HOUSE OF REPRESENTATIVES—*Tuesday, January 21, 1997*

The House met at 12 noon and was called to order by the Speaker pro tempore [Mr. BEREUTER].

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

January 21, 1997.

I hereby designate the Honorable DOUG BEREUTER to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We join in the words of the Psalmist who wrote: "Behold how good and pleasant it is when God's people dwell in unity. It is like the precious oil upon the head, running down upon the beard, upon the beard of Aaron, running down on the collar of his robes. It is like the dew of Hermon, which falls on the mountains of Zion. For there the Lord has commanded the blessing, life forevermore."

Among all Your bountiful favors to us, O gracious God, is the knowledge that You have created every person in Your image and You have blessed every person with those gifts that make us truly human: the gifts of justice and mercy, the gifts of peace and good will, the gifts of unity and common purpose.

May all Your blessings, O God, that flow from the early morn to the last light, be with each of us and remain with us all our days.

In Your name we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. 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.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Ohio [Mr. TRAFICANT] come forward and lead the House in the Pledge of Allegiance.

Mr. TRAFICANT 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.

MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Sherman Williams, one of his secretaries.

IN THE MATTER OF REPRESENTATIVE NEWT GINGRICH

Mrs. JOHNSON of Connecticut. Mr. Speaker, pursuant to rule IX and by direction of the Select Committee on Ethics, I send to the desk a privileged resolution (H. Res. 31) in the matter of Representative NEWT GINGRICH, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

HOUSE RESOLUTION 31

IN THE MATTER OF REPRESENTATIVE NEWT GINGRICH

Resolved, That the House adopt the report of the Select Committee on Ethics dated January 17, 1997, In the Matter of Representative Newt Gingrich.

The SPEAKER pro tempore. The resolution constitutes a question of privilege and may be called up at any time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Before we proceed, the Chair will have a statement about the decorum expected of the Members.

The Chair has often reiterated that Members should refrain from references in debate to the conduct of other Members where such conduct is not the question actually pending before the House, either by way of a report from the Committee on Standards of Official Conduct or by way of another question of the privileges of the House.

This principle is documented on pages 168 and 526 of the House Rules and Manual and reflects the consistent rulings of the Chair in this and in prior Congresses. It derives its force primarily from clause 1 of rule XIV which broadly prohibits engaging in personality in debate. It has been part of the rules of the House since 1789.

On the other hand, the calling up of a resolution reported by the Committee on Standards of Official Conduct, or the offering of a resolution as a similar question of the privileges of the House, embarks the House on consideration of a proposition that admits references in debate to a Member's conduct. Disciplinary matters by their very nature involve personalities.

Still, this exception to the general rule against engaging in personality—admitting references to a Member's conduct when that conduct is the very question under consideration by the House—is closely limited. This point was well stated on July 31, 1979, as follows: While a wide range of discussion is permitted during debate on a disciplinary resolution, clause 1 of rule XIV still prohibits the use of language which is personally abusive. This is recorded in the Deschler-Brown Procedure in the House of Representatives in chapter 12, at section 2.11.

On the question now pending before the House, the resolution offered by the gentlewoman from Connecticut, Members should confine their remarks in debate to the merits of that precise question. Members should refrain from remarks that constitute personalities with respect to members of the Committee on Standards of Official Conduct or the Select Committee on Ethics or with respect to other sitting Members whose conduct is not the subject of the pending report. Finally, Members should exercise care to maintain an atmosphere of mutual respect.

On January 27, 1909, the House adopted a report that stated the following: It is the duty of the House to require its Members in speech or debate to preserve that proper restraint which will permit the House to conduct its business in an orderly manner and without unnecessarily and unduly exciting animosity among its Members.

This is recorded in Cannon's Precedents in volume 8 at section 2497.

The report adopted on that occasion responded to improper references in debate to the President, but it articulated a principle that occupants of the Chair over many Congresses have held equally applicable to Members' remarks toward each other.

The Chair asks and expects the cooperation of all Members in maintaining a level of decorum that properly dignifies the proceedings of the House.

The gentlewoman from Connecticut [Mrs. JOHNSON] is recognized for 1 hour.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I ask unanimous consent that debate on the resolution be extended for a half an hour.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Connecticut [Mrs. JOHNSON] is recognized for 90 minutes.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mrs. JOHNSON of Connecticut. Mr. Speaker, for purposes of debate only, I yield 45 minutes to the gentleman from Maryland [Mr. CARDIN], pending which I yield myself such time as I may consume.

Mr. Speaker, I rise as chairman of the Select Committee on Ethics to lay before you the committee's bipartisan recommendation for final action on the matter of Representative NEWT GINGRICH. The committee recommends that Representative GINGRICH be reprimanded and reimburse the House $300,000. The penalty is tough and unprecedented. It is also appropriate. No one is above the rules of the House of Representatives.

This matter centered on two key questions: whether the Speaker violated Federal tax law and whether he intentionally filed incorrect information with the Ethics Committee. While the committee investigated these questions extensively, its findings were inconclusive. Rather, the committee found that Representative GINGRICH brought discredit to the House by failing to get appropriate legal advice to ensure that his actions would be in compliance with tax law and to oversee the development of his letters to the committee to ensure they were accurate in every respect.

Each Member of Congress, especially those in positions of leadership, shoulders the responsibility of avoiding even the appearance of impropriety. Representative GINGRICH failed to exercise the discipline and caution of his office and so is subject to penalty today.

As I have said, the penalty recommended by the committee is tough and unprecedented. In past cases of this nature, the House has reprimanded a Member only where the Member was found to have intentionally made false statements to the Ethics Committee. In this case, the committee recommended a reprimand of Representative GINGRICH even though the statement of alleged violations did not assert that he intentionally misled the committee. Likewise in past cases where the committee imposed monetary sanctions on a Member, the committee found that the Member had been personally enriched by the misconduct. The committee made no such finding against Representative GINGRICH, yet recommends that a cost reimbursement of $300,000 be paid to the House by him.

The report before us contains several hundred pages of exhibits and a detailed analysis of the subcommittee's findings. The allegations and the key facts supporting them were laid out by the special counsel during a public hearing on January 17. The committee's recommendations before you today end 2 long years of work.

Throughout this process we never lost sight of our key goals: full and complete disclosure of the facts and a bipartisan recommendation. We accomplished both. Even though it would have been easy for Republicans or Democrats to walk away from the process at many stages, we did not, because we believed in this institution and in the ethics process.

The investigative subcommittee was ably chaired by Representative PORTER GOSS. Representatives BEN CARDIN, STEVE SCHIFF, and NANCY PELOSI, along with Mr. GOSS deserve the gratitude of this House for the extraordinary workload they shouldered and for their dedication to pursuing each issue until they reached consensus. Together with Mr. James Cole, the special counsel, they laid the groundwork for the bipartisan conclusion of this matter. I want to thank Mr. CARDIN, the current ranking member, as well, for working with me through difficult times to enable the bipartisan Ethics Committee process to succeed.

In the last 2 years the committee was forced to conduct its work against the backdrop of harsh political warfare. It is the first time ever that members of the Ethics Committee have been the target of coordinated partisan assaults in their districts. Coordinated political pressure on members of the Ethics Committee by other Members is not only destructive of the ethics oversight process but is beneath the dignity of this great institution and those who serve here.

□ 1215

Despite the pressures, we bring you today a bipartisan recommendation resolving the most complex charge against Representative NEWT GINGRICH. I ask for both my colleagues' rejection of the partisanship and animosity that has so deeply permeated the work of the House and for their support of the committee's resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. CARDIN. Mr. Speaker, I yield myself such time as I may consume.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The gentleman will suspend.

The Chair notes a disturbance in the visitors' gallery in contravention of the laws and the rules of the House. The Doorkeepers and police, the Chair believes, have already acted, but shall act to remove from the gallery those persons participating in a disturbance.

If there is an outburst from the visitors' gallery, the Chair will make this statement but will insist on order.

The Chair recognizes the gentleman from Maryland [Mr. CARDIN].

Mr. CARDIN. Mr. Speaker, as I have said, this is a sad moment for the House of Representatives. One of our Members has admitted to a serious violation of the House rules. This process and this admission affects not only that Member but each Member who serves in this body. While I believe that is true of any ethics proceeding, it is particularly true and particularly troublesome in this case because the offending Member is the Speaker of the House, the third ranking official in our Government.

We have received the report and recommendation from the special counsel. Mr. GINGRICH has agreed with the judgment of the special counsel. In addition to the report, the recommendation of sanctions represents the bipartisan work produced by our investigative subcommittee. The report in the recommendation of sanctions has been overwhelmingly approved by the full Committee on Standards of Official Conduct and deserves the support of this House.

Let me begin by saying how proud I am of the work of the investigative subcommittee. In my judgment, all four members of the subcommittee maintained their commitment to a process that was fair to the respondent as well as the House and its rules. I want to commend and compliment the work of our chairman, the gentleman from Florida [Mr. GOSS], for the extraordinary work that he did as well as the work of the gentleman from New Mexico [Mr. SCHIFF] and the gentlewoman from California [Ms. PELOSI] and the work of the subcommittee. I also want to recognize the extraordinary service performed by Jim Cole, our special counsel; Kevin Wolf, his assistant; and Virginia Johnson from the Committee on Standards of Official Conduct.

Before commenting on the substance of the resolution before us, I feel obligated to point out the severe problems that have plagued the process. The 1-year delay in 1995 in enlisting the services of the special counsel was wrong. We have some evidence that this delay may have been part of the strategy by allies of Mr. GINGRICH. In sharp contrast to the good faith, bipartisan cooperation which governed the subcommittee's work, the orderly process collapsed on December 21, 1996, after the matter was forwarded to the full committee. Ignoring the advice of special counsel and the subcommittee, the Republican leadership in the House imposed an unrealistic deadline for the completion of our work to coincide with the Presidential inauguration. The schedule agreed upon by the full Committee on Standards of Official Conduct for full public hearings on the subcommittee findings was unilaterally and improperly canceled. These partisan actions were aimed at shielding Mr. GINGRICH from a full airing of the charges to which he has admitted guilt.

During the past 5 days the gentlewoman from Connecticut [Mrs. JOHNSON] and I have worked closely together to use these days as effectively as possible to achieve two objectives: First, in the face of an unrealistic time

limit, to get the broadest possible public release of the information contained in the subcommittee's report; and second, to arrive at a fair, bipartisan recommendation on sanctions. We have achieved both objectives, and for that I would like to express my appreciation to the chairwoman. The report details the reason why the committee has found that Mr. GINGRICH has committed a serious violation of the House ethics rules. I urge each of my colleagues to read the report and the accompanying exhibits.

I will now briefly review the findings of the special counsel's report. First, we must disregard the notion that this case involves a college professor engaged in a normal academic classroom activity. The respondent in this case is not Professor GINGRICH, but Representative GINGRICH, a Member of the House, minority whip and then Speaker of the House, who had a vision to launch a political movement to change the country, in his words, from a welfare state to an opportunity society.

Second, over a 5-year period Mr. GINGRICH improperly commingled political activities with tax exempt organizations. When GOPAC ran short of funds, Mr. GINGRICH sought contributions from several tax exempt entities in order to continue his partisan political crusade.

Third, there is ample evidence that he did so in violation of tax laws. Celia Roady, the tax expert retained by the committee, has concluded that the tax laws were violated, and it is not even a close call. Our special counsel agrees with that judgment. In all, almost $1.5 million was spent by these tax exempt organizations, costing the U.S. Treasury hundreds of thousands of dollars in lost tax revenues that should have been paid.

Fourth, one need not reach a conclusion on the tax issues to find that Mr. GINGRICH has violated our ethical standards. From his involvement in the American Campaign Academy case, Mr. GINGRICH knew that pursuing these activities posed a risk of potential tax law violations. The ACA case established limits on political activities of tax exempt organizations.

It is important to understand that this case involved similar facts and some of the same parties as the matter investigated by the subcommittee. In fact, in response to a question from the special counsel, Mr. GINGRICH stated, and I quote: "I lived through that case. I mean I was very well aware of what the ACA case did and what the ruling was." All experts agreed that he should have sought tax advice before using tax exempt organizations to pursue his political agenda.

In the words of our special counsel Mr. GINGRICH's actions suggest that "either Mr. GINGRICH did not seek legal advice because he is aware that it would not have permitted him to use a 501(c)(3) organization for his projects," or he was "reckless in an area that was fraught with legal peril."

Finally, the House must make a judgment on the question of whether Mr. GINGRICH deliberately misled the committee. Mr. GINGRICH submitted two letters to the committee that he now admits contained information about GOPAC that was inaccurate. The facts surrounding these inaccuracies were well known to Mr. GINGRICH. Mr. GINGRICH had read the letters before submitting them to the committee. When the investigative subcommittee specifically called the contradiction in the letters to Mr. GINGRICH's attention, he once again defended them as accurate even though they were clearly wrong. The misleading letters were sent with the express intent of persuading the Committee on Standards of Official Conduct to dismiss the pending charges. They had the effect of misleading the committee. It stretches credibility to conclude that the repeated misstatements were innocent mistakes.

The linchpin of these findings is stated clearly in the report of special counsel: "Of all the people involved in drafting, reviewing, or submitting the letters, the only person who had firsthand knowledge of the facts contained within them with respect to the Renewing American Civilization course was Mr. GINGRICH."

The special counsel concludes: "Either Mr. GINGRICH intentionally made misrepresentations to the committee or he was again reckless in the way he provided information to the committee concerning a very important matter."

Mr. GINGRICH's defense is that he has always been very sensitive to ethics issues and he was embarrassed by the obvious inaccurate letters. He said he never intended to mislead the committee. But Mr. GINGRICH's actions with respect to the understanding reached with the Committee on Standards of Official Conduct belies his statement.

Mr. GINGRICH, through his attorneys, had entered into an agreement with the committee. That agreement provided "Mr. GINGRICH agree that no public comment should be made about this matter while it is still pending. This includes having surrogates sent out to comment on the matter and attempt to mischaracterize it."

I am sure that Members of this House are well aware of public comment since the release of our findings on December 21. As the special counsel States, "In the opinion of the subcommittee Members and the special counsel, a number of press accounts indicated that Mr. GINGRICH had violated that agreement," the finding of the bipartisan committee and our special counsel. Mr. GINGRICH's violation of the no comment agreement raises serious questions about the extent to which he has deliberately sought to mislead the committee in other instances.

Beyond the events of December 21, 1996, Republican operatives close to Mr. GINGRICH conducted an ongoing campaign to disrupt the committee's work. It is relevant for this House to consider these circumstances in determining the degree of Mr. GINGRICH's culpability in providing the Committee on Standards of Official Conduct information that was not accurate, reliable, and complete. It is up to the Members of this House to determine the appropriate sanction for the violations committed by Mr. GINGRICH. This is not a vote on whether Mr. GINGRICH should remain Speaker of the House. Members need time to become familiar with the factual record presented in the special counsel's report and to consider the seriousness of these violations that have just come to light during the past 4 days.

In the days and weeks to come Mr. GINGRICH and each Member of this House should consider how these charges bear on the question of the speakership. The resolution before us, the House, today is a sanction for Representative GINGRICH for the ethics violations that he has committed. According to the House rules a reprimand is appropriate for serious violations of ethical standards. Sadly, Mr. GINGRICH's conduct requires us to confirm that this case involves infractions of at least that level of seriousness. He has provided inaccurate and misleading information to the Committee on Standards of Official Conduct and there is significant evidence that he intended to do so.

The recent history of congressional ethics sanctions indicate the House has imposed the sanction of reprimand when a Member has been found knowingly to have given false statements. But the earlier cases did not involve giving false statements to the Committee on Standards of Official Conduct itself in response to an inquiry from the Committee on Standards of Official Conduct, and Mr. GINGRICH's case involves more than just giving false information to the committee. Mr. GINGRICH has also admitted to directing a political empire that made extensive use of tax exempt entities for political fundraising purposes. As a result of all these actions, the reputation of the House of Representatives has been damaged and tax dollars have been lost.

But there is still more. This is not the first time Mr. GINGRICH has had ethical problems that drew critical action by the Committee on Standards of Official Conduct. On other occasions he has been sighted by this committee for violating House rules. The American public has not forgotten the lucrative book advance contract that the incoming Speaker of the House was forced to renounce under public pressure. Our

committee concluded in regards to that book deal: "At a minimum this creates the impression of exploiting one's office for personal gain. Such perception is especially troubling when it pertains to the Office of the Speaker of the House, a constitutional office requiring the highest standards of ethical behavior."

Because of all those factors, these violations require a penalty more serious than a reprimand. Considering all these matters, I urge this House to adopt the resolution before us. The resolution incorporates the recommendation of the special counsel, the investigative subcommittee, the full Committee on Standards of Official Conduct, and Mr. GINGRICH. The sanction we recommend is somewhere between a reprimand and a censure. It provides a reprimand plus a required $300,000 contribution by Mr. GINGRICH to the cost of these proceedings. In my view this payment should come from his personal resources because it is a personal responsibility.

Mr. Speaker, with today's vote I will have completed my service on the Committee on Standards of Official Conduct. Over the past 6 years and 1 month I have participated in many ethics matters. Among the issues that we had before the committee during my tenure has been not only this matter but the House bank and post office matters, both of which exposed many Members of this House, including its leadership, to embarrassment either for misdeeds or for mismanagement. I must say, however, that the matter before us today has brought a threat to the Committee on Standards of Official Conduct that far exceeded anything I have seen. The committee was subject to repeated attempts to obstruct its work and improperly interfere with its investigation. As I leave the Committee on Standards of Official Conduct, I hope that the incoming Members will find the process has survived and will continue to serve this House and the people of our Nation.

Mr. Speaker, I reserve the balance of my time.

□ 1230

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield such time as he may consume to the gentleman from New Mexico [Mr. SCHIFF], a distinguished member of the subcommittee.

Mr. SCHIFF. Mr. Speaker, I first want to join in the compliments to the other committee members and to our staffs and special counsel because, even though we had many disagreements along the way, and obviously still have some disagreements, I think we made the best possible effort to get us here today.

I agree with the gentleman from Maryland [Mr. CARDIN] this is a sad day. It is a sad day when any Member is here because of a recommendation of the Committee on Standards of Official Conduct. Last time I was here it was because a Democratic colleague was here on our recommendations. I was not happier then because it was a Democrat and not a Republican then. I think it is a sad day when it is a Member of the House.

Nevertheless, I think the House can be proud of the fact there is accountability for its Members. I wish such accountability could be found from every area of our government.

Second, I am sorry that in the rendition of facts I just heard, there were certain partisan conclusions that eliminated other conclusions which I guess could be stated from the other side. For example, it was said that there was an attempt made by our chairwoman, the gentlewoman from Connecticut [Mrs. JOHNSON] who got us here, when many people expected along the way we could never get here; but through her leadership we are here today.

There was the accusation that our chairwoman deliberately tried to scuttle the information getting to the Members in order to mitigate any effect on Congressman GINGRICH. Quite the contrary. Our chairwoman and the rest of us had an agreed to up to 5 days of public hearings. Those were changed only when our Democratic colleagues on the Committee on Standards of Official Conduct held a press conference in which they said the most important product we could produce would be a written report that Members could consider before they vote.

That left our Chair, in my judgment, no alternative but to change directions and to postpone the public hearing, which we ultimately did have anyway, in favor of trying to produce the written report by this date which we have now accomplished.

There has been no mention of the fact that Members on the Republican side particularly were subject to enormous political attack in their districts. If I were still a district attorney, a career I had before I got to Congress, I would have certain leaders arrested for attempted jury tampering, because I think that is what they were doing. They were trying to use political pressure to get a result in what is essentially a judicial type of deliberative body. That was their intent.

That was one of the most unethical things I have seen since becoming a member of the Committee on Standards of Official Conduct.

What I want to emphasize now is why we are here today. I want to point out that the statement made, that there have been many new facts revealed in the last several days, in my judgment is not correct. We are here because of a statement of alleged violation found by the ethics subcommittee and released publicly on December 21, 1996, to which the Speaker acknowledged. And those violations have not changed.

What has changed is the reporting of those violations in the news media over the last several days. What I have seen in the news media in various forms is some significant misstatements of what the violations are. But I have to add that I do not believe that that was in this case the fault of the news media. It is their job to be critical of us, and it is our responsibility to respond if we think it is appropriate.

But I want to make it very clear what I think happened was an unfortunate matter of timing, that on Friday of last week, our hearing did not begin and our written report was not available until 3 o'clock on Friday afternoon. Some reporters have told me there were not enough copies to go around. So they are trying to form deadlines for their programs or for their newspapers with a report that is over 200 pages long. I think it is entirely understandable that some errors were made at first.

Nevertheless, I think some errors were made. They were made because Mr. Cole's report attempted to be a soup-to-nuts, beginning to end explanation of what we did in the ethics subcommittee to get to where we are today. In going through step by step, he quite properly, in my judgment, said we had this choice to make and we had this fact and we handled it as follows, and so forth. But what I have seen as reported as a final conclusion, certain excerpts from that report were intermediary at best.

The final conclusion of the subcommittee did not change. That final conclusion is, first, that Mr. GINGRICH should have sought competent legal, professional tax advice before he began his procedures that involved the use of a tax-exempt foundation, which under the law is called a 501(c)(3) organization.

Second, that materials were sent to the Committee on Standards of Official Conduct in response to questions from the Committee on Standards of Official Conduct that the Speaker should have known were inaccurate. That is the final finding, if you will, of the subcommittee.

The report goes through all of the events, and I heard the gentleman from Maryland [Mr. CARDIN] make reference to a number of the events. But the findings did not change. All of the events would include things like we on the subcommittee interviewed everybody we could find who had anything to do with the preparation of those two letters that were inaccurate.

What we found, in my judgment, if it were not so serious, and I recognize how serious it is, it would really be called a comedy of errors.

What happened was the letters were prepared in Mr. GINGRICH's law firm that sent the letters first to a staff member in Mr. GINGRICH's office. The law firm thought that the staff member would correct any factual

misstatements. The staff member thought the law firm had already checked out the facts. So nobody checked out the facts to see if they were accurate. But the most important thing is that Mr. GINGRICH was never involved in the preparation of those letters at any point until the very end where he acknowledges he signed them, he should have read more carefully, and he is responsible for that before this House of Representatives.

I would point out that in a letter of October 1996 that he prepared himself with his staff, he gave us entirely accurate information about the matters that are under consideration here. I think it is pretty obvious you do not give accurate information in October and then you can deliberately prepare information the following September and March that nobody would know the difference of.

Based upon the allegation, the violations we found, the Committee on Standards of Official Conduct on a 7-to-1 vote, full committee now, entire committee, recommended the following penalty: It recommended a reprimand and a cost assessment of $300,000. In some meetings earlier with members, I have heard some members say that that is unique and they are concerned about that penalty being unique because, although we have imposed cost assessments before, we have never done so in the past for the cost of the investigation.

That is basically what we did. We set $300,000 as the estimated cost of that portion of the investigation that dealt with clearing up the misstatements that we received, which may have begun to be prepared in Mr. GINGRICH's law firm, but for which he is responsible as a Member of the House.

I want to tell all Members that they do not need, in my judgment, to be concerned about the precedent value, because I believe everyone concerned understood that this is a unique penalty because the Speaker of the House is a unique official in our institution. In fact, that is the reason we decided to, on the subcommittee's part, propose a unique penalty, and we got word, I have to say "got word," because we never met with the Speaker to discuss the penalty. All of the negotiations were by our special counsel on our behalf and the Speaker's attorney, Mr. Evans, on his behalf. So we got reports on it. But the report we got back was that Speaker NEWT GINGRICH agrees that because he holds a unique position in the House he should receive a unique penalty, so there is no doubt even the Speaker of the House is not above the rules.

I would hastily add, however, two things, and conclude with this. The first is that I think there is room for this to be made a standing procedure in certain cases. For example, I saw what in my judgment were a number of frivolous complaints filed with the Committee on Standards of Official Conduct which had no other purpose than to be leaked to the press and create bad publicity for whomever was the target of those complaints. It seems to me that the precedent we have established here should apply to those who are found by the committee to have filed frivolous complaints.

Finally, on how the funds should be paid if the House adopts the recommended penalty, we were deliberately silent on that. My colleague, the gentleman from Maryland [Mr. CARDIN], is most certainly entitled to his opinion, but the subcommittee and the committee made no determination.

Insofar as I have studied the precedents on financial remuneration to the Government, we have never established as a matter of law how these funds can be paid.

Mr. GINGRICH, if he does get this as a final penalty, understands all the ramifications, I am certain he does not need me to explain them to him or, for that matter, any of my colleagues on the other side. But the fact is the committee was silent deliberately on how any such funds should be paid. It is my understanding there are at least some precedents for campaign funds, for example, being used to reimburse the Government, and certainly we all know that the Chief Executive of the United States has a legal defense fund in which he raises money. So I am just saying that whatever the options are to NEWT GINGRICH as a Member of the House, they have not been precluded legally by the committee, and in my judgment they should not be.

With that, Mr. Speaker, I just want to again commend our chairwoman, the gentlewoman from Connecticut [Mrs. JOHNSON], my fellow members of the committee, and say I believe we have come up with an appropriate penalty, which some think is too harsh, some think is too lenient. That tells me we are about where we ought to be. I hope the House will adopt it.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BEREUTER). The Chair will request that visitors in the gallery, in coming and going, refrain from any audible disruption of the proceedings.

Mr. CARDIN. Mr. Speaker, I yield myself such time as I may consume briefly to comment on some of the points raised by the gentleman from New Mexico [Mr. SCHIFF].

Mr. Speaker, the gentleman from New Mexico [Mr. SCHIFF] is correct, we are in agreement on the recommendation. We put different emphasis on some of the facts. Mr. GINGRICH clearly, in my view, had ample opportunity to know about the statements in his letters. He did indicate he hired an attorney in order to draft the two letters. Let me just read, if I might, from the transcripts as to the exchange between Mr. Cole and Mr. Baran, Mr. Baran being Mr. GINGRICH's attorney.

Mr. Cole: "Would you have made sure that he had read it and approved it, or just the fact he read it is all you would have been interested in," referring to Mr. GINGRICH?

Mr. Baran said, "No, I would have wanted him to be comfortable with this on many levels."

Mr. Cole: "Were you satisfied he was comfortable with it prior to filing it with the committee?"

Mr. Baran: "Yes."

Let me also point out that after this, after we pointed out to Mr. GINGRICH the inconsistency in the letters, Mr. GINGRICH wrote another letter back to the committee. Clearly he had time to review the inconsistencies by that time. The October 31, 1996, letter, in that letter he still maintains his innocence on inconsistencies in the letter, even though the letters were clearly inaccurate, he knew they were inaccurate, and he had a chance to reread the letters and correct the record.

Mr. Speaker, I yield 11½ minutes to the gentlewoman from California [Ms. PELOSI], my colleague on the Committee on Standards of Official Conduct, who was on the investigative subcommittee and who has made a great contribution to this process and has been an extraordinary member of our Committee on Standards of Official Conduct.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding me time and for his leadership and guidance throughout this process. Clearly without his involvement, we would not be here today with a bipartisan recommendation for a sanction for the Speaker of the House.

Mr. Speaker, as a member of the investigative subcommittee, I would like to take this opportunity to publicly thank the gentleman from Florida, PORTER GOSS, our Chair of the investigative subcommittee, again acknowledge the gentleman from Maryland, Mr. CARDIN, as ranking member for his service there, as well as to say how much I learned from the gentleman from new Mexico, Mr. SCHIFF, in the course of our service there.

Clearly, from the debate so far, you can see that we had many unresolved difficult issues to deal with, and under the leadership of the gentleman from Florida [Mr. GOSS], we went through that.

I want to also commend our special counsel, James Cole, for making us stick to the facts, the law, and the ethics rules as those elements that were the only matters relevant to our decisions, and many thanks to Kevin Wolf and Virginia Johnson for their assistance and professionalism.

I heard my colleague, the gentleman from New Mexico [Mr. SCHIFF], say in his earlier days as a prosecutor he might entertain thoughts of bringing

jury tampering charges. If he decides to do that, I hope that the gentleman will include in his package the dirty tricks memo that is now in the public record that is a written document about attempts to undermine the ethics process directly by the Republican House leadership.

Let me say though we did produce a bipartisan product. I hope our work will serve as a foundation for a bipartisan solution to be agreed to today.

Today, others have said it, is a sad day. I think it is a tragic day. Here in the House of Representatives we will sanction a sitting Speaker for the first time. It is an unwelcome task to pass judgment on any of our colleagues, but we have a responsibility to uphold ethical standards called for in the rules and expected by the American people.

I associate myself with the gentleman from Maryland, Mr. CARDIN's, remarks about the process. We should not have to choose to make the American people aware of either the hearing, a full hearing, or the report. But since we have a report, I urge everyone to read it. I think it is very instructive and gives lie to many of the mischaracterizations that have been made about the violations that the committee charged Mr. GINGRICH with and those which he admitted to.

□ 1245

The last few weeks have been dreadful. But we have an opportunity to say today to the American people that when we come to Washington, we do not check our integrity at the beltway, and that power is not a license to ignore ethical standards. We also have an opportunity to tell the American people that sanity can reign in the Congress by demonstrating our ability to agree and disagree in a respectful way. The American people gave us the privilege to serve; they expect us not only to make the laws and to obey the laws, but also to live up to a high ethical standard.

So today we are here to address the failure of Speaker GINGRICH with regard to the laws governing charitable contributions and GOPAC, and his failure to respond accurately and reliably to the Committee on Standards of Official Conduct.

I would like to just take a moment to refer to the book, because as I asked people to read it, I want to point out the statement of alleged violations which was originally set forth by the special counsel. This is on page 155.

Based on the information described above, the special counsel proposed a statement of alleged violations to the subcommittee on December 12. The statement of alleged violations contained 3 counts: Mr. GINGRICH's activities on behalf of ALOF in regard to AOW and ACTV, and the activities of others in that regard with his knowledge and approval, constituted a violation of ALOF's status under section 501(c)(3).

Second, Mr. GINGRICH's activities on behalf of Kennesaw State College Foundation, the Progress and Freedom Foundation, and Reinhardt College in regard to the Renewing American Civilization course, and other activities in that regard, with his knowledge and approval, constituted a violation of those organizations' status under 501(c)(3).

And, third, Mr. GINGRICH had provided information to the committee, directly or through counsel, that was material to matters under consideration by the committee, which Mr. GINGRICH knew or should have known was inaccurate, incomplete, and unreliable.

These were not the alleged violations that were passed out at the committee because we did not come to agreement on them, but they are the original allegations by the special counsel. I think everyone is well aware that we have charged the Speaker in our statement of alleged violations that he did not ensure that the law was complied to in his activities, and that he gave information to the committee that was not accurate.

Think how much easier it would be if we could all use the 501(c)(3), not consult a lawyer, and build our political agenda around tax deductible considerations. The American people in their generosity give the opportunity to charitable institutions to do charitable work. That does not include subsidizing our political activity. At the grassroots level we have always had to comply with the law in relationship to political activity and 501(c)(3). If we have to do it at the grassroots level, so should the Speaker of the House.

As the counsel mentions in his statement, some members of the committee and the special counsel were in favor, as I mentioned before, of the original proposal. After much deliberation, all four of us could agree on a statement of alleged violations that despite, in quotes, "Despite significant and substantial warnings, Mr. GINGRICH did not seek the legal advice to ensure that his conduct conformed with the provisions of 501(c)(3)," with the law.

Why did he not? Why did he not? Either because Speaker GINGRICH knew what the answer would be no, from an attorney, "No, you cannot do this," or he was reckless in conforming with the law. The committee decided that regardless of the resolution of the 501(c)(3) tax question, Speaker GINGRICH's conduct was improper, did not reflect credibly on the House, and was deserving of sanction, serious sanction, and Speaker GINGRICH agreed.

The next issue in my view is the most serious, that of not dealing honestly with the Committee on Standards of Official Conduct. It is interesting to me that Speaker GINGRICH has repeatedly stated that ethics are important to him. Why, then, did he say that he was too busy to respond to the committee accurately? Again, either he was trying to get complaints dismissed and an accurate answer would not achieve that end, or that ethics were not important enough for him to take the necessary time.

As our colleague, Mr. CARDIN, has pointed out, Mr. GINGRICH gave one answer in the earlier letter in order to respond to a complaint regarding use of official resources for his course, so he said GOPAC did it. Then when we asked the question if GOPAC and 501(c)(3) cannot be that cozy, then he said GOPAC did not do it; and then in the third communication to the committee, he stood by his previous letters.

The gentleman from New Mexico [Mr. SCHIFF] prefers to call it a comedy of errors. I think it is violating our trust that we have among Members. Every day that we speak to each other in this House, we refer to each other as the gentleman from Georgia, the gentlewoman from Connecticut, the gentleman from Maryland. We trust each other that we will deal truthfully with each other.

Unfortunately, in terms of Speaker GINGRICH's dealings with the committee on a number of occasions, and in his violation of the agreement under which we would go forward in bringing this issue to a conclusion, Mr. GINGRICH's statements lead me to one conclusion: that Mr. GINGRICH, in his dealings with the committee, is not to be believed. I conclude also that Mr. GINGRICH gave these different answers not because it was a comedy of errors, but because he thought he would get away with it.

I was particularly concerned about the "too busy" defense. We cannot say that ethics is important to us and then say we are too busy to answer the central question asked by the Committee on Standards of Official Conduct. Maintaining a high ethical standard is a decision, and it requires making it a priority. It is not just something we do when we are not too busy.

We expect the Speaker of the House to be busy. We also expect the Speaker of the House to be ethical. Speaker GINGRICH himself has stated that the Speaker must be held to a higher standard. I do not put any additional burden on the Speaker. I think all Members of Congress should be held to a higher ethical standard.

When new Members arrive in Congress, one of the first documents they receive is the House Ethics Manual. And one of the first responsibilities impressed upon all of us is to uphold a high ethical standard. Clearly, Speaker GINGRICH did not live up to his own professed ethical standards of the House, and, indeed, to the ethical standards in this book.

I urge my colleagues to read this report. I think when you do, you will see that it gives lie to the mischaracterizations of our Republican colleagues that the violations were nothing, or that they were like trespassing or double parking. Either our colleagues were ill-informed, and that is what I choose to believe, or they have a cavalier regard for the tragedy of the Speaker admitting bringing discredit to the House of Representatives which he wants to lead.

Now we come to the penalty. As you know, we have a financial penalty because we believe that the inaccurate statements that the Speaker said to us prolonged the process. There are other reasons why there is a financial penalty, but that was one of them. And the subcommittee concluded, and I quote, "that because these inaccurate statements were provided to the committee, this matter was not resolved as expeditiously as it could have been. This caused a controversy over the matter to arise and last for a substantial period of time, it disrupted the operations of the House, and it cost the House a substantial amount of money in order to determine the facts."

So I urge our colleagues, in light of all of that, to support the bipartisan recommendation of the committee. The $300,000 penalty I believe speaks eloquently to the American people, who may not know the weight of one of our sanctions or another, but they understand $300,000. And I hope that this money will not come from the Speaker's political campaign funds, because I think that will increase the cynicism of the American people about what goes on here in Washington.

Whether the Speaker remains Speaker is up to the Republicans. He is technically eligible. I hope you will make a judgment as to whether he is ethically fit.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. GOSS], the chairman of the subcommittee, and I want to recognize the outstanding job that he did chairing that subcommittee, as I recognize the remarkable service of the members of that subcommittee.

Mr. GOSS. Mr. Speaker, I thank the gentlewoman from Connecticut, the distinguished chair of our committee, for yielding me this time. She deserves our sincere gratitude for all she has endured, for her persistence, for her determination to bring this to a successful conclusion, and here we are today. It was certainly an unenviable and, I know, thankless task.

Today we have a conclusion. Today the House takes the final step in what has been a most difficult process, I think we all would agree. It is not just for those intimately involved in the day-to-day twists and turns in this tortuous case, but also for the entire House.

On Friday the full Committee on Standards of Official Conduct approved a recommendation which is today before this House, for an official reprimand and a $300,000 cost assessment to Mr. GINGRICH as sanction for his violation of House rules and as partial reimbursement for the costs of the inquiry that ensued. This is unquestionably a serious sanction, but one that is also fair and appropriate, in my view, as evidenced by the fact that indeed Mr. GINGRICH himself has agreed to it.

The Committee on Standards of Official Conduct, functioning independently of leadership on both sides of the aisle, is supposed to find the truth through an investigative process. It is not designed to protect errant Members, nor is it designed to permit partisan zealots to destroy Members or to score political points.

In this case, the committee's members were subject to frequent unfair and inaccurate partisan political attack. That is a matter of fact. Outsiders attempted to influence our activities, our deliberations, our schedule and our conclusions. That is truly a shame. It has caused harm, not just to the Members involved, but it has also brought discredit to this institution, in my view.

Friday, I urged the leadership on both sides of the aisle to tone down the rhetoric, cut the nonsense, and get back to work in repairing the damage that has come to this House. I repeat that exhortation today.

With regard to the matter at hand, I am very satisfied with the work done by our investigative subcommittee, whose recommendation was adopted by the full committee and is the recommendation all Members will consider today.

The four of us, working with the extraordinarily talented special counsel, Jim Cole, functioned in a spirit of bipartisan cooperation that did actually grow as we went along in the case. I say we started with different perspectives, but we started with open minds, and I am grateful for the very fine service, the unbelievable commitment of time of the members, their cooperation. I take my hat off to the gentleman from Maryland [Mr. CARDIN], the gentleman from New Mexico [Mr. SCHIFF], and the gentlewoman from California [Ms. PELOSI], all of whom in my view bring great credit to this institution.

Contrary to what has been reported, the statement of alleged violations that our subcommittee developed and passed and which forms the basis for the sanctioned recommendation did not, I repeat not, find that Mr. GINGRICH violated or did not violate tax law in his relationship with 501(c)(3) tax exempt organizations. And contrary to media reports, that statement of alleged violation of December 21st also did not charge Mr. GINGRICH with intentionally deceiving our committee with his correspondence in this case.

Nonetheless, I found it extraordinarily imprudent of Mr. GINGRICH not to seek and follow a less aggressive course of action in tax areas he knew to be sensitive and controversial. And even more troubling, I found the fact that the committee was given inaccurate, unreliable, and incomplete information to be a very serious failure on his part.

□ 1300

Now, it is certainly true that we had more than enough facts and extenuating circumstances to consider. We all know a Member of Congress wears many hats, for our official lives, our campaign lives, our private lives, our business lives or whatever, and knowledge of how careful we must be in wearing those hats is fundamental to our job. We all have an extra obligation to be sure our activities are appropriate, no matter which hat we are wearing. That is an obligation that each of us signs up for when we run to serve in this institution.

That is why the serious sanction we recommend is appropriate, in my view. The gentleman from Georgia [Mr. GINGRICH] has recognized his lapses and the problems they have caused for this House. He has apologized, forthrightly and sincerely. He has also accepted the unique sanction we proposed, one that includes a clear signal to all Members about the importance of providing accurate and grounded information to the Select Committee on Ethics, whether in response to a complaint or in filing a complaint.

I must point out to Members that our mission in the preliminary investigation was to find and examine the dark clouds. That is what investigations do. Mr. Cole is very good at that. He is a brilliant prosecutor. In his report he presented well those dark clouds. He did not, however, present all of the other clouds we looked at that turned out to be not quite so dark. So I found that his report would be well supplemented by reading the report of the Speaker's attorneys for balance, as well. I refer colleagues and interested parties to both reports to get the full picture.

In the end, I agreed with my subcommittee colleagues that Mr. GINGRICH's absence of diligence subjects him legitimately to charges of conduct reckless enough to constitute a violation of House rules. I sincerely hope with today's voting we can put this matter to rest.

I urge this House to adopt the recommendation of the Select Committee on Ethics and remember, the penalty is aimed at findings in response to the specific work of our subcommittee, no matter what feelings any particular Member may personally have about Mr. GINGRICH.

Some have said this is a sad day. Indeed it is, whenever we have this type of a situation. I will also say it is a day of victory. We have proved to the American people that no matter how rough the process is, we can police ourselves. We do know right from wrong in this institution. We can take the necessary steps.

Mr. CARDIN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. BORSKI], a very valuable member of the Select Committee on Ethics, who has done yeoman's service for the House and for the Congress on that committee.

Mr. BORSKI. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I want to start by commending the members of the investigative subcommittee, the gentleman from Maryland, Mr. BEN CARDIN, the gentlewoman from California, Ms. NANCY PELOSI, the chairman, the gentleman from Florida, Mr. PORTER GOSS, and, of course, the gentleman from New Mexico, Mr. SCHIFF, for the extraordinary job they have performed for this institution. They are all people of enormously high integrity, and they have done this committee and this House very proud.

I also want to commend the special counsel, Mr. Cole, who under the most difficult and trying of circumstances came through with a report that, again, I would urge all Members of the House to read; but again, under the most difficult and trying of circumstances, he performed an heroic deed for this House.

Mr. Speaker, let me state the obvious. No Member seeks or enjoys a position on the Ethics Committee, but the proper functioning of that committee is essential to the integrity of the House. It is a matter of personal and institutional honor that each of us has agreed to serve.

I remember distinctly when I received the phone call that any one of us never wants to get; a leader of my party, Speaker Tom Foley, asked me to serve on the Ethics Committee. I remember distinctly saying to Mr. Foley that I was reminded of the fellow who was tarred and feathered, put on a rail and run out of town, whose retort was that if it weren't for the honor, he would rather walk. I am on this committee, but it is as a reluctant member. On more than one occasion I have offered to step down when the removal of a member was necessary to maintain the political balance of the committee. But Mr. Speaker, I feel very strongly that it is our constitutional duty, and it was mine, to respond positively to Tom Foley's request. It was, again, certainly not a position that I wanted.

I hope to concentrate my efforts and energies on the work of the Committee on Transportation and Infrastructure, probably the most bipartisan committee in this House of Representatives, and where that bipartisan atmosphere has enabled us to turn out very important pieces of legislation.

It is always a grueling and distasteful task to investigate a fellow Member—all the more so in the case of the Speaker. Some have suggested that partisan attempts were made to derail the special counsel's efforts and render him less effective. I might say that I agree. The subcommittee released its statement of alleged violation on the Saturday before Christmas. The counsel's report was released on Friday afternoon, before inaugural weekend, with the vote firmly scheduled for this afternoon. Despite a prior agreement which allowed for a full week of public hearings, we were left with only a single afternoon's session. Mr. Cole, along with members of the full committee and subcommittee were troubled by the time line insisted upon by Republican leadership. The special counsel insisted with consistency that he would be hard pressed to complete a report detailing the 2-year investigation before February 4. Yet, Mr. Cole was denied the time he deemed necessary.

Despite these obstacles, however, the special counsel did release a report on Friday afternoon which included the subcommittee's recommended sanction of a reprimand and fine. In this report, Mr. Cole, along with Ms. Roady, the subcommittee's tax expert, and two members of the committee conclude that Mr. GINGRICH has violated the tax code in conjunction with 501(c)(3). However, the Committee agreed that the focus of the investigation should be on the conduct of the Member rather than the resolution of issues of tax law which would best be left to the IRS. What the report does say about the 501(c)(3), is the following:

"* * * the subcommittee was faced with a disturbing choice. Either Mr. GINGRICH did not seek legal advice because he was aware that it would not have permitted him to use a 501(c)(3) organization for his projects, or he was reckless in not taking care that, as a Member of Congress, he made sure that his conduct conformed with the law in an area where he had ample warning that his intended course was fraught with legal peril. The subcommittee decided that regardless of the resolution of the 501(c)(3) tax question, Mr. GINGRICH's conduct in this regard was improper, did not reflect creditably on the House and was deserving of sanction."

With respect to the letters containing inaccurate information that Mr. GINGRICH provided to the committee, the report goes on to say:

"The special counsel suggested that a good argument could be made, based on the record, that Mr. GINGRICH did act intentionally, however it would be difficult to establish that with a high degree of certainty * * * In determining what the appropriate sanction should be in this matter, the subcommittee and the special counsel considered the seriousness of the conduct, the level of care exercised by Mr. GINGRICH, the disruption caused to the House by the conduct, the cost to the House in having to pay for an extensive investigation, and the repetitive nature of the conduct."

"The subcommittee was faced with troubling choices in each of the areas covered by the statement of alleged violation. Either Mr. GINGRICH's conduct in regard to the 501(c)(3) organizations and the letters he submitted to the committee was intentional or it was reckless. Neither choice reflects creditably on the House. * * *"

Under the rules of the committee, a reprimand is the appropriate sanction for a serious violation of House Rules and a censure is appropriate for a more serious violation of House rules. This is the extent to which guidelines are in place for Members to make a determination of sanction. According to the special counsel, it was the opinion of the Ethics Subcommittee, after two years of investigation and inquiry, that this matter fell somewhere in between. As such, both the subcommittee and the special counsel recommended that the appropriate sanction should be a reprimand and a payment reimbursing the House for some of the costs of the investigation in the amount of $300,000. Mr. GINGRICH has agreed that this is the appropriate sanction, as has the full Ethics Committee.

Mr. Speaker, I say to my colleagues, particularly my colleagues on the Democratic side of the aisle, this is not about who should be the Speaker of the House. Democrats have no say in who should be the Speaker of the House. That is up to the majority party.

This is not about process. There were parts of this process that I find extremely disturbing, and parts that I think need to be dealt with further at an appropriate time. This is not that time.

This is not about whether the existing tax code in question is arcane. I asked the special counsel, Mr. Cole, at our Friday afternoon public hearing whether the law was in fact arcane, and Mr. Cole responded in the strongest possible language that the law was not arcane. In fact, it is a headline issue that politics and tax-exempt organizations should not mix. Even Mr. GINGRICH's tax attorney agreed with that statement.

I also asked the special counsel to respond to the spin that we are all familiar with, and it goes like this: "I saw the course, I watched the tape. There is nothing political about them." Mr. Cole's response was that the issue in question was not so much the content of the course, but, rather, the intent and the way in which it was distributed.

The report states, "Mr. GINGRICH applied the ideas of the course to partisan political purposes." Mr. Speaker, this is not about determining the innocence or the guilt of Mr. GINGRICH. He has already admitted that guilt, that he has brought discredit to this House. This is about the ability of the House of Representatives, under the most trying of circumstances, to judge one of its own Members, an extremely controversial Member, one who has led his party to the majority. It is our duty to determine the appropriate sanction to that Member.

The subcommittee, aided by the special counsel, has conducted an investigation and made its recommendation

to the full committee, which in turn has made that recommendation to the full House.

Those are the processes we have adopted and those are the processes we have followed. We are giving every Member, independently, the opportunity to put aside partisan politics and follow the recommendation offered by the special counsel, the subcommittee, and the full committee upon completion of a 2-year inquiry. It is right and it is just. We were asked as Members of Congress to put aside our partisan beliefs and serve on this committee out of a sense of duty and honor. Now, we are asking you to honor our recommendations with dignity.

I ask my colleagues to honor the work of the Ethics Committee and to vote yes for this very strict sanction.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Speaker, I thank the chair of the Ethics Committee for yielding time to me.

Let me say at the outset that you can clearly disagree and have great respect for your colleagues on the Ethics Committee, as I do, and still reach different conclusions, as I do.

My conclusion is that the penalty that has been assessed by the Ethics Committee is way too severe when you look at the actual findings of the committee and when you look at the precedent that has been established by this House.

Let us look at the actual findings. There have been two here. The first finding is that the Speaker should have consulted an attorney about tax laws. The second is that he submitted two inaccurate letters to the Ethics Committee. These are real mistakes, but they should not be hanging offenses, especially when we consider that there was no finding of any law that was broken, there was no finding of any intent to mislead the Ethics Committee, and there was no finding that the Speaker received any personal financial gain.

The special counsel to the Ethics Committee once described it this way. He said that the Speaker had "run some very yellow lights." But you do not get ticketed, or you should not, for running a very yellow light, no matter how close it is to becoming a red one.

If we look at the precedents that have been established here as well, we see that there is no justification for this severe a penalty. The Ethics Committee staff has researched this issue, and there is simply not a single case where there has not been a finding of an intent to mislead the committee that has resulted in a penalty of reprimand, not a single case.

In fact, all of the precedents are to the contrary. Wherever there has not been a finding of intent to mislead the committee, the penalty has always been either a Letter of Reproval, or the case has been dismissed against the individual involved.

I might say here, we all know that the Speaker has agreed to the penalties, but that does not mean that the agreement is a fair one. It does not mean that that is a penalty that we have to support.

Remember the speech by Teddy Roosevelt called the man in the arena speech. He said that we can either grapple in the political arena, or we can be one of those "timid souls who know neither victory nor defeat."

How much better it would be for us today to have the victory of conscience, and vote against a penalty that we know is too severe.

The report of counsel and article follow:

IN THE MATTER OF SPEAKER NEWT GINGRICH

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT: REPORT OF COUNSEL FOR THE RESPONDENT

This is the Report of Counsel for the Respondent Speaker Newt Gingrich. This Report is being submitted in connection with the Sanction Hearing specified in Rule 20 of the Rules of the Committee on Standards of Official Conduct ("Rules") regarding written submissions by counsel.[1] The Report is subject to two limitations. First, the Report has been prepared without the access to all of the information collected by the Investigative Subcommittee. Respondent was limited to certain exhibits made available by the Committee; selected transcripts made available by the Committee; and public documents. Second, Respondent has not been afforded the opportunity to conduct discovery or otherwise develop information relating to the matter before the Committee.

OVERVIEW

On December 21, 1996, the Investigative Subcommittee issued a Statement of Alleged Violation. The Statement was the product of an investigation by the Investigative Subcommittee and Special Counsel. It is important to note that the process was one-sided: Witnesses were not subject to cross-examination; documents were not subject to pertinency or admissibility standards; and traditional rules establishing standards for admissibility, pertinency and reliability of evidence were not applied. Respondent was not permitted to participate in the examination of witnesses or documents.

Also on December 21, 1996, Respondent submitted an Answer admitting the alleged violation. Pursuant to Rule 19(c) of the Rules, Respondent's admission relieved the Committee of determining through an adjudicatory subcommittee at a Disciplinary Hearing whether the single count in the Statement of Alleged Violation was proven by clear and convincing evidence. At such a Disciplinary Hearing, Respondent would have been afforded the opportunity to cross-examine witnesses, challenge documents and obtain discovery.

With the Statement of Alleged Violation and the Answer, the next process contemplated by the Rules is a Sanction Hearing pursuant to Rule 20. This process does not entail a trial on the merits of the alleged violation. Instead, the process is limited to determining the appropriate sanction, if any, for the violation.

This Report is submitted for that purpose. This is not a report in response to the Special Counsel's Report. It does not contain a fact by fact, argument by argument response to the Special Counsel's Report. Respondent does not accept as true the asserted factual statements and characterizations thereof beyond the facts contained in the Statement of Alleged Violation admitted by Respondent's Answer. It is relatively easy for an attorney, such as the Special Counsel, to piece together testimony and documents, free from the tests of cross-examination, hearsay limits and other evidentiary standards to assure accuracy, and free from the boundaries of reality, to reach virtually any conclusion through clinical forensic reconstruction. The Report is designed to put the facts before the Committee in the context of the real world so that the Committee can determine the appropriate sanction, if any, for the violation, in the absence of an adversary process.

Let there be no mistake, Respondent has accepted the Investigative Subcommittee's Statement of Alleged Violation. In doing so, Respondent has accepted the facts contained therein. This does not mean, however, that Respondent accepts as true those asserted facts not contained in the Statement of Alleged Violation. To assist the Committee in its decision-making process, attached hereto as Appendix A is a timeline of the events relating to the Renewing American Civilization course. This Report is submitted to place the general body of facts in the context of reality as opposed to a version of the facts viewed with hindsight that could only exist in a laboratory free from the dynamics of the real world. For assistance in placing the facts in context, please see Appendix B.

SCOPE OF HEARING

There have been a myriad of charges and allegations made against Respondent. With the exception of the single violation contained in the Statement of Alleged Violation, those charges and allegations are untrue and groundless. The only violation before this Committee for purposes of determining the appropriate sanction, if any, is the violation contained in the Statement of Alleged Violation. The Statement of Alleged Violation describes conduct which violates Rule 43(1) of the Rules of the Committee on Standards of Official Conduct. Rule 43(1) provides as follows: "A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives." Rules of the Committee on Standards of Official Conduct, Rule 43, clause 1.

Paragraph 52 of the Statement of Alleged Violation contains the only violation found, and states that:

"[R]egardless of the resolution of whether the activities described in paragraphs 2 through 41 constitute a violation of section 501(c)(3) of the Internal Revenue Code, *by failing to seek and follow legal advice* described in paragraphs 15 and 40, *Mr. Gingrich failed to take appropriate steps to ensure that the activities* described in paragraphs 2 through 41 *were in accordance with section 501(c)(3)* of the Internal Revenue Code; and on or about March 27, 1995, and on or about December 8, 1994, *information was transmitted to the Committee by and on behalf of Mr. Gingrich that was material to matters under consideration by the Committee, which information, as Mr. Gingrich should have known, was inaccurate, incomplete, and unreliable.*" Statement of Alleged Violation, ¶52, p. 22 (emphasis added).

The standard relating to the adoption of a Statement is contained in Rule 17(d) of the Rules of the Committee on Standards of Official Conduct and provides:

[1] Footnotes at end of document.

"Upon completion to the Preliminary Inquiry, an investigative subcommittee, by majority vote of its members, may adopt a Statement of Alleged Violation if it determines that there is *reason to believe* that a violation has occurred." (emphasis added). Rules of the Committee on Standards of Official Conduct, Rule 17(d).

Given the false information which has been disseminated regarding the violation, it is important to note that the Investigative Subcommittee:

did not charge Respondent with any violation of U.S. tax law;

did not charge Respondent with intending to deceive the Committee;

did not charge Respondent with illegal activities or criminal tax violations; and

did not charge Respondent with money laundering.

Indeed, based on the standard applied by the Investigative Subcommittee, there is no reason to believe that any such allegations are true. All statements to the contrary are not only false, but maliciously false, as established by the language of the Statement of Alleged Violation.

THE REAL WORLD

In the real world, Members of Congress necessarily confront many issues incidental to their multiple responsibilities. Chapter 9 of the House Ethics Manual itself addresses "Involvement With Official and Unofficial Organizations." On page 307, the House Ethics Manual state: "Members and employees of the House need to distinguish carefully between official and unofficial activities when they interact with private organizations."

Also in the real world, Members interact with a variety of organizations. Some are political action committees; some are charitable organizations (Section 501(c)(3) entities); and others are lobbying organizations (Section 501(c)(4) entities.[2] It is neither illegal nor inappropriate for Members to participate as directors, officers or trustees of these political action committees, charitable organizations and lobbying organizations. According to The Exempt Organization Tax Review, "a review of Members' 1988 financial disclosure forms . . . showed that 51 Senators and 146 House Members were founders, officers or directors of tax-exempt organizations." See, Exhibit A: The Exempt Organization Tax Review, Dec.–Jan. 1990, p. 680. Indeed, "five candidates in the 1988 presidential contest had tax-exempt groups ostensibly doing research and educational activities in the months preceding their campaigns." Id.

The Internal Revenue Service specifically contemplated such structures. As described by the IRS:

"A number of IRC 501(c)(3) organizations have related IRC 501(c)(4) organizations that conduct political campaign activities, usually through a PAC (an IRC 527(f) separate segregated fund). So long as the organizations are kept separate (with appropriate record keeping and fair market reimbursement for facilities and services), the activities of the IRC 501(c)(4) organizations or of the PAC will not jeopardize the IRC 501(c)(3) organization's exempt status. 1992 IRS CPE, at 439."

In addition, it is not unusual that the political action committees, charitable organizations and lobbying organizations share the same address and operate out of the same offices. For example, the National Organization of Women (a section 501(c)(4)), National Organization of Women Foundation Inc. (a section 501(c)(3)), and the National Organization of Women Political Action Committee (a political action committee) all list as their address 1000 16th St. NW 700, Washington, D.C. For a further listing of multiple, affiliated Political Action Committees/Section 501(c)(3) entities/Section 501(c)(4) entities sharing the same address, *see* Exhibit B and Appendix D.

Finally, it is common for these multiple-entity organizations to engage simultaneously in activities that have political implications. For example, the Sierra Club operates a section 501(c)(3) entity designated as Sierra Club Fund; a section 501(c)(4) entity designated as Sierra Club; a political action committee designated as Sierra Club Committee on Political Education; and a section 501(c)(3) entity designated as Sierra Club Legal Defense Fund. All of the entities list as their address 730 Polk Street, San Francisco, CA. The internet home page of Sierra Club reflects its broad-ranging purposes, including those which are political. The home page states as follows:

"The Sierra Club has played an increasingly active role in elections in recent years. Candidates who can be counted on to preserve the environment can count on our support—in the form of endorsements, contributions, publicity, and volunteer support. Candidates who try to deceive the public by supporting efforts to eliminate or weaken our basic environment safeguards will be called to account for their actions. In 1996, concerned citizens have the opportunity to reverse the tide of the last election. We have no choice, as the 21st century nears, but to send to Washington elected officials who have a genuine commitment to preserving and protecting the Earth. With your help, the 1996 elections can set a new course for our nation." See Exhibit C for other similar home pages involving multiple entity organizations with tax exempt affiliates.

RENEWING AMERICAN CIVILIZATION MOVEMENT

The movement to renew American civilization had its genesis in Respondent's belief that American civilization is decaying and must be renewed. Respondent believes that the act of renewing American civilization involves far more than politics, politicians and votes. It involves what is being taught in local schools and colleges, what is heard on radio and television and what happens in local clubs and organizations, in addition to what government and politicians are doing. Respondent believes that the renewal must be cultural, societal, educational, economic, governmental and political. More importantly, to achieve the degree of change necessary to renew American civilization, there would have to be a movement that transcends any single vehicle of change.

Looking toward the 21st Century, Respondent developed an approach which he referred to as the "five pillars" of renewing American civilization: (1) quality; (2) technological advancement; (3) entrepreneurial free enterprise; (4) principles of American civilization; and (5) psychological strength. Based on these principles, Respondent sought to initiate a movement to replace the welfare state and renew American civilization to occur at every level of American society. Renewal would require the accomplishment of various goals including the education of the general population and creation of a majority of citizens committed to reform, thereby spawning activism; education of business leaders; and education of the media as to the ideals and concepts of renewal. In effect, Respondent sought to create a national dialogue for reform and a methodology by which citizen activists could accomplish the stated goals of the movement.

Respondent envisioned many methods to initiate the movement through simultaneous efforts utilizing Respondent's various public roles. First, as a Member of Congress and a member of the Republican leadership. Respondent envisioned utilizing the legislative process through speeches, such as special orders presented to the House, votes and legislation. Second, as an educator, Respondent envisioned refinement of his message and delivering it to foster healthy debate on the issues of reform. Third, as Chairman of GOPAC, Respondent envisioned recruiting and training Republican candidates. Respondent believes that every citizen, regardless of partisan affiliation, should participate in the renewal, and that, through education in the principles of civilization, debate will ensue and every citizen can become a pro-civilization activist to ensure that American civilization can be renewed.

During a December, 1992 meeting with GOPAC contributor Owen Roberts, Respondent described the movement as "articulat[ing] the vision of civilizing humanity and recivilizing all Americans." GDC 11363. He sought to: "[d]efine, plan and begin to organize the movement for civilization and the effort to transform the welfare state into an opportunity society to help people achieve productivity, responsibility and safety so they can achieve prosperity and freedom so they can pursue happiness." GDC 11363; HAN 2123.

Respondent further described the movement as follows: "The challenge is not Republican or Democrat, liberal or conservative. The challenge is to our civilization's survival." GDC 1066; see also, GDC 10729.

Jeffrey Eisenach, Project Director for the Renewing American Civilization course, described the movement as follows: "The potential movement to renew American civilization and replace the welfare state is bigger than and in some ways different from the Republican Party." Eisenach 2767.

When questioned by Special Counsel, Respondent states as follows:

Q: "Is that [the movement] to be conducted in a political framework?

A: "There is a political framework within the movement. The movement itself is cultural, not political.

Q: "Is the movement intended to be Republican identified?

A: "No." Gingrich July 17, 1996 Tr., p. 28.

When Respondent was asked by Special Counsel whether the goal of the movement was to recruit a Republican majority, he answered as follows:

A: "No. Just the reverse. That is the movement is large. You might or might not have a Republican majority within this movement. If the movement succeeded without a Republican majority, that would still be a success. We thought, the times we talked this out, the Republican majority was the most logical step in this country——

Q: "I understand that it may not result, but was it a goal?

A: "It was a not a goal of this movement. It was a goal of my activities." Gingrich July 17, 1996 tr., pp. 49–50.

It is against that backdrop that Respondent and his advisors conceived of the Renewing American Civilization course, one of several tools to be utilized in initiating this movement. See Exhibit D: chart illustrating, in part, the dynamics of initiating the movement.

THE RENEWING AMERICAN CIVILIZATION COURSE

The Renewing American Civilization course was offered for academic credit at over 20 colleges and universities across the

United States, including the University at Berkeley, Vanderbilt University, Clemson University, Emory University, the University of Mississippi, Kansas State University, Colgate University, Auburn University, the University of South Carolina and Penn State University. FIC 00108; FIC 00148–49.

The basic format of the Renewing American Civilization course consisted of ten lecture topics, discussing various aspects of renewing American civilization. Some key elements of those ten lectures can be summarized as follows:

1. "Understanding American Civilization"—America is the only country in a position to lead the world into a new age, and must strive to replace its welfare state with an opportunity society, based on the five principles of American civilization: personal strength, entrepreneurial free enterprise, the spirit of invention and discovery, quality and the lessons of American history.

2. "Personal Strength"—Personal strength is a basic principal of American civilization vital to establishing safety, family, work, health and learning. Existing frameworks weaken personal strength by discouraging work, undermining family and integrity and discouraging self-reliance.

3. "Entrepreneurial Free Enterprise"—The role of the entrepreneur is vital to American civilization. Bureaucratic credentialism stifles entrepreneurial free enterprise, and government regulation distorts the market's ability to reinforce success.

4. "Spirit of Invention and Discovery"—The welfare state cripples progress through bureaucracy, litigation and taxation. A prospirit of invention and discovery America will create a better future through better ideas.

5. "Quality and Deming's Profound Knowledge"—With a culture of quality, Americans can compete against anyone in the world. Consumers define value. To improve results, you must improve the process that generates them. People want to do a good job. Every person is part of a larger system. Continual learning is the basis for continual improvement.

6. "Lessons of American History"—History is a collective memory and a resource to be learned from and used. America is exceptional and its history teaches us how exceptional. The religious and social tenets of puritanism are diffused throughout American values today.

7. "Economic Growth & Job Creation"—The welfare state's despised low-paying job is the entrepreneur's opportunity. It is not who you are today, it is who you want to be tomorrow that counts in America. A successful America will have the highest value added jobs with the greatest productivity leading to the greatest take home pay and the greatest job security.

8. "Health and Wellness"—Our challenge is to create a vision of a healthy American focusing on lower costs, higher quality, more choices and greater access. The five principles of American civilization should help us brainstorm a better way of life.

9. "Saving the Inner City"—American reform movements have emerged quickly and have had powerful impacts. Saving the inner city can be accomplished through individual, decentralized efforts. The vicious circle of the welfare state should be replaced with the virtuous circle of American civilization to help people create new hope and new opportunities.

10. "Citizenship for the 21st Century"—Citizenship may be defined as the duties and obligations, rights and responsibilities necessary to maintain community. The genius of America lies in liberating each citizen to seek community and define citizenship in the broadest possible way.

These lectures would also include a list of suggested readings to allow for a more complete explanation of the issues covered. These readings included works written by Democrats such as Al Gore and Max Cleland, as well as works by Alvin Toffler, a Futurist. During each class section, Respondent would lecture for his two-hour period and the faculty representative or site representative would then make a presentation involving group discussion which Respondent did not control.

Respondent himself was, prior to election to Congress in 1978, a professor of history who served on the faculty of West Georgia College for eight years. He was awarded a B.A. from Emory University in 1965 and a Ph.D. in European History from Tulane University in 1971.

The course itself was taught at Kennesaw State College, a senior college within the University System of Georgia, and, later, at Reinhardt College, a private, accredited college located in Waleska, Georgia.

Periodically during course lectures, Respondent made references to individuals, entities and companies which in their own way exemplified his notion of American exceptionalism. A total of 46 videotape inserts—typically three to four minutes in length—were used in the course to illustrate various points. GDC 2619. The inserts from the "Personal Strength" lesson are typical of these: Former Georgia Secretary of State and now U.S. Senator Max Cleland on overcoming his injuries in Vietnam; Congressman John Lewis about the role of personal strength in the civil rights movement; Nationally-recognized teacher Marva Collins on teaching personal strength; Supreme Court Justice Clarence Thomas' journey from Pinpoint, Georgia to the Supreme Court; and A story about the Paralympics. GDC 2619.

During the course, Respondent also prominently featured Franklin D. Roosevelt, John F. Kennedy, Rev. Martin Luther King, Jr. and Jimmy Carter in his discussions and videotape presentations. Respondent discussed both Democrats and Republicans favorably.

In developing the Renewing American Civilization course, Respondent invited Members of Congress from both parties to contribute ideas to the course. WGC 07084. Prior to the time Respondent taught the course, he described his course development to the Committee as follows:

"I expect that we will invite many people to comment on the content of the course, at every stage of the four-year process. Commentators will include people involved in state and local government, including Congressional staff (my own and others). These commentators will also include members of both major political parties. (For example, I have recently talked with both Pat Moynihan and John Lewis, who have agreed to serve in this capacity.)" Gingrich July 21, 1993 letter to Rep. McDermott.

Respondent later described his course development as follows:

"I have invited many people in many backgrounds to submit material for consideration and to assist in reviewing the course. These include President Clinton and Secretary of Labor Robert Reich." Gingrich September 7, 1993 letter to Barry Phillips, Chairman of the Georgia Board of Regents, GDC 2607.

Several prominent scholars reviewed the content of the Renewing American Civilization course. David King, an assistant professor of public policy at Harvard University's John F. Kennedy School of Government, concluded that the course is "not partisan. . . . It touts conservative ideas, but those ideas are never explicitly linked to the Republican Party." Peter Applebome, "Educators Divided on Course by Gingrich," New York Times, Feb. 20, 1995 at A12. Professor King also concluded it is impossible to teach a political science or history course "without someone interpreting what you say in partisan terms." Kathy Alexander, "Gingrich's Notorious Course at End: For Now Students Praise Teachings and Teacher as he Takes Two-Year Break," Atlanta Journal-Constitution, Mar. 11, 1995, at C1.

The vast majority of those persons who attended the course, or were otherwise associated with the course, found it to be academic and non-partisan. For instance, Dr. Tim Mescon, dean of the business school at Kennesaw State College where the course was first taught, characterized the philosophical approach of the Renewing American Civilization course as follows:

"This course . . . is by no means constructed as a political platform or forum for unidimensional ideologies. . . . Today, citizens of the United States are immersed in conversations pertaining to reform. . . . Regardless of political philosophies, this country is engaged in lively debate over the need to reform and the methodology required to implement change. This course has been designed by contributors from various political platforms, socioeconomic backgrounds, and academic and professional institutions. The intention is to incubate dialogue, discourse and discussion all focused on renewing American civilization. . . . Kennesaw State students should be encouraged to participate in pensive discussions on such timely issues, and it is my intention that this course create a dynamic forum for these interchanges." July 28, 1993 Memo from Mescon to Faculty Colleagues, FIC 00185.

Many of the students who took the Renewing American Civilization course for academic credit at Reinhardt College, one of the host sites, were highly enthusiastic about the course and regarded it as one of the most challenging classes of their college careers. See Reinhardt College Student Evaluation Forms, GDC 12454–12546. Some students viewed Renewing American Civilization as an excellent course for people with a "true interest in history," while other students saw it as "really a business course." Id. at 12472. Another student commented, "I really was ready to argue political points, but I'm glad that [Respondent] stayed away from those." Id. One student was "disappointed" because he or she did not "learn more about politics." Id. at 12499. Another student wrote, "this has not been political grandstanding." Id. at 12517. One student wrote, "it had no politics whatsoever." Id. at 12487.

Although the Renewing American Civilization course was promoted among a wide array of Republican organizations, non-partisan or Democratic-oriented organizations were also solicited, including the American Political Science Association. Of the 36 contributors to the course, only 14 were associated with GOPAC or its efforts. GDC 2621. Respondent only mentioned four of the 36 contributors in the course lectures.

One course memorandum reflected Respondent's firm desire to maintain the course as a non-partisan, apolitical endeavor, stating as follows:

"Obviously, we also need to design a process which is legally appropriate and as immune as possible from criticism from those

who oppose what we are doing. In particular, we need to ensure that Kennesaw State College and Kennesaw State College Foundation resources are not used to help partisan organizations (e.g., GOPAC) or political candidates (e.g., Newt)." Aug. 25, 1993 Eisenach Memorandum, WGC 07080.

Much has been written regarding GOPAC's involvement in the Renewing American Civilization course. The critical inquiry in this regard is whether the Respondent took steps to maintain the division of capacities between his capacities as a Member, a teacher in a section 501(c)(3) setting and a partisan politician in connection with a political action committee. Whether those efforts were completely successful necessarily depended on others. The Respondent's activities, however, reflect that he attempted repeatedly to ensure that his partisan and non-partisan activities were properly segregated.

For example, as reflected in the February 15, 1993 Agenda to a GOPAC planning session, Respondent viewed the Renewing American Civilization course as separate and apart from GOPAC. On the agenda, item I. is "General Planning/Renewing American Civilization" and item II. is "Political/GOPAC Issues." JR 645.

Finally, Nancy Desmond, the Renewing American Civilization Course Coordinator, stated Respondent's position succinctly when she wrote to Barry Hutchison of Friends of Newt Gingrich ("FONG") on July 11, 1993:

"In a recent conversation with Newt, he expressed the concern that my involvement in both the Congressional Club and the Renewing American Civilization course at Kennesaw might suggest to some that there is a possible connection between the course and the campaign. As you know, Newt is adamant about keeping the two separate and wants it to be clear to everyone that the course is, in no way, connected to his political campaign. The firmness of this resolve on his part and the absolute commitment to maintaining a clear and unequivocal separation between the course and his campaign leave me no alternative but to withdraw from my volunteer post with the Club." PFF 38289.

Two tax-exempt organizations, Kennesaw State College Foundation ("KSCF") and Progress & Freedom Foundation ("PFF"), collected the funding for the Renewing American Civilization course at Kennesaw State College and Reinhardt College, respectively. Regarding KSCF, Respondent taught the course at Kennesaw. The KSCF was the funding repository for activities at the Kennesaw campus, and it existed before Respondent had any relationship to the college.

In relation to PFF, Jeffrey Eisenach described Respondent's lack of involvement with PFF as follows in his Attachment to his 1995 Statement:

"[Respondent] is not and has never been a board member, officer or employee of the foundation. He was not aware of plans to create the foundation until after they were well advanced; did not participate in key planning meeting leading to its creation; has never served in any official capacity with the Foundation; did not review or participate in the development of its application to the IRS for tax exempt status or other key founding documents; did not participate in the selection of or make recommendations for membership on its founding board of directors; was not consulted on the naming of new board members; has not, with the exception of his Renewing American Civilization project, participated in fundraising activities; and, he has always understood the Foundation to be an independent entity, created for the non-partisan research and educational purposes stated in its application for tax exempt status and subsequent IRS filings." GDC 12176.

"FAILING TO SEEK AND FOLLOW LEGAL ADVICE"

The Statement of Alleged Violation alleges that, "by failing to seek and follow the legal advice" or tax counsel to ensure that the activities described in the Statement of Alleged Violation "were in accordance with section 501(c)(3) of the Internal Revenue Code", Respondent's conduct constituted a violation of Rule 43(1) of the Rules of the United States House of Representatives. (S.A.V., ¶52–53). It is important to note that, contrary to the statements of some, the Investigative Subcommittee did not find that Respondent's activities violated federal tax law or caused the tax-exempt organizations to violate their tax exempt status. The fact is that a violation of law may not, in and of itself, be a violation of the Code of Official Conduct. As noted on page 12 of the Ethics Manual, "[d]uring the floor debate preceding the adoption of the Code, Representative Price of Illinois, Chairman of the Select Committee on Standards of Official Conduct, rejected the notion that violations of the law are simultaneous violations of the Code . . ."

Certainly, a knowing violation of law could constitute conduct that did not reflect creditably on the House of Representatives in violation of Rule 43(1). Here, there has been no finding of a knowing violation of law.[3] In fact, such a finding would be directly contradicted by the findings in the Statement of Alleged Violation itself.

The Statement of Alleged Violation notes that tax counsel retained by the Investigative Subcommittee and tax counsel retained by Respondent disagree regarding whether the activities at issue constitute a violation of the tax-exempt organizations' section 501(c)(3) status. The only clear conclusion from the findings and the testimony before the Investigative Subcommittee is that there is no clear answer. In the absence of a clear answer, there could be no knowing violation of law.

Although there appears to be no precedent for it,[4] the issue then becomes whether there is a violation when a Member is actually aware that the law is unsettled, but nonetheless proceeds with the activity with knowledge that a public controversy may ensue, resulting in discredit to the House of Representatives. In this case, the hindsight conclusions of the tax counsel who appeared before the Investigative Subcommittee are that any counsel presented with the facts alleged in the Statement of Alleged Violation "would have advised that it not be conducted under the auspices of an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code." (S.A.V., ¶15,40). After two years of public controversy driven largely by interests totally unrelated to the tax-exempt status of the organizations, the tax attorney's position is a relatively obvious conclusion for attorneys operating with the benefit of hindsight. Respondent's conduct must, however, be evaluated in the real world, real time context of what was the generally accepted practice in 1993 when the course was established.

THE USE OF CHARITABLE FUNDS IN SUPPORT OF NONPARTISAN POLITICAL EDUCATION WAS AN ACCEPTED PRACTICE IN 1992 AND 1993

First, the Respondent's activities were not inconsistent with clear federal tax law in the opinion of all tax practitioners at the relevant time. The practice in the real world at the time was that the conduct engaged in by Respondent was in accord with the conduct of many well-advised contemporary charitable educational entities, the comment of legal scholars, and the practice of other Members of Congress.

Nonprofit organizations, to qualify for tax exempt status, must satisfy the basic criteria established by section 501(c)(3) of the Internal Revenue Code ("IRC" or "the Code"), regulations promulgated thereunder, judicial interpretation of the law and its regulations, Internal Revenue Service ("IRS") Revenue Rulings, IRS Letter Rulings, tax notices, and the various other means such as IRS press releases and announcements by which citizens can attempt to anticipate IRS interpretation of their conduct under the law.

SECTION 501(C)(3) AND THE REGULATIONS PROMULGATED THEREUNDER

In essence, section 501(c)(3) of the Internal Revenue Code provides that entities must satisfy several basic criteria to qualify for exempt status. First, the entity must be "organized and operated exclusively for" one or more of several enumerated charitable, religious or educational purposes,[5] second, "no part" of the net earnings of the entity may inure to the benefit of any private shareholder or individual; third, "no substantial part of the activities" of that entity may be "carrying on propaganda, or otherwise attempting to influence legislation"; and fourth, the entity must not "participate in, or intervene in . . ., any political campaign on behalf of (or in opposition to) any candidate for public office." IRC §501(c)(3).

The legislative history of the campaign intervention rule reflects the difficulties practitioners have encountered in applying these provisions. This provision of the Code was added to the federal tax law when then-Senator Lyndon B. Johnson offered the provision by way of a floor amendment to the Revenue Act of 1954 without congressional hearings out of concern that funds provided by a charitable foundation had been used to finance the campaign of a primary opponent. B. Hopkins, The Law of Tax-Exempt Organizations, p. 327 (6th ed. 1992); Lobbying and Political Activities of Tax-Exempt Organizations: Hearings before the Subcommittee on Oversight of the House Committee on Ways and Means, 100th Cong., 1st Sess. 19–20, 423 (1987) (Statements of Bruce Hopkins, Baker & Hostetler and the United States Catholic Conference). In offering the amendment, Senator Johnson stated that the purpose of the amendment was to "den[y] tax exempt status to not only those people who influence legislation but also to those who intervene in any public campaign on behalf of any candidate for any public office." 100 Cong. Rec. 9604 (1954).

Section 1.501(c)(3)–1 of the Income Tax Regulations ("the Regulations") marked a retreat from the "exclusively for" language of section 501(c)(3) by providing that "[a]n organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." 26 C.F.R. 1.501(c)(3)–1(c)(1). Thus, contrary to the language of section 501(c)(3), the IRS has indicated that conduct not consistent with articulated exempt purposes will not jeopardize exempt status as long as such conduct

constitutes only an "insubstantial part" of its overall activities. Id.

The Regulations further provide that an entity will not be regarded as being operated exclusively for exempt purposes if it satisfies the IRS' definition of an "action" organization. 26 C.F.R. 1.501(c)(3)–1(c)(3). An "action" organization is defined as one that devotes "a substantial part of its activities [to] attempting to influence legislation by propaganda or otherwise." 26 C.F.R. 1.501(c)(3)–1(c)(3)(ii). Likewise, "[a]n organization is an 'action' organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office." 26 C.F.R. 1.501(c)(3)–1(c)(3)(iii).

APPLICATION OF REVENUE RULINGS APPLYING 501(C)(3) AND ITS REGULATIONS

In 1978, the IRS issued a Revenue Ruling revoking a prior such ruling to hold that "[c]ertain 'voter education' activities conducted in a nonpartisan manner by an organization recognized as exempt under section 501(c)(3) of the Code will not constitute prohibited political activity disqualifying the organization from exemption." Rev. Rul. 78–248, 1978–1 C.B. 154. According to the IRS ruling, the determination of whether an organization is participating or intervening in a political campaign as proscribed by regulation 1.501(c)(3)–1(c)(3)(iii) "depends upon all of the facts and circumstances of each case." Id. Revenue Ruling 78–248 then sets forth four hypothetical "situations" describing activities which the IRS deemed to be either permitted or prohibited under 501(c)(3). Ultimately, the factual analysis provided by the IRS with respect to each situation was whether, under the specific facts of the hypothetical, the activities "evidenced a bias or preference" with respect to the views of the entity towards issues, a candidate or a group of candidates. Id.

Two years later, the IRS applied Revenue Ruling 78–248 to conclude that an entity's publication of a newsletter reporting Congressional voting records did not violate the entity's tax exempt status. Rev. Rul. 80–282, 1980–2 C.B. 178. The IRS so held, notwithstanding its conclusion, that "the format and content of the publication are not neutral, since the organization reports each incumbent's votes and its own views on selected legislative issues and indicates whether the incumbent supported or opposed the organization's view." Id. The IRS based its ruling on a factual conclusion that "the organization will not widely distribute its compilation of incumbents' voting records . . . [and that n]o attempt will be made to target the publication toward particular areas in which elections are occurring nor to time the date of publication to coincide with an election campaign." Id. Accordingly, the IRS opined, the issues presented in Revenue ruling 80–282 presented sufficient factual distinctions from the hypothetical prohibited situations set forth in Revenue Ruling 78–248 to permit the IRS to conclude that this entity's proposed activities, "in the manner described above, will not constitute participation or intervention in any political campaign within the meaning of section 501(c)(3)." Id.

EFFECT OF THE IRS' FACT-BASED ANALYSIS ON PUBLIC BEHAVIOR

As a consequence of the IRS' indications that it would apply fluid, fact-specific analysis to charitable efforts to educate the public on political matters, the late 80's and early 90's marked a period of wide-ranging opinion among tax practitioners as to the extent that political education by charitable entities would be permitted by the IRS. Specifically, this period marked an era when tax exempt entities were being called upon by sophisticated practitioners to educate and motivate the public on an ever-widening range of issues. As would be expected, the legal literature of this period reflects the lack of guidance provided by the IRS with respect to political education by tax exempt entities. See e.g., Lobbying and Political Activities of Tax-Exempt Organizations: Hearings before the Subcommittee on Oversight of the House Committee of Ways and Means, 100th Cong., 1st Sess. 6 (Opening remarks of Chairman Pickle) ("I am concerned that the public sees and hears a steady stream of media reports about abuses in this area, and the IRS seems to be taking little or no action. The public gets the impression that the Internal Revenue Service is just looking the other way."); Maxwell Glen, "Battle Looming over Partisan Activities of Tax-Exempt Nonprofit Organizations," The National Journal, p. 2294 (Dec. 1, 1994) ("In fact, since the early 1970s, when it was accused of harassing Nixon Administration opponents, the IRS has seldom policed the nonprofit sphere for political partisanship, tax specialists say. 'What you see now is a testing,' and Washington lawyer Thomas A. Asher, 'because the IRS has been remarkably reticent on the subject of the line between charity and the partisan activity of charitable organizations.'"); Frances R. Hill, "Newt Gingrich and Oliver Twist: Charitable Contributions and Campaign Finance," Tax Notes, p. 237, 238 (Jan. 9, 1995) ("While [the prohibition against participation in political campaigns] is absolute, it is far from clear what activity it prohibits short of direct endorsement of a particular candidate by an official speaking on behalf of the organization. In all other cases, the law offers little guidance and perhaps even less restraint.").

Apparently, this concern among leading tax practitioners regarding the lack of guidance provided by the IRS with respect to political education by tax exempt entities was shared by Celia Roady,[6] the tax expert retained by the Special Counsel to testify in favor of sanctioning Respondent. On September 28, 1994, the Exempt Organizations Committee of the American Bar Association's Section on Taxation presented a memorandum to Mr. Leslie B. Samuels, Assistant Secretary for Tax Policy at the Department of the Treasury, suggesting clarification of numerous issues facing tax practitioners under section 501(c)(3) for which the Exempt Organizations Committee believed there "currently is no authority, or there is unclear precedential authority." "ABA Tax Section Members Suggest Exempt Organization Areas in Need of Precedential Guidance," 94 Tax Notes Today, 207–14 (Oct. 21, 1994). Celia Roady is presented first on the list of those upon whom principal authority for the preparation of the memorandum rested and she is listed as the Committee's "Contact Person" on the memorandum. Id. In that memorandum to the Department of the Treasury, Ms. Roady observed:

"During the past two decades, there has been significant growth in our country's tax-exempt sector and a corresponding proliferation in the number of new legal issues confronting tax-exempt organizations. Signifying this development, the number of tax-exempt organizations included in the Cumulative List has increased from approximately 806,000 in 1974 to approximately 1,083,000 in 1994. Many of these organizations * * * have adopted evermore complex corporate structures, and many have become involved in new investment activities made possible by the evolution of financial markets. As tax-exempt organizations have grown in number and ventured into new areas, their activities have raised numerous federal tax law questions that are not adequately addressed by existing precedential authorities. Answering these questions has proved very difficult because at the same time as this expansion of organizations and issues has been taking place, the amount of precedential guidance issued by the Internal Revenue IRS has decreased dramatically.

* * * * *

". . . Issuing precedential authority on the items described below that have already been the subject of non-precedential IRS guidance would greatly assist tax-exempt organizations in complying with the law.

"PUBLIC CHARITY ISSUE—POLITICAL ACTIVITIES

"One of the most important areas in which additional precedential guidance is needed is clarification of the prohibition on political activities by section 501(c)(3) organizations. . . . Illustrative of the political activities issue in the first category is the question of when will the acts and statements of the religious organization's minister be treated as the acts and statements of the religious organization for purposes of determining whether the organization has violated the prohibition against political campaign activities contained in section 501(c)(3). The statement issued by Jimmy Swaggart Ministries and endorsed by the Service when Ministries entered into a closing agreement with the Service articulated a clear and reasonable position on this issue. It would be helpful to know as well whether that position would apply for purposes of section 4955. As noted, the Subcommittee report also addresses a number of other "Category One" issues on which precedential guidance would be quite helpful." Id.

In a subsequent document submitted by Ms. Roady's A.B.A. Committee on Exempt Organizations (for which Ms. Roady was again designated as the "Contact Person") to the Commissioner of the IRS on February 21, 1995, Ms. Roady and the American Bar Association Section on Taxation observed:

"Our most serious concern is that the IRS is facing a crisis of credibility with respect to the Section 501(c)(3) political prohibition. Despite some publicized enforcement actions, such as the Jimmy Swaggart Ministries settlement, there is still widespread confusion as to what constitutes 'participation' or 'invervention' in a political campaign. As a consequence, compliance within the charitable sector is highly uneven. Some organizations openly flout the rule; others are reluctant to engage in legitimate educational activities during an election period.

* * * * *

"Up to now, it appears that the IRS has been using a 'smell' test to determine whether prohibited political activities have occurred. This has created a string of precedents applying the general rule to particular fact patterns, without any unifying principle being stated. We believe that it will be significantly simpler for practitioners to advise clients about, and for organizations to comply with, the statutory rule if the IRS develops a concrete, unifying definition for political intervention, just as it has done for direct and grass roots lobbying activities." ABA Committee on Exempt Organizations Recommends "Reasonable Person" Standard for Determining Whether a Charity Participates in Political Activities, 95 Tax Notes Today 53–11, Mar. 17, 1995.

Not surprisingly, therefore, in light of this recognized lack of guidance from the IRS, the public record is replete with examples, in the time period leading up to the organization of the renewing American civilization course of charitable entities—entities that are well represented and advised as to the current state of the law—participating in the political arena unmolested by the IRS. For example, in 1986 and 1987, the IRS conducted a ten-month review of a tax exempt educational entity known as "Project Vote," a national voter registration campaign that enrolled more than 500,000 potential voters. Critics of Project Vote's activities alleged that the entity's true objective was to accomplish the partisan objective of increasing the Democratic vote. After reviewing Project Vote's activities, however, the IRS concluded that the organization complied with the nonpartisan requirements of its tax-exempt status. "Raising Money to Register More Voters," The Exempt Organization Tax Review, p. 679 (Dec.–Jan. 1990);[7] see also, "Old Softie: Alan Cranston's Soft Money Machine; Campaign Fund Ethics," The New Republic, p. 17 (Dec. 11, 1989) ("Though Project Vote mixed contributions from labor, corporations, foundations, and individuals, some of which may have been motivated by partisan goals, the IRS found its voter registration activities to be perfectly legal."). Thus, it is not surprising that, as early as 1984, charitable institutions which consulted with tax counsel abandoned 501(c)(4) affiliates (which are expressly permitted by the Code to adopt partisan political positions) by merging those affiliates' activities into 501(c)(3) entities as a means of reducing 501(c)(4) record keeping requirements. See e.g., Glen, at p. 2294 (Dec. 1, 1994) (" 'I've had more than one client get rid of its C-4 [affiliate] by merging it into [the client's] C-3,' said Gail Harmon, an attorney who represents about 30 nonprofit organizations, including NARAL. 'The fact of having to keep separate records does discourage' having both.").

Historically, the IRS' reticence to conclude that political activity does not violate the political intervention doctrine is not limited to political education activities. See, e.g., Wimmer, "Curtailing the Political Influence of Section 501(c)(3) Tax Exempt Machines," 11 Va. Tax Rev. 605, 606 (1992) ("Many of the groups that successfully opposed [Judge Robert] Bork's nomination to the high court were section 501(c)(3) tax-exempt organizations, entities prohibited from intervening in any political campaign and prohibited from carrying on substantial activities designed to influence legislation. These organizations took full advantage of the 'particularly murky' rules governing how tax-exempt organizations could influence the Senate's confirmation of judicial nominations.").

As a consequence of the IRS' lack of guidance in this arena, participation in charitable education activities by Members of Congress was commonplace in the time leading up to the organization and formation of the renewing American civilization course. For example, a National Journal review of Members' 1988 financial disclosure form revealed that 51 Senators and 146 House Members were founders, officers or directors of tax-exempt organizations. The Exempt Organization Tax Review, p. 680, Dec.–Jan. 1990; see also "Members of Congress Insist Foundations Aid Causes, Not Politics," Washington Post, February 22, 1990, at A21 (identifying tax exempt groups associated with Members of Congress). In 1993 Financial Disclosure Forms, at least 93 Members of Congress were founders, directors, officers or trustees of at least 210 tax-exempt organizations, including at least 109 section 501(c)(3) entities. See, Financial Disclosure Reports of Members of the United States House of Representatives of the 105th Congress. Likewise, five candidates in the 1988 Presidential election contest employed tax-exempt groups to perform research and educational activities in the months preceding their campaigns. The Exempt Organization Tax Review, p. 680 (Dec.–Jan. 1990).

The prevailing attitude among tax specialists in the early 90's is encapsulated in the comments of Washington fund-raiser Jan Scott Brown as reported in the National Journal: "Every nonprofit puts a Congressman on their committee. That's the first thing I think of with a nonprofit client—how can I work in some political angle? That's the name of the game in town." Maxwell Glen, "Battle Looming over Partisan Activities of Tax-Exempt Nonprofit Organizations," The National Journal, p. 2294 (Dec. 1, 1994)

Indeed, the criticism of the Special Counsel's tax expert, Ms. Roady, of Respondent's activities on this issue appears disingenuous at best. In February of 1995, the Exempt Organizations Committee of the American Bar Association—for which Ms. Roady was identified as the Committee's "Contact Person"—requested that the Internal Revenue Service formally approve of activity under existing precedent virtually identical to Respondent's Renewing American Civilization course; the only difference being that Ms. Roady's expressed preference would be that it be only "politically disadvantaged groups," rather than the American citizenry as a whole, that is encouraged to participate more actively in the grass-roots political process:

"One could argue that the general rule we propose appears to be overbroad, since it states that a 501(c)(3) organization cannot intentionally help ANY group of people to seek public office. What if the group is an indefinite class of persons that has been systematically under-represented in elective office, such as African-Americans or people with disabilities? Why couldn't a charity operate a campaign training school to assist, for instance, Spanish-speaking people to become effective campaign operatives or even candidates themselves?

"It is clear that the IRS has been willing to permit VOTER-ORIENTED activities such as registration drives, get-out-the-vote, and voter education, where a certain group of voters is encouraged to participate more actively in the political life of the country. For instance, the IRS concluded in PLR 9223050 that voter registration of homeless people, coupled with education about the electoral process, was a valid, nonpartisan, charitable activity that did not violate Section 501(c)(3). This is consistent with the position generally taken by the IRS that charities may engage in activities to increase the levels of voter participation among minorities, low-income people, or other politically disadvantaged groups.

"However, those rulings do not appear to contemplate activities benefiting an underrepresented group of POTENTIAL CANDIDATES. As a consequence, it is not clear whether a charity which runs an educational program to train individuals in political campaign skills must offer it to the general public, rather than to any limited group. Our impression is that such a program must be conducted in a thoroughly nonpartisan manner with respect to recruitment of instructors and students, curriculum, placement of graduates, and all other aspects of operation. Existing precedents, such as the American Campaign Academy decision, speak more to what is prohibited than to what is permitted, and thus offer little helpful guidance on this score.

"We urge the IRS to state explicitly that charitable organizations are permitted to organize and operate certain types of campaign schools that serve indeterminate groups of persons who have been under-represented in the political life of our society. This would be consistent with the current IRS position on nonpartisan, voter-oriented educational activities.

"We think that IRS approval of candidate campaign schools benefiting politically disadvantaged groups, like its long-standing approval of voter participation activities directed at a variety of charitable and other diverse groups, would be consistent with the general definition we propose. In essence, the IRS has embraced voter registration and similar activities as a valuable public service, recognizing that low voter participation rates seriously undermine the functioning of our democracy. Therefore, a charity should be able to develop a voter education program directed at under-represented sectors of our society without violating the political prohibition, so long as it makes no suggestion to anyone on how to vote or what office to seek. In other words, voter participation programs (and, we believe, disadvantaged-candidate education programs) have an inherent educational value ("some other reasonable explanation") that outweighs any implication that they were undertaken for a prohibited political purpose ("to improve or diminish" someone's chances of getting elected). So long as the program is not a disguised effort to promote a candidate, party, or other private interest (as in the American Campaign Academy case), simply providing people with the tools to participate in the political process should not violate the Section 501(c)(3) prohibition." ABA Committee on Exempt Organizations Recommends "Reasonable Person" Standard for Determining Whether a Charity Participates in Political Activities, 95 Tax Notes Today 53-11, Mar. 17, 1995.

ABRAHAM LINCOLN OPPORTUNITY FOUNDATION ("ALOF")

In 1984, Colorado Republican Party Chairman Howard "Bo" Callaway received tax-exempt status from the IRS for ALOF, an entity organized to conduct oratory contests throughout Colorado secondary schools, lend care and assistance to the needy "and to provide educational services to the public." ALOF's officers consisted of Howard "Bo" Callaway, who was the Chairman of GOPAC, and Kay Riddle, Executive Director of GOPAC. Upon Mr. Callaway's resignation from the Colorado Republican Party, ALOF entered a period of dormancy in June of 1988. As described in a January 2, 1997 letter from Mr. Callaway to the Honorable Christopher Shays and distributed by Mr. Shays to other Members of Congress (attached hereto as Exhibit F and referred to as "Callaway Letter"), in the Spring of 1990, Mr. Callaway revived ALOF as a means of sponsoring the American Citizens' Television ("ACTV") program. At the time, there was only $486.08 in the ALOF bank account. Recognizing that ACTV's goal of increasing community involvement and citizen understanding of government and democracy presented a logical extension of ALOF's original educational

mandate to motivate people and get them involved in their community. Mr. Callaway offered ALOF as ACTV's sponsor. Callaway Letter, p. 1–2.

ACTV, like a project previously run by GOPAC known as "American Opportunities Workshop" ("AOW"), was a self-described non-partisan project "based on the three tenants [sic] of Basic American Values, Entrepreneurial Free Enterprise, and Technological Progress and involved the recruiting of activists to set up local workshops around the broadcast to recruit people to the citizens' movement." (S.A.V., ¶9). Respondent participated in two ACTV broadcasts produced by ALOF; aired on July 21, 1990 and September 29, 1990. Id., ¶10.

Mr. Callaway has several times expressly stated that "Dan Swillenger [sic], our attorney, approved ACT as an appropriate activity for a 501(c)(3) foundation and in accord with the ALOF charter. I gave explicit instructions that there be no politics involved in the ACT programs and to the best of my knowledge there was none." Callaway Letter, p. 2–3.

The statements made in the Callaway Letter were repeated in an interview that Mr. Callaway gave to the Boston Globe. According to that article,

"Callaway stressed that he and Gingrich had been told by a lawyer that it was legal because the shows were "educational," not political.

* * * * *

"According to Callaway, Gingrich and his associates looked to a nonprofit corporation that could accept tax-deductible donations. In contrast, contributions to political action committees are not deductible.

"Callaway thought it would take too long to get IRS approval to set up a new nonprofit corporation to fund Gingrich's television shows, so he revived the Lincoln Foundation, which had been dormant for years.

"Callaway said Daniel Swillinger, a GOPAC lawyer, told them the foundation's charter allowed it to pay for Gingrich's television show." Ex-foundation Director Says Gingrich OK'd Use of Funds, The Boston Globe, Nov. 22, 1996, at A1.

Of the two tax experts to appear for the purposes of Preliminary Inquiry before the Subcommittee, one opined that the described activity would not violate ALOF's status under section 501(c)(3). The expert, retained by the Special Counsel, opined to the contrary. That same expert, Celia Roady, is the same attorney who prepared a memorandum[8] to the Department of the Treasury bemoaning the IRS's lack of guidance available to practitioners called upon to provide counsel to non-lawyers, such as Respondent, who desire to use tax exempt charities for the purpose of providing political education to the public.

There are several important facts which should be noted regarding ALOF. First, Respondent was not at any time a member of the Board of Directors or an officer of ALOF. Second, contributors to ALOF always knew the purpose of their donations. ALOF began to pay for the ACTV programs in June of 1990. On May 30, 1990, there was only $486.08 in the ALOF bank account. With the exception of this small sum, which was used just to keep the bank account open, all of the money used to produce ACTV was raised specifically for ACTV with money contributed from people who knew what their money was going to be used for and who fully supported the ACTV programs. Third, the Articles of Incorporation of ALOF, submitted to the IRS when ALOF applied for tax exemption stated in part that the purposes of ALOF were:" ". . . to provide educational services to the public. . . ." The Bylaws passed pursuant to the Articles of Incorporation stated that the purposes of ALOF, in part are to: ". . . provide education services to the public, and to engage in any and all lawful activities incidental to the forgoing purposes. . . ." The Bylaws further stated that "The purposes of the Corporation are promoted and developed through public discussion groups, panels, lectures, conferences, projects, publications and program. . . ." Fourth, money given to ALOF was kept separate from and not commingled with GOPAC funds. Consistent with IRS rules and common practice, ALOF's expenses were separately allocated and paid. Anyone who worked on both projects had salary allocated based on the time spent on each.

Within this context, Respondent has admitted the violation contained in the Statement of Alleged Violation. Notwithstanding the common practice at the time, it was incumbent on the Respondent to engage qualified tax attorneys to assure that his activities in the furtherance of a movement would not jeopardize the tax-exempt status of the organizations involved and would not unnecessarily engender public controversy that would bring discredit on the House. This is true as to both the Renewing American Civilization course and the Abraham Lincoln Opportunity Foundation.

THE ABSENCE OF PRECEDENT MITIGATES IN FAVOR OF RESPONDENT

The Committee is urged to consider, as a mitigating circumstance, the unprecedented nature of the charge relating to the creation of a "public controversy." No Member of Congress could reasonably have known that such a standard might be imposed. As early as November 15, 1994, Representative Bob Michel wrote a letter to Representatives McDermott and Grandy indicating his strong belief that the information requested by the Committee on October 31, 1994 regarding tax-exempt entities was beyond the Committee's jurisdiction to sanction. Specifically, Representative Michel commented: ". . . [T]he information you request goes to the legal status of a 501(c)(3) entity, an entity that I believe is outside of the jurisdiction of the Committee on Standards. To my knowledge, there is no precedent for such an inquiry. The Committee has never launched a formal or informal investigation of such an entity. The Internal Revenue Service might be interested in the tax status of this particular group but it appears outside of your jurisdiction." (Letter of Rep. Bob Michel to Reps. Jim McDermott and Fred Grandy, November 15, 1994 at 1).

Indeed, this view was echoed by a Member of the Committee's own legal counsel's office, David McCarthy, when Respondent and his staff first consulted with McCarthy in June of 1993 regarding the Renewing American Civilization course. (See Letter of David J. McCarthy to Rep. David Hobson, December 1, 1994). The sound policy reasons for placing such matters outside the Committee's jurisdiction have been borne out by the present proceeding which has been costly not only in financial terms, but also in terms of the integrity of the House ethics process.

The power of both Houses of Congress to discipline their Members for "disorderly Behavior" is recognized by the Constitution itself.[9] House precedent recognizes the power of this body to discipline its Members for "conduct unworthy of a representative of the people"[10] or other conduct which creates an appearance of impropriety. Such a standard is currently embodied in House Rule 43(1), which provides: "A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives." However, the application of this standard is limited, or should be, to those cases where the conduct is wrong in and of itself or where a violation of the law has already been found by a proper adjudicatory body.[11] The House Ethics Manual observes that "[a] review of these cases indicates that the Committee has historically viewed clause 1 as encompassing violations of law and abuses of official position." House Ethics Manual at 14 (footnote omitted). In such cases, Members are well-placed to pass on the conduct of their colleagues, as, indeed, is any citizen, as such conduct so clearly transgresses the acceptable bounds placed on individuals in our society.

By contrast, the basis for the investigation in the present proceeding relates to a complex and difficult question of tax law relating to the permissible activities of tax-exempt entities. Such questions should not form the basis for a finding that a Member has violated the Code of Official Conduct unless a properly constituted administrative or judicial authority has previously found that the Member has in fact committed acts prohibited by the tax code. To punish a Member for creating a public controversy involving the legality of a Member's involvement with organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code without any violation of the law having been found by the Internal Revenue Service or this Committee is not only unprecedented, but unwise.

In establishing a bright-line rule to distinguish between those matters properly governed by the standard set forth in House Rule 43(1), it is helpful to refer to the long-recognized distinction between and mala in se (literally, "wrongs in themselves") and mala prohibita ("prohibited wrongs"). See, *Morisette* v. *United States*, 342 U.S. 246 (1952); *United States* v. *Park*, 421 U.S. 658 (1975). Mala in se are aggravated wrongs and injuries in derogation of public morals and decency. Examples include killing and stealing. While such offenses may or may not violate a specific law, we all know that such acts are inherently wrong and we punish those who commit such offenses. The Committee on Standards of Official Conduct can, and should, recommend appropriate punishment for the commission of mala in se even if the Committee finds that there has been no violation of the law.

Mala prohibita, on the other hand, are acts that are wrong only in the sense that they are specifically prohibited by the state. In many instances, determining whether a malum prohibitum has been committed requires the application of specialized expertise as to the state's technical prohibition. If it is found, by a properly constituted administrative or judicial tribunal with the expertise to comprehend and adjudicate the alleged violation, that a Member has violated such a law then sanctioning the Member pursuant to Rule 43(1) is perfectly appropriate as such conduct does not reflect creditably on the House. In the absence of such a finding, however, the Committee should abstain from becoming involved in investigating and attempting to resolve such questions.

The Committee's investigation of Respondent in the present case has attempted to apply Rule 43(1), in an unprecedented manner. The conduct being investigated in this proceeding—using charitable funds for educational or allegedly partisan political activities—is not a wrong in and of itself. It is

only wrong if the conduct in question violates the technical parameters set out by the Internal Revenue Code. Furthermore, this is not even a case in which it is alleged that a Member violated the law; but rather it is one step further removed. This is a case in which a Member is alleged to have failed to appreciate fully his need for technical guidance so as to avoid the controversy generated by the divergence of expert opinion with respect to his conduct.

The dangers of such a precedent lie in the fact that: "appearance" standards are so vague as to have little content, thus providing scant guidance to members and their staffs in shaping their conduct and, at the same time, exposing them to the possibility of manipulable complaints and prosecution. In the words of the ABA Committee on Government Standards, "beyond [an] initial role in rule formation, 'appearance of impropriety' is too vague and contestable a concept to function effectively as an independent benchmark in a system of ethics regulations."[12]

Such a precedent would undoubtedly have a chilling effect on Member participation in charitable or educational organizations now expressly permitted by the Committee.[13]

The subcommittee has created a new wrong not heretofore known to law: conduct which creates a "public controversy." Let us be clear that this new hybrid is substantially different from sanctioning a member for the commission of a malum in se involving infamy for clearly immoral or unjust conduct. Furthermore, the subcommittee seeks to punish Respondent for failing to engage counsel to avoid such controversy. Yet the practical implications of this newly-created offense make it difficult to understand how engagement of counsel would serve as a defense as the subcommittee's Statement of Alleged Violation suggests. Is it a "public controversy" if experts disagree and there is little or no media attention, or is it only a "public controversy" if experts disagree and there is substantial media attention? Is it a perfect defense to have consulted counsel? What if counsel is diligent but mistaken? What if counsel renders incorrect advice? Does the Member have to seek Board certified counsel? These and a panoply of other practical problems present themselves if a sanction is predicated upon this as yet untrodden minefield.

The policy reasons for declining to create such a precedent are numerous. First, allowing the mere allegation of violations of the law to become a basis for ethics charges will encourage political opponents to use the law and the ethics process as tools of political strategy. The controversy surrounding the Federal Election Commission's complaint against GOPAC filed in the Federal District Court for the District of Columbia provides a case in point. See, *Federal Election Comm'n* v. *GOPAC, Inc.*, 917 F.Supp. 851 (D.D.C. 1996). In April, 1994, the FEC filed a civil action against GOPAC alleging that, in 1989 and 1990, GOPAC had failed to register as a "political committee" as required by the Federal Election Campaign Act, 2 U.S.C. §§ 433(a) and 434(a). One of the primary contentions made by the FEC was that GOPAC funds to support Respondent as chairman of GOPAC were utilized by Respondent's election campaign. The filing of the case prompted great speculation among the press and generated headlines such as "Another Ethical Problem for Newt,"[14] "FEC Says GOPAC Aided Gingrich Race Despite Law; Group Barred From Federal Campaigns in 1990"[15] and "GOPAC secretly aided Gingrich in 1990, election officials charge."[16] However, the FEC's complaint was disposed of by the district court on summary judgment. The parallels to the present case are apparent. Despite the vast number of allegations regarding Respondent's violations of federal election laws in the press, when a "controversial" claim was exposed to rigorous examination in proper a judicial forum the claim was found insufficient to survive a motion for summary judgment. Yet if allegations alone that "controversy" had been generated provided a sufficient basis for an investigation and discipline under Rule 43(1), Respondent might have been once again forced to expend great amounts of effort and money in defense and the Committee might have been forced to consume a great deal of its time in investigating claims that proved to be baseless when subjected to judicial scrutiny. For this reason, cases involving mala prohibita such as violations of federal elections law or the tax code ought to be left to regulators and the courts who are ultimately better equipped to address technical aspects of the law.

Not only is this Committee ill-equipped to address allegations that such laws have been violated, but to do so ultimately undermines the administrative enforcement process of many of these laws that Congress itself created and creates, in effect, a highly politicized system parallel to the enforcement mechanisms of the FEC and IRS that is applicable only to Members of the House. Under such a system, Members may be investigated for alleged violations of highly technical laws and forced to endure great time and expense only to reach a conclusion that the Committee simply is not qualified to resolve such questions.

In discussing the merits and benefits of a disclosure-based ethics system for Members of Congress, one commentator highlighted the unique concerns presented by claims that a Member has violated a highly technical prohibition and the need for particularized expertise to make such a determination. Specifically, "disclosure is not the most effective tool to employ against conduct that violates highly technical regulations or is itself composed of a complex or highly nuanced series of events. In such circumstances, it seems that the risk of manipulation and/or voter misunderstanding would be high; accordingly, entrusting an entity such as the Federal Election Commission with the responsibility to police such areas as technical campaign regulations might be preferable. In this regard, it is important to recognize that the question of whether a violation has occurred can be separated from the question of whether a sanction should be imposed.[17]

From a policy standpoint, it would be far preferable for the Committee to take action with respect to allegations of this nature only after it has been found that a Member has violated the law by an administrative agency or court subject to judicial review. Indeed, this Committee has on several occasions deferred action pursuant to a request from the Department of Justice.[18] Such an approach in no way diminishes the authority of this Committee to regulate the conduct of Members on behalf of the House as once a violation has been found by a competent tribunal as House precedent clearly establishes that the Committee may investigate or sanction the Member for conduct which does not reflect creditably on the House.[19]

Yet to expand dramatically this Committee's jurisdiction to consider technical violations of statutes not governing mala in se is to open a Pandora's box which it may be impossible to close again. If this path is taken, this Committee will become a special tribunal which tries to hear and decide, without right of appeal, every conceivable allegation that might be levied against a Member regardless of whether it is malum prohibitum or malum in se. Such an action is neither an efficient nor a wise use of the resources of this great body. While the Committee should not engage in deciding whether Members have committed mala prohibita, it should continue its traditional and proper role of disciplining Members for committing mala in se. For such offenses the House is, and should be, the court of last resort.

These arguments are not a challenge to this Committee's jurisdiction for that time has passed. Rather, the Committee should carefully consider the lack of guidance available to Members, including Respondent, during the period in question as a mitigating factor in considering its recommendation to the Full House. In addition, the Committee should carefully consider the troubling concerns raised by this application of Rule 43(1) as other members attempt to conform their conduct to the Code of Official Conduct.

DECEMBER 8, 1994 AND MARCH 27, 1995 LETTERS

As background, it is important to note that the Respondent has been proactive, as opposed to reactive, with the Committee in connection with the Renewing American Civilization course and any potential ethics issues which it might present. Respondent has waived attorney-client privileges, produced thousands of documents and met with the Investigative Subcommittee at its convenience. The proactive involvement began with his letter dated May 12, 1993 in which he specifically inquired if "the committee [had] any concerns about this project." Then, in June of 1993, Respondent, Jeffrey Eisenach, Annette Meeks and Linda Nave met with then Committee counsel David J. McCarthy. (See Letter of Speaker Gingrich to Reps. Goss and Cardin, October 31, 1996 with attachments (including Letter of David J. McCarthy to Rep. Hobson, December 1, 1994)). During the course of that meeting, Mr. McCarthy recalls that:

"The discussion eventually turned to fundraising for the course. Jeff Eisenach began to volunteer details of how he contemplated fundraising, and I interrupted his explanation with a question, "are you on the House payroll?" When he answered that he was not, never had been, and did not ever expect to be I shifted the focus of the discussion by explaining that I was not interested in what Eisenach was planning to do, I was only interested in what Mr. Gingrich and any House employees were going to do * * *.

* * * * *

"Then Mr. Gingrich again brought up Eisenach and asked whether he should not get the Committee's written advice that Eisenach would be permitted to engage in the fundraising. His concern seemed to be that Eisenach's identity with GC AC, along with his fundraising for the course through the college foundation, could open him to criticism that the motivation for the course was political. I replied that, in my judgment, Mr. Gingrich should not ask the Committee to pass on the activity of Eisenach.

"First, I explained that because Eisenach was not a Member, officer or employee of the House his activity was really outside of the Committee's jurisdiction. Secondly, I told him that, to my knowledge of tax law, the issue of whether the contributions in support of the course would keep their tax-deductible

status would turn not on who did the fundraising but on how the funds were spent, and that the educational nature of the course spoke for itself. I told him that I was aware of no law or IRS regulation that would prevent Eisenach from raising charitable contributions, even at the same time that he was raising political contributions. In any event, I advised him, I expected the Committee to stick by its advisory opinion in the Ethics Manual and not get into second-guessing the IRS on its determination of tax-exempt status.

"I also felt that because the Committee's written answer might decline to offer advice on Eisenach's fundraising activity—it being outside the Committee's purview—he might be just as well off not to raise the question in his letter. My experience was that Members found it annoying when the Committee in a written advisory opinion would explicitly decline to answer a question. I believe that there was some brief discussion about Eisenach leaving GOPAC, in any event, to focus on the course fundraising." (Letter of David J. McCarthy to Rep. David Hobson, December 1, 1994 at 1–2).

The significance of these passages from McCarthy's letter is twofold. First, they demonstrate that Respondent expressly referenced GOPAC and the involvement of Eisenach in course fundraising in his consultations with Committee counsel.[20] Secondly, these passages explain that Respondent did not make reference to GOPAC involvement in the course in his letter of July 21, 1993 providing additional information to Representative McDermott as Committee Chairman on the express advice of Committee counsel. (See Letter to Rep. Jim McDermott, July 21, 1993; see also, Letter from Committee to Speaker Gingrich, October 31, 1994 at 2).

Then, on September 7, 1994, Ben Jones, Respondent's electoral opponent, filed his first ethics complaint against Respondent. Respondent's initial responsive submission to the Committee dated October 4, 1994, prepared by a member of Respondent's staff, expressly refers to GOPAC's involvement in the course. In particular, the letter states:

"I would like to make it *abundantly clear* that those who were paid for course preparation were paid by either the Kennesaw State Foundation [sic], the Progress and Freedom Foundation or GOPAC . . . Those persons paid by one of the aforementioned groups include: Dr. Jeffrey Eisenach, Mike DuGally, Jana Rogers, Patty Stechschultez [sic], Pamla Prochnow, Dr. Steve Hanser, Joe Gaylord and Nancy Desmond." (Letter to Rep. Jim McDermott, October 4, 1994 at 2). (emphasis added.)

As the above-quoted passage indicates, Respondent expressly referred in correspondence with the Committee to the involvement of GOPAC in the course and the use of GOPAC funds to pay individuals for course preparation. Indeed, there is no question that the Committee was aware of involvement by GOPAC. This knowledge was confirmed in the Committee's letter dated October 31, 1994 to Respondent. Significantly, the Committee's letter notes that Respondent's October 4, 1994 letter "sufficiently answer[ed] most of the allegations raised in Mr. Jones' complaint."

Eliminating any issue regarding the Committee's awareness of GOPAC' involvement, however, the Committee's October 31, 1994 letter went on to state: "A number of documents reflect the involvement of GOPAC and GOPAC employees in developing and raising funds for the course." The letter continues: "In addition to the above, various other documents related to the course were sent out on GOPAC letterhead, were sent from GOPAC's fax machine, used GOPAC's address as a place to mail materials related to the course, and referred to registration materials being included in GOPAC Farmteam mailings." In all, the Committee's October 31, 1994 letter makes reference to GOPAC no less than 46 times and cites extensive documentation referring to GOPAC. (See, Letter from Committee to Speaker Gingrich, October 31, 1994). Interestingly, from the original complaint to the October 31, 1994 Committee correspondence, GOPAC is mentioned by name 92 times in correspondence to and from the Committee.

DECEMBER 8, 1994 LETTER

As reflected above, the Committee's request for information was dated October 31, 1994. On November 8, 1994, election day, Republicans captured a majority of seats in the U.S. House of Representatives. The process of transition began immediately. In the context of these events Respondent retained counsel on November 15, 1994 to represent him in connection with the ethics investigation.

Counsel began preparation of the response. An associate was assigned to prepare an initial draft of the response. The attorneys coordinated their efforts with a member of Respondent's staff. Subsequently, the December 8, 1994 letter was presented to Respondent for review and signature. It does not appear that there was any communication between the attorneys and the Respondent until after December 8, 1994.

Regarding the response, Respondent testified that he would have turned and said "I want this done...." (Gingrich Tr., 11/13/96, at p. 28) Respondent testified that, in November, "we, in effect, had decided to go from [the staff member] being in charge to [the staff member] coordinating with the law firm and the law firm being in charge." Respondent testified that it was his understanding that the law firm was primarily responsible for drafting the December 8th letter. (Gingrich Tr. 11/13/96, at 28).

The firm partner recalls that his role and that of his firm in the preparation of the December 8, 1994 letter was to prepare a response working with the staff member. (Baran Tr. at 6–7). The partner assigned responsibility for preparing an initial draft to an associate at the firm. (Baran Tr. at 9–10; Mehlman Tr. at 15). The associate testified that in preparing the draft response to the October 31, 1994 letter, he relied upon "various correspondence" between Respondent and the Committee including the October 4, 1994 letter, the course book, a pamphlet on the course, and the Jones' complaint with exhibits and the videotapes of the course. (Mehlman Tr. at 15–16). The associate further testified that it was his understanding that he did not need to go beyond these materials in drafting the response. (Mehlman Tr. at 19). The associate testified that, in preparing the draft, he never contacted anyone at GOPAC (Mehlman Tr. at 18, 28), nor did he contact Dr. Eisenach (Mehlman Tr. at 28) or Respondent (Mehlman Tr. at 27) to confirm any of the information contained in the December 8, 1994 letter. The associate then met with the partner to review the draft and some editorial changes were made. (Mehlman Tr. at 18).

The partner testified that his review was limited to the October 31, 1994 letter from the Committee, the Jones complaint with exhibits and telephone conversations, and that otherwise "[he] didn't have any other independent factual gathering." (Baran Tr. at 13). The partner further indicated that he had no contact with the Kennesaw State College Foundation (KSCF), Kennesaw State College or Reinhardt College in preparing the December 8th letter. (Baran Tr. at 18). The partner further testified that his first contact with Respondent during this time period was on December 9, 1994, and that he had no recollection of having discussed the letter at all and that he had no contact with Respondent concerning the matter prior to that time. (Baran Tr. at 18, 33).

Turning then to the involvement of Respondent and his staff in the December 8, 1994 letter, the partner indicated that the letter "eventually went from our office to [the staff member.]." (Baran Tr. at 14). Respondent's testimony confirms that it was his understanding that the law firm would be responsible for preparing the response in coordination with his staff member. (Gingrich Tr., 11/13/96, at 28). Respondent indicated that, in assigning this task, "[the staff member] would have been acting with my authority to conduct what we thought at the time was a thorough investigation." (Gingrich Tr., 11/13/96, at 15–16). However, the testimony makes apparent that the staff member believed that the partner attorney was checking the factual basis of the statements for accuracy while the partner attorney was under the misimpression that the staff member was doing so.[21] This miscommunication extended not only to the research into the factual basis for the statements but to the communication of these findings to Respondent. As noted above, the partner attorney testified that he did not discuss the contents of the letter with Respondent prior to submission. (Baran Tr. at 18, 33) nor does Respondent recall such a meeting. (Gingrich Tr., 11/13/96, at 30). Nor apparently did anyone on Respondent's staff confirm the facts contained in the letter with Respondent prior to its submission in any systematic fashion. The staff member's recollection is that she did not even see Respondent during the signing process, but forwarded the letter to Respondent for signature through the executive assistant. (Meeks Tr. 15 76–77).

MARCH 27, 1995, LETTER

Turning then to the letter to the Committee of March 27, 1995, similar miscues appear to have resulted in inaccuracies in statements made to the Committee. Again the attorneys had responsibility for the preparation of the submission on Respondent's behalf, and on this occasion, the responsibility for the initial drafting fell to the associate as well as to a more senior associate. The senior associate testified that, in drafting the facts section of the March 27 response, he relied upon the October 4 letter, the attachments to the amended complaint, the original Jones complaint and its exhibits, the December 8 letter, all of the exhibits included with the March 27 submission and conversations with the Respondent's staff member. (Toner Tr. at 19, 29–30, 34). The senior associate further indicated that he made no contact with anyone at GOPAC, the Progress & Freedom Foundation, Reinhardt College, Kennesaw State College or the Kennesaw State College Foundation in preparing the March 27, 1995, letter. (Toner Tr. at 19–20; 26–27; see also, Baran Tr. at 27 (no contact with GOPAC)). The junior associate similarly testified that he had relied upon the correspondence and materials he had from the December 8 submission as well as having reviewed other responses by the senior associate and the partner. (Mehlman Tr. 15 38).

Both associates indicated that they were not personally aware of efforts to check the

factual accuracy of the March 27, 1995, submission. (Toner Tr. at 38–39; Mehlman Tr. at 53). The senior associate testified that he was similarly unaware of any contacts with people outside the firm, other than Respondent's staff member, to confirm the factual basis for statements contained in the submission (Toner Tr. at 56), and that he was not aware of any changes made to the document based on comments from anyone associated with the Respondent. (Toner Tr. at 60–61). The junior associate indicated that he did not recall contacting any outside persons to confirm such facts. (Mehlman Tr. at 38). The partner additionally confirmed that, while he reviewed the drafts and edits with the associate, he did not recall making any outside inquiries of anyone regarding the Renewing American Civilization course with one possible exception. (Baran Tr. at 28).

Asked if he was aware of any additional factual inquiry done in preparation for the March 27, 1995, submission in addition to that previously done for the December 8, 1994, submission, the partner replied: "Factual inquiry—none that I recall—no." (Baran Tr. at 30–31). The partner's testimony was that after drafting and editing the March 27, 1995, document "at some point we would have sent a draft that we felt comfortable with over to the Speaker's office." (Baran Tr. at 28). The partner testified that he did not recall any discussions with the Respondent prior to the submission of the March 27, 1995 letter over the partner's signature. (Baran Tr. at 32). The firm's billing records reflect that the submission was filed on March 27, 1995 at 6:05 and delivered to Tony Blankley of Respondent's staff at 6:35 that same evening. (WFP 00224).

The purpose of this extended review of the testimony offered in this proceeding regarding the process of preparing these submissions to the Committee is not an attempt to shift the ultimate responsibility for submitting these statements from Respondent to others, but only to demonstrate that the testimony of record in this matter clearly supports the conclusion that any inaccuracies contained in these submissions were the result of regrettable errors rather than of any intent to mislead this Committee. In their testimony before this Committee, the staff members as well as the attorneys repeatedly testified that they were never told, directly or indirectly, by Respondent, or anyone on his behalf, to provide anything other than accurate information to the Committee.

"Mr. GOSS. For the record, you may want to respond to this. I will try and make it as clearly as I can. Do you have any personal knowledge of whether the Speaker either directly or through his attorney Mr. Baran deliberately provided anything other than accurate, reliable or complete information to this committee regarding his response related to the complaints with regard to the letters that we have talked about today?

"The WITNESS. Do I have any knowledge that any of the information was false? Is that the question?

"Mr. GOSS. Was deliberately provided, that was other than accurate, reliable or complete.

"The WITNESS. No.

"Mr. GOSS. Do you know if Mr. Gingrich at any time tried to forward or intended to forward to us incomplete, inaccurate or unreliable information?

"The WITNESS. If I may editorialize on my answer for a second, we really—in the two replies that I was involved in, we really, in our estimation, tried to comply as fully, completely, honestly, straightforward, and promptly as we were able.

"Mr. SCHIFF. The question is did Mr. Gingrich ever suggest to you in any way, shape, or form, that you do other than that?

"The WITNESS. Oh, goodness, no." (Meeks Tr. at 85–86).

"Mr. GOSS. Do you have any knowledge that Mr. Gingrich was aware that any of the information contained in the letters that we have talked about at the time that those letters were submitted were incomplete, misleading, or inaccurate?

"The WITNESS. No." (Baran Tr. at 60).

"Mr. SCHIFF. Could I ask you two questions on that; actually, I may be leaping ahead, but a general question? Was there anything told to you that you heard either directly or indirectly, that indicated that it was the purpose of either the speaker or of Mr. Baran or of anyone else connected with this case, to deceive this committee and to provide anything but accurate information?

"The WITNESS. No.

"Mr. SCHIFF. Your assumption, then, is you are supposed to put together a correct statement of the facts and submit it to us?

"The WITNESS. Absolutely." (Toner Tr. at 28).

Representative Goss summarized the testimony on this point most succinctly observing:

"Mr. GOSS. Okay. I have only one little thought. We seem to have gotten into a situation where we know we have some information that is not everything we desired it to be, and we are trying to track down why and how we got into that position. It seems that Mr. Gingrich was relying on you [Baran] and some other people to do the December 8th letter, or his December 8th letter was given to somebody else and they were supplemented by your firm, and your firm in turn, by your testimony, you were relying pretty much on what that individual, who would be Ms. Meeks, was doing and you were just checking for legalities rather than substance, would be sort of the way I read your testimony, and therefore the problem started on December 8th was further compounded on March 27th on that letter because you used some of the material from the December 8th letter. Is that correct?

"The WITNESS [the partner attorney]: Yes. I would agree with that characterization." (Baran Tr. at 59).

Respondent's own testimony before this Committee similarly endorses this version of events:

". . . After reviewing my testimony, my counsel's testimony, and the testimony of his two associates, the ball appears to have been dropped between my staff and my counsel regarding the investigation and verification of the responses submitted to the committee.

"As I testified, I erroneously, it turns out, relied on others to verify the accuracy of the statements and responses. This did not happen. As my counsel's testimony indicates, there was no detailed discussion with me regarding the submissions before they were sent to the committee. Nonetheless, I bear responsibility for them, and I again apologize to the committee for what was an inadvertent and embarrassing breakdown." (Gingrich Tr., 12/10/96, at 5–6).

Upon realizing that errors were made, Speaker Gingrich has openly and publicly accepted responsibility for these errors and has offered his sincere apologies to this Committee and the House.

Notwithstanding these circumstances, the bottom line is that inaccurate, incomplete and unreliable information was submitted to the Committee. There are no circumstances which can justify the submission of inaccurate, incomplete or unreliable information to the Committee. The information submitted was submitted on Respondent's behalf. Respondent has accepted full responsibility.

Respectfully submitted, this 16th day of January, 1997.

J. RANDOLPH EVANS,
Counsel for Respondent.
ED BETHUNE,
Co-Counsel for Respondent.

FOOTNOTES

[1] Contributing to the preparation of this report were Anthony W. Morris, Esq. and Stefan C. Passantino, Esq. of Arnall, Golden & Gregory, L.L.P. and Shannon H. Ratliff, Esq. of Bracewell & Patterson, L.L.P.

[2] Charitable, religious and educational entities organized under section 501(c)(3) and lobbying entities organized under section 501(c)(4) are exempt from taxation under the tax code. IRC §501(a).

[3] In fact, qualified tax experts in the field have concluded that there has been no violation of federal tax law. Highly regarded 501(c)(3) expert William J. Lehrfeld concluded there is no violation of federal tax laws. *See*, Exhibit E. James P. Holden of the law firm of Steptoe & Johnson reached the same conclusion. *See*, Appendix C.

[4] *See*, *infra* p. 35–43.

[5] IRC section 501(c)(3) identifies these qualifying entities as: "[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals. . . ." IRC §501(c)(3).

[6] FEC records reflect that Ms. Roady, a registered Democrat, has made political contributions totaling $1,550 to Emily's List, The Rangel for Congress Committee, and the Democratic National Committee.

[7] The IRS has similarly refused to revoke the tax exempt status of a voter registration organization promoted by then-Senator Alan Cranston and run by his son, Kim Cranston. "Old Softie: Alan Cranston's Soft Money Machine; Campaign Fund Ethics," The New Republic, p. 17 (Dec. 11, 1989); "Raising Money to Register More Voters," The Exempt Organization Tax Review, p. 697 (Dec.-Jan. 1990). Indeed, "[i]n 1984, . . ., several foundations attempted to use their tax-free assets to increase turnout by targeted groups and thus increase the Democratic vote in the presidential election, according to election experts." "Raising Money to Register More Voters", p. 679.

[8] *See*, *supra*, p. 30.

[9] Art. I, §5, cl. 2 provides: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member."

[10] See, In re Rep. Edward D. Holbrook (ID), II Hinds §1305 (1869); In re Rep. John T. Deweese (NC), II Hinds §1239 (1870).

[11] See, House Ethics Manual, 102nd Cong., 2nd Sess., April 1992 at 13–14 (collecting cases in which Rule 43(1) has been invoked in investigating or disciplining Members).

[12] Theresa A. Gabaldon, "The Self-Regulation of Congressional Ethics: Substance and Structure," 48 Admin. L. Rev. 39, 54–55 (1996) (quoting ABA Committee on Government Standards (Cynthia Farina Reporter), "Keeping Faith: Government Ethics and Government Ethics Regulation," 45 Admin. L. Rev. 287, 297 (1993)).

[13] The House Ethics Manual relied upon for guidance by Members provides: "The Committee has granted a blanket exception to [5 U.S.C.] section 7353 to allow Members and employees of the House to solicit funds on behalf of charitable organizations, provided that no official resources are used, no official endorsements is implied, and no direct personal benefit results. "House Ethics Manual at 319 (footnote omitted).

[14] "Another Ethical Problem for Newt, The News Tribune, December 2, 1995, at A9.

[15] "FEC Says GOPAC Aided Gingrich Race Despite Law; Group Barred From Federal Campaigns in 1990," Washington Post, November 30, 1995, at A1.

[16] "GOPAC secretly aided Gingrich in 1990, election officials charge," The Commercial Appeal (Memphis), November 30, 1995, at 1A.

[17] Gabaldon, supra, at 57.

[18] See, In re Del. Fofo I.F. Sunia (Am. Sam.) and aide Matthew K. Iuli, See, Summary of Activities of 100th Cong., H. Rep. No. 100-1125, at 15-16 (1989); In re Rep. Frederick W. Richmond (NY), See, Summary of Activities, 97th Cong., H. Rep. No. 97-1004 (1982).

[19] See, e.g., In re Del. Fofo I.F. Sunia (Am. Sam.) and aide Matthew K. Iuli, See Summary of Activities, 100th Cong., H. Rep. No. 100-1125, at 15-16 (1989) (disciplinary hearing scheduled after Member and aide pleaded guilty to conspiracy to defraud government, although both resigned before hearings held); In re Rep. Mario Biaggi (NY), H. Rep. No. 100-506, 100th Cong., 2d Sess. (disciplinary hearing held after conviction for accepting illegal gratuities).

[20] "I would also ask the committee to place this error in the context of our proactive effort in 1993 to seek the committee's advice and approval and the letter from the former committee counsel, Dave McCarthy, confirming that I had aggressively sought to explore any complications that would involve GOPAC. At no time did I intend to deceive the committee or in any way be less than forthright." (Gingrich Tr. at 6-7).

[21] The staff member's repeated testimony in this regard was as follows:

Q. Did you look over the document to check it for accuracy?

A. Yes.

Q. Factual accuracy?

A. Primarily I would have been looking at this document for typographical errors, misspelled words.

Q. Did you have any knowledge of the facts that are contained in this document, the December 8, 1994, letter?

A. This was prepared by our counsel. I trust that he had——

Q. My question is, very specifically, did you have any knowledge of the facts, personal knowledge of the facts, that are contained in the letter?

A. I would have, yes. I would have looked to Dave McCarthy, which characterized a conversation that Linda Nave and I had with Mr. McCarthy, to verify Jan's characterization of that conversion.

I verified Clerk's report which I had provided a copy of and the termination papers that I had provided and also the Dave McCarthy conversation about GOPAC staff simultaneously working for the course and for GOPAC.

Q. Anything else?

A. No. (Meeks Tr. at 45).

Q. No, I am now asking the letter itself, did you ever indicate to Mr. Baran that you had provided the December 8th letter prior to its going to the committee to anyone for the purpose of checking its accuracy?

A. No, that would not have been—no. (Meeks Tr. 87).

Mr. GOSS. So your answer, as of the December 8 letter, would be that all of the information that came from outside came from Mr. Baran?

The WITNESS. Yes, sir. (Meeks Tr. at 67).

However, the partner testified as follows:

Q. And again, I'm trying to understand exactly the level of factual inquiry that was made aside from the materials that were submitted with the complaint, some of which were also submitted with the October 31st letter. Aside from that and Mr. Eisenach talking to you, perhaps Mr. Gaylord, and looking at the tapes, was there any factual inquiry that you know of done by you or anyone at your office to prepare the portions of the letters concerning the course?

A. Well, whatever review occurred subsequently by others.

Q. But you don't know what that was?

A. That is correct. I cannot confirm that today. (Baran Tr. at 48).

[From the Washington Post, Jan. 18, 1997—Federal News Service]

THE GINGRICH ETHICS CASE: EXCERPTS FROM THE COUNSEL FOR THE HOUSE SPEAKER

Following are excerpts from the statement to the House ethics committee of J. Randolph Evans, counsel for House Speaker Newt Gingrich (R. Ga).

Let me begin by saying that we recognize and the speaker recognizes the serious nature of the charges that are contained in the Statement of Alleged Violation, and recognizes the seriousness of his admission to the violation contained in the Statement of Alleged Violation. Any charge against a member of Congress is a serious matter. Any charge involving the speaker of the Congress is indeed a serious matter, especially when it is leveled against a member who has so consistently over the years proactively involved himself in the issue of ethics, including pursuing sanctions against members of his own party where he deemed appropriate.

Nonetheless, we do recognize and the speaker recognizes how serious this issue is. In fact, in connection with this process, the speaker has cooperated fully and completely with the investigative subcommittee in all phases, including waiving privileges with his counsel, producing thousands of documents, attending meetings with the subcommittee at the subcommittee's convenience, and directing his staff and counsel to cooperate with the subcommittee at every phase.

Indeed, the speaker himself has apologized to the subcommittee, to the House, and to the American people for the public controversy that has ensued from the activities that are described in the Statement of Alleged Violation. . . .

In addition, the speaker has agreed to the recommended level of sanction which Mr. Cole has described. In connection with that, [co-counsel] Ed Bethune and I . . . have spent a great deal of time reviewing the various information that has been made available to us. . . . And our recommendation is the same recommendation as the recommendation of the special counsel.

I should note that our recommendation is premised in part on the significant and important message that it sends in two respects: First, the submission of inaccurate, incomplete and unreliable information in the course of any ethics investigation, regardless of the circumstances surrounding the submission, is serious and should be addressed in a serious way. Second, the speaker feels strongly that when information, which is inaccurate, incomplete or unreliable, causes the committee to expend resources, then the party submitting the information should bear some responsibility for reimbursing the committee for some of the cost in addressing that information. . . .

We recommended the sanction be reprimand, a sanction which is relegated to serious violations.

Speaker Gingrich has voluntarily agreed that the committee will be reimbursed $300,000 for costs incurred in connection with the investigation of the inaccurate, incomplete and unreliable information submitted to the committee. We have recommended that this reimbursement be included in any sanction that is recommended by the committee to the full House. . . .

NOT A REHASHING

I should note that I agree with [Rep. Benjamin L.] Cardin [D-Md.] that the purpose of this hearing is not a rehashing of all the facts that are contained in the special counsel's report. . . . [However] I disagree with some of the conclusions and analysis that are contained from those facts. . . .

[W]hile certainly the facts are carefully stated in the special counsel's report, I think that they are often stated in a way which ignores the realities and the context in which the events that are being described was occurring. . . .

[The] Statement of Alleged Violation essentially consists of two parts. The first part consists of an alleged violation that the speaker failed to seek and follow the legal advice that is described within the Statement of Alleged Violation. Second, the Statement of Alleged Violation refers to information that was transmitted to the committee on the speaker's behalf on two separate occasions.

I would like to emphasize . . . the speaker was not charged with violation of U.S. tax laws. The speaker was not charged with intending to deceive the committee. The speaker was not charged with illegal activities or criminal tax violations. The speaker was not charged with money laundering. . . . We can only conclude that not only did the Statement of Alleged Violation not charge any of those items, but there was no reason to believe that illegal or criminal or other such activities occurred.

Second, I think it is important to place this in the context of what was happening in 1991 and 1992 and 1993. . . . [T]he House Ethics Manual specifically contemplates multiple capacities involving . . . members of Congress. It specifically talks about the difference between office accounts, official and unofficial organizations and similar distinctions involving multiple capacities. . . .

I would note that the Internal Revenue Service itself has recognized on repeated occasions that a number of 501(c)(3) organizations have related 501(c)(4) organizations that can [conduct] political campaign activities, usually through a [political action committee]. . . .

I would even note for the committee that in the continuing-education handbook that is provided to IRS field agents, they specifically acknowledge that two organizations, such as a 501(c)(3) and a 501(c)(4), can include two organizations that share the same staff, the same facilities and other expenses. They can conduct joint activities as long as there is an allocation of the income and expenses. This is not a new concept that has just simply arose in connection with this particular case. . . .

The idea that somehow what was occurring in 1992 and 1993 by the speaker in connection with multiple entities was unusual or extraordinary or subject to serious question by the Internal Revenue Service, all of those which do not relate to the facts that the committee has found but relate to the environment and the context of what was occurring in the United States in 1992 and 1993, would reflect that those were consistent with what at least 51 senators and 146 other House members were doing at the same time in connection with multiple entities.

The speaker developed a movement. I think in that regard it is important to note at the outset . . ., if you notice on Slide 32, that he made it clear that the challenge involved was not Republican or Democrat, liberal or conservative; the challenge was to civilization's survival. . . . What happened in 1992 and 1993 and relating back as early as 1990, is Speaker Gingrich developed ideas on what he saw as necessary to renew American civilization. It extended well beyond the concept—extended well beyond the concept of any partisan political gain, but instead . . . extends to a fundamental concern about whether American civilization indeed is in decay and decline. . . .

CHANGING CULTURAL DECLINE

[T]o change cultural decline, there had to be a cultural, economic, political, governmental movement that transcended any government, any business, any educational institutions, specifically including the Congress. . . . As part of the government, he was convinced that it required . . . that there be a majority committed to reform. . . . In connection with that there were three things that occurred. There was the whip's office; and his congressional office; there was the 501 (c)(3) organizations; and then there was

GOPAC. . . . All three served distinct purposes.

The purpose of the whip's office was through votes and legislation, to cause the movement to occur. Through the 501 (c)(3), there was the focus to educate and reform ideas necessary for a movement to occur. And through GOPAC was to recruit and train Republican candidates. All of these then were to cause a movement to occur. . . .

It is not without question that both achieved Renewing American Civilization, but it is not inconsistent that they would have the same goal, the only difference being that while the movement itself would presuppose a majority considered—committed—to reform, that GOPAC would want that majority to be Republican.

Those are not inconsistent, and I'd think even Mr. Cole would concede . . . that it is not inappropriate . . . for a political action committee to in fact use and disseminate information that has been developed by a 501(c)(3). . . . It is important that that context of that movement be put in the perspective of the same thing that occurs on a daily basis involving any number of 501(c)(3)'s, 501(c)(4)'s and PACs in Washington, D.C., or across America. . . .

[O]ne issue that appears to be in significant dispute is the issue of whether the goal of what all was occurring in 1991, 1992, and 1993 was a Republican majority, of which the movement was a part, or was the goal the movement, of which a Republican majority was a part. . . .

I would ask that in that context, that you would specifically take a look . . . at the materials relating to the vision, and I would ask that you would specifically take a look at the degree to which the movement always operated as an overall umbrella under which the other activities always fit. I do not believe that there is any document that reflects a Republican majority as the overall umbrella of the goal in which then, on the flip side, the movement was a part leading to the majority. . . .

As far as his violation of the tax law goes, there are two possibilities that largely exist. One . . . is that there was a violation of the law, which the committee specifically did not find, and that indeed the speaker, at the time that he engaged in this conduct, knew that it was a violation of law and thus acted improperly. That is an impossible conclusion under this record. At best, the area of the law is unsettled. The committee's own tax counsel, in her reports to the [American Bar Association], indicates that it is unsettled and that the IRS precedent provides little guidance.

But more importantly, if you assume for a moment that the tax-law issue was clear to the subcommittee's tax counsel, it is equally clear that the speaker's tax counsel reached the opposite conclusion. The best that you can say is, from all of the writing in the articles that existed at the time, is that the law was unclear. And if the law was unclear, there is no way in which the speaker could have understood what the law was and intended to violate it.

The other possibility is that the speaker was put on notice that there was a serious potential problem, and nonetheless, chose to ignore it. . . . In addition to 51 senators and 146 congressmen engaging in this kind of multiple-capacity structures, that the legal writings at the time seemed to suggest that the course, specifically Gingrich's course, fit within acceptable parameters at the time. . . .

[Y]ou will see . . . citations that equally make it clear that the writings at the time, the legal periodicals at the time, reflected the multiple-structure process.

I would also note to consider in connection with deciding the appropriate level of sanction, that the speaker specifically addressed the issue of GOPAC involvement and fundraising in a meeting with David McCarthy who was committee counsel to the ethics committee. You will note that . . . Mr. McCarthy . . . pretty much articulated standards that . . . the tax-deductible status would turn not . . . on who did the fund-raising, but on how the funds were stacked, and that the educational nature of the course spoke for itself. . . .

It is in that context that I ask you to place the activities surrounding Renewing American Civilization and the American Opportunities Workshop.

ISSUE OF THE LETTERS

If I could now turn my attention to the issue of the letters that were submitted to the committee. . . .

In May 1993, the speaker delivered to the committee a letter regarding participation in the formulation of the course. He attached his January 25, 1993, special order, in which he outlined his vision for Renewing American Civilization. Any suggestion that the committee at the time was not aware of the vision of Renewing American Civilization as it extended, is simply incorrect, given that the one hour special order speech was specifically attached to the letter.

In the spring of 1993, the speaker's staff met with David McCarthy, counsel for the committee, in which there are references to [executive director Jeffrey] Eisenach's identity with GOPAC, and . . . the 501(c)(3) issues.

It is important to note that in the connection with that letter, that Mr. McCarthy made it very clear . . . that the issue of GOPAC's involvement and the issue of the tax-deductible status was not something within the committee's jurisdiction and . . . of which the committee would not be particularly interested; that he said that he thought the committee would stick by its position and not get involved in second-guessing the IRS on its tax determinations of tax-exempt status.

I think it's important to note that in fact he discouraged . . . involvement of the ethics committee in connection with the relationship of GOPAC and 501(c)(3) status so that the focus of the committee counsel's interest was on the distinction between office accounts and unofficial activities. So it's against that backdrop that we then measure the responses that were being submitted later.

On July 21, there was a letter to the committee that noted the involvement of the 501(c)(3). I would again commend to you to read specifically the letter that references the Kennesaw State Foundation and the fact that it was a 501(c)(3) entity.

On August 3, the committee issued its letter noting its position in granting approval to the course as outlined in the correspondence that had been submitted by the speaker and the information that had been submitted.

On September 7, 1994, the complaint was filed by Speaker Gingrich's opponent [Ben Jones] in the general election. It references at length GOPAC and its involvement and its relationship to 501(c)(3).

On October 4, Speaker Gingrich sent a letter to the committee addressing the complaint. . . . [I]t says, "I would like to make it abundantly clear that those who were paid for the course preparation were paid by either the Kennesaw State Foundation, the Progress and Freedom Foundation, or GOPAC. . . ."

[T]here was no concealment that GOPAC was participating in connection with the preparation of the course and funding for the course. [T]hen there's the October 31, 1994, letter from the committee, which indicates that the October 4th letter sufficiently answered most of allegations raised in Mr. Jones's complaint but then went on to note that there were a number of documents that reflect the involvement of GOPAC and GOPAC employees in developing and raising the funds for the course. . . . [T]his is a shift that occurs if you read the letters in succession. Prior to this point, the focus of the committee has squarely been on official and unofficial activities by a member of Congress. At this point, the issue then becomes raised relating to other issues. And if you put it in that context, you can see how the letters fit together. I will note that that letter specifically referenced the involvement of GOPAC personnel, GOPAC fax machine, letterhead, addresses and other materials. . . . Any suggestion that there was an effort to conceal, or that the committee was unaware and the speaker was trying to take advantage of that ignorance of GOPAC's involvement, is simply directly refuted and belied by the correspondence that exists in connection with this matter. GOPAC's involvement was clearly unequivocally known throughout the process, being referenced by name some 92 times.

If you then look at the time-line, you will see that then followed Election Day, which was November 8, 1994, at which the Republicans captured a majority of the seats in the Congress. The following day, the speaker began the process of transition, a hectic time. On November 15, 1994, he retained attorneys to begin the process of assuming responsibility for the preparation of the responses to the committee's inquiry of October 31, 1994. He began the process of a series of nonstop meetings—steering committee meetings and other meetings—to begin the transition process that followed the November election.

In this regard, I find the conclusions of the special counsel's reports, the characterizations to be somewhat in error. . . .

THE BALL GOT DROPPED

[I]t is simply an example of a situation where, as the speaker put it, the ball got dropped between the staff and between the attorneys, about verifying the accuracy of information. This is especially true given that the information that is inaccurate relates to information which was already in the committee's possession and which had already been referred to some 92 times.

That brings us to the March 27 letter, which was a letter that was signed by counsel, and for which there is no real indication of involvement by the speaker himself in connection with it. . . . I would note to you that if I take the testimony at face value, and that is that there were these erroneous statements in the document, it should be put in some context. This was a 52-page letter.

It had 31 exhibits. It had 235 pages. It was prepared by an attorney after 140 hours. It consisted of 1,131 lines, of which 18 are at issue. It was submitted to the speaker during the last week of the . . . [first] 100 days [of the new Republican-majority Congress]. The suggestion being that the speaker should have caught the . . . errors made by attorneys retained by him after 140 hours of a 52-page letter with 31 exhibits. Context is important in understanding the nature of the

allegations that have been made. . . . [T]he speaker himself was not involved, and in fact no effort was made to investigate the statements by the attorneys at the time the letter was prepared.

I would note that I think there is a very good summary by [subcommittee Chairman Porter J.] Goss [R-Fla.]: "Okay, I have only one little thought. We seem to have gotten in a situation where we know we have some information that is not everything we desired it to be, and we are trying to track down why and how we got to that position. It seems that Mr. Gingrich was relying on you and some other people to do the December 8 letter, or his December 8 letter was given to somebody else and they were to be supplemented by your firm. And your firm in turn, by your testimony, you were relying pretty much on what that individual...was doing, and you were just checking it for legalities rather than substance, would be sort of the way I read your testimony; and that, therefore, the problem started on December 8 was further compounded on December 27 in that letter because you used some of the material from the December 8 letter. Is that correct?"

"Yes, I agree with that characterization, which is, simply stated, is that the attorneys became involved, they limited it to the universe of the information that they reviewed; the December 8 letter was prepared; it was erroneous; and then the problem was exacerbated when the March 27 letter was submitted, since no further investigation was done regarding it."

I think [Rep. Steven] Schiff's [R-N.M.] questions relating to this issue are particularly important given...the innuendos that...there was something further at issue here in terms of an intent or scheme or plan to deceive.

Mr. Schiff asked this question: "Was there anything told to you that you heard directly or indirectly, that indicated that it was the purpose of either the speaker or [Gingrich counsel Jan] Baran or anyone else connected with this case to deceive the committee or to provide anything but accurate information?"

Answer by the associate: "No."

"Your assumption, then, is that you were supposed to put together a correct statement of the facts and submit it to us?"

Answer: "Absolutely...."

Question: "Well, did Mr. Gingrich ever ask you to provide us any information that was less than complete or that was misleading?"

Answer: "Absolutely not, although I have to hesitate to use the word 'absolutely.'"

Mr. GOSS: "Do you have any knowledge that Mr. Gingrich was aware that any of the information...that we have talked about, at the time those letters were submitted, were incomplete, misleading or inaccurate?"

Answer: "No."

The testimony is consistent on this point. There is no evidence from any testimony from any witness who in any way touched any of the letters that there was any intent or attempt to submit inaccurate information....

I noted in reading the report, the conclusions of the report, that there are words which are . . . cleverly juxtaposed against each other to lead to a conclusion which is somewhat different than what the testimony itself is.

I do not dispute the facts surrounding the letters. I don't dispute the testimony that surrounds the letters. Most importantly, the speaker does not attempt in any way to offer excuses relating to the letters, and it has been his consistent position, as opposed to that of mine of being the attorney here, to put things in context for you, that the letters were his responsibility. They were submitted on his behalf. They are inaccurate. That is wrong.

It is wrong to submit inaccurate information to the committee. He has accepted the complete responsibility for that and has agreed to a serious sanction, that being of a reprimand with a reimbursement of $300,000.

The only thing I point out to you is from my perspective as the counsel that has reviewed this, is that notwithstanding his position, it is important to put that into context of what was actually transpiring at the time those letters were prepared. . . .

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. HOBSON].

Mr. HOBSON. Mr. Speaker, there has been a lot of heated rhetoric and partisanship in this case, as it has progressed. I think it is important that we step back and focus on the case, examine the specific charges contained in the statement of alleged violations.

The first charge is that the Speaker should have sought legal advice in his dealings with 501(c)3 organizations. The second is that he gave inaccurate information to the Select Committee on Ethics. Those are the charges; no more, no less.

I turn to the Speaker's response to these charges. He accepted the subcommittee's findings. He acknowledged that he should have consulted a lawyer, and that some of the information he gave was incorrect. Since the Speaker has accepted the alleged violations, it was the job of the full committee to determine an appropriate sanction.

While the committee attempted to work through this process there was all kinds of rhetoric flying, from all sides, of those not involved in the process. Some called for the expulsion of the Speaker, and may still do that, while others called for a letter of reproval or even less. That may happen also.

In the end, the special counsel submitted his report to the full committee, and the committee supported and voted out an unprecedented sanction, since there is no evidence that the Speaker engaged in misconduct that resulted in personal financial gain to him.

I would like to take a few moments to discuss the counsel's report. Mr. Cole was hired by the Select Committee on Ethics as an investigator to lay out the facts of the Speaker's case. As a member of the Select Committee on Ethics, I understood that Mr. Cole was not hired to be a judge, nor a 501(c)3 tax expert. In either case, it was my understanding he had no prior experience. Rather, the resolution of preliminary inquiry authorizing Mr. Cole's employment specified that he was appointed to assist the subcommittee.

I am submitting for the RECORD the biography of B. John Williams, who served as a judge on the U.S. Tax Court, and currently is in the Washington law firm of Morgan, Lewis, and Bockius, the very same law firm as Mr. Cole's hired tax expert.

I am also submitting for the RECORD a statement written by Mr. Williams concerning the potential significance of the American Campaign Academy case, which he provided when he was interviewed by the committee for the position of special counsel.

I am going to read just a little bit from that, but I have submitted the entire statement as I have it for the RECORD.

Mr. Williams' quote:

* * * there is an adage taught in the first year of law school that "hard cases make bad law." American Campaign Academy seems to be a good example of that adage. While the case reached the right result because of the integral closeness of the Academy and the Republican Party sponsorship and direction, the reasoning of the case reaches the result by focusing heavily on a vague term that the Court called "secondary benefit." The "secondary benefit" of the Academy's program was the benefit to employers—Republican candidates—of the training period acquired by academy graduates.

The court found the secondary benefit disproportionately benefited Republicans as they were the only ones hiring the graduates. The court's reasoning really plows uncharted waters and leaves only ill-defined notions of how to access whether recipients of the secondary benefits serve the organization's exempt educational purposes.

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My purpose for submitting Mr. Williams' statement is not to point out who is right or who is wrong but, rather, to point out that knowledgeable people on tax issues can and will have different interpretations about the law in this area, even two tax experts from the same law firm. These different interpretations may give some justification for Mr. GINGRICH's actions, although I still believe and I believe now that he should have consulted a tax lawyer.

After reviewing the Speaker's case and examining House precedents on sanctions, I believe the sanction was more harsh than the charges in the case warrant. For the RECORD, I am submitting a memo which outlines the rules and precedents on disciplinary sanctions. I believe a careful reading of this memo supports my conclusion.

But the Speaker accepted the charges and the sanction against him. I believe that it demonstrates to all of us and to the American public that he truly regretted his actions and sends a message that the Speaker's conduct should be held to a particularly high standard, as should every other Member's.

But there is another message in this for all of us as Members. The reimbursement of $300,000 sets a new standard for the ethics process. Some may disagree with that. It says that those who create additional and unnecessary

work for the committee are going to pay a price. This should also alert those Members who trump up charge after charge and file frivolous complaints with the Select Committee on Ethics that they may be held to a similar monetary standard.

There have been numerous allegations and charges filed against Mr. GINGRICH over the past few years, and they have been investigated by the Select Committee on Ethics and at an enormous cost to the taxpayers. All of these cases have either been deemed minor or dismissed except for the current issue.

This leads me to believe that there is an orchestrated effort by certain opposition forces, some even involving tax exempt organizations to attack the Speaker. And the attacks did not stop with the Speaker. For the first time in my career on the committee, there has been a relentless attack on members who serve on the Select Committee on Ethics, including myself. I have served on the Select Committee on Ethics for 6 long years. It was not until we handled the Speaker's case that I experienced and saw the attacks on members of the Select Committee on Ethics from other Members and outside groups which, I might my add, by the way also included certain tax exempt groups.

Intense political pressure was brought to bear on the members purely for the reason that they served on the Select Committee on Ethics. These and other distractions were detrimental to the entire process. Had these actions and certain other committee problems not occurred, this case could have been resolved much earlier and been far less disruptive to the House and the American people. Fortunately that is all behind us and we are here today.

This has been a long and difficult case and would have been completed much earlier had it not been for these disruptions. But fortunately, due to the leadership of the Chair of the Select Committee on Ethics and the work of the subcommittee, we are here. For the past 2 years, NANCY JOHNSON forced the committee to do its job. Rather than referring the tough issues to others to decide, she kept the committee on track and kept the pressure on the commit to resolve cases. NANCY JOHNSON, more than any other Member, has paid a heavy political price for her determined service to the Select Committee on Ethics. This, in my opinion, is absolutely totally unfair and her constituents should understand the extent of the partisan political forces working against her.

Despite the enormous pressures brought to bear against the Chair, the Chair endured and pressed on to resolve this most difficult and contentious case.

After 6 years, I am today leaving the Select Committee on Ethics with mixed emotions, as Mr. CARDIN also said. I think most of us getting off agree. It troubles me that this case brought out the worst partisan rancor and resulted in inappropriate actions of certain Members, but at the same time I am pleased that this case has been resolved in a bipartisan manner and we can move forward in the House and do the work that the people sent us here to do.

In closing, as I stated earlier, I believe the committee sanction was more harsh than the charges warranted but I will vote for the resolution because it was the bipartisan decision reached by the committee and agreed to by Mr. GINGRICH.

The material referred to follows:

B. JOHN WILLIAMS, JR.

B. John Williams, Jr. is a partner in the Tax Section resident in the Washington, D.C., office. His practice focuses on federal tax controversies and litigation before the U.S. Tax Court, U.S. Court of Federal Claims, U.S. District Court, and the U.S. Circuit Courts of Appeal. He also represents clients before the Internal Revenue Service and the Treasury Department on rulings and regulations.

Mr. Williams, who is vice-chairman of the Tax Section, represented and continues to represent clients in a variety of fields, including the oil, coal, newspaper, consumer products and construction industries.

From 1981 through 1984, Mr. Williams served as Special Assistant to the Chief Counsel of the Internal Revenue Service, and as Deputy Assistant Attorney General, Tax Division, in the Department of Justice (supervising five civil trial sections, the Office of Legislation and Policy, and the Review Section).

In 1985, Mr. Williams, then a partner at Morgan Lewis was appointed by President Ronald Reagan to the U.S. Tax Court. He served with distinction on the bench where he wrote many important opinions and tried several highly complex factual cases involving hundreds of millions of dollars in dispute and where he served on the Court's Rules Committee. In March, 1990, he resigned from the Tax Court and re-entered the practice of law as a partner with Morgan Lewis.

Mr. Williams speaks regularly before business and bar groups on litigating large tax cases. He has served as a panel member of the ALI-ABA Course of Study, "How to Handle a Tax Controversy at the IRS and in Court;" the Georgetown CLE program, "The Perfect Trial of a Tax Court Case;" and the Tax Executives Institute's seminar on "Strategies for Success: How to Handle an IRS Audit."

Mr. Williams is a member of the District of Columbia and Pennsylvania bars, the American Law Institute and the American Bar Association. He served as a member of the Advisory Committee to the U.S. Court of Appeals for the Federal Circuit (1992-96). Mr. Williams is noted in *Who's Who in America, Who's Who in American Law* and *Best Lawyers in America*. He is a Fellow of the American College of Tax Counsel.

He received his undergraduate degree from George Washington University with distinction and university honors and with departmental honors in history; he is a member of Phi Beta Kappa and Omicron Delta Kappa.

Mr. Williams received his law degree with distinction from George Washington University where he was a member of the law review. He served for two years as a law clerk for the late Judge Bruce M. Forrester of the U.S. Tax Court.

In examining the relationship between GOPAC funding and the course taught by Mr. Gingrich at tax exempt colleges, and taped for later broadcast distribution, the Committee has asked about the potential significance of American Campaign Academy, 92 T.C. 1053 (1989). In my view this case offers uncertain guidance to the Committee at best.

First, the task before the Committee is to judge the propriety of Mr. Gingrich's behavior, whereas the case has direct application only to an issue about the exempt status of the colleges at which he taught his course. The case simply does not articulate any principle that would condemn or exonerate the presentation of Mr. Gingrich's course content. Further, the case does not provide any standard for determining the propriety of Mr. Gingrich's teaching a course, even if partisan in content, at a tax exempt institution of higher learning. Finally, the case does not provide standards for condemning or exonerating the funding of the course by GOPAC. Assuming Mr. Gingrich's course was partisan, and designed to be so, and further assuming that GOPAC provided funds for the course, American Campaign Academy would apply, if at all, only to determining whether "no more than an insubstantial part" of the colleges' activities furthered a "nonexempt purpose." In this exercise, which seems inappropriate for the Committee, the issue would require an examination of the colleges' educational operations and a determination that any private benefits conferred were more than an incidental part of the colleges' activities and purposes.

Second, there is an adage taught in the first year of law school that "hard cases make bad law." American Campaign Academy seems to be a good example of that adage. While the case reached the right result because of the integral closeness of the Academy and Republican Party sponsorship and direction, the reasoning of the case reaches the result by focussing heavily on a vague term that the Court called "secondary benefit". The "secondary benefit" of the Academy's program was the benefit to employers (Republican candidates) of the training acquired by Academy graduates. The Court found the "secondary benefit" disproportionately benefited Republicans (they were the only ones hiring the graduates). The Court's reasoning really plows uncharted waters, and it leaves only ill-defined notions of how to assess the whether recipients of the "secondary benefits" serve the organization's exempt educational purposes.

If this Committee were to investigate whether the colleges' exempt purposes were served, delicate issues arise which the Committee will most likely not be in a position to assess, e.g., whether "conservative" or "liberal" viewpoints can be equated with partisan positions, whether the self-selection of an audience can constitute a cognizable group that can be said to receive a private benefit (or whether the possibility that some in the audidence will be motivated to join conservative or liberal causes entails a private benefit to a political party), or whether a tax exempt institution of higher learning with an established educational program loses its exempt status by presenting a political figure who offers definite views and is funded by designated contributions. These issues were not the subject of American Campaign Academy and to apply that case as

if it were applicable precedent will not, in my view, answer the questions before the Committee or serve its best interests.

[Memorandum]

To: Members of the House of Representatives.
From: David L. Hobson, Member of Congress.
Date: January 21, 1997.
Subject: Rules and Precedents Regarding Disciplinary Sanctions.

I. LEGAL AUTHORITY TO IMPOSE DISCIPLINARY SANCTIONS

The U.S. Constitution expressly authorizes the House to discipline its Members. Section 5, Clause 2 of Article I states that each House "may punish its Members for disorderly Behavior, and, with the concurrence of two thirds, expel a Member." House Rule X, Clause 4(e), authorizes the Committee on Standards of Official Conduct to investigate any alleged violation by a Member of "the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member. . . ." House Rule X, Clause 4(e) also authorizes the Committee "to recommend to the House from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members. . . ."

Committee Rule 20(e) states:

With respect to any proved counts against a Member of the House of Representatives, the Committee may recommend to the House one or more of the following sanctions:

(1) Expulsion from the House of Representatives.
(2) Censure.
(3) Reprimand.
(4) Fine.
(5) Denial or limitation of any right, power, privilege, or immunity of the Member if under the Constitution the House of Representatives may impose such denial or limitation.
(6) Any other sanction determined by the Committee to be appropriate.

Alternatively, the Committee may issue a Letter of Reproval without obtaining the approval of the House if, pursuant to Committee Rule 20(d), it determines that such a letter "constitutes sufficient action. . . ."

Committee Rule 20(g) provides the following guidance regarding the appropriateness of the different types of sanctions:

A reprimand is appropriate for "serious violations."

Censure is appropriate for "more serious violations."

Expulsion is appropriate for "the most serious violations."

A monetary fine is "appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit."

A denial or limitation of a right, power, privilege, or immunity is appropriate "when the violation bears upon the exercise or holding of such right, power, privilege, or immunity."

Rule 20(g) also states that the above standards comprise only "general guidelines" and do "not limit the authority of the Committee to recommend other sanctions."

II. PRECEDENT REGARDING SANCTIONS

Outlined below, in escalating categories of severity, are precedents regarding sanctions recommendations by the Committee since 1967, when the Committee on Standards of Official Conduct was established as a standing committee of the House. Pursuant to House Rules, the memorandum omits mention of any case concerning a current House member.

A. Letter of reproval

1. In re Rep. Jim Bates, H. Rep. No. 101–293, 101st Cong., 1st Sess. (1989).

In connection with allegations that Member sexually harassed female staff in violation of House Rule XLIII, Clause 9, Committee issued public letter of reproval directing Member to apologize to former staff. (The House took no action.)

2. In re Rep. Charlie G. Rose, III, H. Rep. No. 101–526, 100th Cong., 2d Sess. (1988).

In connection with allegations that Member borrowed campaign funds for personal use in violation of House Rule XLIII, Clause 6, and filed an inadequate Financial Disclosure Statement in violation of House Rule XLIV, the Committee adopted a Statement of Alleged Violation and issued a public letter of reproval. (The Member subsequently repaid the funds and amended his Financial Disclosure Statement.)

3. In re Rep. Richard H. Stallings, H. Rep. No. 100–382, 100th Cong., 1st Sess. (1987).

In connection with allegations that Member borrowed from his campaign fund for himself and a member of his staff, the Committee investigated and issued a public letter of reproval.

B. Reprimand

1. In re Rep. Austin J. Murphy, H. Rep. No. 100–485, 100th Cong., 1st Sess. (1987).

Following an investigation and disciplinary hearing, Committee recommended reprimand regarding allegations that Member: allowed another person to cast his House vote in violation of House Rule VIII, Clause 1; permitted his former law firm access to official resources in violation of 31 U.S.C. §1301(a), and Paragraph 5 of the Code of Ethics for Government Service; and maintained an employee on a committee payroll who was not performing duties commensurate with the employer's pay, in violation of House Rule XLIII, Clause 8. The House reprimanded the Member.

2. In re Rep. George Hansen, H. Rep. No. 98–891, 98th Cong., 2d Sess. (1984).

Following a criminal conviction for making false statements on Financial Disclosure Statement in violation of 18 U.S.C. §1001, Committee held inquiry and disciplinary proceeding regarding violation of House Rule XLIV. Committee recommended reprimand, and the House concurred.

4. In re Rep. Daniel B. Crane, H. Rep. No. 98–296, 98th Cong., 1st Sess. (1983).

In connection with allegations that Member had an improper sexual relationship with a House page in violation of House Rule XLIII, Clause 1, the Committee conducted an investigation and recommended a reprimand. The House voted to censure the Member.

5. In re Rep. Gerry E. Studds, H. Rep. No. 98–295, 98th Cong., 1st Sess. (1983).

Committee recommended reprimand following investigation of allegations that Member had an improper sexual relationship with a House page in violation of House Rule XLIII, Clause 1. The House voted to censure the Member.

6. In re Rep. John J. McFall, H. Rep. No. 95–1742, 95th Cong., 2d Sess. (1978).

Committee adopted Statement of Alleged Violation, held a public investigative hearing, and recommended reprimand concerning allegations that Member failed to report campaign contribution by Tongsun Park in violation of House Rule XLIII, Clause 1. The House reprimanded the Member.

7. In re Rep. Charles H. Wilson, H. Rep. No. 95–1741, 95th Cong., 2d Sess. (1978).

In connection with allegation that Member made a false statement to the Committee concerning the receipt of funds from Tongsun Park, the Committee filed a Statement of Alleged Violation, held a hearing, and recommended a reprimand. The House voted to reprimand the Member. (See discussion below.)

8. In re Rep. Robert L. F. Sikes, H. Rep. No. 94–1364, 94th Cong., 2d Sess. (1976).

Committee recommended reprimand concerning allegations that Member used his office to further his personal financial interests in violation of Paragraph 5 of the Code of Ethics for Government Service and failed to disclose stock holdings in violation of House Rule XVIV. The House voted to reprimand the Member.

C. Censure

As indicated above, the House voted for censure in two 1983 cases (concerning Representatives Crane and Studds) in which the Committee recommended a reprimand. Other cases resulting in censure are outlined below.

1. In re Rep. Charles H. Wilson, H. Rep. No. 96–930, 96th Cong., 2d Sess. (1980).

Committee adopted Statement of Alleged Violation and recommended censure in connection with allegations that Member: accepted gifts from a person with a direct interest in legislation, in violation of House Rule XLIII, Clauses 1 and 4; and made personal use of campaign funds, in violation of House Rule XLIII, Clause 6. The Member was censured by the House.

2. In re Rep. Charles Diggs, H. Rep. No. 96–351, 96th Cong., 1st Sess. (1979).

Following criminal convictions for mail fraud (18 U.S.C. §1341) and making false statements (18 U.S.C. §1001), the Committee adopted Statement of Alleged Violation and recommended censure concerning allegations that Member inflated staff salaries to enable him to pay his personal and congressional expenses. (Member apologized and agreed to make restitution.) The House unanimously voted to censure the Member.

3. In re Rep. Edward J. Roybal, H. Rep. No. 95–1743, 95th Cong., 2d Sess. (1978).

Committee adopted Statement of Alleged Violation, held public investigative hearing, and recommended censure in connection with allegations that Member: failed to report campaign contributions in violation of House Rule XVIII, Clause 1; converted campaign funds to personal use in violation of House Rule XVIII, Clause 6; and made a false statement to the Committee in violation of House Rule XVIII, Clause 1. The House subsequently voted to reprimand the Member. (See discussion below.)

4. In re Rep. Adam Clayton Powell, H. Rep. No. 27, 90th Cong., 1st Sess. (1967).

Special Select Committee considered allegations that Member used committee travel funds for personal travel, improperly authorized clerk hire payments to his wife, and committed contempt of court by failing to comply with New York state court orders.

Special Select Committee recommended that Member be seated but deprived of his seniority, that he pay restitution for improperly authorizing the expenditure of official funds, and that he be censured by the House.

House voted to exclude Member, imposed a fine, and denied him seniority. U.S. Supreme Court subsequently found that Member's expulsion was unconstitutional.

D. Expulsion

1. In re Rep. Mario Biaggi, H. Rep. No. 100–506, 100th Cong., 2d Sess. (1988).

Following a criminal conviction, the Committee unanimously recommended expulsion

in connection with charges that the Member: accepted illegal gratuities in violation of 18 U.S.C. §201(g), House Rule XLIII, Clauses 1, 2, and 4, and Paragraph 5 of the Code of Ethics for Government Service; and failed to report gifts on Financial Disclosure Statements in violation of House Rule XLIV.

House deferred action on expulsion resolution while Member defended against second prosecution. The Member resigned from the House.

2. In re Rep. Raymond F. Lederer, H. Rep. No. 97–110, 97th Cong., 1st Sess. (1981).

Following a criminal conviction for bribery arising out of the "ABSCAM" case, the Committee held an inquiry and disciplinary hearing, and subsequently recommended expulsion, concerning allegations that the Member accepted money in return for promising to use official influence, in violation of House Rule XLIII, Clauses 1 through 3. The Member resigned, and the House took no action.

3. In re Rep. Michael J. Myers, H. Rep. No. 96–1387, 96th Cong., 2d Sess. (1980).

Following a criminal conviction for bribery arising out of the "ABSCAM" case, the Committee held an inquiry and disciplinary hearing, and subsequently recommended expulsion, concerning allegations that the Member accepted money in return for promising to use official influence. The House expelled the Member.

III. CASES CONCERNING FALSE STATEMENTS TO THE COMMITTEE

In light of Speaker Gingrich's admission to the charges in the Statement of Alleged Violation, the two 1978 cases concerning Representatives Wilson and Roybal may be of particular interest to Members of the House.

In the Roybal case, the Committee considered allegations that Representative Roybal received $1,000.00 in cash from Tungsun Park. The Committee found by "clear and convincing evidence" that Representative Roybal knowingly gave false testimony when he denied under oath that he received a gift or campaign contribution from Mr. Park, and concluded that Representative Roybal's false testimony constituted a violation of House Rule 43, Clause 1. In re Rep. Edward J. Roybal, H. Rep. No. 95–1743, 95th Cong., 2d Sess. 1, 3–4 (1978). The Committee recommended that the House censure Representative Roybal, but the House voted to reprimand him instead.

In the Wilson case, the Committee found that Representative Wilson knowingly made a false statement to the Committee in writing when, in a response to a Committee questionnaire sent to each Member of the House, Representative Wilson denied receiving anything of value greater than $100.00 from Tongsun Park. In re Rep. Charles H. Wilson, H. Rep. No. 95–1741, 95th Cong., 2d Sess. 1–3 (1978). After a hearing, the Committee adopted a Statement of Alleged Violation in which it found, by clear and convincing evidence, that Representative Wilson had violated House Rule 43, Clause 1. *Id.* at 4–5. The Committee recommended to the House that Representative Wilson be reprimanded, and the House adopted that recommendation.

Mr. CARDIN. Mr. Speaker, I yield 30 seconds to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Speaker, very quickly I want to make two points.

Our colleagues have talked about this not being about financial gain to the Speaker. Indeed that was not our charge to the committee to find that, and we did indeed not find it. But this was about power, so when we talk about high ethical standard, it is not just about money; it is about what Members will do for power.

The second point is, the gentleman from Texas [Mr. SMITH] and the gentleman from Ohio [Mr. HOBSON] alluded to other penalties for other violations of House rules. Those cases were brought to conclusion. Mr. GINGRICH admitted to these charges, thereby freezing the record. We could possibly prove intent if we had the full process gone through. So I want to make that distinction.

Mr. CARDIN. Mr. Speaker, I yield 7 minutes to the gentleman from Ohio [Mr. SAWYER], a very distinguished member of the Select Committee on Ethics, who has contributed greatly not only to this particular matter, to many matters before the Select Committee on Ethics.

Mr. SAWYER. Mr. Speaker, I thank my colleague from Maryland for his leadership in this matter and join in my colleagues in recognizing the work of the subcommittee and the staff of the subcommittee in this difficult matter.

Earlier this year, a lifelong friend of mine was thrilled that his daughter on graduating law school was selected to speak on behalf of her classmates in terms of the kinds of things that they had learned in the course of their time together. She chose as her theme the nature of testimony.

Now, that is something that is certainly familiar to law students and lawyers. It is certainly familiar to all of us who deal day in and day out with testimony. But she was talking about testimony of another kind. Her theme was centered on the idea that the lives we lead, the sum of our actions is testimony to the values that we hold. That it is testimony to the very definition of who we are as individual actors in our public and private lives and in our corporate life here together as an institution.

It is just such a matter that brings us here today to judge that kind of testimony, a year's work, 150,000 pages of documents and testimony, that are themselves testimony to the work of the committee, to consider the seriousness of the conduct that was before us, the absence of care that was exercised in that conduct, the disruption that has been caused to this institution, and the cost in both monetary and ethical terms and the repetitive nature of the conduct that we speak of today.

The subcommittee concluded that there were significant and substantial warning signals to Mr. GINGRICH that he should have had prior to embarking on that activity. The subcommittee and the full committee and we today were faced with a disturbing choice. That choice was that either Mr. GINGRICH did not seek appropriate advice in the action that he took or that he was reckless in not taking care that as a Member of Congress he made sure that his action conformed with the law that he faced. We face another disturbing choice, that Mr. GINGRICH either intentionally misrepresented the truth or, again, that he was reckless in his disregard for the nature of truth.

This is at the heart of the charges that are before us. This is a serious offense. It is a serious sanction. But I hasten to add that it does not raise the hurdle that is before us. Twenty years ago in the consideration of the Korean Influence Investigation, the ethics committee produced a manual of offenses and procedures and concluded that, even where serious criminal sanctions are imposed, the law does not insist on proof of actual knowledge.

The courts have often held that proof that the accused acted in reckless disregard of the facts or deliberately closed his eyes to avoid obtaining knowledge may suffice to support a conviction if the circumstances should have alerted a responsible Member concerned about both the letter and spirit of the law to hesitate to inquire before acting, the failure of a Member to learn the truth should not be an excuse, and then goes on to discuss that that failure to adhere to this higher standard is an appropriate basis for imposing the most severe sanctions available to this House.

As we consider all of this, I hope that we recognize that, although we have heard often that this is a sad day, I want to add to that, as the gentleman from Florida [Mr. GOSS] suggested, that this can be a sound day if we can draw lessons from this case, not just Representative GINGRICH but all of us can draw lessons that ethical behavior, as Ms. PELOSI suggested, is not something that we do when we are too busy. It represents the way we live our lives together, that ethics is not a matter of cutting corners or pressing for an unfair advantage or that seeks to blur the truth or that seeks to find an entrepreneurial expression in the way we conduct our business here but, rather, ethical behavior may be even more important to us all when the lines are blurred than when they are clear.

This is not a matter of personal gain to the Speaker. It is a matter of ethical loss to us all if we do not recognize the importance of what is before us here today. We are all diminished by a violation of ethical standards, and we are all elevated by their careful and caring observation.

In that sense, in conclusion, Mr. Speaker, this can be a unique day. It will be in one sense the worst thing that we have ever done to a Speaker of the House of Representatives. But it can also be one of the very best things that ever happened in his life and in fact in all of our lives if he and we take the lessons of this day to heart, recognize them as personal obligations for

us all, to act on them in our lives, to have the decency to face up to the personal responsibility and to let all of our lives, not just the Speaker from this point forward become testimony to the high standards we set for ourselves in the public arena.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield 1¾ minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I thank the gentlewoman for yielding me the time.

I would like to embark on a slightly different dimension here, and I would hope that all the Members would listen as to my observation of the Speaker, what has NEWT GINGRICH done in my mind over the years, especially the last 2 years as Speaker of the House of Representatives. The Speaker has created a situation on the House floor where each Member of Congress can become a responsible advocate for his or her position.

My first 4 years here, I saw money and seniority as the influencing factor in developing legislation. The Speaker, in my observation, changed that. Those with credibility have information, and those with information generated as a result of that information influence. That is how a democracy is supposed to work. Those with the information have the influence, the course, the direction of the legislation.

As a result of that, the sophistication of the debate in my judgment has risen very, very high, a more open and honest exchange of ideas, not pummeled by political punishment by seniority or power; but an exchange of ideas is what democracy is all about.

The debate has often been clearly misunderstood as partisan politics or gridlock. This is democracy. It is difficult. That exchange of ideas does not take place in North Korea, Cuba, Iraq, or someplace else. NEWT GINGRICH has not aspired to power in this House or this country like many others in this place have done, buttressed by arrogance, dogma, and ignorance. In my judgment, in my observation, NEWT GINGRICH has sought to reveal his vision for America. This is what democracy is about.

Mrs. JOHNSON of Connecticut. Mr. Speaker, might I inquire as to the time remaining on both sides?

The SPEAKER pro tempore (Mr. BEREUTER). The gentlewoman from Connecticut [Mrs. JOHNSON] has 9¾ minutes remaining, and the gentleman from Maryland [Mr. CARDIN] has 8 minutes remaining.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Speaker, I thank the Chair again for yielding me the time.

There has been much discussion this afternoon about the tax issues in this case. There has been an assertion made that the Speaker supposedly intended to violate tax laws or that he was reckless in his activities. I want to address that head on.

□ 1330

I spoke yesterday with the chairman of the American Bar Association tax committee. He is the successor to the individual who served as the tax consultant to the Ethics Committee. He told me about a recent meeting that had been held by this tax committee, which was attended by 75 to 80 attorneys. And this meeting occurred on January the 10th of this year. He said there was much discussion about the facts of the case that are before us today, but he said, "there was no conclusion."

In fact, he said, "in regard to the discussion of the facts, it was not conclusive." There were many different conclusions. He himself went on to say that it was, "a stretch to conclude that the Speaker was guilty of violating any tax laws."

My point here is that the tax laws are so unclear that, in regard to what the Speaker was allegedly doing, how in the world could anyone have intended to violate such laws or been reckless in regard to such laws.

Last, I want to say that in the conclusion of the report of the special counsel, several explanations are mentioned to justify the severity of the penalty that is being discussed today. One of those explanations given for justification is that "Politics and tax deductible contributions are an explosive mix." Well, of course, there is nothing new about that.

Another explanation is that the Speaker had taken an aggressive approach to the tax laws. Well, since when have Members been penalized for taking an aggressive approach to anything?

And last, it is said that Mr. GINGRICH's own tax lawyer would have advised him not to use a tax exempt organization. But lawyers are risk-averse. They are paid to be cautious. They are worried about malpractice suits. If they think there is 1 chance out of 100 that their client might get in trouble, they are going to recommend against that supposed action.

The point here is that, just because the Speaker did not consult an attorney, is that reckless? Is that reason enough to give him the severe penalty of a reprimand?

And, furthermore, let me end on a question that I would pose to other Members of the House, and that is, Do we want to be judged by the same standards that we are judging the Speaker by today?

Mr. CARDIN. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York [MR. RANGEL].

Mr. RANGEL. Mr. Speaker, I gather that most of the Members, Democrat and Republican, are very anxious to put the heat and passion of our partisanship behind us and to get on and legislate as the American people would want us to do. God knows I have contributed my share toward that heat and passion, and make no apologies for my partisanship. But we cannot have it both ways. We cannot say that he pled guilty but he did not do anything.

For those people who want to pursue outside issues, I beg them not to think about doing it. If we want to investigate who was coercing members of the committee, then maybe we will investigate who asked them how they were going to vote on the question of the Speaker.

Who is talking about taxes? The Select Committee on Ethics had no right to go into tax issues. That is for the Internal Revenue Service; that is for the Federal Bureau of Investigation, and they have the responsibility to do that.

The Speaker is intelligent. He is an intellectual. He read the charges. He said he brought discredit upon this House. For God's sake, let us get on with it.

Mr. CARDIN. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I salute the Republicans for their loyalty to their Speaker and their unity. The facts are clear, Democrats: 7 years ago the Democrats abandoned Jim Wright; today the Republicans rescue NEWT GINGRICH. I commend them.

Let me say this. The bottom line, folks, is this is not Rotary; this is politics. If Democrats are going to win back the majority, I think we should not only do that but maybe expend a little bit of time on creating jobs in the country. It might serve a better purpose.

I want to close today by commending all of the leaders and all of the members of the committee. They are to be commended. I will support their decision. But let me say this: I hope that today's events serve to bring some form of historical fairness and perspective to our fine former Democrat Speaker, Jim Wright.

Mrs. JOHNSON of Connecticut. Mr. Speaker, how much time is remaining?

The SPEAKER pro tempore (Mr. BEREUTER). The gentlewoman from Connecticut [Mrs. JOHNSON] has 7 minutes remaining, and the gentleman from Maryland [Mr. CARDIN] has 6 minutes remaining.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield 4½ minutes to the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Speaker, I thank the chairman for giving me this time.

Last week, Mr. Speaker, I was prepared to vote for a reprimand, but then I found out that it is more than a reprimand; it is now a reimbursement plus a reprimand. And I cannot take what I was going to take, a political decision,

when I feel strongly, feel very strongly, that it is not right.

Now, I have the greatest respect for the chairwoman of the Committee on Standards of Official Conduct, NANCY JOHNSON, and I appreciate all the hard work that the committee has put into this recommendation. But I must agree with my colleague from Texas, Mr. SMITH, the only member of the committee who voted against that recommendation. I believe that this punishment is too harsh given the history of the ethics process and the precedence of earlier punishments.

Such a punishment is not only unprecedented and can be levied on every one of us, it is unwarranted. I will not vote to reprimand NEWT GINGRICH for transgressions that in the past have only warranted either warnings or letters of reproval from the Committee on Standards of Official Conduct.

Now, I understand the Speaker's noble motivation in working out a settlement in this case, and I understand why and how the committee came to this end and the Speaker came to this end; but we have to put it in perspective. The gentleman from Missouri, the minority leader, Mr. GEPHARDT, received a letter from the Committee on Standards of Official Conduct for giving false information to the committee not intentionally. The chairman of the DCCC received a letter from this Committee on Standards of Official Conduct because he did not intentionally use a Federal employee for campaign purposes.

Those are letters of reproval, and I submit that both of those actions are worse than what NEWT GINGRICH has owned up to.

Now, for what kind of violations has this House put reprimands on Members? Hiring the wrong lawyer? Submitting or being sloppy about submissions to the committee? No. Reprimands have been used for things such as using political influence to fix parking tickets for personal friends; reprimands or recommendations of reprimand by the committee for improper sexual relationships with pages; reprimand for intentionally lying to the committee.

This committee has not found this Speaker has intentionally lied or intentionally misled the committee.

This is, I say to the gentlewoman from California, Mr. Speaker, this is about power. This is about some on this side have lost power and they are trying to regain it by abusing the ethics process and this institution. That is what this is all about.

So, I do not agree that the Speaker should be held to a higher standard. All of us, all of us, every Member, should be held to the highest of standards. This Speaker and any other Member should not be held to a double standard. This is a double standard that we are imposing on this Speaker.

In fact, we know it because this Speaker has been prodded and probed from every direction. Since 1989 he has had over 500 ethics charges brought against him. In the last 2 years he has had 74 ethics charges brought against him. You know what? Nothing has been brought to this floor to bring a sanction against anything that he has been charged with.

What he is being charged with today is during the process he happened to screw up. That is what is going on here. I just find that really sad that we have abused the process like this.

This Speaker has had every detail of his life examined under a microscope, and that microscope has exposed some flaws, some sloppiness, some things that should have been done better; but it has not exposed corruption or lawlessness or personal profit. And that is what reprimands and censures are all about. The highest possible standard does not mean an impossible standard that no American could reach.

Let us stop using the ethics process for political vendettas. Let us not create precedence that will only serve to undermine the service of this country. Let us stop this madness. Let us stop the cannibalism.

Let us not fall victim to unrealistic expectations that do not forgive the common flaws of normal Americans.

With all due respect to the great work of the Ethics Committee, I cannot vote to reprimand the Speaker of the House for the stated transgressions.

Mr. CARDIN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I agree with the chairwoman of our committee. These are very tough penalties, and the violation of the rules justify these tough sanctions.

The sanctions are being recommended not because Mr. GINGRICH is the Speaker of the House. They are being recommended because Mr. GINGRICH is a Member of this House. These sanctions would be appropriate for any Member of this House who committed the violations that have now been established by the Committee on Standards of Official Conduct and have now been admitted to by Mr. GINGRICH.

Mr. GINGRICH made a decision that any Member has the right to make. He has admitted to the charges. He has done that in order to avoid the necessity of a trial. That is his decision, and one which I think we all must respect, but the underlying facts as to why this sanction is so severe, I think, will become obvious to any one of us if we will read the report of the special counsel which now has been approved not only by the bipartisan investigative committee but by the full Committee on Standards of Official Conduct.

It points to the fact that this was not a college course. It was a course conceived within a political movement. Read pages 38 and 39. It was conceived in a political movement. It was conceived as the only way, according to Mr. GINGRICH, to get the message out, to get the political message out.

I appreciate the comments of my colleague from Maryland, Mr. GILCHREST, but we do not use tax exempt organizations to get a political message out. I appreciate the comments of the gentleman from Texas, Mr. SMITH, about the meeting of tax lawyers. In all due respect, this report was just released 4 days ago. The facts and circumstances are just now known to the American people. The political motivation and the action on that political motivation is now just known by the American people.

Mr. GINGRICH commingled tax exempt organizations with his political agenda. He did it because he could not raise enough money in the political PAC's. That is part of our record. This was a new way to raise money, a new avenue in which he could promise his contributors a tax exemption to boot. That is wrong. He did it because he needed the money in order to get his political message out. And that is wrong.

There is ample evidence here that tax laws were violated, and it is not a close case, but we do not need to reach that conclusion. As the special counsel's report concludes, this is a bipartisan conclusion, Mr. GINGRICH should have sought tax advice. The reason he did not seek that tax advice was either that he knew it would be wrong and he did not want to get that advice or he was reckless in his conduct.

Make no mistake about this. This is reckless conduct, at least reckless conduct, over a long period of time dating back 5 years, involving four tax exempt organizations costing taxpayers hundreds of thousands of dollars of legitimate tax needs.

But there is more to this case than just the tax issues. We have letters that misled the Committee on Standards of Official Conduct. As the special counsel has pointed out, there is ample evidence, there is significant evidence here that he intentionally did this. No, we do not reach that conclusion. The record was frozen by his admission. But we do reach the conclusion that this was either intentional conduct to mislead this House and the ethics process or it was reckless conduct.

Now, that is more than innocent mistakes. We have reached conclusions that these are not just innocent mistakes. Mr. GINGRICH's explanation that he is sensitive to the ethics process, he was embarrassed, and he came forward as soon as he knew they were in error, just does not wash with the record that has been presented to you today. There is more to it than that, and the special counsel's record reflects that, and we need to take cognizance of that.

So we have a series of conduct that was either reckless or intentional and

it cost this House and our reputation dearly. That is why the sanction is before us.

□ 1345

Not because he is Speaker of the House but because a Member of the House has brought disgrace to this Chamber.

I am proud of the fact that we have a bipartisan recommendation here today. That is very important. The process has worked. Democrats and Republicans have come together and have performed one of their most important constitutional responsibilities, to judge the conduct of our own Members, and we have done that, and we have reached an agreement, and the agreement is right, and Mr. GINGRICH has agreed on that assessment. Now it is time for us to do right as a full House. It is time for us to support the recommendations of the Ethics Committee to send a very clear message that every Member of this House must adhere to the highest standards when it comes to their personal conduct that can bring discredit to this House and to their conduct with the Ethics Committee and the information that they make available to our committee.

I urge my colleagues to support this recommendation. Let us approve it overwhelmingly and then, yes, let us get on with the business of this House, Democrats and Republicans working together to do the people's business.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield 1 minute to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Speaker, I have to say that I do not think it is an accurate portrayal of the matters that bring us to the House floor today and that are about to bring us to a vote to selectively choose facts in a long investigative process. I cannot say that anything the gentleman from Maryland [Mr. CARDIN] just rendered was inaccurate if taken by itself. But these things are not taken by themselves. Also in the special counsel's report is the quotation of another tax expert who said he did not think that there was a violation of 501(c)3 laws in any way. There was no abuse of the tax laws. It was his opinion that as long as the content of the Speaker's course as a college course was pure of political involvement, then anyone could use it anyway they wanted to, and not even the worst critic of the Speaker we heard from challenged the fact that the course itself contained no partisan directives to the class, that it was a legitimate college course.

I urge the Members to adopt the recommendation of the committee.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. I thank the gentlewoman for yielding me this time.

Mr. Speaker, I rise in strong support of the Ethics Committee report. It is a serious and appropriate sanction. I urge that it have the same bipartisan support on the vote of this House.

Mr. Speaker, I support the report of the Committee on Standards of Official Conduct, the Ethics Committee, and urge its adoption recognizing that it will close a sad chapter in the history of this House. This is a serious and an appropriate sanction, as stated by Representative PORTER GOSS, the chairman of the Investigative Subcommittee. However, left unstated in this report and unresolved by the committee is the means by which the fine or cost assessment, that is, the reimbursement of $300,000 should be paid.

The reprimand for Congressman GINGRICH and the $300,000 cost assessment represent a serious penalty and one in which I concur. However, while this resolution leaves repayment to the Speaker's discretion, I personally believe, and would advise, that payment be made from the Speaker's personal funds and not from any political action committee or other campaign account.

I would advise the Speaker that payment of this cost assessment from his personal funds would at least begin to rehabilitate this House and the ethics process to which we are all accountable.

This vote today is conclusion of a sad chapter in the ethical history of the U.S. House. With this vote, we should move beyond partisanship and attend with seriousness of purpose and probity to the people's business in the highest tradition of American democracy.

This is now our ethical challenge—a challenge upon which the public will ultimately judge us.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, today we take final action on the Gingrich case. I believe passage of the tough, unprecedented penalty package is appropriate and I also believe it can be one important step toward restoring pride and confidence in the people's House of the U.S. Congress. But as important as this vote is today, no single vote can renew public confidence in this institution. Rather, each Member of this House must take personal responsibility to restore civility and mutual respect to our deliberations. The American people are bone tired of partisanship. They want us to work together, and I believe most Members of this House are yearning to return to the deliberative process that alone produces good public policy. We were elected Republicans and Democrats but the core of democracy is building bipartisan consensus by maturing the best ideas from both parties into responsible, effective solutions. Today we conclude this case by imposing a heavy penalty on the leader of this House. It is a tough penalty, unprecedented and appropriate. But if our action fails today to chasten this body and bring a halt to the crippling partisanship and animosity that has surrounded us, then we will have lost an opportunity to grow and learn from this solemn occasion, and that would be a tragedy.

I ask for your support of the bipartisan recommendation of the Ethics Committee.

Mr. CARDIN. Mr. Speaker, I ask unanimous consent that the report of the Select Committee on Ethics be made a part of the RECORD.

The SPEAKER pro tempore (Mr. BEREUTER). Is there objection to the request of the gentleman from Maryland?

There was no objection.

The report is as follows:

IN THE MATTER OF REPRESENTATIVE NEWT GINGRICH

I. INTRODUCTION

A. Procedural Background

On September 7, 1994, a complaint was filed with the Committee on Standards of Official Conduct ("Committee") against Representative Newt Gingrich by Ben Jones, Mr. Gingrich's opponent in his 1994 campaign for reelection. The complaint centered on a course taught by Mr. Gingrich called "Renewing American Civilization." Among other things, the complaint alleged that Mr. Gingrich had used his congressional staff to work on the course in violation of House Rules. The complaint also alleged that Mr. Gingrich had created a college course under the sponsorship of 501(c)(3) organizations in order "to meet certain political, not educational, objectives" and, therefore, caused a violation of section 501(c)(3) of the Internal Revenue Code to occur. In partial support of the allegation that the course was a partisan, political project, the complaint alleged that the course was under the control of GOPAC, a political action committee of which Mr. Gingrich was the General Chairman.

Mr. Gingrich responded to this complaint in letters dated October 4, 1994, and December 8, 1994, but the matter was not resolved before the end of the 103rd Congress. On January 26, 1995, Representative David Bonior filed an amended version of the complaint originally filed by Mr. Jones. It restated the allegations concerning the misuse of tax-exempt organizations and contained additional allegations. Mr. Gingrich responded to that complaint in a letter from his counsel dated March 27, 1995.

On December 6, 1995, the Committee voted to initiate a Preliminary Inquiry into the allegations concerning the misuse of tax-exempt organizations. The Committee appointed an Investigative Subcommittee ("Subcommittee") and instructed it to: determine if there is reason to believe that Representative Gingrich's activities in relation to the college course "Renewing American Civilization" were in violation of section 501(c)(3) or whether any foundation qualified under section 501(c)(3), with respect to the course, violated its status with the knowledge and approval of Representative Gingrich * * *.

The Committee also resolved to appoint a Special Counsel to assist in the Preliminary Inquiry. On December 22, 1995, the Committee appointed James M. Cole, a partner in the law firm of Bryan Cave LLP, as the Special Counsel. Mr. Cole's contract was signed January 3, 1996, and he began his work.

On September 26, 1996, the Subcommittee announced that, in light of certain facts discovered during the Preliminary Inquiry, the investigation was being expanded to include the following additional areas:

(1) Whether Representative Gingrich provided accurate, reliable, and complete information concerning the course entitled "Renewing American Civilization," GOPAC's relationship to the course entitled "Renewing American Civilization," or the Progress and Freedom Foundation in the course of communicating with the Committee, directly or through counsel (House Rule 43, Cl. 1);

(2) Whether Representative Gingrich's relationship with the Progress and Freedom Foundation, including but not limited to his involvement with the course entitled "Renewing American Civilization," violated the foundation's status under 501(c)(3) of the Internal Revenue Code and related regulations (House Rule 43, Cl. 1);

(3) Whether Representative Gingrich's use of the personnel and facilities of the Progress and Freedom Foundation constituted a use of unofficial resources for official purposes (House Rule 45); and

(4) Whether Representative Gingrich's activities on behalf of the Abraham Lincoln Opportunity Foundation violated its status under 501(c)(3) of the Internal Revenue Code and related regulations or whether the Abraham Lincoln Opportunity Foundation violated its status with the knowledge and approval of Representative Gingrich (House Rule 43, Cl. 1).

As discussed below, the Subcommittee issued a Statement of Alleged Violation with respect to the initial allegation pertaining to Renewing American Civilization and also with respect to items 1 and 4 above. The Subcommittee did not find any violations of House Rules in regard to the issues set forth in items 2 and 3 above. The Subcommittee, however, decided to recommend that the full Committee make available to the IRS documents produced during the Preliminary Inquiry for use in its ongoing inquiries of 501(c)(3) organizations. In regard to item 3 above, the Subcommittee decided to issue some advice to Members concerning the proper use of outside consultants for official purposes.

On January 7, 1997, the House conveyed the matter of Representative Newt Gingrich to the Select Committee on Ethics by its adoption of clause 4(e)(3) of rule X, as contained in House Resolution 5.

On January 17, 1997, the Select Committee on Ethics held a sanction hearing in the matter pursuant to committee rule 20. Following the sanction hearing, the Select Committee ordered a report to the House, by a roll call vote of 7–1, recommending that Representative Gingrich be reprimanded and ordered to reimburse the House for some of the costs of the investigation in the amount of $300,000. The following Members voted aye: Mrs. Johnson of Connecticut, Mr. Goss, Mr. Schiff, Mr. Cardin, Ms. Pelosi, Mr. Borski, and Mr. Sawyer. The following Member voted no: Mr. Smith of Texas.

The adoption of this report by the House shall constitute such a reprimand and order of reimbursement. Accordingly, the Select Committee recommends that the House adopt a resolution in the following form.

HOUSE RESOLUTION —

Resolved, That the House adopt the report of the Select Committee on Ethics dated January 17, 1997, In the Matter of Representative Newt Gingrich.

Statement Pursuant to Clause 2(l)(3)(A) of Rule XI

No oversight findings are considered pertinent.

B. Investigative Process

The investigation of this matter began on January 3, 1996, and lasted through December 12, 1996. In the course of the investigation, approximately 90 subpoenas or requests for documents were issued, approximately 150,000 pages of documents were reviewed, and approximately 70 people were interviewed. Most of the interviews were conducted by Mr. Cole outside the presence of the Subcommittee. A court reporter transcribed the interviews and the transcripts were made available to the Members of the Subcommittee. Some of the interviews were conducted before the Members of the Subcommittee primarily to explore the issue of whether Mr. Gingrich had provided the Committee, directly or through counsel, inaccurate, unreliable, or incomplete information.

During the Preliminary Inquiry, Mr. Cole interviewed Mr. Gingrich twice and Mr. Gingrich appeared before the Subcommittee twice. Several draft discussion documents, with notebooks of exhibits, were prepared for the Subcommittee in order to brief the Members on the findings and status of the Preliminary Inquiry. After receiving the discussion documents, the Subcommittee met to discuss the legal and factual questions at issue.

In most investigations, people who were involved in the events under investigation are interviewed and asked to describe the events. This practice has some risk with respect to the reliability of the evidence gathered because, for example, memories fade and can change when a matter becomes controversial and subject to an investigation. One advantage the Subcommittee had in this investigation was the availability of a vast body of documentation from multiple sources that had been created contemporaneously with the events under investigation. A number of documents central to the analysis of the matter, in fact, had been written by Mr. Gingrich. Thus, the documents provided a unique, contemporaneous view of people's purposes, motivations, and intentions with respect to the facts at issue. This Report relies heavily, but not exclusively, on an analysis of those documents to describe the acts, as well as Mr. Gingrich's purpose, motivations, and intentions.

As the Report proceeds through the facts, there is discussion of conservative and Republican political philosophy. The Committee and the Special Counsel, however, do not take any positions with respect to the validity of this or any other political philosophy, nor do they take any positions with respect to the desirability of the dissemination of this or any other political philosophy. Mr. Gingrich's political philosophy and its dissemination is discussed only insofar as it is necessary to examine the issues in this matter.

C. Summary of the Subcommittee's Factual Findings

The Subcommittee found that in regard to two projects, Mr. Gingrich engaged in activity involving 501(c)(3) organizations that was substantially motivated by partisan, political goals. The Subcommittee also found that Mr. Gingrich provided the Committee with material information about one of those projects that was inaccurate, incomplete, and unreliable.

1. AOW/ACTV

The first project was a television program called the American Opportunities Workshop ("AOW"). It took place in May 1990. The idea for this project came from Mr. Gingrich and he was principally responsible for developing its message. AOW involved broadcasting a television program on the subject of various governmental issues. Mr. Gingrich hoped that this program would help create a "citizens' movement." Workshops were set up throughout the country where people could gather to watch the program and be recruited for the citizens' movement. While the program was educational, the citizens' movement was also considered a tool to recruit non-voters and people who were apolitical to the Republican Party. The program was deliberately free of any references to Republicans or partisan politics because Mr. Gingrich believed such references would dissuade the target audience of non-voters from becoming involved.

AOW started out as a project of GOPAC, a political action committee dedicated to, among other things, achieving Republican control of the United States House of Representatives. Its methods for accomplishing this goal included the development and articulation of a political message and the dissemination of that message as widely as possible. One such avenue of dissemination was AOW. The program, however, consumed a substantial portion of GOPAC's revenues. Because of the expense, Mr. Gingrich and others at GOPAC decided to transfer the project to a 501(c)(3) organization in order to attract tax-deductible funding. The 501(c)(3) organization chosen was the Abraham Lincoln Opportunity Foundation ("ALOF"). ALOF was dormant at the time and was revived to sponsor AOW's successor, American Citizens' Television ("ACTV"). ALOF operated out of GOPAC's offices. Virtually all its officers and employers were simultaneously GOPAC officers or employees. ACTV had the same educational aspects and partisan, political goals as AOW. The principal difference between the two was that ACTV used approximately $260,000 in tax-deductible contributions to fund its operations. ACTV broadcast three television programs in 1990 and then ceased operations. The last program was funded by a 501(c)(4) organization because the show's content was deemed to be too political for a 501(c)(3) organization.

2. RENEWING AMERICAN CIVILIZATION

The second project utilizing 501(c)(3) organizations involved a college course taught by Mr. Gingrich called Renewing American Civilization. Mr. Gingrich developed the course as a subset to and tool of a larger political and cultural movement also called Renewing American Civilization. The goal of this movement, as stated by Mr. Gingrich, was the replacement of the "welfare state" with an "opportunity society." A primary means of achieving this goal was the development of the movement's message and the dissemination of that message as widely as possible. Mr. Gingrich intended that a "Republican majority" would be the heart of the movement and that the movement would "professionalize" House Republicans. A method for achieving these goals was to use the movement's message to "attract voters, resources, and candidates." According to Mr. Gingrich, the course was, among other things, a primary and essential means to develop and disseminate the message of the movement.

The core message of the movement and the course was that the welfare state had failed, that it could not be repaired but had to be replaced, and that it had to be replaced with an opportunity society based on what Mr. Gingrich called the "Five Pillars of American Civilization." These were: (1) personal strength; (2) entrepreneurial free enterprise; (3) the spirit of invention; (4) quality as defined by Edwards Deming; and (5) the lessons of American history. The message also concentrated on three substantive areas. These

were: (1) jobs and economic growth; (2) health; and (3) saving the inner city.

This message was also Mr. Gingrich's main campaign theme in 1993 and 1994 and Mr. Gingrich sought to have Republican candidates adopt the Renewing American Civilization message in their campaigns. In the context of political campaigns, Mr. Gingrich used the term "welfare state" as a negative label for Democrats and the term "opportunity society" as a positive label for Republicans.

As General Chairman of GOPAC, Mr. Gingrich decided that GOPAC would use Renewing American Civilization as its political message and theme during 1993–1994. GOPAC, however, was having financial difficulties and could not afford to disseminate its political messages as it had in past years. GOPAC had a number of roles in regard to the course. For example, GOPAC personnel helped develop, manage, promote, and raise funds for the course. GOPAC Charter Members helped develop the idea to teach the course as a means for communicating GOPAC's message. GOPAC Charter Members at Charter Meetings helped develop the content of the course. GOPAC was "better off" as a result of the nationwide dissemination of the Renewing American Civilization message via the course in that the message GOPAC had adopted and determined to be the one that would help it achieve its goals was broadcast widely and at no cost to GOPAC.

The course was taught at Kennesaw State College ("KSC") in 1993 and at Reinhardt College in 1994 and 1995. Each course consisted of ten lectures and each lecture consisted of approximately four hours of classroom instruction, for a total of forty hours. Mr. Gingrich taught twenty hours of each course and his co-teacher, or occasionally a guest lecturer, taught twenty hours. Students from each of the colleges as well as people who were not students attended the lectures. Mr. Gingrich's 20-hour portion of the course was taped and distributed to remote sites, referred to as "site hosts," via satellite, videotape and cable television. As with AOW/ACTV, Renewing American Civilization involved setting up workshops around the country where people could gather to watch the course. While the course was educational, Mr. Gingrich intended that the workshops would be, among other things, a recruiting tool for GOPAC and the Republican Party.

The major costs for the Renewing American Civilization course were for dissemination of the lectures. This expense was primarily paid for by tax-deductible contributions made to the 501(c)(3) organizations that sponsored the course. Over the three years the course was broadcast, approximately $1.2 million was spent on the project. The Kennesaw State College Foundation ("KSCF") sponsored the course the first year. All funds raised were turned over to KSCF and dedicated exclusively for the use of the Renewing American Civilization course.[1] KSCF did not, however, manage the course and its role was limited to depositing donations into its bank account and paying bills from that account that were presented to it by the Dean of the KSC Business School. KSCF contracted with the Washington Policy Group, Inc. ("WPG") to manage and raise funds for the course's development, production and distribution. Jeffrey Eisenach, GOPAC's Executive Director from June 1991 to June 1993 was the president and sole owner of WPG. WPG and Mr. Eisenach played similar roles with respect to AOW/ACTV.

When the contract between WPG and KSCF ended in the fall of 1993, the Progress and Freedom Foundation ("PFF") assumed the role WPG had with the course at the same rate of compensation. Mr. Eisenach was PFF's founder and president. Shortly after PFF took over the management of the course, the Georgia Board of Regents passed a resolution prohibiting any elected official from teaching at a Georgia state educational institution. This was the culmination of a controversy that had arisen around the course at KSC. A group of KSC faculty had objected to the course being taught on the campus because of a belief that it was an effort to use the college to disseminate a political message. Because of the Board of Regent's decision and the controversy, it was decided that the course would be moved to a private college.

The course was moved to Reinhardt for the 1994 and 1995 sessions. While there, PFF assumed full responsibility for the course. PFF no longer received payments to run the course but, instead, took in all contributions to the course and paid all the bills, including paying Reinhardt for the use of the college's video production facilities. All funds for the course were raised by and expended by PFF under its tax-exempt status.

3. FAILURE TO SEEK LEGAL ADVICE

Under the Internal Revenue Code, a 501(c)(3) organization must be operated exclusively for exempt purposes. The presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Conferring a benefit on private interests is a non-exempt purpose. Under the Internal Revenue Code, a 501(c)(3) organization is also prohibited from intervening in a political campaign or providing any support to a political action committee. These prohibitions reflect congressional concerns that taxpayer funds not be used to subsidize political activity.

During the Preliminary Inquiry, the Subcommittee consulted with an expert in the law of tax-exempt organizations and read materials on the subject. Mr. Gingrich's activities on behalf of AOW/ACTV and Renewing American Civilization, as well as the activities of others on behalf of those projects done with Mr. Gingrich's knowledge and approval, were reviewed by the expert. The expert concluded that those activities violated the status of the organizations under section 501(c)(3) in that, among other things, those activities were intended to confer more than insubstantial benefits on GOPAC, Mr. Gingrich, and Republican entities and candidates, and provided support to GOPAC.

At Mr. Gingrich's request, the Subcommittee also heard from tax counsel retained by Mr. Gingrich for the purposes of the Preliminary Inquiry. While that counsel is an experienced tax attorney with a sterling reputation, he has less experience in dealing with tax-exempt organizations law than does the expert retained by the Subcommittee. According to Mr. Gingrich's tax counsel, the type of activity involved in the AOW/ACTV and Renewing American Civilization projects would not violate the status of the relevant organizations under section 501(c)(3). He opined that once it was determined that an activity was "educational," as defined by the IRS, and did not have the effect of benefiting a private interest, it did not violate the private benefit prohibition. In the view of Mr. Gingrich's tax counsel, motivation on the part of an organization's principals and agents is irrelevant. Further, he opined that a 501(c)(3) organization does not violate the private benefit prohibition or political campaign prohibition through close association with or support of a political action committee unless it specifically calls for the election or defeat of an identifiable political candidate.

Both the Subcommittee's tax expert and Mr. Gingrich's tax counsel, however, agreed that had Mr. Gingrich sought their advice before embarking on activities of the type involved in AOW/ACTV and the Renewing American Civilization course, each of them would have advised Mr. Gingrich not to use a 501(c)(3) organization as he had in regard to those activities. The Subcommittee's tax expert said that doing so would violate 501(c)(3). During his appearance before the Subcommittee, Mr. Gingrich's tax counsel said that he would not have recommended the use of 501(c)(3) organizations to sponsor the course because the combination of politics and 501(c)(3) organizations is an "explosive mix" almost certain to draw the attention of the IRS.

Based on the evidence, it was clear that Mr. Gingrich intended that the AOW/ACTV and Renewing American Civilization projects have substantial partisan, political purposes. In addition, he was aware that political activities in the context of 501(c)(3) organizations were problematic. Prior to embarking on these projects, Mr. Gingrich had been involved with another organization that had direct experience with the private benefit prohibition in a political context, the American Campaign Academy. In a 1989 Tax Court opinion issued less than a year before Mr. Gingrich set the AOW/ACTV project into motion, the Academy was denied its exemption under 501(c)(3) because, although educational, it conferred an impermissible private benefit on Republican candidates and entities. Close associates of Mr. Gingrich were principals in the American Campaign Academy, Mr. Gingrich taught at the Academy, and Mr. Gingrich had been briefed at the time on the tax controversy surrounding the Academy. In addition, Mr. Gingrich stated publicly that he was taking a very aggressive approach to the use of 501(c)(3) organizations in regard to, at least, the Renewing American Civilization course.

Taking into account Mr. Gingrich's background, experience, and sophistication with respect to tax-exempt organizations, and his status as a Member of Congress obligated to maintain high ethical standards, the Subcommittee concluded that Mr. Gingrich should have known to seek appropriate legal advice to ensure that his conduct in regard to the AOW/ACTV and Renewing American Civilization projects was in compliance with 501(c)(3). Had he sought and followed such advice—after having set out all the relevant facts, circumstances, plans, and goals described above—501(c)(3) organizations would not have been used to sponsor Mr. Gingrich's ACTV and Renewing American Civilization projects.

4. MR. GINGRICH'S STATEMENTS TO THE COMMITTEE

In responding to the complaints filed against him concerning the Renewing American Civilization course, Mr. Gingrich submitted several letters to the Committee. His first letter, dated October 4, 1994, did not address the tax issues raised in Mr. Jones' complaint, but rather responded to the part of the complaint concerning unofficial use of official resources. In it Mr. Gingrich stated

[1] As general management and support fees, KSCF kept 2.5% of any money raised and KSC's Business School kept 7.5% of any money raised.

that GOPAC, among other organizations, paid people to work on the course. After this response, the Committee wrote Mr. Gingrich and asked him specifically to address issues related to whether the course had a partisan, political aspect to it and, if so, whether it was appropriate for a 501(c)(3) organization to be used to sponsor the course. The Committee also specifically asked whether GOPAC had any relationship to the course. Mr. Gingrich's letter in response, dated December 8, 1994, was prepared by his attorney, but it was read, approved, and signed by Mr. Gingrich. It stated that the course had no partisan, political aspects to it, that his motivation for teaching the course was not political, and that GOPAC neither was involved in nor received any benefit from any aspect of the course. In his testimony before the Subcommittee, Mr. Gingrich admitted that these statements were not true.

When the amended complaint was filed with the Committee in January 1995, Mr. Gingrich's attorney responded to the complaint on behalf of Mr. Gingrich in a letter dated March 27, 1995. His attorney addressed all the issues in the amended complaint, including the issues related to the Renewing American Civilization course. The letter was signed by Mr. Gingrich's attorney, but Mr. Gingrich reviewed and approved it prior to its being delivered to the Committee. In an interview with Mr. Cole, Mr. Gingrich stated that if he had seen anything inaccurate in the letter he would have instructed his attorney to correct it. Similar to the December 8, 1994 letter, the March 27, 1995 letter stated that the course had no partisan, political aspects to it, that Mr. Gingrich's motivation for teaching the course was not political, and that GOPAC had no involvement in nor received any benefit from any aspect of the course. In his testimony before the Subcommittee Mr. Gingrich admitted that these statements were not true.

The goal of the letters was to have the complaints dismissed. Of the people involved in drafting or editing the letters, or reviewing them for accuracy, only Mr. Gingrich had personal knowledge of the facts contained in the letters regarding the course. The facts in the letters that were inaccurate, incomplete, and unreliable were material to the Committee's determination on how to proceed with the tax questions contained in the complaints.

D. Statement of Alleged Violation

On December 21, 1996, the Subcommittee issued a Statement of Alleged Violation stating that Mr. Gingrich had engaged in conduct that did not reflect creditably on the House of Representatives in that by failing to seek and follow legal advice, Mr. Gingrich failed to take appropriate steps to ensure that activities with respect to the AOW/ACTV project and the Renewing American Civilization project were in accordance with section 501(c)(3); and that on or about December 8, 1994, and on or about March 27, 1995, information was transmitted to the Committee by and on behalf of Mr. Gingrich that was material to matters under consideration by the Committee, which information, as Mr. Gingrich should have known, was inaccurate, incomplete, and unreliable.

On December 21, 1996, Mr. Gingrich filed an answer with the Subcommittee admitting to this violation of House Rules.

The following is a summary of the findings of the Preliminary Inquiry relevant to the facts as set forth in the Statement of Alleged Violation.

II. SUMMARY OF FACTS PERTAINING TO AMERICAN CITIZENS TELEVISION

A. GOPAC

GOPAC was a political action committee organized under Section 527 of the Internal Revenue Code. As such, contributions to GOPAC were not tax-deductible.[2] GOPAC's goal was to attract people to the Republican party, develop a "farm team" of Republican state and local public officials who might one day run for Congress and, ultimately, create a Republican majority in the United States House of Representatives. (12/7/96 Callaway Tr. 9; 7/12/96 Eisenach Tr. 21; 7/17/96 Gingrich Tr. 17–20).[3] GOPAC did not undertake any projects that were not directed toward achieving that goal. (7/18/96 Gingrich Tr. 362; 12/7/96 Callaway Tr. 33).

GOPAC's mission was defined as follows:

GOPAC's mission for the 1990's is to create and disseminate the doctrine which defines a caring, humanitarian reform Republican Party in such a way as to elect candidates, capture the United States House of Representatives and become a governing majority at every level of Government.

(Ex. 1, GOPAC3 137). This aspect of GOPAC's activities was further explained in a draft document from November 1989:

As important as the creation of new doctrine is its *dissemination*. During the 1980s GOPAC and Newt Gingrich have led the way in applying new technology, from C–SPAN to video tapes, to disseminate information to Republican candidates and political activists.

* * * * *

But the Mission Statement demands that we do much more. To create the level of change needed to become a majority, the new Republican doctrine must be communicated to a broader audience, with greater frequency, in a more usable form. GOPAC needs a bigger "microphone." (emphasis in the original).

(Ex. 2, 283). GOPAC continued to support this approach to achieving its goals in subsequent years. For example, as stated in its Report to Shareholders dated April 26, 1993:

While both "message" and "mechanism" are important, GOPAC's comparative advantage lies in developing new ideas—i.e. in the "message" part of the equation. GOPAC will thus continue to focus its efforts on developing and communicating our values in a way voters can understand and support.

(Ex. 3, Eisenach 2539).

From approximately 1986 through 1995, Mr. Gingrich served as the General Chairman of GOPAC. (7/17/96 Gingrich Tr. 15). In this role he came up with the ideas GOPAC used for its political messages and themes, as well as its vision, strategy, and direction. -(7/17/96 Gingrich Tr. 20; 7/15/96 Gaylord Tr. 21–22; 6/26/96 Hanser Tr. 81; 7/12/96 Eisenach Tr. 22–23; 7/3/96 Rogers Tr. 54–56; 6/27/96- Nelson Tr. 22–23; 12/7/96 Callaway Tr. 6, 9).

B. American Opportunities Workshop/American Citizens Television

1. BACKGROUND

In early 1990, GOPAC embarked on a project to produce a television program called the American Opportunities Workshop ("AOW"). The idea for this project came from Mr. Gingrich and he was very involved in developing the message it used. (12/7/96 Callaway Tr. 11, 12, 14; 7/12/96 Eisenach Tr. 16; 12/5/96 Eisenach Tr. 10; 12/9/96 Riddle Tr. 14; 12/9/96 Gingrich Tr. 12).[4] AOW was broadcast on May 19, 1990, on the Family Channel and was hosted by Mr. Gingrich. (Ex. 4, GOPAC3 181).

One of the purposes of the program was to build a citizens' movement that would communicate the principles of Entrepreneurial Free Enterprise, Basic American Values, and Technological Progress. (Ex. 5, FAM 0011; 12/7/96 Callaway Tr. 14). These principles were called the "Triangle of American Success." (Ex. 4, GOPAC3 181). AOW consisted of workshops set up throughout the country where activists could gather to watch the broadcast and, in the words of those responsible for AOW, help build a citizens' movement and increase citizen involvement. (12/7/96 Callaway Tr. 14, 15; 12/9/96 Riddle Tr. 12, 13). Approximately 600 workshop cites were established where approximately 20,000 people watched the program. (Ex. 6, Eisenach 0359). The target group for the program was nonvoters. (Ex. 7, WGC2–01025).

As stated by GOPAC's then-Executive Director, Kay Riddle, the purpose of creating the citizens' movement and attempting to increase citizen involvement was to get people to solve their own community problems and not look to the federal government for help. (12/9/96 Riddle Tr. 13). Ms. Riddle went on to say, "Another product of that would be, of course, if we got people interested * * *, we hoped and believed that eventually they would vote Republican." (12/9/96 Riddle Tr. 13). "[W]e [at GOPAC] truly believed that the more we could involve people and educate people, the more likely we were to have people vote Republican." (12/9/96 Riddle Tr. 14–15). Similarly, Mr. Callaway characterized the message of AOW as follows:

But I think, fundamentally * * * it was a message that Republican principles are sound principles, that everything does not need to be done by government, that you can do better by trusting individuals to act for themselves than you can by having government tell individuals what they must do, that a smaller government is frequently better than a larger government, that it is better to reduce taxes than raise taxes. I think it is Republican kinds of issues.

(12/7/96 Callaway Tr. 12–13).

Producing AOW was very expensive. (12/7/96 Callaway Tr. 16; 6/14/96 Callaway Tr. 21–22). It cost over $500,000 and consumed approximately 62% of GOPAC's budget for the first half of 1990. (Ex. 8, 1273). It was envisioned that the project would continue beyond May 19, 1990 (12/5/96 Eisenach Tr. 46; Ex. 4, GOPAC3 181) and prior to its airing, Mr. Gingrich, Mr. Callaway and others decided to have the project's follow-on activities transferred to a 501(c)(3) organization. (Ex. 9, Eisenach 3909; 12/5/96 Eisenach Tr. 49; 12/7/96 Callaway Tr. 80). The organization chosen was the Abraham Lincoln Opportunity Foundation ("ALOF"). The project was transferred to ALOF so that it could be funded

[2] See September 6, 1996 letter from the tax counsel Mr. Gingrich hired during the Preliminary Inquiry, James Holden, at page 41: "Contributions made to organizations described in section 501(c)(3) qualify generally as charitable deductions under section 170(c)(2). In contrast, contributions made to section 501(c)(4) and section 527 organizations do not qualify as charitable deductions. For this reason, exempt organizations that are described in section 501(c)(3) enjoy the substantial advantage of being able to attract donations that are deductible on the tax returns of contributors."

[3] Citations containing a "Tr." indicate the page of the transcript from a witness's interview. The date of the interview is also provided in the citation.

[4] The Committee's Special Counsel, James Cole, interviewed Mr. Gingrich on July 17, 1996; July 18, 1996; and December 9, 1996. Mr. Gingrich appeared before the Investigative Subcommittee to give testimony on November 13, 1996, and December 10, 1996.

with tax-deductible money. (12/9/96 Riddle Tr. 19).

ALOF was established in 1984 in Colorado by Mr. Callaway to fund programs for inner city youth. (6/14/96 Callaway Tr. 26). It had been inactive for some time prior to 1990 and was revived for the purpose of taking over the successor activities of AOW. (12/7/96 Callaway Tr. 84). Under ALOF the project became know as American Citizens' Television ("ACTV"). Mr. Callaway was the President of ALOF and Kay Riddle was the Secretary. Mr. Callaway was also GOPAC's Chairman and Ms. Riddle was also GOPAC's Executive Director. ALOF hired some GOPAC employees on a full-time basis, used other GOPAC employees and consultants on a part-time basis, and used GOPAC offices and facilities. (12/7/96 Callaway Tr. 7, 11, 13, 14, 73–75).

ACTV was designed to continue AOW's work of building a citizens' movement based on the "Triangle of American Success" and had the same goals as AOW. (Ex. 5, FAM 0011; 12/7/96 Callaway Tr. 14; 12/9/96 Riddle Tr. 16; 12/9/96 Gingrich Tr. 8). In order to ensure a smooth transition, materials concerning ACTV were given to all AOW participants on May 19, 1990. (Ex. 6, Eisenach 0361).

ACTV produced three television programs in 1990—one on July 21 which discussed the use of local access cable television for activist movements; one on September 29 which discussed educational choice;[5] and one on October 27 which was about Taxpayers' Action Day. The last program was primarily the responsibility of the Council for Citizens Against Government Waste ("CCAGW"), a 501(c)(4) organization. This was due to the fact that the content of the program was deemed to be inappropriate for ALOF to sponsor as a 501(c)(3) organization. (Ex. 10, FAM 0024). While CCAGW paid for all of the out-of-pocket expenses (e.g., production expense and broadcast time), ALOF still provided support through its staff. (Ex. 11, Eisenach 4254; 12/5/96 Eisenach Tr. 5, 67). Each program was broadcast on the Family Channel.

In setting up ACTV it was understood that Mr. Gingrich would maintain his involvement and control over the programs. (Ex. 12, WGC2–01337). While some say that he was not very involved when it became ACTV, (e.g., 12/7/96 Callaway Tr. 14), there is evidence that his involvement continued. Mr. Gingrich hosted the first ACTV program. Mr. Gingrich also introduced and closed the second program in September. The host was Pete DuPont, but Mr. Gingrich was featured for a significant portion of the program. While the last program in October was paid for primarily by CCAGW, Mr. Gingrich approved its use on ACTV. (Ex. 11, Eisenach 4254).

Both AOW and ACTV were described to the public as non-partisan. (Ex. 6, Eisenach 0361). Much of the documentation that was either internal to GOPAC or sent to its supporters, however, indicates a partisan, political purpose. While GOPAC, as a political action committee, could freely engage in partisan, political activity, ALOF, as a 501(c)(3) organization could not. Because ACTV was described as a continuation of the activities of AOW (12/7/96 Callaway Tr. 13–15; 12/5/96 Eisenach Tr. 8; Ex. 5, FAM 0011), documents were reviewed during the Preliminary Inquiry relating to both projects to determine what the goals were for the two projects.

[5] A 1989 draft GOPAC document indicates that one of GOPAC's projects designed to "create and disseminate the new Republican doctrine for the 1990's" would be the Education Choice Coalition. (Ex. 2, 284).

GOPAC contracted with an organization called the Washington Policy Group ("WPG") to manage AOW. (7/12/96 Eisenach Tr. 298). Jeffrey Eisenach was president and sole owner of WPG and the project coordinator for AOW. (7/12/96 Eisenach Tr. 298). Mr. Eisenach was also responsible for managing ALOF's ACTV programs. (12/7/96 Callaway Tr. 16). WPG was essentially Mr. Eisenach's "personal consulting firm" and usually had two or three employees. (7/12/96 Eisenach Tr. 9). WPG used GOPAC office space and equipment as part of its compensation. (11/14/96 Eisenach Tr. 60). In addition to its work on AOW and ACTV, WPG had a consulting contract with GOPAC from January 1989 through September 1993. (7/12/96 Eisenach Tr. 9, 10, 298). Through WPG's contract with GOPAC, Mr. Eisenach "provided research assistance and advice to Mr. Gingrich, strategic advice to GOPAC and worked on some specific projects, focus groups and so forth, for GOPAC." (7/12/96 Eisenach Tr. 9). Mr. Eisenach was also the Executive Director of GOPAC from June 1991 to June 1993. (7/12/96 Eisenach Tr. 8).

2. PLANNING AND PURPOSE FOR AOW/ACTV

A document entitled "Key Factors in a House GOP Majority" appears to be one of the earliest documents pertaining to the purpose of AOW and ACTV. A typed version and a handwritten version of the document were produced during the Preliminary Inquiry. The handwritten version is in Mr. Gingrich's handwriting. In it he wrote:

1. The fact that 50% of all potential voters are currently outside politics (non-voters) creates the possibility that a new appeal might alter the current balance of political power by bringing in a vast number of new voters.

* * * * *

3. It is possible to articulate a vision of "an America that can be" which is appealing to most Americans, reflects the broad values of a governing conservatism (basic American values, entrepreneurial Free Enterprise and Technological progress), and is very difficult for the Democrats to co-opt because of their ideology and their interest groups.

4. It is more powerful and more effective to develop a reform movement parallel to the official Republican Party because:

* * * * *

b. the non-voters who are non-political or anti-political will accept a movement more rapidly than they will accept an established party;

* * * * *

5. As much as possible, the House Republican Party, the Bush Administration, Senate Republicans, incumbent Republicans across the country, the NRCC, RNC, SRCC and the conservative movement should be briefed on movement developments; conflict within this broad group should be minimized and coordination maximized.

6. The objective measurable goal is the maximum growth of news coverage of our vision and ideas, the maximum recruitment of new candidates, voters and resources, and the maximum electoral success in winning seats from the most local office to the White House and then using those victories to implement the values of a governing conservatism and to create the best America that can be.

(Ex. 13, Eisenach 4838–4839 (typed version) and Eisenach 4832–4834 (handwritten version)).

When asked about AOW and ACTV, Mr. Gingrich said he had very little recollection of the projects. He said he was distracted by other events at the time such as his re-election efforts, legislative issues, and becoming Republican Whip. (12/9/96 Gingrich Tr. 19, 39, 43). He said he had no recollection of the "Key Factors in a House GOP Majority" document, did not know if it related to AOW or ACTV, and did not know the purpose for which it was written. (12/9/96 Gingrich Tr. 31). An analysis of other documents, however, shows its relationship to the AOW/ACTV projects. Mr. Callaway said in his interview that the goals set forth in the "Key Factors in a House GOP Majority" document were the same as those for AOW and ACTV. (12/7/96 Callaway Tr. 37–38).

As stated above, AOW was targeted to non-voters. (Ex. 7, WGC2–01025). The "Key Factors in a House GOP Majority" document notes that non-voters are the ones to appeal to in order to change the balance of power. AOW/ACTV based the citizens' movement on the "Triangle of American Success" which was made up of basic American values, entrepreneurial free enterprise, and technological progress. (Ex. 5, FAM 0011; 12/7/96 Callaway Tr. 14). The "Key Factors in a House GOP Majority" document indicates that it will use those same three principles to appeal to non-voters. AOW/ACTV was focused on building a non-partisan citizens' movement. (Ex. 6, Eisenach 0358–0359; Ex. 5, FAM 0011). In the "Key Factors in a House GOP Majority" document, Mr. Gingrich states that "[i]t is more powerful and more effective to develop a reform movement parallel to the official Republican Party because . . . the non-voters who are non-political or anti-political will accept a movement more rapidly than they will accept an established party." (Ex. 13, Eisenach 4838 and Eisenach 4832).

In a congressional briefing Mr. Gingrich gave concerning AOW on March 30, 1990, he described AOW/ACTV as follows:

It is our goal to define our position as a caring humanitarian reform party applying the triangle of American success and applying common sense focused on success and opportunities to explain in general terms for the whole fall campaign, and again some Democrats will pick up the language and this is open to everybody, this is a free country, we think on balance it is vastly more advantageous to us than it is to the left since they are the party of big city machines, they are the party of the unions, they're much more tied to the bureaucratic welfare state.

(Ex. 15, WGC2 06081, pp. 17–18). The "Key Factors in a House GOP Majority" document notes that the message of the citizens' movement is designed not to be useful for Democrats because it will be "very difficult for [them] to co-opt [the ideas] because of their ideology and their interest groups." (Ex. 13, Eisenach 4838 and 4832–4833).

At the congressional briefing, Mr. Gingrich spoke of a focus group that was commissioned to assist in the AOW/ACTV effort. He described it as "the largest focus group project ever undertaken by the Republican Party." (Ex. 14, WGC2 06081, p. 8). He said it concentrated on non-voters under 40 years of age (Ex. 14, WGC2 06081, p. 8) and tested negative language like "the bureaucratic welfare state" and positive language like the "Triangle of American Success," "Entrepreneurial Free Enterprise," "Technological Progress and Innovation," and "Basic American Values." (Ex. 14, WGC2 06081, pp. 10–11).

Near the end of the briefing Mr. Gingrich explained the reasons for having the program labeled as non-partisan:

Lastly I was going to make the point one of the reasons we are reaching out and we really urge people to be nonpartisan and be wide open. But we have two reasons. First, there are a lot of former Democrats. Andy Ireland, Ronald Reagan, Phil Gramm, Jean Kirkpatrick, Connie Mack, you go down the list, a surprising list of people who looked at both sides and decided we were right. That we were more open, we were moving in the right direction.

But second, most young people under 40 are not politicized. The minute you politicize this and you make it narrow and you make it partisan—you lose them.

(Ex. 14, WGC2 06081, pp. 23–24).

The focus group Mr. Gingrich referred to was commissioned by GOPAC in early 1990. It was performed by Market Strategies, Inc. The July 10, 1990 report on the results of the focus group described the project as follows:

This research project is part of an overall effort to build a new governing majority in the United States formed around conservative principles. Historically, building a new majority has involved three essential tasks: activating a group of non-participating citizens to support an existing party (or form a new party), constructing a theory or explanation of what is right and wrong in society with which the non-participating citizens agree, and developing the right language (political rhetoric) to communicate that theory to the non-participating citizens. This project is the first of several research projects to be sponsored by GOPAC to help achieve these three tasks in this decade.

(Ex. 15, MSI 0030). The report then describes the specific language it tested as follows:

The theory's explanation of what is wrong in society was put in terms of "the bureaucratic welfare state" and the "values of the left." The theory's explanation of what is good in society was put in terms of "technological progress," "entrepreneurial free enterprise," and "basic American values" which were summarized as "the Triangle of American Success."

(Ex. 15, MSI 0030).

In describing the target group for building the new governing majority, the report states:

The potential for a new governing majority exists because of the large and growing numbers of non-participating citizens in our political system.

* * * * *

Consequently, a major premise for the research project is that younger citizens are the right target group for a new majority strategy and that a political theory and language needs to be effective with them if it is to be effective at all. Supporting this premise is an additional opportunity (to their not voting now) about younger voters—they are already predisposed to vote Republican.

(Ex. 15, MSI 0031–0032).

3. LETTERS DESCRIBING PARTISAN, POLITICAL NATURE OF AOW/ACTV

A number of GOPAC letters also indicate the purpose behind AOW/ACTV. Some are signed, some are not, but the ones that are not signed were apparently in GOPAC's files for some years, indicating that they were probably sent out. For example, in a signed letter dated February 21, 1990, to members of GOPAC's Executive Finance Committee, Mr. Callaway wrote that:

The next two years are absolutely critical to all that we hope to accomplish. Our May 19 project [AOW] will go a long way toward helping Republicans set an agenda and persuading Americans to realign with us.

(Ex. 16, GOPAC3 484). A copy of this letter was sent to Mr. Gingrich. Written across the top of his copy, in his handwriting, is "Newt 2/20/90." (Ex. 16, WGC2–03992). According to Mr. Gingrich this probably meant he had seen the letter (12/9/96 Gingrich Tr. 36–37); however, he did not recall the content of this letter during an interview with Mr. Cole. (12/9/96 Gingrich Tr. 35).

An unsigned letter, apparently prepared for Mr. Callaway's signature,[6] dated March 7, 1990, states:

Our May 19th American Opportunities Workshop is the single most exciting project I've ever undertaken. I consider this program critical to our efforts to become a Republican majority.

* * * * *

In order to encourage Americans to vote—and vote Republican—so that we may enact our policies of opportunity, we must reach them with our vision of hope.

It is time for our message and program, now proven among those in the trenches, to be shared with the Americans who are not motivated by our current government to go to the polls or get involved.

* * * * *

The American Opportunities Workshop is GOPAC's answer to teaching and empowering the American people. We hope that the citizen movement launched by this project will be the key to a future of Republican governance.

(Ex. 17, 425–426). A March 16, 1990 GOPAC letter over Mr. Gingrich's name discusses the purpose behind AOW.

Through the use of satellite hook-ups, not only can we reach new groups of voters not traditionally associated with our Party, but we'll be able to give them our message straight, without it being filtered and misinterpreted by liberal elements in the media.

* * * * *

Because I believe it has such great potential for helping President Bush, our candidates and our Party, I told Bo to move ahead with planning the workshop.

* * * * *

I truly believe that our Party and our President stand on the verge of a tremendous success this year, and that this workshop can be a great election year boost to us.

(Ex. 18, 2782–2783). Mr. Gingrich did not recall this document. When asked whether AOW was intended to be an election year boost, he said that it may have been, but he also thought it was idea oriented. (12/9/96 Gingrich Tr. 39–40).

In an unsigned letter addressed to Mr. Thorton Stearns, apparently written for Mr. Callaway's signature,[7] the AOW project and its purpose were described as follows:

With more than 600 workshop sites across the country, 30,000 participants, and extensive media coverage, AOW was a significant success on its own terms. However, the real reason GOPAC took on AOW was to explore an innovative new mechanism for creating and motivating the new Republican majority of the 1990s.

(Ex. 19, GOPAC3 467). In a letter over Mr. Gingrich's name dated June 21, 1990, AOW and ACTV are explicitly tied together in an effort to achieve the same goal of building the Republican Party and trying to have an impact on political campaigns. The letter states:

These are exciting times at GOPAC and we have been quite busy lately. I am excited about [the] progress of the "American Citizens' Television" project, which will carry the torch of citizen activism begun by our American Opportunities Workshop on May 19th. We mobilized thousands of people across the nation at the grass roots level who as a result of AOW, are now dedicated GOPAC activists. We are making great strides in continuing to recruit activists all across America to become involved with the Republican party. Our efforts are literally snowballing into the activist movement we need to win in '92.

(Ex. 20, GOPAC3 224). Mr. Gingrich said that the signature on the letter was not his. (12/9/96 Gingrich Tr. 40). Mr. Gingrich said that the above statement did not reflect the purpose of AOW or ACTV. (12/9/96 Gingrich Tr. 41).

Finally, an August 27, 1990 memorandum from Mr. Callaway to Mr. Gingrich and Jim Tilton[8] gives insight to the goals of the AOW/ACTV projects. (Ex. 21, Eisenach 3950–3959). The memorandum discusses a meeting the three men had five days earlier. Based on the memorandum, the main topic focused on how GOPAC should proceed in the future. The problems addressed in the meeting concerned the fact that AOW/ACTV had diverted too much money and attention from traditional GOPAC efforts. This caused erosion in support from GOPAC members. The three men decided to try one more ACTV program on September 29, 1990. If additional funding was not available beyond that point, the project would not be continued. They decided that it needed to be "a very strong program that is controversial enough to stir up our Charter members and other constituents." (Ex. 21, Eisenach 3951). The show that was chosen was on educational choice, which was a specific GOPAC project.

The memorandum recounted that Mr. Gingrich had reviewed all the options set forth and concluded the following:

Newt then stated firmly that he feels we need to go back to basics for now through 1992. That the only special projects for 1992 should be 1992 election oriented projects. Newt has now concluded that you can't really affect 1992 elections indirectly—we must do it directly through political programs.

(Ex. 21, Eisenach 3950).[9] Mr. Callaway said that this paragraph could have been referring to ACTV, but he did not have a clear recollection. (12/5/96 Callaway Tr. 62).

4. AOW/ACTV IN MR. GINGRICH'S CONGRESSIONAL DISTRICT

While AOW/ACTV was supposed to be nonpartisan, two memoranda indicate that there was some effort to ensure that workshops were set up in Mr. Gingrich's congressional district. In a memorandum to Mr. Callaway, dated February 8, 1990, Mr. Eisenach wrote:

An area for immediate attention is "targets of opportunity"—e.g. Georgia's 6th District, Colorado, and the D.C. area. We need to identify resources to ensure that we maximize our returns in these three areas, and other specific target areas we might add later. In particular, we need to put very high on our agenda the task of identifying a 6th District Coordinator.

[6] According to Mr. Callaway this letter may have been sent out, but he did not have a specific recollection of it. (12/7/96 Callaway Tr. 49).

[7] According to Mr. Callaway this letter may have been sent out, but he again did not have a specific recollection of it. (12/7/96 Callaway Tr. 58).

[8] Jim Tilton was an unpaid senior advisor to GOPAC. He was an attorney and a close friend of Mr. Gingrich. (12/10/96 Gingrich Tr. 10, 11, 56, 57).

[9] A GOPAC statement of "Revenue and Expenses" attached to this memorandum shows a single line item for "AOW/ACTV." (Ex. 21, Eisenach 3957).

(Ex. 22, Eisenach 3811). Similarly, in a March 30, 1990 memorandum from Mr. Gingrich to Joe Gaylord and Mary Brown, the following is written:

The GOPAC print-out shows only one very tentative (Clay Davis) site in my district. Time is getting short for finding sites and GOPAC needs to have the hosts identified as soon as possible to get materials to them to make the workshops a success.

Please make this a high priority.

(Ex. 23, GOPAC3 460). Mr. Gingrich did not recall this memorandum and said that there was an effort to target the 6th District—his congressional district—"only in the sense that we hosted [AOW] from there." (12/9/96 Gingrich Tr. 19).

5. GOPAC'S CONNECTION TO ALOF AND ACTV

As has been previously discussed, ACTV was a continuation of AOW and ALOF used GOPAC's offices and facilities. In his interview, Mr. Callaway stated a number of times that GOPAC was separate from ALOF. (12/7/96 Callaway Tr. 64, 65–66, 68–69, 73). A number of documents, however, from 1990 indicate that ALOF and ACTV had significant connections to GOPAC.

In a June 26, 1990 memorandum to Mr. Callaway, Mr. Eisenach recounts a discussion the two men had that morning with Mr. Gingrich. During that discussion, Mr. Gingrich gave them a handout that "identified three GOPAC/ALOF zones: 1. Local Elections, 2. Planning/R&D, 3. Movement." (Ex. 24, Eisenach 4039). The memorandum goes on to discuss how GOPAC and ALOF will relate to each other.

During the Preliminary Inquiry GOPAC produced copies of its "Confidential Masterfile Reports" that were used to keep track of contributors. Under the section entitled "Giving History" the 1990 reports list two entities: GOPAC and ALOF. (Ex. 25, GOPAC3 0510). Attached to these reports are copies of correspondence from both GOPAC and ALOF to contributors. (Ex. 25, GOPAC3 0511–0515).

An August 13, 1990 memorandum from Mr. Callaway to Mr. Gingrich lists the three broad things GOPAC does. The third one listed is "Projects such as ACTV, AOW and focus groups." (Ex. 26, Eisenach 4251).[10]

GOPAC's Report to Charter Members dated November 11, 1990, includes a section on Community Activism. (Ex. 4, GOPAC3 180–188). In that section it discusses AOW and ACTV. While it states that ACTV is "legally no longer a GOPAC project," it goes on to discuss ACTV in terms which indicate that it continued to be treated as a GOPAC project. For example it states that "Our mission is to establish ACTV as a new, interactive information network." (Ex. 4, GOPAC3 181). The Charter Member Report is worded in a manner that indicates ACTV was considered a GOPAC project. For example, it uses phrases like "Our goal" with ACTV, "Our next ACTV program," and "Our program was hosted by * * *." (Ex. 4, GOPAC3 181–182). At the end of the report under the heading "Getting Out the Message," there is a chart showing the AOW and ACTV programs. It then lists how many workshops were set up for each program and what the estimated attendance was for these workshops. (Ex. 4, GOPAC3 183).

6. GOPAC FUNDING OF ALOF AND ACTV[11]

When ALOF began to operate in June 1990 it had less than $500 in its bank account. (Ex. 27, CNB 006). It obtained a loan for $25,000 from the Central Bank of Denver in late June and received some direct contributions. These came from a foundation associated with Mr. Callaway, the Family Channel, and at least one other GOPAC supporter. (Ex. 28, ALOF 0050). In addition, GOPAC loaned ALOF $45,000 in 1990, and $29,500 in early 1991 to pay for production expenses. The total of loans from GOPAC to ALOF was $74,500. (Ex. 35, ALOF 0030).

ALOF's last program was broadcast in October 1990. In 1991 and 1992 it did not engage in any activities. In 1991, Citizens Against Government Waste contributed $37,000 to ALOF and Mr. Callaway's foundation contributed $10,000. (Ex. 28, ALOF 0090). The total, $47,000, was given to GOPAC to be applied to the debt. (Ex. 37, CNB 0426, CNB 0428, CNB 0430, CNB 0432). After the $47,000 payment, ALOF owed GOPAC $27,500. (Ex. 28, ALOF 0064).[12]

In late 1991 and 1992, ALOF received contributions from a number of GOPAC supporters totalling $80,000. (Ex. 28, ALOF 0078). $70,000 of that amount was given to GOPAC. GOPAC's then-Executive Director, Mr. Eisenach, was involved in soliciting a number of these donations.

On February 27, 1992, Mr. Eisenach wrote to R. Randolph Richardson to ask him to become a Charter Member of GOPAC. In order to be a Charter Member, a person must contribute at least $10,000. In the letter Mr. Eisenach states:

With respect to foundation funds, it is of course not appropriate for GOPAC to accept 501(c)(3) money. However, Bo Callaway does have a foundation, the Abraham Lincoln Opportunity Foundation (ALOF), which owes GOPAC a substantial sum of money. You might consider a contribution to ALOF, which would enable it to pay down its GOPAC debt, and thus be of enormous help in our efforts to change the Congress in 1992. (Ex. 29, Eisenach 4652). Mr. Richardson's foundation, the Grace Jones Richardson Trust, wrote a $25,000 check to ALOF on April 14, 1992, and ALOF wrote a $25,000 check to GOPAC on April 23, 1992. (Ex. 38, CNB 0449, CNB 0445).

On March 16, 1992, Mr. Eisenach wrote a memorandum to June Weiss, GOPAC's Finance Director, concerning Mr. Callaway's Charter Member dues. The memorandum states:

Bo has offered us a choice of (1) $10,000 from him or (2) $20,000 from ALOF. I indicated to him on the phone today I would tend to go for $20,000 over $10,000—in part, frankly, because I think we ought to go ahead and get the ALOF loan repaid and be done with it, as opposed to having it hanging around for another year.

(Ex. 30, Eisenach 3725). On March 23, 1992, Mr. Callaway's foundation donated $20,000 to ALOF. (Ex. 39, CNB 0443). On the same day, ALOF wrote a check to GOPAC for $20,000. (Ex. 39, CNB 0447). A letter was sent to Mr. Callaway on ALOF stationery thanking him for the contribution. It was signed by numerous members of GOPAC's staff. (Ex. 31, GOPAC2 0012).

Two other GOPAC Charter Members made contributions to ALOF which were immediately turned over to GOPAC. (Ex. 40, CNB 0217, CNB 0439, CNB 0441, CNB 0459). Handwritten notes relating to one of them indicates that a tax-deductible option for his contribution to GOPAC was discussed before the contribution to ALOF was made. (Ex. 32, GOPAC2 2424–2426).

As of 1993 ALOF had relocated its offices to Colorado. Its Colorado accountant was preparing the tax return for 1992 and saw the payments to GOPAC. In November she wrote to Kay Riddle, ALOF's Secretary, and asked for invoices from GOPAC to ALOF to support these payments. (Ex. 33, Newbill 0119). In December, Ms. Riddle wrote to GOPAC's accountant asking for those invoices. (Ex. 34, ALOF 0028). Several days later the accountant provided Ms. Riddle with a summary memorandum and a number of invoices. (Ex. 35, ALOF 0029–0030, ALOF 0027–0028, GOPAC3 0811). Some were undated. Some were dated in 1991. All concerned activities which were stated to have taken place in 1990 and there is no evidence that the invoices were written contemporaneously with the events for which they billed.[13]

The invoices, along with the previously mentioned loans, totaled $160,537.70. This consisted of rent ($12,718.08), postage and office supplies ($8,455.08), services of staff and consultants ($64,864.54), and the loans ($74,500).[14] (Ex. 35, ALOF 0029, ALOF 0027, ALOF 0026, GOPAC3 0811). The time for the staff was apportioned to reflect the percentage of their work spent on ALOF business. Some of the consultants listed, however, did not keep any records reflecting the percentage of time they spent on specific projects and did not recall doing any work for ALOF. (12/2/96 Hanser Tr. 25; 12/5/96 Mahe Tr. 31). Records of one consultant did record the time he spent on ALOF business, but it was substantially less than the time listed in the invoice. (Ex. 35, ALOF 0029; Ex. 36, WGC2–01378–01379, Eisenach 4276–4277, Eisenach 4302–4303). According to Ms. Riddle, she did not attempt to apportion time based on the actual hours spent by these people on ALOF business. Instead, she said she determined the percentages before any of the people had done any work based on her best guess of the time they would spend. (12/9/96 Riddle Tr. 69–70).

Of the total amount listed on the invoices of $160,537.70, ALOF paid GOPAC $117,000 between 1991 and 1992. (Ex. 35, ALOF 0029). This left a balance of $43,537.70, which, according to ALOF's 1993 tax return, was forgiven by GOPAC. (Ex. 28, ALOF 0089).[15]

According to Kathleen Taylor, a current employee of the Speaker's Office and the

[10] According to Mr. Callaway, the listing of ACTV was a "bad choice of words." (12/7/96 Callaway Tr. 70).

[11] There is no evidence that Mr. Gingrich had any significant involvement with this level of the financial aspects of the operations of ALOF. However, because these facts form part of the basis for a recommendation by the Subcommittee that the relevant materials gathered during the preliminary inquiry be made available to the Internal Revenue Service, the matter is set forth in some detail.

[12] The original debt from GOPAC listed on ALOF's tax returns was for $45,247. This is not supported by the checks from GOPAC to ALOF which only reflect $45,000. This additional $247 continued to be listed for the remaining years and was reflected in the ultimate forgiveness of a portion of this debt in 1993. It is not clear what the $247 represents.

[13] Because of her assertion of a Constitutional privilege, the Subcommittee was unable to interview the accountant for GOPAC and ALOF.

[14] In the tax return for ALOF for 1990, Part VII asks, among other things, whether ALOF had any transactions with a political action committee involving loans, shared facilities, equipment, or paid employees. Even though GOPAC was a political action committee the return answers "no" to all those questions. (Ex. 28, ALOF 0056). The accountant for ALOF, who was also the accountant for GOPAC, said that she had answered those questions in the negative based on her belief that these questions specifically excluded any transactions with political action committees. (10/31/96 Gilbert Tr. 18-20). She did not discuss this reading of the tax return with anyone at ALOF, but she did fill the form out in this way and they signed it without any questions. (10/31/96 Gilbert Tr. 21). This same error occurred in the tax return for 1991. (Ex. 28, ALOF 0069).

[15] The amount listed on the Return was $43,785. As referred to earlier, it is unclear what the $247 difference represents.

former Political Services Director for GOPAC, the lessons learned from AOW and ACTV were used for the Renewing American Civilization course discussed below. (6/28/96 Taylor Tr. 45). Those lessons were "[h]ow to get workshops sites, how to disseminate information, [and] mass-marketing the ideas." (6/28/96 Taylor Tr. 45). In the same vein, a letter from Mr. Eisenach to Mr. Mescon containing the terms and conditions under which WPG would manage the Renewing American Civilization course states:

Among our most significant project management undertakings was the 1990 "American Opportunities Workshop" and its successor, American Citizens' Television. Both of these projects bear significant similarities to the project you have asked us to get involved with, "Renewing American Civilization." Thus, we enter this undertaking with both enthusiasm and a full understanding of the enormity and complexity of the undertaking.

(Ex. 41, Mescon 0651).

III. SUMMARY OF FACTS PERTAINING TO "RENEWING AMERICAN CIVILIZATION"

A. Genesis of the Renewing American Civilization Movement and Course

In his interview with the Special Counsel, Mr. Gingrich said the idea for the course was first developed while he was meeting with Owen Roberts, a GOPAC Charter Member and advisor, for two days in December 1992. (7/17/96 Gingrich Tr. 11–12, 23–24; -7/15/96 Gaylord Tr. 23–24; Ex. 42, GOPAC2 2492). Mr. Gingrich wrote out notes at this meeting and they were distributed to some of his advisors. (Ex. 42, HAN 02103–02125; 6/26/96 Hanser Tr. 28; 7/15/96 Gaylord Tr. 24–25; 7/12/96 Eisenach Tr. 108–109).[16] A review of those notes indicates that the topic of discussion at this meeting centered mostly on a political movement. The notes contain limited references to a course and those are in the context of a means to communicate the message of the movement.

The movement was to develop a message and then disseminate and teach that message. (Ex. 42, HAN 02109). One of the important aspects of the movement was the creation of "disseminating groups and [a] system of communication and education." (Ex. 42, HAN 02109). It also sought to "professionalize" the House Republicans by using the "message to attract voters, resources and candidates" and develop a "mechanism for winning seats." (Ex. 42, HAN 02110). The ultimate goal of the movement was to replace the welfare state with an opportunity society, and all efforts had to be exclusively directed to that goal. (Ex. 42, HAN 02119). Ultimately, it was envisioned that "a Republican majority [would be] the heart of the American Movement * * *". (Ex. 42, HAN 02117).[17] Mr. Gingrich's role in this movement was to be the "advocate of civilization," the "definer of civilization," the "teacher of the rules of civilization," the "arouser of those who form civilization," the "organizer of the pro-civilization activists," and the "leader (possibly) of the civilizing forces." (Ex. 42, HAN 02104). In doing this, he intended to "retain a primary focus on elected political power as the central arena and fulcrum by which a free people debate their future and govern themselves." (Ex. 42, HAN 02104). The support systems for this movement included GOPAC, some Republican international organizations, and possibly a foundation. (Ex. 42, HAN 02121). There was substantial discussion of how to disseminate the message of the movement. (Ex. 42, HAN 02109, 02110, 02111). Some of the methods discussed for this dissemination included, "Possibly a series of courses with audio and videotape follow ons"/"Possibly a text-book (plus audio, video, computer) series"/"Campus (intellectual) appearances on 'the histories' Gingrich the Historian applying the lessons of history to public life." (Ex. 2, HAN 02118). One of the tasks listed for 1993 is "Design vision and its communication and communicate it with modification after feedback." (Ex. 2, HAN 02120). According to Mr. Gingrich, the course was to be a subset of the movement and was to be a primary and essential means for developing and disseminating the message of the movement. (7/17/96 Gingrich Tr. 42, 58; 11/13/96 Gingrich Tr. 126–127).

Another description of the Renewing American Civilization movement is found in notes of a speech Mr. Gingrich gave on January 23, 1993, to the National Review Institute. (Ex. 44, PFF 14473–14477, PFF 38279–38288).[18] In those notes, Mr. Gingrich wrote that "our generation's rendezvous with history is to launch a movement to renew American civilization." (Ex. 44, PFF 14474). He noted that a majority of Americans favor renewing American civilization and that "[w]e are ready to launch a 21st century conservatism that will renew American civilization, transform America from a welfare state into an opportunity society and create a conservative governing majority." (Ex. 44, PFF 14475). Mr. Gingrich then goes on to describe the five pillars of American civilization and the three areas where the movement needs to offer solutions.[19] He then wrote that if they develop solutions for those three areas they "will decisively trump the left. At that point either Clinton will adopt our solutions or the country will fire the president who subsidizes decay and blocks progress." (Ex. 44, PFF 14476). The notes end with the following:

We must renew American civilization by studying these principles, networking success stories, applying these success stories to develop programs that will lead to dramatic progress, and then communicating these principles and these opportunities so the American people have a clear choice between progress, renewal, prosperity, safety and freedom within America [sic] civilization versus decay, decline, economic weakness, violent crime and bureaucratic dominance led by a multicultural elite.

Given that choice, our movement for renewing American civilization will not just win the White House in 1996, we will elect people at all levels dedicated to constructive proposals.

(Ex. 44, PFF 14477). (Emphasis in the original).[20]

In a draft document entitled "Renewing American Civilization Vision Statement," written by Mr. Gingrich and dated March 19, 1993, he again described the movement in partisan terms and emphasized that it needed to communicate the vision of renewing American civilization on very large scale. (Ex. 46, WGC 00163–00171, WGC 00172–00191). He wrote that renewing American civilization will require "a new party system so we can defeat the Democratic machine and transform American society into a more productive, responsible, safe country by replacing the welfare state with an opportunity society." (Ex. 46, WGC 00163).

B. Role of the Course in the Movement

Mr. Gingrich was asked about the role of the course in the movement. He said that the course was "the only way actually to develop and send * * * out" the message of the movement. (7/17/96 Gingrich Tr. 42). In a later interview, he modified this statement to say that the course was "clearly the primary and dominant method; it was not the only way one could have done it. But I think it was essential to do it, to have the course." (11/13/96 Gingrich Tr. 126–127).

The earliest known documentary reference to the course in the context of the movement is in an agenda for a meeting held on February 15, 1993, at GOPAC's offices. The meeting had two agenda items: "I. General Planning/Renewing American Civilization" and "II. Political/GOPAC Issues." (Ex. 47, JR–0000645–0000647). Under the first category, one topic listed is "American Civilization Class/Uplink." (Ex. 47, JR–0000645). Under the second category two of the items listed are "GOPAC Political Plan & Schedule" and "Charter Meeting Agenda." (Ex. 47, JR–0000645).[21] Attached to the agenda for this meeting is a "Mission Statement" written by Mr. Gingrich which applied to the overall Renewing American Civilization movement, including the course. (7/12/96 Eisenach Tr. 248–249; 7/17/96 Gingrich Tr. 145–146). It states:

We will develop a movement to renew American civilization using the 5 pillars of 21st Century Freedom so people understand freedom and progress is possible and their practical, daily lives can be far better.* As people become convinced American civilization must and can be renewed and the 5 pillars will improve their lives we will encourage them and help them to network together and independently, autonomously initiate improvements wherever they want. However, we will focus on economic growth, health,

[16] Among the people who received copies of the notes were Mr. Hanser, Mr. Gaylord and Mr. Eisenach. In a subsequent memorandum to Gay Gaines and Lisa Nelson, as Ms. Gaines and Ms. Nelson were about to take over the management of GOPAC in October 1993, Mr. Gingrich described the roles each of the three men played in his life as follows:

1. Joe Gaylord is empowered to supervise my activities, set my schedule, advise me on all aspects of my life and career. He is my chief counselor and one of my closest friends. * * *

2. Steven Hanser is my chief ideas adviser, close personal friend of twenty years, and chief language thinker. * * *

3. Jeff Eisenach is our senior intellectual leader and an entrepreneur with great talent and determination. * * *

Ex. 43, GDC 11551, 11553).

[17] Mr. Gingrich said that he intended the movement to be international in scope. Until some point in 1995, however, its scope was only national. (7/17/96 Gingrich Tr. 33).

[18] This appears to be the earliest example of Mr. Gingrich speaking about the Renewing American Civilization movement. A draft of this document in Mr. Gingrich's handwriting is attached to the typed version of the notes.

[19] Although not mentioned in this speech, those five pillars and three areas are each separate lectures in what became the course.

[20] Two days later Mr. Gingrich delivered a Special Order on the House floor concerning Renewing American Civilization. In this speech he described a movement to renew American civilization, but did not mention the course. He did discuss the five pillars of American civilization and the three areas where solutions needed to be developed. (Ex. 45, LIP 00036–00045).

[21] It is not clear whether the meeting was exclusively a GOPAC meeting, but at least part of the agenda explicitly concerned GOPAC projects. As will be discussed later, GOPAC's political plan for 1993 centered on Renewing American Civilization. As also discussed below, GOPAC's April 1993 Charter Meeting was called "Renewing American Civilization" and employed breakout sessions for Charter Members to critique and improve individual components of the course on Renewing American Civilization. (7/17/96 Gingrich Tr. 69–70; 7/12/96 Eisenach Tr. 144–146; 7/15/96 Gaylord Tr. 46).

and saving the inner city as the first three key areas to improve. Our emphasis will be on reshaping law and government to facilitate improvement in all of [A]merican society. We will emphasize elections, candidates and politics as vehicles for change and the news media as a primary vehicle for communications. To the degree Democrats agree with our goals we will work with them but our emphasis is on the Republican Party as the primary vehicle for renewing American civilization.

*Renewing American Civilization must be communicated as an intellectual-cultural message with governmental-political consequences. (footnote in original)

(Ex. 47, JR–0000646).

In February 1993, Mr. Gingrich first approached Mr. Mescon about teaching the course at KSC. (Ex. 48, Mescon 0278; 6/13/96 Mescon Tr. 26–27). Mr. Gingrich had talked to Dr. Mescon in October or November 1992 about the general subject of teaching, but there was no mention of the Renewing American Civilization course at that time. (6/13/96 Mescon Tr. 12–14). The early discussions with Mr. Mescon included the fact that Mr. Gingrich intended to have the Renewing American Civilization course disseminated through a satellite uplink system. (Ex. 49, Mescon 0664; 6/13/96 Mescon Tr. 29–30).

Shortly before this discussion with Mr. Mescon, in late January 1993, Mr. Gingrich met with a group of GOPAC Charter Members. In a letter written some months later to GOPAC Charter Members, Mr. Gingrich described the meeting as follows:

During our meeting in January, a number of Charter Members were kind enough to take part in a planning session on "Renewing American Civilization." That session not only affected the substance of what the message was to be, but also how best the new message of positive solutions could be disseminated to this nation's decision makers—elected officials, civic and business leaders, the media and individual voters. In addition to my present avenues of communication I decided to add an avenue close to my heart, that being teaching. I have agreed with Kennesaw State College, * * * to teach "Renewing American Civilization" as a for-credit class four times during the next four years.

Importantly, we made the decision to have the class available as a "teleseminar" to students all across the country, reaching college campuses, businesses, civic organizations, and individuals through a live "uplink," video tapes and audio tapes. Our hope is to have at least 50,000 individuals taking the class this fall and to have trained 200,000 knowledgeable citizen activists by 1996 who will support the principles and goals we have set.

(Ex. 50, Kohler 137–138).[22] During an interview with the Special Counsel, Mr. Gingrich said he doubted that he had written this letter and said that the remark in the letter that the Charter Members' comments played a large role in developing the course "exaggerates the role of GOPAC." The letter was written to "flatter" the Charter Members. (11/13/96 Gingrich Tr. 129–130).

In a March 29, 1993 memorandum, Mr. Gingrich specifically connects the course with the political goals of the movement. The memorandum is entitled "Renewing American Civilization as a defining concept" and is directed to "Various Gingrich Staffs."[23] The original draft of the memorandum is in Mr. Gingrich's handwriting. (Ex. 51, GDC 08891–08892, GDC 10236–10238). In the memorandum, Mr. Gingrich wrote:

I believe the vision of renewing American civilization will allow us to orient and focus our activities for a long time to come.

At every level from the national focus of the Whip office to the 6th district of Georgia focus of the Congressional office to the national political education efforts of GOPAC and the re-election efforts of FONG[24] we should be able to use the ideas, language and concepts of renewing American civilization.

(Ex. 51, GDC 08891).

In the memorandum, he describes a process for the dissemination of the message of Renewing American Civilization to virtually every person he talks to. This dissemination includes a copy of the Special Order speech and a one-page outline of the course. He then goes on to describe the role of the course in this process:

The course is only one in a series of strategies designed to implement a strategy of renewing American civilization.

(Ex. 51, GDC 08891). Another strategy involving the course is:

Getting Republican activists committed to renewing American civilization, to setting up workshops built around the course, and to opening the party up to every citizen who wants to renew American civilization.

(Ex. 51, GDC 08892).[25] Jana Rogers, the Site Host Coordinator for the course in 1993, was shown a copy of this memorandum and said she had seen it in the course of her work at GOPAC. (7/3/96 Rogers Tr. 64). She said that this represented what she was doing in her job with the course. (7/3/96 Rogers Tr. 67–69). Steve Hanser, a paid GOPAC consultant and someone who worked on the course, also said that the contents of the memorandum were consistent with the strategy related to the movement. (6/28/96 Hanser Tr. 42–45).

The most direct description of the role of the course in relation to the movement to renew American civilization is set out in a document which Mr. Gingrich indicates he wrote. (7/17/96 Gingrich Tr. 162–163). The document has a fax stamp date of May 13, 1993 and indicates it is from the Republican Whip's Office. (Ex. 52, GDC 10639–10649). The document has three parts to it. The first is entitled "Renewing America Vision" (Ex. 52, GDC 10639–10643); the second is entitled "Renewing America Strategies" (Ex. 52, GDC 10644–10646); and the third is entitled "Renewing American Civilization Our Goal." (Ex. 52, GDC 10647–10649). Mr. Gingrich said that the third part was actually a separate document. (7/17/96 Gingrich Tr. 162–164). While all three parts are labeled "draft," the document was distributed to a number of Mr. Gingrich's staff members and associates, including Mr. Hanser, Ms. Prochnow, Ms. Rogers, Mr. Gaylord, Mr. Eisenach, and Allan Lipsett (a press secretary). Each of the recipients of the document have described it as an accurate description of the Renewing American Civilization movement. (6/28/96 Hanser Tr. 48, 53; 7/10/96 Prochnow Tr. 70–71; 7/3/96 Rogers Tr. 71–75; 7/15/96 Gaylord Tr. 66–67; 7/12/96 Eisenach Tr. 148–149, 272–275; Lipsett Tr. 30–31).[26] In the first section, Mr. Gingrich wrote:

The challenge to us is to be positive, to be specific, to be intellectually serious, and to be able to communicate in clear language a clear vision of the American people and why it is possible to create that America in our generation.

Once the American people understand what they can have they will insist that their politicians abolish the welfare state which is crippling them, their children, and their country and that they replace it with an opportunity society based on historically proven principles that we see working all around us.

(Ex. 52, GDC 10643).

In the second portion of the document, Mr. Gingrich describes how the vision of renewing America will be accomplished. He lists thirteen separate efforts that fall into categories of communication of the ideas in clear language, educating people in the principles of replacing the welfare state with an opportunity society, and recruiting public officials and activists to implement the doctrines of renewing American civilization. (Ex. 52, GDC 10644–10646).

In the third section, Mr. Gingrich explicitly connects the course to the movement. First he starts out with three propositions that form the core of the course: (1) a refrain he refers to as the "four can'ts;"[27] (2) the welfare state has failed; and (3) the welfare state must be replaced because it cannot be repaired. (Ex. 52, GDC 10647; *see also* Ex. 54, PFF 18361, 18365–18367). He then described the goal of the movement:

Our overall goal is to develop a blueprint for renewing America by replacing the welfare state, recruit, discover, arouse and network together 200,000 activists including candidates for elected office at all levels, and arouse enough volunteers and contributors to win a sweeping victory in 1996 and then actually implement our victory in the first three months of 1997.

Our specific goals are to:

1. By April 1996 have a thorough, practical blueprint for replacing the welfare state that can be understood and supported by voters and activists.

We will teach a course on Renewing American civilization on ten Saturday mornings this fall and make it available by satellite, by audio and video tape and by computer to interested activists across the country. A month will then be spent redesigning the course based on feedback and better ideas. Then the course will be retaught in Winter Quarter 1994. It will then be rethought and redesigned for nine months of critical reevaluation based on active working groups actually applying ideas across the country the course will be taught for one final time in Winter Quarter 1996.

2. Have created a movement and momentum which require the national press corps

[22] The letter goes on to state that: [L]et me emphasize very strongly that the "Renewing American Civilization" project is *not* being carried out under the auspices of GOPAC, but rather by Kennesaw State College and the Kennesaw State College Foundation. We will not be relying on GOPAC staff to support the class, and I am not asking you for financial support.

(Ex. 50, Kohler 138) (emphasis in the original).

[23] At the top of this memorandum is a handwritten notation (not Mr. Gingrich's) stating: "Tuesday 4 p.m. GOPAC Mtg." (Ex. 51, GDC 08891).

[24] "FONG" stands for Mr. Gingrich's campaign organization, "Friends of Newt Gingrich."

[25] The "party" referred to in the quote is the Republican Party. (11/13/96 Gingrich Tr. 80).

[26] Mr. Eisenach apparently sent a copy of this to a GOPAC supporter in preparation for a meeting in May of 1993. (7/12/96 Eisenach Tr. 146–149). In the accompanying letter, Mr. Eisenach said: "The enclosed materials provide some background for our discussions, which I expect will begin with a review of the Vision, Strategies and Goals of our efforts to Renew American Civilization. The class Newt is teaching at Kennesaw State College this Fall is central to that effort, and GOPAC and the newly created Progress & Freedom Foundation both play important roles as well. (Ex. 13, GOPAC2 2337)."

[27] This refrain goes as follows: "You cannot maintain a civilization with twelve-year-olds having babies, fifteen-year-olds shooting each other, seventeen-year-olds dying of AIDS, and eighteen-year-olds getting diplomas they can't read."

to actually study the material in order to report the phenomenon thus infecting them with new ideas, new language and new perspectives.

3. Have a cadre of at least 200,000 people committed to the general ideas so they are creating an echo effect on talk radio and in letters to the editor and most of our candidates and campaigns reflect the concepts of renewing America.

Replacing the welfare state will require about 200,000 activists (willing to learn now [sic] to replace the welfare state, to run for office and to actually replace the welfare state once in office) and about six million supporters (willing to write checks, put up yard signs, or do a half day's volunteer work).

(Ex. 52, GDC 10647–10649). The "sweeping victory" referred to above is by Republicans. (11/13/96 Gingrich Tr. 86). The reference to "our candidates" above is to Republican candidates. (11/13/96 Gingrich Tr. 90). According to Mr. Gingrich, Mr. Gaylord, and Mr. Eisenach, the three goals set forth above were to be accomplished by the course. (7/17/96 Gingrich Tr. 174–179; 7/15/96 Gaylord Tr. 66–67; 7/12/96 Eisenach Tr. 225; Ex. 55, GOPAC2 2419; Ex. 56, GOPAC2 2172–2173; Ex. 57, Mescon 0626).

In various descriptions of the course, Mr. Gingrich stated that his intention was to teach it over a four-year period. After each teaching of the course he intended to have it reviewed and improved. The ultimate goal was to have a final product developed by April of 1996. (7/17/96 Gingrich Tr. 109; Ex. 56, GOPAC2 2170). An explanation of this goal is found in a three-page document, in Mr. Gingrich's handwriting, entitled "End State April 1996." (Ex. 58, PFF 20107–20109). Mr. Gingrich said he wrote this document early in the process of developing the movement and described it as a statement of where he hoped to be by April 1996 in regard to the movement and the course. (7/17/96 Gingrich Tr. 108–115). On the first page he wrote that the 200,000 plus activists will have a common language and general vision of renewing America, and a commitment to replacing the welfare state. In addition, "[v]irtually all Republican incumbents and candidates [will] have the common language and goals." (Ex. 58, PFF 20107). On the second page he wrote that the "Republican platform will clearly be shaped by the vision, language, goals and analysis of renewing America." (Ex. 58, PFF 20108). In addition, virtually all Republican Presidential candidates will broadly agree on that vision, language, goals and analysis. (Ex. 58, PFF 20108). The Clinton administration and the Democratic Party will be measured by the vision, principles and goals of renewing America and there will be virtual agreement that the welfare state has failed. (Ex. 58, PFF 20108). On the last page Mr. Gingrich wrote a timeline for the course running from September of 1993 through March of 1996. At the point on the timeline where November 1994 appears, he wrote the word "Election." (Ex. 58, PFF 20109). When Mr. Hanser was asked about this document he said that the vision, language, and concepts of the Renewing American Civilization movement discussed in the document were being developed in the course. (6/28/96 Hanser Tr. 53). He went on to say that "End State" was "an application of those ideas to a specific political end, which is one of the purposes, remember, for the course." (6/28/96 Hanser Tr. 54). There was an appreciation that this would be primarily a Republican endeavor. (6/28/96 Hanser Tr. 30).

C. GOPAC and Renewing American Civilization

As discussed above, GOPAC was a political action committee dedicated to, among other things, achieving Republican control of the United States House of Representatives. (11/13/96 Gingrich Tr. 169; 7/3/96 Rogers Tr. 38–40). One of the methods it used was the creation of a political message and the dissemination of that message. (7/12/96 Eisenach Tr. 18–19; 6/28/96 Hanser Tr. 13–14; 7/3/96 Rogers Tr. 36). The tool principally used by GOPAC to disseminate its message was audiotapes and videotapes. These were sent to Republican activists, elected officials, potential candidates, and the public. The ultimate purpose of this effort was to help Republicans win elections. (6/27/96 Nelson Tr. 21–22; 7/15/96 Gaylord Tr. 37, 39; 7/3/96 Rogers Tr. 35–36).

1. GOPAC'S ADOPTION OF THE RENEWING AMERICAN CIVILIZATION THEME

At least as of late January 1993, Mr. Gingrich and Mr. Eisenach had decided that GOPAC's political message for 1993 and 1994 would be "Renewing American Civilization."[28] (Ex. 59, PFF 37584–37590; 11/13/96 Gingrich Tr. 157; 7/17/96 Gingrich Tr. 61–62, 74; 7/15/96 Gaylord Tr. 35–36, 42–43; 7/3/96 Rogers Tr. 35, 54–56; 6/28/96 Taylor Tr. 26; 6/27/96 Nelson Tr. 34, 46). As described in a February 1993 memorandum over Mr. Gingrich's name to GOPAC Charter Members:

GOPAC's core mission—to provide the ideas and the message for Republicans to win at the grass roots—is now more important than ever, and we have important plans for 1993 and for the 1993–1994 cycle. The final enclosure is a memorandum from Jeff Eisenach outlining our 1993 program which I encourage you to review carefully and, again, let me know what you think.

(Ex. 60, PFF 37569). The attached memorandum, dated February 1, 1993, is from Mr. Eisenach to Mr. Gingrich and references their recent discussions concerning GOPAC's political program for 1993. (Ex. 59, PFF 37584–37590). It then lists five different programs. The fourth one states:

(4) *Message Development/"Renewing American Civilization"—focus group project designed to test and improve the "Renewing American Civilization" message in preparation for its use in 1993 legislative campaigns and 1994 Congressional races.*

(Ex. 59, PFF 37584) (emphasis in original). Of the other four programs listed, three relate directly to the use of the Renewing American Civilization message. The fourth—the "'Tory (Franchise) Model' R & D"—was not done. (7/12/96 Eisenach Tr. 188). This same political program was also listed in two separate GOPAC documents dated April 26, 1993. One is entitled "1993 GOPAC POLITICAL PROGRAM" (Ex. 61, PP001187–00193) and the other is the "GOPAC Report to Shareholders." (Ex. 62, Eisenach 2536–2545). The first page of the Report to Shareholders states:

The challenge facing Republicans, however, is an awesome one: We must build a governing majority, founded on basic principles, that is prepared to do what we failed to do during the last 12 years: Replace the Welfare State with an Opportunity Society and demonstrate that our ideas are the key to progress, freedom and the Renewal of American Civilization.

(Ex. 62, Eisenach 2536).

In describing the political programs, these documents provide status reports that indicate that the Renewing American Civilization message is at the center of each project. Under "Off-Year State Legislative Races (New Jersey, Virginia)" the project is described as "Newt speaking at and teaching training seminar for candidates at [a June 5, 1993] Virginia Republican Convention." (Ex. 61, PP001187; Ex. 62, Eisenach 2540).[29] As discussed below, that speech and training session centered on the Renewing American Civilization message. Under "Ongoing Political Activities" the first aspect of the project is described as sending tapes and establishing a training module on Renewing American Civilization and health care. (Ex. 61, PP001187; Ex. 62, Eisenach 2540). Under "Curriculum Update and Expansion" the project is described as the production of new training tapes based on Mr. Gingrich's session at the Virginia Republican Convention. (Ex. 61, PP01189; Ex. 62, Eisenach 2541).[30]

2. GOPAC'S INABILITY TO FUND ITS POLITICAL PROJECTS IN 1992 AND 1993

At the end of 1992, GOPAC was at least $250,000 short of its target income (Ex. 65, PFF 38054) and financial problems lasted throughout 1993. (7/15/96 Gaylord Tr. 71–72). Because of these financial shortfalls, GOPAC had to curtail its political projects, particularly the tape program described above. (Ex. 65, PFF 38054–38060; Ex. 66, WGC 07428; 7/15/96 Gaylord Tr. 71–72, 76). For example, according to Mr. Gaylord, GOPAC usually sent out eight tapes a year; however, in 1993, it only sent out two. (7/15/96 Gaylord Tr. 76). One of these was the "Renewing American Civilization" tape made from Mr. Gingrich's June 1993 training session at the Virginia Republican Convention (Ex. 63, JG 000001693). Accompanying the mailing of this tape was a letter from Joe Gaylord in his role as Chairman of GOPAC. That letter states:

Ideas matter, and replacing the welfare state with an Opportunity society is so important that Newt is developing a college course that he'll be teaching this fall on this subject, Renewing American Civilization.

I wanted you to hear his initial thoughts because it seems to me that we can't answer the question "What does the Republican Party stand for?" without considering the issues Newt has raised in this speech.

(Ex. 67, WGC 06215). In light of GOPAC's poor financial condition, the dissemination of the Renewing American Civilization message through the course was beneficial to its political projects. In this regard, the following exchange occurred with Mr. Gingrich:

Mr. Cole: [I]s one of the things GOPAC wanted to have done during 1993 and 1994 was the dissemination of its message; is that correct?

Mr. Gingrich: Yes.

Mr. Cole: GOPAC also did not have much money in those years; is that correct?

Mr. Gingrich: That is correct. Particularly—it gets better in '94, but '93 was very tight.

Mr. Cole: That curtailed how much it could spend on disseminating its message?

[28] As mentioned above, the earliest mention of the Renewing American Civilization course was in February 1993. (Ex. 47, JR–0000646).

[29] It is not clear whether any work was done in New Jersey because that state had a Republican legislature and did not need GOPAC's help. (7/15/96 Gaylord Tr. 42).

[30] GOPAC later produced two tapes from the session. One was called "Renewing American Civilization" and was mailed to 8,742 people. (Ex. 63, JG 000001693). The other was called "Leading the Majority" and became a major training tool for GOPAC, used at least into 1996. (6/27/96 Nelson Tr. 18). Both are based on the Renewing American Civilization message and contain the core elements of the course. The "Renewing American Civilization" tape contains more of the RAC philosophy than the "Leading the Majority" tape, however, both contain the basics of the course that Mr. Gingrich describes as the "central proposition" or "heart of the course." (Ex. 56, GOPAC2 2146–2209; Ex. 64, PP000330–000337; Ex. 54, PFF 18361, 18365–18367).

Mr. Gingrich: Right.

Mr. Cole: The message that it was trying to disseminate was the Renewing American Civilization message; is that right?

Mr. Gingrich: Was the theme, yes. (11/13/96 Gingrich Tr. 157–158). With respect to whether the dissemination of the course benefited GOPAC, the following exchange occurred:

Mr. Cole: Was GOPAC better off in a situation where the message that it had chosen as its political message for those years was being disseminated by the course? Was it better off?

Mr. Gingrich: The answer is yes. (11/13/96 Gingrich Tr. 167).

3. GOPAC'S INVOLVEMENT IN THE DEVELOPMENT, FUNDING, AND MANAGEMENT OF THE RENEWING AMERICAN CIVILIZATION COURSE

a. GOPAC personnel

Starting at least as early as February 1993, Mr. Eisenach, then GOPAC's Executive Director, was involved in developing the Renewing American Civilization course. Although Mr. Eisenach has stated that Mr. Gaylord was responsible for the development of the course until mid-May 1993 (7/12/96 Eisenach Tr. 71–75; Ex. 68, Eisenach Testimony Before House Ethics Committee at Tr. 142; Ex. 69, PFF 1167), Mr. Gaylord stated that he never had such a responsibility. (7/15/96 Gaylord Tr. 15–18). Additionally, Mr. Gingrich and others involved in the development of the course identified Mr. Eisenach as the person primarily responsible for the development of the course from early on. (7/17/96 Gingrich Tr. 117, 121; 6/13/96 Mescon Tr. 30–31; 6/28/96 Hanser Tr. 74–75; 7/3/96 Rogers Tr. 17–18, 22).[31] Several documents also establish Mr. Eisenach's role in the development of the course starting at an early stage. One document written by Mr. Eisenach is dated February 25, 1993, and shows him, as well as others, tasked with course development and marketing. (Ex. 70, PFF 16628). A memorandum from Mr. Gingrich to Mr. Mescon, dated March 1, 1993, describes how Mr. Eisenach is involved in contacting a number of institutions in regard to funding for the course. (Ex. 71, KSC 3491).

Aside from Mr. Eisenach, other people affiliated with GOPAC were involved in the development of the course. Mr. Gingrich was General Chairman of GOPAC and had a substantial role in the course. Jana Rogers served as Mr. Eisenach's executive assistant at GOPAC during the early part of 1993 and in that role worked on the development of the course. (7/3/96 Rogers Tr. 16–17). In June 1993, she temporarily left GOPAC at Mr. Eisenach's request to become the course's Site Host Coordinator. As a condition of her becoming the site host coordinator, she received assurances from both Mr. Eisenach and Mr. Gaylord that she could return to GOPAC when she had finished her assignment with the course. (7/3/96 Rogers Tr. 12–16). After approximately five months as the course's Site Host Coordinator, she returned to GOPAC for a brief time. (7/3/96 Rogers 24–25). Steve Hanser, a member of the GOPAC Board and a paid GOPAC consultant, helped develop the course. (6/28/96 Hanser Tr. 10, 19–21). Mr. Gaylord was a paid consultant for GOPAC and had a role in developing the course. (7/15/96 Gaylord Tr. 15).

Pamla Prochnow was hired as the Finance Director for GOPAC in April 1993.[32] Ms. Prochnow spent a portion of her early time at GOPAC raising funds for the course. (7/10/96 Prochnow Tr. 14–16; 6/13/96 Mescon Tr. 63–67, 82; Ex. 74, Documents produced by Prochnow).[33] A number of the people and entities she contacted were GOPAC supporters. In fact, according to Mr. Eisenach, approximately half of the first year's funding for the course came from GOPAC supporters. (Ex. 69, PFF 1168–1169). Some of those people also helped fund the course in 1994. (*See* attachments to Ex. 69, PFF 1252–1277) (the documents contain Mr. Eisenach's marks of "G" next to the people, companies, and foundations that were donors or related to donors to GOPAC.))

When Mr. Eisenach resigned from GOPAC and assumed the title of the course's project director, two GOPAC employees joined him in his efforts. Kelly Goodsell had been Mr. Eisenach's Administrative Assistant at GOPAC since March of 1993 (7/9/96 Goodsell Tr. 8, 11), and Michael DuGally had been an employee at GOPAC since January 1992. (7/19/96 DuGally Tr. 9–10). Both went to work on the course as employees of Mr. Eisenach's Washington Policy Group ("WPG").[34] In the contract between WPG and KSCF, it was understood that WPG would devote one-half of the time of its employees to working on the course. WPG had only one other client at this time—GOPAC. In its contract with GOPAC, WPG was to receive the same monthly fee as was being paid by KSCF in return for one-half of the time of WPG's employees. (Ex. 76, PFF 37450–37451). The contract also stated that to the extent that WPG did not devote full time to KSCF and GOPAC projects, an adjustment in the fee paid to WPG would be made. (Ex. 76, PFF 37450). Neither Ms. Goodsell nor Mr. DuGally worked on any GOPAC project after they started working on the course in June of 1993. (7/9/96 Goodsell Tr. 8, 10–11; 7/19/96 DuGally Tr. 14). Mr. Eisenach said that he spent at the most one-third of his time during this period on GOPAC projects. (7/12/96 Eisenach Tr. 36–37). No adjustment to WPG's fee was made by GOPAC. (7/12/96 Eisenach Tr. 44).[35]

The February 15, 1993, agenda discussed above also gives some indication of GOPAC's role in the development of the Renewing American Civilization course. (Ex. 47, JR–0000645–0000647). Of the eight attendees at that meeting, five worked for or were closely associated with GOPAC (Mr. DuGally, Mr. Eisenach and Ms. Rogers were employees, Mr. Hanser was a member of the Board and a paid GOPAC consultant, and Mr. Gingrich was the General Chairman). Furthermore, the agenda for that meeting indicates that GOPAC political issues were to be discussed as well as course planning issues. Two of the GOPAC political issues apparently related to: (1) the political program described in the February 1, 1993, memorandum which lists four of GOPAC's five political projects as relating to Renewing American Civilization (Ex. 60, PFF 37569–37576), and (2) GOPAC's Charter Meeting agenda entitled "Renewing American Civilization." As discussed below, this Charter Meeting included breakout sessions to help develop a number of the lectures for the course, as well as GOPAC's message for the 1993–1994 election cycle. (Ex. 78, PP00448–PP000452). As Mr. Gingrich stated in his interview, his intention was to have GOPAC use Renewing American Civilization as its message during this time frame. (7/17/96 Gingrich Tr. 74; 7/3/96 Rogers Tr. 54–56).

In 1993 Mr. Eisenach periodically produced a list of GOPAC projects. The list is entitled "Major Projects Underway" and was used for staff meetings. (7/12/96 Eisenach Tr. 213; 7/15/96 Gaylord Tr. 79–80; 6/28/96 Taylor Tr. 43–44). Items related to the Renewing American Civilization course were listed in several places on GOPAC's project sheets. For example, from April 1993 through at least June 1993, "Renewing American Civilization Support" is listed under the "Planning/Other" section of GOPAC's projects sheets. (Ex. 79, JG 000001139, JG 000001152, JG 000001173, JG 000001270). Another entry which appears a number of times under "Planning/Other" is "RAC Pert Chart, etc." (Ex. 79, JG 000001152, JG 000001173, JG 000001270). It refers to a time-line Mr. Eisenach wrote while he was the Executive Director of GOPAC relating to the development of the various components of the course, including marketing and site coordination, funding, readings, and the course textbook. (Ex. 80, PFF 7529–7533; 7/12/96 Eisenach Tr. 212–213). Finally, under the heading "Political" on the May 7, 1993, project sheet, is listed the phrase "CR/RAC Letter." (Ex. 79, JG 000001152). This refers to a mailing about the course sent over Mr. Gingrich's name by GOPAC to approximately 1,000 College Republicans. (Ex. 81, Mescon 0918, 0915, 0914 and Meeks 0038–0040; 7/15/96 Gaylord Tr. 81–82).

b. Involvement of GOPAC charter members in course design

As discussed earlier, Mr. Gingrich had a meeting with GOPAC Charter Members in January 1993 to discuss the ideas of Renewing American Civilization. (11/13/96 Gingrich Tr. 132). According to a letter written about that meeting, the idea to teach arose from that meeting. In April 1993, GOPAC held its semi-annual Charter Meeting. Its theme was "Renewing American Civilization." (Ex. 78, PP000448–PP000452). Mr. Gingrich gave the keynote address, entitled "Renewing American Civilization," and there were five breakout sessions entitled "Advancing the Five Pillars of Twenty-first Century Democracy." (Ex. 78, PP000449). Each of the breakout sessions was named for a lecture in the course, and these sessions were used to help develop the content of the course (11/13/96 Gingrich Tr. 164–165; 7/17/96 Gingrich Tr. 69–70; 7/12/96 Eisenach Tr. 144–146; 7/15/96 Gaylord Tr. 46) as well as GOPAC's political message for the 1993 legislative campaigns and the 1994 congressional races. (11/13/96 Gingrich Tr. 164–165; Ex. 62, Eisenach 2540). As stated in a memorandum from Mr. Eisenach to GOPAC Charter Members, these breakout sessions were intended to "dramatically improve

[31] The February 15, 1993, agenda for the meeting where the RAC course and other GOPAC issues were discussed, lists Mr. Eisenach as an attendee, but does not list Mr. Gaylord as being present. (Ex. 47, JR–0000645).

[32] During her interviewing process, Ms. Prochnow was provided with materials to help her understand the goals of GOPAC. (Ex. 72, GOPAC2 0529). Although she has no specific recollection as to what these materials were, she believes they were materials related to the Renewing American Civilization movement. (7/10/96 Prochnow Tr. 18–19; Ex. 73, PP000459–000463; PP00778).

[33] Mr. Eisenach has stated that he did not ask Ms. Prochnow to do this fundraising work, but rather Mr. Gaylord did. (7/12/96 Eisenach Tr. 71, 75; Ex. 65, PFF 1168). However, both Mr. Gaylord and Ms. Prochnow clearly state that it was Mr. Eisenach, not Mr. Gaylord, who directed Ms. Prochnow to perform the fundraising work. (7/15/96 Gaylord Tr. 16, 17; 7/10/96 Prochnow Tr. 14, 73–74; Ex. 71, Letter dated July 25, 1996, from Prochnow's attorney).

[34] As discussed earlier, WPG was a corporation formed by Mr. Eisenach which had a contract with KSCF to run all aspects of the course.

[35] The only other person who was involved in the early development of the course was Nancy Desmond. She did not work for GOPAC, but had been a volunteer at Mr. Gingrich's campaign office for approximately a year before starting to work on the course. (6/13/96 Desmond Tr. 15–16). She continued to work as a volunteer for Mr. Gingrich's campaign until July of 1993, when she was told to resign from the campaign because of the perceived negative image her two roles would project. (6/13/96 Desmond Tr. 37–38; Ex. 77, PFF 38289).

both our understanding of the subject and our ability to communicate it." (Ex. 82, Roberts 0045–0048).

c. Letters sent by GOPAC

In June of 1993, GOPAC sent a letter over Mr. Gingrich's signature stating that "it is vital for Republicans to now DEVELOP and put forward OUR agenda for America." (Ex. 83, PP000534) (emphasis in original). In discussing an enclosed survey the letter states:

It is the opening step in what I want to be an unprecedented mobilization effort for Republicans to begin the process of replacing America's failed welfare state.

And the key political component of that effort will be an all-out drive to end the Democrat's 40 year control of the U.S. House or Representatives in 1994!

(Ex. 83, PP000535).[36] The letter then states that it is important to develop the themes and ideas that will be needed to accomplish the victory in 1994. (Ex. 83, PP000536). In language that is very similar to the core of the course, but with an overtly partisan aspect added to it, the letter states:

Personally, I believe we can and should turn the 1994 midterm elections into not just a referendum on President Clinton, but on whether we maintain or replace the welfare state and the Democratic Party which supports it.

I believe the welfare state which the Democrats have created has failed.

In fact, I challenge anyone to say that it has succeeded, when today in America twelve year olds are having children, fifteen year olds are killing each other, seventeen year olds are dying of AIDS and eighteen year olds are being given high school diplomas they cannot even read.

* * * * *

And what I want to see our Party work to replace it with is a plan to renew America based on what I call "pillars" of freedom and progress:

(1) Personal strength;

(2) A commitment to quality in the workplace;

(3) Spirit of American Inventiveness;

(4) Entrepreneurial free enterprise applied to both the private and public sectors;

(5) Applying the lessons of American history as to what works for Americans to proposed government solutions to our problems.

After being active in politics for thirty years, and being in Congress for fourteen of them, I firmly believe these five principles can develop a revolutionary change in government. Properly applied, they can dramatically improve safety, health, education, job creation, the environment, the family and our national defense.

(Ex. 83, PP000536). In other letters sent out by GOPAC, the role of the Renewing American Civilization course in relation to the Republican political goals of GOPAC were described in explicit terms. A letter to Neil Gagnon, dated May 5, 1993, over Mr. Gingrich's name, states:

As we discussed, it is time to lay down a blue print—which is why in part I am teaching the course on Renewing American Civilization. Hopefully, it will provide the structure to build an offense so that Republicans can break through dramatically in 1996. We have a good chance to make significant gains in 1994, but only if we can reach the point where we are united behind a positive message, as well as a critique of the Clinton program.[37]

(Ex. 84, GOPAC2 0003). In a letter dated June 21, 1993, that Pamla Prochnow, GOPAC's new finance director, sent to Charter Members as a follow-up to an earlier letter from Mr. Gingrich, she states:

As the new finance director, I want to introduce myself and to assure you of my commitment and enthusiasm to the recruitment and training of grassroots Republican candidates. In addition, with the course Newt will be teaching in the fall—Renewing American Civilization—I see a very real opportunity to educate the American voting population to Republican ideals, increasing our opportunity to win local, state and Congressional seats.[38]

(Ex. 85, PP000194). On January 3, 1994, Ms. Prochnow sent another letter to the Charter Members. It states:

As we begin the new year, we know our goals and have in place the winning strategies. The primary mission is to elect Republicans at the local, state and congressional level. There, also, is the strong emphasis on broadcasting the message of renewing American civilization to achieve peace and prosperity in this country.

(Ex. 86, PP000866). In another letter sent over Mr. Gingrich's name, the course is again discussed. The letter, dated May 12, 1994, is addressed to Marc Bergschneider and states:

I am encouraged by your understanding that the welfare state cannot merely be repaired, but must be replaced and have made a goal of activating at least 200,000 citizen activists nationwide through my course, Renewing American Civilization. We hope to educate people with the fact that we are entering the information society. In order to make sense of this society, we must rebuild an opportunistic country. In essence, if we can reach Americans through my course, independent expenditures, GOPAC and other strategies, we just might unseat the Democratic majority in the House in 1994 and make government accountable again.

(Ex. 87, GDC 01137). Current and former GOPAC employees said that before a letter would go out over Mr. Gingrich's signature, it would be approved by him. (7/3/96 Rogers Tr. 88; 6/27/96 Nelson Tr. 56–60). According to Mr. Eisenach, Mr. Gingrich "typically" reviewed letters that went out over his signature, but did not sign all letters that were part of a mass mailing. (7/12/96 Eisenach Tr. 35). With respect to letters sent to individuals over Mr. Gingrich's name, Mr. Eisenach said the following:

Mr. Eisenach: [Mr. Gingrich] would either review those personally or be generally aware of the content. In other words, on rare, if any, occasions, did I or anybody else invent the idea of sending a letter to somebody, write the letter, send it under Newt's signature and never check with him to see whether he wanted the letter to go.

There were occasions—now, sometimes that would be—Newt and I would discuss the generic need for a letter. I would write the letter and send it and fax a copy to him and make sure he knew that it had been sent.

Mr. Cole: Would you generally review the contents of the letter with him prior to it going out?

Mr. Eisenach: Not necessarily word for word. It would depend. But as a general matter, yes.

(7/12/96 Eisenach Tr. 36). Mr. Gingrich's Administrative Assistant, Rachel Robinson, stated that in 1993 and 1994 whenever she received a letter or other document for Mr. Gingrich that was to be filed, she would sign Mr. Gingrich's name on the document and place her initials on it. This "usually" meant that Mr. Gingrich had seen the letter. (9/6/96 Robinson Tr. 4). The letter sent to Mr. Bergschneider on May 12, 1994, was produced from the files of Mr. Gingrich's Washington, D.C. office and has Ms. Robinson's initials on it. (9/6/96 Robinson Tr. 4).

The letters sent out over Mr. Gingrich's signature were shown to Mr. Gingrich during an interview. He said that none of them contained his signature, he did not recall seeing them prior to the interview, and said he would not have written them in the language used. (7/17/96 Gingrich Tr. 77–78, 140–141). Mr. Gaylord said that "it seemed to [him] there was a whole series of kind of usual correspondence that was done by the staff" that Mr. Gingrich would not see. (7/15/96 Gaylord Tr. 77). The content of the letters listed above, however, are quite similar to statements made directly by Mr. Gingrich about the movement and the role of the course in the movement. (See, e.g., Ex. 47, JR–0000646 ("emphasis is on the Republican Party as the primary vehicle for renewing American civilization"); Ex. 52 GDC 10639–10649 ("sweeping victory" will be accomplished through the course); Ex. 88, GDC 10729–10733 ("Democrats are the party of the welfare state." "Only by voting Republican can the welfare state be replaced and an opportunity society be created.").)

D. "Replacing the Welfare State With an Opportunity Society" as a Political Tool

According to Mr. Gingrich, the main theme of both the Renewing American Civilization movement and the course was the replacement of the welfare state with an opportunity society. (7/17/96 Gingrich Tr. 52, 61, 170; 11/13/96 Gingrich Tr. 85). Mr. Gingrich also said, "I believe that to replace the welfare state you almost certainly had to have a [R]epublican majority." (7/17/96 Gingrich Tr. 51). "I think it's hard to replace the welfare state with the [D]emocrats in charge." (7/17/96 Gingrich Tr. 62). The course was designed to communicate the vision and language of the Renewing American Civilization movement and "was seen as a tool that could be used to replace the welfare state." (7/17/96 Gingrich Tr. 159–160; see also 11/13/96 Gingrich Tr. 47, 76).[39]

In addition to being the title of a movement, the course, and GOPAC's political message for 1993 and 1994, "Renewing American Civilization" was also the main message of virtually every political and campaign speech made by Mr. Gingrich in 1993 and 1994. (7/17/96 Gingrich Tr. 69).[40] According to Mr.

[36] The copy of the letter produced is a draft. While Mr. Gingrich was not able to specifically identify the letter, he did state that the letter fit the message and represented the major theme of GOPAC at that time. (7/17/96 Gingrich Tr. 60–61).

[37] Jana Rogers had not seen this letter before her interview, but after reading it she said that through her work on the course, she believed the contents of the letter set out one of the goals of the Renewing American Civilization course. (7/3/96 Rogers Tr. 75–76).

[38] Both Dr. Mescon and Dr. Siegel of KSC were shown some of these letters. They both said that had they known of this intention in regard to the course, they would not have viewed it as an appropriate project for KSC. (6/13/96 Mescon Tr. 84–87; 6/13/96 Siegel Tr. 60–62).

[39] During his interview, the following exchange occurred regarding the movement:

Mr. Cole: Yet there was an emphasis in the movement on the Republican Party?

Mr. Gingrich: There certainly was on my part, yes.

Mr. Cole: You were at the head of the movement, were you not?

Mr. Gingrich: Well, I was the guy trying to create it.

Mr. Cole: The course was used as the tool to communicate the message of the movement, was it not?

Mr. Gingrich: Yes, it was a tool, yes.

(11/13/96 Gingrich Tr. 76).

[40] According to Ms. Rogers, the course's Site Host Coordinator, there was coordination between the

Gingrich, there was an effort in 1994 to use the "welfare state" label as a campaign tool against the Democrats and to use the "opportunity society" label as an identification for the Republicans. (7/17/96 Gingrich Tr. 113). Mr. Gingrich made similar comments in a subsequent interview:

Mr. Cole: During [1993–1994] was there an effort to connect the Democrats with the welfare state?

Mr. Gingrich: Absolutely; routinely and repetitively.

Mr. Cole: And a campaign use of that?

Mr. Gingrich: Absolutely.

Mr. Cole: A partisan use, if you will?

Mr. Gingrich: Absolutely.

Mr. Cole: And was there an effort to connect the Republicans with the opportunity society?

Mr. Gingrich: Absolutely.

Mr. Cole: A partisan use?

Mr. Gingrich: Yes, sir.

Mr. Cole: And that was the main theme of the course, was it not, replacement of the welfare state with the opportunity society?

Mr. Gingrich: No. The main theme of the course is renewing American civilization and the main subset is that you have—that you have to replace the welfare state with an opportunity society for that to happen.

(11/13/96 Gingrich Tr. 79–80). As referred to above, Mr. Gingrich held a training seminar for candidates on behalf of GOPAC at the Virginia Republican Convention in June 1993. (7/15/96 Gaylord Tr. 29–30). He gave a speech entitled "Renewing American Civilization" which described the nature of the movement and the course. (Ex. 56, GOPAC2 2146–2209). Near the beginning of his speech, Mr. Gingrich said:

What I first want to suggest to you [is] my personal belief that we are engaged in a great moral and practical effort, that we are committed to renewing American civilization, and I believe that's our battle cry. That we want to be the party and the movement that renews American civilization and that renewing American civilization is both an idealistic cause and a practical cause at the same time.

(Ex. 56, GOPAC2 2146). He then told the audience that he has four propositions with which 80% to 95% of Americans will agree. These are: (1) there is an American civilization; (2) the four can'ts; (3) the welfare state has failed; and (4) to renew American civilization it is necessary to replace the welfare state. (Ex. 56, GOPAC2 2149–2153).[41] Mr. Gingrich then went on to relate the principles of renewing American civilization to the Republican party:

We can't do much about the Democrats. They went too far to the left. They are still too far to the left. That's their problem. But we have a huge burden of responsibility to change our behavior so that every one who wants to replace the welfare state and every one who wants to renew American civilization has a home, and it's called being Republican. We have to really learn how to bring them all in.

And I think the first step of all that is to insist that at the core of identification the only division that matters is that question. You want to replace the welfare state and renew American civilization. The answer is just fine, come and join us. And not allow the news media, not allow the Democrats, not allow interest groups to force us into fights below that level in terms of defining who we are. That in any general election or any effort to govern that we are every one who is willing to try to replace the welfare state, and we are every one who is willing to renew American civilization.

Now, that means there is a lot of ground in there to argue about details. Exactly how do you replace the welfare state. Exactly which idea is the best idea. But if we accept every one coming in, we strongly change the dynamics of exactly how this country is governed and we begin to create a majority Republican party that will frankly just inexorably crow[d] out the Democrats and turn them into minority status.

(Ex. 56, GOPAC2 2155–2156). Mr. Gingrich told the audience that he would discuss three areas in his remarks: (1) the principles of renewing American civilization; (2) the principles and skills necessary to be a "renewing candidate" and then ultimately a "renewing incumbent;" and (3) the concept and principles for creating a community among those who are committed to replacing the welfare state and renewing American civilization. (Ex. 56, GOPAC2 2168). In speaking of the first area, Mr. Gingrich said that it is a very complicated subject. Because of this he was only going to give a "smattering" of an outline at the training seminar. (Ex. 56, GOPAC2 2170). He said, however, that in the fall he planned to teach a twenty-hour course on the subject, and then refine it and teach it again over a four-year period. (Ex. 56, GOPAC2 2170). He then described the three goals he had for the course:

First, we want to have by April of '96 a genuine intellectual blueprint to replace the welfare state that you could look at as a citizen and say, yeah, that has a pretty good chance of working. That's dramatically better than what we've been doing.

Second, we want to find 200,000 activist citizens, and I hope all of you will be part of this, committed at every level of American life to replacing the welfare state. Because America is a huge decentralized country. You've got to have school boards, city councils, hospital boards, state legislatures, county commissioners, mayors, and you've got to have congressmen and senators and the President and governors, who literally [sic] you take all the elected posts in America and then you take all the people necessary to run for those posts and to help the campaigns, etc., I think it takes around 200,000 team players to truly change America.

(Ex. 56, GOPAC2 2170–2171).

Third, we create a process—and this is something you can all help with in your own districts—we create a process interesting enough that the national news media has to actually look at the material in order to cover the course.[42]

(Ex. 56, GOPAC2 2173). The transcript of his speech goes on for the next 30 pages to describe the five pillars of American civilization that form the basis of the course, and how to use them to get supporters for the candidates' campaigns. In discussing this Mr. Gingrich said:

Now, let me start just as [a] quick overview. First, as I said earlier, American civilization is a civilization. Very important. It is impossible for anyone on the left to debate you on that topic.

* * * * *

But the reason I say that is if you go out and you campaign on behalf of American civilization and you want to renew American civilization, it is linguistically impossible to oppose you. And how is your opponent going to get up and say I'm against American civilization?

(Ex. 56, GOPAC2 2175–2176). Near the end of the speech he said:

I believe, if you take the five pillars I've described, if you find the three areas that will really fit you, and are really in a position to help you, that you are then going to have a language to explain renewing American civilization, a language to explain how to replace the welfare state, and three topics that are going to arouse volunteers and arouse contributions and help people say, Yes, I want this done.

(Ex. 56, GOPAC2 2207).[43]

In a document that Mr. Gingrich apparently wrote during this time (Ex. 89, Eisenach 2868–2869), the course is related to the Renewing American Civilization movement in terms of winning a Republican majority. The "House Republican Focus for 1994" is directed at having Republicans communicate a positive message so that a majority of Americans will conclude that their only hope for real change is to vote Republican. In describing that message, the document states:

The Republican party can offer a better life for virtually every one if it applies the principles of American civilization to create a more flexible, decentralized market oriented system that uses the Third Wave of change and accepts the disciplines of the world market.

These ideas are outlined in a 20 hour intellectual framework "Renewing American Civilization" available on National Empowerment Television every Wednesday from 1 pm to 3 pm and available on audio tape and video tape from 1–800–TO–RENEW.

(Ex. 89, Eisenach 2869). In a document dated March 21, 1994, and entitled "RENEWING AMERICA: The Challenge for Our Generation,"[44] Mr. Gingrich described a relationship between the course and the movement. (Ex. 90, GDC 00132–00152). Near the beginning of the document, one of the "key propositions" listed is that the welfare state has failed and must be replaced with an opportunity society. (Ex. 90, GDC 00136). The opportunity society must be based on, among other things, the principles of American civilization. (Ex. 90, GDC 00136). The document states that the key ingredient for success is a movement to renew American civilization by replacing the welfare state with an opportunity society. (Ex. 90, GDC 00137). That movement will require at least 200,000 "partners for progress" committed to the goal of replacing the welfare state with an opportunity society and willing to study the principles of American civilization, work on campaigns, run for office, and engage in

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message, the movement, and activists. "They were extensions of Newt and each had to make—each group had to make sure—what I mean specifically is GOPAC and the class had to make sure that they were using the same message that Newt was trying to disseminate, that it was identical.

(7/3/96 Rogers Tr. 54).

[41] These four propositions were used as the "central propositions" or "heart" of the course to introduce each session in 1993 and 1994. (Ex. 54, PFF 18361, 18365–18367).

[42] These are the same three specific goals that were listed in the document entitled "Renewing American Civilization Our Goal" that referred to achieving a "sweeping victory in 1996" as the overall goal. (Ex. 52, GDC 10647–10648).

[43] As discussed above, this speech was used by GOPAC to produce two training tapes. One was called "Renewing American Civilization" and the other was called "Leading the Majority." (7/15/96 Gaylord Tr. 31).

[44] Mr. Gingrich at least wrote the first draft of this document and stated that it was compatible with what he was doing at that time. It was probably a briefing paper for the House Republican members. (Ex. 90, GDC 00132–00152; 7/17/96 Gingrich Tr. 203–204).

other activities to further the movement. (Ex. 90, GDC 00138).[45] Under the heading "Learning the Principles of American Civilization" the document states, "The course, 'Renewing American Civilization', is designed as a 20 hour introduction to the principles necessary to replace the welfare state with an opportunity society." (Ex. 90, GDC 00139). It then lists the titles of each class and the book of readings associated with the course. The next section is titled "Connecting the 'Partners' to the 'Principles'." (Ex. 90, GDC 00140). It describes where the course is being taught, including that it is being offered five times during 1994 on National Empowerment Television, and states that, "Our goal is to get every potential partner for progress to take the course and study the principles." (Ex. 90, GDC 00140).[46] The document then lists a number of areas where Republicans can commit themselves to "real change," including the Contract with America and a concerted effort to end the Democratic majority in the House. (Ex. 90, GDC 00144–00150).

A May 10, 1994 document which Mr. Gingrich drafted (7/18/96 Gingrich Tr. 234–235; 7/15/96 Gaylord Tr. 70) entitled "The 14 Steps[:] Renewing American Civilization by replacing the welfare state with an opportunity society," he notes the relationship between the course and the partisan aspects of the movement. (Ex. 88, GDC 10729–10733). After stating that the welfare state has failed and needs to be replaced (Ex. 88, GDC 10729), the document states that, "Replacing the welfare state will require a disciplined approach to both public policy and politics." (Ex. 88, GDC 10730). "We must methodically focus on communicating and implementing our vision of replacing the welfare state." (Ex. 88, GDC 10730). In describing the replacement that will be needed, Mr. Gingrich says that it:

must be an opportunity society based on the principles of American civilization * * *.

These principles each receive two hours of introduction in 'Renewing American Civilization', a course taught at Reinhardt College. The course is available on National Empowerment Television from 1–3 P.M. every Wednesday and by videotape or audiotape by calling 1–800–TO–RENEW.

(Ex. 88, GDC 10730). This document goes on to describe the 200,000 "partners for progress" as being necessary for the replacement of the welfare state and how the Contract with America will be a first step toward replacing the welfare state with an opportunity society. (Ex. 88, GDC 10731). The document then states:

The Democrats are the party of the welfare state. Too many years in office have led to arrogance of power and to continuing violations of the basic values of self-government.

Only by voting Republican can the welfare state be replaced and an opportunity society be created.

(Ex. 88, GDC 10731). On November 1, 1994, Mr. Gingrich attended a meeting with Ms. Minnix, his co-teacher at Reinhardt, to discuss the teaching of the course in 1995. (Ex. 92, Reinhardt 0063–0065). Also at that meeting were Mr. Hanser, Ms. Desmond, Mr. Eisenach, and John McDowell. One of the topics discussed at the meeting was Mr. Gingrich's desire to teach the course on a second day in Washington, D.C. According to notes of the meeting prepared by Ms. Minnix, Mr. Gingrich wanted to teach the course in D.C. in an effort:

To attract freshman congresspeople, the press—who will be trying to figure out the Republican agenda—and congressional staff looking for the basis of Republican doctrine. 'Take the course' will be suggested to those who wonder what a Republican government is going to stand for.

(Ex. 92, Reinhardt 0064).[47] Later in the meeting Mr. Gingrich said that his chances of becoming Speaker were greater than 50 percent and he was making plans for a transition from Democratic to Republican rule. Ms. Minnix wrote that Mr. Gingrich "sees the course as vital to this—so vital that no one could convince him to teach it only one time per week and conserve his energy." (Ex. 92, Reinhardt 0065).[48]

A number of other documents reflect a similar partisan, political use of the message and theme of Renewing American Civilization. (Ex. 93, LIP 00602–00610, ("Renewing American Civilization: Our Duty in 1994," a speech given to the Republican National Committee January 21, 1994 Winter Breakfast); Ex. 94, GDC 11010–11012, ("Whip Office Plan for 1994" with the "vision" of "Renew American civilization by replacing the welfare state which requires the election of a Republican majority and passage of our agenda"); Ex. 95, GDC 10667–10670, ("Planning Assumptions for 1994"); Ex. 96, Eisenach 2758–2777, (untitled); Ex. 97, PFF 2479–2489, (seminar on Renewing American Civilization given to the American Legislative Exchange Council); Ex. 98, PFF 37179–37188, ("House GOP Freshman Orientation: Leadership for America's 21st Century."))

E. Renewing American Civilization House Working Group

As stated in Mr. Gingrich's easel notes from December 1992, one goal of the Renewing American Civilization movement was to "professionalize" the House Republicans. (Ex. 42, HAN 02110). His intention was to use the message of Renewing American Civilization to "attract voters, resources and candidates" and to develop a "mechanism for winning seats." (Ex. 42, HAN 02110). In this vein, a group of Republican House Members and others formed a working group to promote the message of Renewing American Civilization. Starting in approximately June 1993, Mr. Gingrich sponsored Representative Pete Hoekstra as the leader of this group and worked with him. (7/18/96 Gingrich Tr. 279).[49] According to a number of documents associated with this group, a goal was to use the theme of renewing American civilization to elect a Republican majority in the House. (Ex. 99, Hoekstra 0259; Ex. 101, Hoekstra 0264; Ex. 102, Gregorsky 0025). According to notes from a July 23, 1993 meeting, Mr. Gingrich addressed the group and made several points:

1. Renewing American Civilization (RAC) is the basic theme;

2. RAC begins with replacing the welfare state, not improving it;

3. RAC will occur by promoting the use of the five pillars of American civilization;

4. Use of the three key policy areas of saving the inner city, health, and economic growth and jobs.

(Ex. 101, Hoekstra 0264). The meeting then turned to a discussion of possible ways to improve these points. (Ex. 101, Hoekstra 0264).

On July 30, 1993, another meeting of this group was held. According to notes of that meeting, the group restated its objectives as follows:

a. restate our objective: Renewing American Civilization by replacing the paternalistic welfare state

—GOP majority in the House ASAP

—nationwide GOP majority ASAP

* * * * *

—objective: create "echo chamber" for RAC

* * * * *

i. develop RAC with an eye toward marketability

* * * * *

ii. promote message so that this defines many 1994 electoral contests at the congressional level and below, and defines the 1996 national election.

(Ex. 102, Gregorsky 0025).[50]

The goal of the group was further defined in a memorandum written by one of Mr. Hoekstra's staffers in September of 1993. (Ex. 103, Hoekstra 0266–0267). In that memorandum, the staff member said the group's goal had changed "from one of promoting the Renewing American Civilization course to one of proposing a 'political platform' around which House Republican incumbents and candidates can rally." (Ex. 103, Hoekstra 0266). The group's "underlying perspective" was described as follows:

To expand our party, it is important that Republicans develop, agree on and learn to explain a positive philosophy of government.

At the core of that philosophy is the observation that the paternalistic welfare state has failed, and must be replaced by alternative mechanisms within and outside of government if social objectives are to be achieved.

Fundamental to developing a new philosophy is the idea that traditions in American civilization have proven themselves to be powerful mechanisms for organizing human behavior. There are working principles in the lessons of American history that can be observed, and should be preserved and strengthened.

These working principles distinguish the Republican party and its beliefs from the Democratic party, which remains committed to the welfare state even though these policies are essentially alien to the American experience.

(Ex. 103, Hoekstra 0266–0267). This group began to develop a program to incorporate

[45] In this section he defines the "partners for progress" as "citizens activists."

[46] The course was broadcast twice each week on National Empowerment Television. In light of it being a ten-week course, and being offered five times during 1994 on NET, it ran for 50 weeks during this election year. In addition to being on NET, it was also on a local cable channel in Mr. Gingrich's district in Georgia. (Ex. 91, DES 01048; 7/18/96 Gingrich Tr. 257–259).

[47] Ms. Minnix stated that the word "Republican" may not have been specifically used by Mr. Gingrich, but that it was the context of his remark. (6/12/96 Minnix Tr. 54–56).

[48] The other participants at this meeting were asked about this conversation. To the extent they recalled the discussion, they confirmed that it was as related in Ms. Minnix's memorandum. No one had a recollection that was contrary to Ms. Minnix's memorandum. (6/12/96 Minnix Tr. 54–56; 6/28/96 Hanser Tr. 71–72; 6/13/96 Desmond Tr. 76–78; 7/12/96 Eisenach Tr. 270–271; 7/17/96 Gingrich Tr. 211–215).

[49] Mr. Gingrich provided Mr. Hoekstra with some materials to explain the movement. (See Ex. 99, Hoekstra 0259). Apparently, this material included the May 13, 1993, three part document entitled "Renewing America Vision," "Renewing America Strategies," and "Renewing American Civilization Our Goal." (Ex. 52, GDC 10639–10649). In a memorandum from one of Mr. Hoekstra's staffers analyzing the material, he lists the thirteen items that were to be done to further the movement. (Ex. 100, Hoekstra 0140b). They are the same thirteen items that are listed in the "Renewing America Strategies" portion of the May 13, 1993 document.

[50] Mr. Gingrich reviewed notes similar to these and though he did not specifically recall them, he said they were compatible with the activities of that time. (7/18/96 Gingrich Tr. 283–284).

Renewing American Civilization into the House Republican party. The program's goals included a House Republican majority, Mr. Gingrich as Speaker, and Republican Committee Chairs. (Ex. 104, Hoekstra 0147–0151). To accomplish this goal, there were efforts to have candidates, staffers and members use Renewing American Civilization as their theme. (Ex. 104, Hoekstra 0148). One proposal in this area was a training program for staffers in the principles of Renewing American Civilization for use in their work in the House. (Ex. 104, Hoekstra 0148). A memorandum from Mr. Gingrich to various members of his staffs[51] asked them to review a plan for this training program and give him their comments. (Ex. 105, WGC 03732–03745).

During his interview, Mr. Hoekstra stated that Renewing American Civilization and the concept of replacing the welfare state was intended as a means of defining who Republicans were; however, the group never finalized this as a project. (7/29/96 Hoekstra Tr. 47–48). In talking about this group, Mr. Gingrich said that he wanted the Republican party to move toward Renewing American Civilization as a theme and that he would have asked the group to study the course, understand the ideas, and use those ideas in their work. (7/18/96 Gingrich Tr. 284–286). It is not known what became of this group. Mr. Hoekstra said that the project ended without any closure, but he does not recall how that happened. (7/29/96 Hoekstra Tr. 46).

F. Marketing of the Course

As discussed above, Mr. Gingrich wrote in his March 29, 1993 memorandum that he wanted "Republican activists committed * * * to setting up workshops built around the course, and to opening the party up to every citizen who wants to renew American civilization." (Ex. 51, GDC 08892). There is evidence of efforts being made to recruit Republican and conservative organizations into becoming sponsors for the course. These sponsors were known as "site hosts." One of the responsibilities of a site host was to recruit participants. (Ex. 106, PFF 8033). Jana Rogers was the Site Host Coordinator for the course when it was at Kennesaw State College. She stated that part of her work in regard to the course involved getting Republican activists to set up workshops around the course to bring people into the Republican party. (7/3/96 Rogers Tr. 67–68). She said there was an emphasis on getting Republicans to be site hosts. (7/3/96 Rogers Tr. 69).

In an undated document entitled "VISION: To Obtain Site Hosts for Winter 1994 Quarter," three "projects" are listed: (1) "To obtain site hosts from conservative organizations;" (2) "To secure site hosts from companies;" (3) "To get cable companies to broadcast course." (Ex. 107, PFF 7526). The "strategies" listed to accomplish the "project" of obtaining site hosts from conservative organizations are listed as:

Mailing to State and local leaders through lists from National Republican Committee, Christian Coalition, American Association of Christian Schools, U.S. Chamber of Commerce, National Right to Life, Heritage Foundation, Empower America, National Empowerment Television, Free Congress, etc.

(Ex. 107, PFF 7526). One of the tactics listed to accomplish the goal of obtaining more site hosts is to:

Contact National College Republican office to obtain names and addresses of all presidents country-wide. Develop letter to ask college republicans to try to obtain the class for credit on their campus or to become a site host with a sponsor group. Also, ask them to contact RAC office for a site host guide and additional information.

(Ex. 107, PFF 7527). In a memorandum written by Nancy Desmond concerning the course, among the areas where she suggested site host recruiting should be directed were to "NAS members,"[52] "schools recognized as conservative" and "national headquarters of conservative groups." (Ex. 108, PFF 37328–37330). In a number of the project reports written by employees of the course in 1993, there are notations about contacts with various Republicans in an effort to have them host a site for the course. There are no similar notations of efforts to contact Democrats. (Ex. 109, Multiple Documents).[53]

In several instances mailings were made to Republican or conservative activists or organizations in an effort to recruit them as site hosts. In May of 1993 a letter was sent over Mr. Gingrich's signature to approximately 1,000 College Republicans regarding the course.[54] That letter states that:

[C]onservatives today face a challenge larger than stopping President Clinton. We must ask ourselves what the future would be like if we were allowed to define it, and learn to explain that future to the American people in a way that captures first their imagination and then their votes.

In that context, I am going to devote much of the next four years, starting this Fall, to teaching a course entitled "Renewing American Civilization." I am writing to you today to ask you to enroll for the class, and to organize a seminar so that your friends can enroll as well.

* * * * *

Let me be clear: This is not about politics as such. But I believe the ground we will cover is essential for anyone who hopes to be involved in politics over the next several decades to understand. American civilization is, after all, the cultural glue that holds us all together. Unless we can understand it, renew it and extend it into the next century, we will never succeed in replacing the Welfare State with an Opportunity Society.

* * * * *

(Ex. 81, Mescon 0915; Meeks 0039). The letter ends by stating:

I have devoted my life to teaching and acting out a set of values and principles. As a fellow Republican, I know you share those values. This class will help us all remember what we're about and why it is so essential that we prevail. Please join me this Fall for "Renewing American Civilization."

(Ex. 81, Mescon 0914; Meeks 0040). GOPAC paid for this mailing (7/12/96 Eisenach Tr. 200; 7/15/96 Gaylord Tr. 82) and it was listed as a "political" project on GOPAC's description of its "Major Projects Underway" for May 7, 1993. (Ex. 79, JG 000001152). At the top of a copy of the letter to the College Republicans is a handwritten notation to Mr. Gingrich from Mr. Eisenach: "Newt, Drops to 1000+ C.R. Chapters on Wednesday. JE cc: Tim Mescon." (Ex. 81, Mescon 0915, Meeks 0039).

During an interview with Mr. Cole, Mr. Eisenach was asked about this letter.

Mr. Eisenach: Use of the course by political institutions in a political context was something that occurred and was part of Newt's intent and was part of the intent of other partisan organizations, but the intent of the course and, most importantly, the operation of the course and its use of tax-exempt funds was always and explicitly done in a nonpartisan way.

Political organizations—in this case, GOPAC—found it to their advantage to utilize the course for a political purpose, and they did so.

Mr. Cole: Were you involved in GOPAC?

Mr. Eisenach: At this time I was involved in GOPAC, yes.

Mr. Cole: And in making the decision that GOPAC would utilize the course?

Mr. Eisenach: Yes.

(7/12/96 Eisenach Tr. 203). Mr. DuGally worked with Economics America, Inc. to have them send a letter to the members of the groups listed in *The Right Guide* as part of an effort to recruit them as site hosts. The first paragraph of the letter states:

Newt Gingrich asked that I tell the organizations listed in The Right Guide about his new nationally broadcast college course, "Renewing American Civilization." It promises to be an important event for all conservatives, as well as many young people who are not yet conservatives. You and your organization can be part of this project.

(Ex. 110, PFF 19821). The letter goes on to say, "And remember, since you are a team teacher you can use the course to explain and discuss your views." (Ex. 110, PFF 19821).

In the fall of 1993, Mr. DuGally arranged for a letter to be sent by Lamar Alexander on behalf of the Republican Satellite Exchange Network promoting the course and asking its members to serve as site hosts. (Ex. 111, PFF 19795–19798). In addition, a letter was prepared for mailing to all chairmen of the Christian Coalition asking them to serve as site hosts. (Ex. 112, PFF 19815). In June of 1993, Mr. DuGally worked with the Republican National Committee to have a letter sent by Chairman Haley Barbour to RNC Members informing them of the course. (Ex. 113, RNC 0094). This letter did not solicit people to be site hosts.

Jana Rogers, the Site Host Coordinator for the course, attended the College Republican National Convention. Her weekly report on the subject said the following:

The response to Renewing American Civilization at the College Republican National Convention was overwelming [sic]. In addition to recruiting 22 sites and possibly another 30+ during follow-up, I was interviewed by MTV about the class and learned more about RESN [Republican Exchange Satellite Network] from Stephanie Fitzgerald who does their site coordination. I also handed out 400 Site Host Guides to College Republicans and about 600 registration flyers. NCRNC says it will work aggressively with their state chairmen to help us set up sites know [sic] that the convention is over.

(Ex. 114, PFF 7613). She made no effort to contact any Democratic groups. (7/3/96 Rogers Tr. 78).

In notes provided by Mr. Mescon from a meeting he attended on the course, he lists a number of groups that would be targeted for mailings on the course. They include mostly elected or party officials and the notation ends with the words "25,000/total Republican

[51] This included his congressional office, his WHIP office, RAC, and GOPAC.

[52] According to Mr. Gingrich, the NAS (National Association of Scholars) is a conservative organization. (7/18/96 Gingrich Tr. 345–346).

[53] Mr. DuGally said that he made an effort to contact the Young Democrats, but they did not show any interest. (7/19/96 DuGally Tr. 31–32).

[54] Mr. Gingrich was shown this letter and he said that while he was not familiar with it, nothing in it was particularly new. (7/17/96 Gingrich Tr. 87). Jeff Eisenach, GOPAC's Executive Director and then the coordinator of the course, either wrote the letter or edited it from a draft written by another GOPAC employee. (7/12/96 Eisenach Tr. 200–201).

mailing." (Ex. 115, Mescon 0263). According to Mr. Mescon, the course was being marketed to Republicans as a target audience and he knew of no comparable mailing to Democrats. (6/13/96 Mescon Tr. 112–113).[55]

In an August 11, 1993, memorandum from Mr. DuGally, a WPG employee who worked on the course, he lists the entities where mailings for the course had been sent or were intended to be sent up to that point. They are as follows:

1. GOPAC farm team—9,000
2. Cong/FONG/Whip offices—4,000
3. Sent to site hosts—5,500
4. College Republicans—2,000
5. American Pol Sci Assoc.—11,000
6. Christian Coalition leadership—3,000
7. *The Right Guide* list—3,000

(Ex. 116, PFF 19794). In June of 1994, John McDowell wrote to Jeff Eisenach with his suggestions about where to market the course during that summer. The groups he listed were the Eagle Forum Collegians; the National Review Institute's Conservative Summit; Accuracy in Academia; Young Republicans Leadership Conference (Mr. McDowell was on their Executive Board); Young America's Foundation, National Conservative Student Conference; College Republican National Conference; the American Political Science Association Annual Meeting;[56] and the Christian Coalition, Road to Victory. (Ex. 117, PFF 3486–3489). At a number of these meetings, Mr. Gingrich was scheduled to be a speaker. (Ex. 117, PFF 3486–3489).

A site host listing dated August 18, 1994, identifies the approximately 100 site hosts as of that date. (Ex. 118, PFF 7493–7496). These include businesses, community groups, cable stations, and others. In addition, some colleges offered the course either for credit, partial credit or no credit. (Ex. 119, Reinhardt 0160–0164). Based on their names, it was not possible to determine whether all of the site hosts fell within the goals set forth in the above-described documents. Some of them, however, were identifiable. For example, of the 28 "community groups" listed on the August 18, 1994 "Site Host Listing," 11 are organizations whose names indicate they are Republican or conservative organizations—Arizona Republican Party; Athens Christian Coalition; Conservative PAC; Henry County Republicans; Houston Young Republicans; Huron County Republican Party; Las Rancheras Republican Women; Louisiana Republican Legislative Delegation; Northern Illinois Conservative Council; Republican Party Headquarters (in Frankfort Kentucky); Suffolk Republican Party. The list does not indicate whether the remaining groups—e.g., the Alabama Family Alliance; the Family Foundation (Kentucky); Leadership North Fulton (Georgia); the North Georgia Forum; Northeast Georgia Forum; the River of Life Family Church (Georgia)—are nonpartisan, Democratic, Republican, liberal or conservative. The list does not contain any organizations explicitly denominated as Democratic organizations. Similarly, it is not clear whether there was a particular political or ideological predominance in the businesses, cable stations and individuals listed.[57]

Mr. Gingrich said that the efforts to recruit colleges to hold the course had been "very broad." "I talked, for example, with the dean of the government school at Harvard. Berkley [sic] actually was offering the course." (7/18/96 Gingrich Tr. 346). The course at Berkeley, however, did not go through the regular faculty review process for new courses, because it was initiated by a student. (7/12/96 Eisenach Tr. 316–317). Such courses were not conducted by a professor, but could be offered on campus for credit if a faculty member sponsored the course and the Dean approved it. The student site host coordinator at Berkeley was named Greg Sikorski. (Ex. 121, JR–0000117). In the June 20, 1994 memorandum from John McDowell to Mr. Eisenach, the following is written under the heading "College Republican National Conference:" "RAC Atlanta representative to attend and staff a vendor booth. These 1,000 college students represent a good source of future 'Greg Sikorskis' * * * in the sense that they can promote RAC on their campus!" (Ex. 117, PFF 3488). The faculty sponsor for the student-initiated Renewing American Civilization course was William Muir, a former speechwriter for George Bush. (Ex. 121, JR–0000117). Aside from Mr. Sikorski and Mr. Muir, Mr. Eisenach did not know if the RAC course at Berkeley had any additional university review. (7/12/96 Eisenach Tr. 319).

The site host for the Renewing American Civilization course at Harvard was Marty Connors. (Ex. 122, LIP 00232). According to Mr. Gingrich, Marty Connors is a conservative activist. (7/18/96 Gingrich Tr. 266). In a memorandum dated October 13, 1993, from Marty Connors to Lamar Alexander, Newt Gingrich, Ed Rogers, Jeff Eisenach, Paul Weyrich, Mike Baroody, and Bill Harris, he wrote about a "series of ideas (that included the Renewing American Civilization course) that could have significant consequences in building a new 'Interactive' communication system and message for the Republican Party and the conservative movement." (Ex. 123, WGC 06781). He goes on to write that he was working on a project to take the concept of the Republican Exchange Satellite Television, National Empowerment Television and "Newt Gingrich's 'Renewing American Civilization' lectures and make them "more interactive and user friendly." (Ex. 123, WGC 06781). The purpose for this is to have a "far greater ability for 'participatory' party building in the immediate future." (Ex. 123, WGC 06781–06782). He goes on to write, "Friends, I truly believe the next major political advantage will go to the group that figures out how to use 'interactive' communications in building a new Republican coalition." (Ex. 123, WGC 06782).[58]

G. Kennesaw State College's Role in the Course

Renewing American Civilization was taught at Kennesaw State College ("KSC") in 1993. The sponsoring organization for the course was the Kennesaw State College Foundation ("KSCF"), a 501(c)(3) organization dedicated to promoting projects at KSC. The approximate expenditures for the course at KSC was $300,000. This represented 29–33% of KSCF's program expenditures for 1993. The funds raised for the course and donated to KSCF were tax-deductible.

KSCF had no role in raising funds for the course. (6/13/96 Fleming Tr. 33–36). Mr. Mescon, the course's co-teacher and Dean of KSC's Business School, wrote some letters with the help of Ms. Prochnow, GOPAC's Finance Director (6/13/96 Mescon Tr. 65–68, 71–74; 7/10/96 Prochnow Tr. 58–62, 66; 7/12/96 Eisenach Tr. 69), but most of the fundraising was coordinated by Mr. Eisenach, Ms. Prochnow, and Mr. Gingrich. (7/12/96 Eisenach Tr. 68–71, 84, 97, 99; 7/17/96 Gingrich Tr. 123, 136, 137).

The course as offered at KSC was a forty-hour classroom lecture. Twenty hours were taught by Mr. Gingrich and twenty hours were taught by Mr. Mescon. While officials of KSC and KSCF considered the course to include the full forty hours of lecture (6/13/96 Mescon Tr. 38; 6/13/96 Fleming Tr. 23), only the twenty hours taught by Mr. Gingrich were taped and disseminated. (6/13/96 Siegel Tr. 25–26; 6/13/96 Mescon Tr. 35; 6/13/96 Fleming Tr. 23). The funds raised for the course were primarily used for the dissemination of Mr. Gingrich's portion of the course to the various site host locations. (6/13/96 Fleming Tr. 22, 24; 6/13/96 Mescon Tr. 55–56). No one at KSC or KSCF had any role in deciding which portions of the course would be taped and disseminated or even knew the reasons for doing it. (6/13/96 Mescon Tr. 36, 44–45, 58–59; 6/13/96 Fleming Tr. 23; 6/13/96 Siegel Tr. 78–79).

KSCF did not manage the course. It contracted with Mr. Eisenach's Washington Policy Group, Inc. ("WPG") to manage and raise funds for the course's development, production and distribution. In return, WPG was paid $8,750 per month.

The contract between WPG and KSCF ran from June 1, 1993, through September 30, 1993.[59] All funds raised were turned over to KSCF and dedicated exclusively for the use of the Renewing American Civilization course. KSCF's only role was to act as the banker for the funds for the course and disburse them upon a request from Mr. Mescon. (6/13/96 Fleming Tr. 24–25; 6/13/96 Mescon Tr. 103; Ex. 124, KSF 001269, Mescon 0454, KSF 003804, PFF 16934, KSF 001246). Mr. Mescon did not engage in a detailed review of the bills. He merely reviewed the bills that were provided by Mr. Eisenach or his staff and determined whether the general nature of the bills fell within the parameters of the project of dissemination of the course. (6/13/96 Mescon Tr. 61–63).

When the contract between WPG and KSCF ended, the Progress and Freedom Foundation ("PFF") assumed the role WPG had with the course at the same rate of compensation.[60] PFF was also a 501(c)(3) tax exempt organization, but its status as such was

[55] Others who worked on the course also said it was marketed to Republican and conservative groups. (7/3/96 Rogers Tr. 62–63; 6/13/96 Stechschulte Tr. 21–22, 57–58; 6/13/96 Desmond Tr. 66).

[56] This is the only meeting where there is not a suggestion to have a Renewing American Civilization or PFF employee attend personally. Instead, Mr. McDowell apparently only intended to find an attendee who would be willing to pass out Renewing American Civilization materials.

[57] Patti Hallstrom, an activist in the Arizona Republican Party, was instrumental in recruiting host sites in Arizona, such as the Arizona Republican Party and various cable television stations. (Ex. 120, PFF 7362). She prepared part of a training manual on how to recruit cable companies as host sites. (Ex. 120, DES 00999–01007). She also provided the Renewing American Civilization project with information about which radio and talk shows in Arizona were the most conservative as possible shows where Mr. Gingrich could appear. She said the more conservative shows would allow for a "more amenable discussion." (Ex. 120, DES 00262–00264; 6/20/96 Hallstrom Tr. 41–43).

[58] This memorandum was faxed to Mr. Gingrich. The fax cover sheet has Mr. Gingrich's name and the date "10/15/93" on it in his handwriting. As Mr. Gingrich has said, this probably indicates that he had seen this memorandum. (12/98/96 Gingrich Tr. 36–37).

[59] The contract between WPG and KSCF was never signed by KSCF. It was directed to Dr. Mescon, but he was not an authorized agent of KSCF. According to Jeffery Eisenach, President of WPG, even though the contract was not signed, it memorialized the terms of the relationship between WPG and KSCF. (Ex. 41, Mescon 0651–0652; 7/12/96 Eisenach Tr. 42; 11/14/96 Eisenach Tr. 11).

[60] Prior to assuming control of the course PFF was tasked with putting together the book of readings

not used while the course was at KSC. Mr. Eisenach was the founder and president of PFF.

KSCF and KSC had little or no role in supervising the course or its dissemination. Since the course was a "Special Topics" course, it did not need to go through formal approval by a curriculum committee at KSC—it only required Mr. Mescon's approval. (6/13/96 Siegel Tr. 15–16, 30, 32, 76–77). While Mr. Mescon was given advance copies of Mr. Gingrich's lectures, he had little input into their content. (6/28/96 Hanser Tr. 22; 6/13/96 Desmond Tr. 63). Mr. Mescon described his role more in terms of having his own 20 hours to put forth any counterpoint or objection to any of the material in Mr. Gingrich's lectures. (6/13/96 Mescon Tr. 40–41).[61]

Shortly after PFF took over the management of the course, the Georgia Board of Regents passed a resolution prohibiting any elected official from teaching at a Georgia state educational institution. This was the culmination of a controversy that had arisen around the course at KSC. The controversy pertained to objections voiced by KSC faculty to the course on the grounds that it was essentially political. (Ex. 127, KSC 3550–3551, 3541, 3460, 3462). Because of the Board of Regent's decision and the controversy, it was decided that the course would be moved to a private college. (7/12/96 Eisenach Tr. 47–50).[62]

H. Reinhardt College's Role in the Course

Reinhardt College was chosen as the new host for the course in part because of its television production facilities. (6/12/96 Falany Tr. 14). The 1994 and 1995 courses took place at Reinhardt. While there, PFF assumed full responsibility for the course. It no longer received payments to run the course. Rather, it paid Reinhardt to use the college's video production facilities. All funds for the course were raised by and expended by PFF under its tax-exempt status. The approximate expenditures for the course were $450,000 in 1994 and in $450,000 in 1995. At PFF this represented 63% of its program expenditures for its first fiscal year (which ended March 31, 1994) and 35% of its program expenditures for its second fiscal year (which ended March 31, 1995).[63]

Reinhardt had a curriculum committee review the content of the course before deciding to have it presented on its campus. (6/12/96 Falany Tr. 15–16). The controversy over the course at KSC, however, affected the level of involvement Reinhardt was willing to assume in regard to the course. (6/12/96 Falany Tr. 44–48, 51–53, 59–66; 6/12/96 Minnix Tr. 26–27). In this regard, Reinhardt's administration saw a distinction between the "course" and a broader political "project." As stated in a memorandum from Mr. Falany, Reinhardt's President, to Mr. Eisenach dated November 11, 1993:

First, there seems to be a "project", which is Renewing American Civilization, of which the "course" is a part. This distinction is blurred at times in the Project Overview. When you refer to the "project" it seems to imply a broader political objective (a non-welfare state). This is not to say that this political objective should be perceived as being negative, but it should, in fact, be seen as broader than and distinct from the simpler objective of the "course."
(Ex. 128, Reinhardt 0225).[64] Because of this concern, Reinhardt administrators agreed to be involved only in the actual teaching of the course on its campus and would not participate in any other aspects of the project. (6/12/96 Falany Tr. 51–53, 59–66; 6/12/96 Minnix Tr. 26–27).[65] In this regard, Mr. Falany made it clear to the faculty and staff at the college that:

It is important to understand that, for the Winter Quarter 1994, the College will offer the course and teach it—that is the extent of our commitment. At the present time, the Progress and Freedom Foundation will handle all of the fund raising associated with the course; the distribution of tapes, text and materials; the broadcasting; and the handling of all information including the coordination of off-campus sites.
(Ex. 129, Reinhardt 0265).[66]

As was the case at KSC, Reinhardt administrators considered the course to be the forty hours of lecture by both Mr. Gingrich and Ms. Minnix. (6/12/96 Falany Tr. 74–76). Again, only Mr. Gingrich's portion of the course was disseminated outside of Reinhardt. (6/12/96 Falany Tr. 53–54; 6/12/96 Minnix Tr. 48–49). Ms. Minnix had little contact with Mr. Gingrich, and no input into the content of the course in 1994. In 1995 she had only limited input into the content of the course. (6/12/96 Minnix Tr. 20–22). Similarly, Mr. Gingrich and his associates provided no input as to Ms. Minnix's portion of the course. (6/12/96 Minnix Tr. 31–32).

While Mr. Falany did not know the purpose for disseminating the course, and made no inquiries in that regard (6/12/96 Falany Tr. 48–50; 54–66; 84–85), Ms. Minnix did have some knowledge in this area. Based on her contacts with the people associated with the course, she believed Mr. Gingrich had a global vision of getting American civilization back "on track" and that he wanted to shape the public perception through the course. (6/12/96 Minnix Tr. 59–60). She felt there was an "evangelical side" to the course, which she described as an effort to have people get involved in politics, run for office, and try to influence legislation. (6/12/96 Minnix Tr. 70–71). Ms. Minnix felt uncomfortable with this "evangelical side." (6/12/96 Minnix Tr. 70). Furthermore, as reflected in her memorandum of the November 1, 1994 meeting with Mr. Gingrich and others, she was aware that the course was to be used to let people know what Mr. Gingrich's political agenda would be as Speaker. (6/12/96 Minnix Tr. 53–59; Ex. 92, Reinhardt 0064). As with KSC, one of the reasons Reinhardt administrators wanted to have the course taught on its campus was to raise profile of the school. (6/12/96 Falany Tr. 112–113).

I. End of Renewing American Civilization Course

Although Mr. Gingrich had intended to teach the course for four years, through the 1996 Winter quarter, he stopped teaching it after the 1995 Winter quarter. According to most of the witnesses interviewed on this subject, the reason for this was that he had run out of time in light of the fact that he had become Speaker. (7/12/96 Eisenach Tr. 280; 6/28/96 Hanser Tr. 52–53). On the other hand, Mr. Gingrich says that he had learned all he could from teaching the course and had nothing new to say on the topics. (7/18/96 Gingrich Tr. 364). Mr. Gingrich refused to support the efforts of PFF in regard to the course at that point, largely because he was disappointed with Mr. Eisenach's financial management of the course. (7/18/96 Gingrich Tr. 365–366). Mr. Eisenach had indicated to Mr. Gingrich that the course was $250,000 in debt and that PFF had used its own resources to cover this shortfall. (Ex. 130, GDC 11325). Mr. Gingrich was skeptical of this claim, offered to have the records reviewed, and stated that he would help raise any amount that the review disclosed was needed. According to Mr. Gingrich, this offer was not pursued by Mr. Eisenach. (7/18/96 Gingrich Tr. 367–368).

IV. ETHICS COMMITTEE APPROVAL OF COURSE

On May 12, 1993, Mr. Gingrich wrote the Committee asking for "guidance on the development of an intellectual approach to new legislation that will be different from our normal activities." (Ex. 131, p. 1). He said that he wanted "to make sure that [his] activities remain within a framework that meets the legitimate ethics concerns of the House." (Ex. 131, p. 1). He went on to describe a course he was planning to teach in the fall of 1993 at Kennesaw State College.

The course would be based on his January 25, 1993 Special Order entitled "Renewing American Civilization." (Ex. 131, p. 2). It would be "completely non-partisan" and, he

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that were to be used for the course. This entailed Mr. Eisenach and Mr. Hanser editing the writings of others. Mr. Hanser was paid $5,000 or $10,000 for this work, but Mr. Eisenach was not separately compensated for his role in this. (7/12/96 Eisenach Tr. 68). Mr. Eisenach was president of PFF, WPG, former Executive Director of GOPAC, and advisor to Mr. Gingrich. Mr. Hanser was a close friend, confidant, and at times a congressional employee of Mr. Gingrich. He was also a board member and consultant to GOPAC and a board member and consultant to the Progress and Freedom Foundation. (6/28/96 Hanser Tr. 6–10, 14). He had a substantial role in developing the course. (6/28/96 Hanser Tr. 19–20).

[61] The December 8, 1994 letter from Mr. Gingrich to the Committee states that, "Respected scholars such as James Q. Wilson, Everett Carl Ladd, and Larry Sabato continue to contribute to and review course content." (Ex. 138, p. 3). The same reference to Mr. Wilson's and Mr. Sabato's review of the course is contained in a September 3, 1993 memorandum sent out over Jana Rogers' name to site hosts. (Ex. 125, PFF 22963). However, in a letter from James Q. Wilson to Mr. Eisenach dated September 28, 1993, Mr. Wilson wrote:

Perhaps I don't understand the purpose of the course, but if it is to be a course rather [than] a series of sermons, this chapter won't do. It is bland, vague, hortatory, and lacking in substance. (emphasis in original)

* * *

I could go on, but I dare not for fear I have misunderstood what this enterprise is all about. I am a professor, and so I bring the perspectives (and limitations) of a professor to bear on this matter. If this is not to be a course but instead a sermon, then you should get a preacher to comment on it.

(Ex. 126, PFF 5994–5995). Also, in a book co-written by Larry Sabato, the following statements are made:

In late 1992 and early 1993, Gingrich began conceiving a new way to advance those political goals—a nationally broadcast college course, ambitiously titled "Renewing American Civilization," in which he would inculcate students with his Republican values. (p. 94).

* * *

Nominally an educational enterprise, internal course planning documents revealed the true nature of the course as a partisan organizing tool. (p. 95).

Sabato, L. and Simpson, G., "Dirty Little Secrets: The Persistence of Corruption in American Politics," Times Books (1996).

[62] Near the end of his interview, Mr. Mescon expressed embarrassment in regard to his participation in the course. He became involved in the course in order to raise the profile of the school, but now believes that his efforts have had severe repercussions. (6/13/96 Mescon Tr. 136–137).

[63] As of November 1996, PFF's tax return (Form 990) for its third fiscal year (which ended March 31, 1996) had not been filed.

[64] Reinhardt saw the "project" as essentially dealing with the dissemination of the course outside of Reinhardt's campus. (6/12/96 Falany Tr. 48–50, 54–66, 84–85).

[65] All of the funds for the course while at Reinhardt were raised by PFF under its tax exempt status.

[66] Reinhardt College did rent its television production facilities to PFF for its use in the dissemination in the course, and was paid separately for this in the amount of $40,000. All production beyond that was handled by PFF. (6/12/96 Falany Tr. 27–28).

hoped, would include ideas from many people, including politicians from both parties and academics. (Ex. 131, p. 2). He stated that he believed the development of ideas in the course was a "crucial part" of his job as a legislator. (Ex. 131, p. 3). He ended his letter with a request to the Committee to meet to discuss the project if the Committee had any concerns. (Ex. 131, p. 3).

In June 1993, counsel for the Committee, David McCarthy, met with Mr. Gingrich, two people from his staff (Annette Thompson Meeks and Linda Nave) and Mr. Eisenach to discuss the course. (7/18/96 McCarthy Tr. 7; 7/10/96 Meeks Tr. 13). Mr. McCarthy's initial concern was whether Mr. Gingrich could qualify for a teaching waiver under the House ethics rules. (7/18/96 McCarthy Tr. 16). When he learned Mr. Gingrich was teaching without compensation, the issue of a teaching waiver became, in his opinion, irrelevant. (7/18/96 McCarthy Tr. 16). Mr. McCarthy then asked questions regarding whether any official resources would be used to support the course and whether Mr. Gingrich planned to use any unofficial resources to subsidize his official business. Mr. McCarthy did not see any problems pertaining to these issues. Mr. Gingrich indicated that he might repeat the lectures from the course as Special Orders on the floor of the House. Mr. McCarthy suggested that Mr. Gingrich consult with the House Parliamentarian on that subject. (Ex. 132, p. 1).

One issue raised with Mr. McCarthy was whether the House Ethics Rules permitted Mr. Gingrich to raise funds for a tax-exempt organization. Mr. McCarthy's conclusion was that since KSCF was a qualified tax-exempt organization, Mr. Gingrich could raise funds for KSCF as long as he complied with the relevant House rules on the subject. (7/18/96 McCarthy Tr. 17). Mr. Eisenach raised the issue concerning the propriety of his being involved in fundraising for the course in light of the fact that he also worked for GOPAC. According to Mr. McCarthy, his response to the issue was as follows:

[T]o my knowledge of tax law, the issue of whether the contributions in support of the course would keep their tax-deductible status would turn not on who did the fundraising but on how the funds were spent, and that the educational nature of the course spoke for itself. I told him that I was aware of no law or IRS regulation that would prevent Eisenach from raising charitable contributions, even at the same time that he was raising political contributions. In any event, I advised him, I expected the Committee to stick by its advisory opinion in the Ethics Manual and not get into second-guessing the IRS on its determinations of tax-exempt status.

(Ex. 132, p. 2). Mr. McCarthy said in an interview that his statement regarding the Committee's "stick[ing]" by its advisory opinion pertained only to whether Mr. Gingrich could raise funds for the course. (7/18/96 McCarthy Tr. 19). The discussion did not relate to any other 501(c)(3) issues. (7/18/96 McCarthy Tr. 19). While Mr. McCarthy was aware that the course lectures would be taped and broadcast (7/18/96 McCarthy Tr. 16), neither Mr. Gingrich nor his staff asked for Mr. McCarthy's advice regarding what activities in that regard were permissible under 501(c)(3) and Mr. McCarthy did not discuss such issues. (7/18/96 McCarthy Tr. 19; 7/18/96 Gingrich Tr. 375–376; 7/10/96 Meeks Tr. 15). Mr. McCarthy did not recall any discussion regarding a Renewing American Civilization movement. (7/18/96 McCarthy Tr. 16). Mr. McCarthy did not recall any discussion of GOPAC's use of the Renewing American Civilization message. (7/18/96 McCarthy Tr. 12–13). The discussion pertaining to Mr. Eisenach and GOPAC was brief. (Ex. 132, p. 2).

During the meeting with Mr. McCarthy, there were no questions posed about 501(c)(3) or what could be done in regard to the course, aside from the fund-raising issue under 501(c)(3). (7/18/96 Gingrich Tr. 375–376). Mr. Gingrich did not believe that it was necessary to explain to Mr. McCarthy his intended use for the course.

Mr. Cole: We are focusing, however, on your intended use of the course. And your intended use of the course here was in a partisan political fashion; is that correct?

Mr. Gingrich: My intended use was, but I am not sure I had any obligation to explain that to the [C]ommittee. As long as the course itself was nonpartisan and the course itself was legal and the course itself met both accreditation and tax status, I don't believe I had an obligation to tell the Ethics Committee what my political strategies were. I think that's a retrospective comment. And maybe I am wrong.

I don't think—the questions were: Was it legal? Did I use official funds? Had we gotten approval? Was GOPAC's involvement legitimate and legal? Was it an accredited course? Was I getting paid for it?

I mean, none of those questions require that I explain a grand strategy, which would have seemed crazy in '94. If I had wandered around and said to people, hi, we are going to win control, reshape things, end the welfare entitlement, form a grand alliance with Bill Clinton, who is also going to join us in renewing America, how would I have written that?

(11/13/96 Gingrich Tr. 89–90). On July 21, 1993, Mr. Gingrich wrote the Committee to provide additional information about the course he planned to teach at KSC. The letter did not discuss how the course was to be funded or that there was a plan to distribute the course nationally via satellite, videotape, audiotape and cable, or that GOPAC's main theme was to be "Renewing American Civilization." The letter also did not discuss GOPAC's role in the course. (Ex. 133).[67]

On August 3, 1993, the Committee, in a letter signed by Mr. McDermott and Mr. Grandy, responded to Mr. Gingrich's letters of May 12, 1993 and July 21, 1993, regarding his request to the teach the course and his request to present the course materials in Special Orders. (Ex. 134, p. 1). The Committee's letter also notes that Mr. Gingrich had asked if he could help KSC raise funds for the course. The Committee's guidance was as follows:

1. Since Mr. Gingrich was teaching the course without compensation, he did not need the Committee's approval to do so;

2. It was within Mr. Gingrich's "official prerogative" to present the course materials in Special Orders;

3. Mr. Gingrich was permitted to raise funds for the course on behalf of charitable organizations, "provided that no official resources are used, no official endorsement is implied, and no direct personal benefit results."

(Ex. 134, p. 1). The Committee, however, advised Mr. Gingrich to consult with the FEC regarding whether election laws and regulations might pertain to his fundraising efforts. The Committee's letter to Mr. Gingrich did not discuss any matters relating to the implications of 501(c)(3) on the teaching or dissemination of the course or GOPAC's relationship to the course. (Ex. 134, p. 1).

V. Legal Advice Sought and Received

As described in greater detail in the Appendix, section 501(c)(3) requires, among other things, that an organization be organized and operated exclusively for one or more exempt purposes. Treas. Reg. 1.501(c)(3)–1(d)(1)(ii) provides that an organization does not meet this requirement: Unless it serves a public rather than a private purpose. It is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or persons controlled, directly or indirectly, by such private interests.

The purpose of the "private benefit" prohibition is to ensure that the public subsidies flowing from section 501(c)(3) status, including income tax exemption and the ability to receive tax-deductible charitable contributions, are reserved for organizations that are formed to serve public, not private interests. Treas. Reg. 1.501(c)(3)–1(c)(1) defines the application of the private benefit prohibition in the context of the operational test: An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Although cases on the private benefit doctrine date back to 1945,[68] a more recent, significant case on the subject is the 1989 Tax Court opinion in *American Campaign Academy* v. *Commissioner*, 92 T.C. 1053 (1989). That case discusses the doctrine in terms of conferring an impermissible private benefit on Republican candidates and entities.

Prior to his involvement in both AOW/ACTV and the Renewing American Civilization course, Mr. Gingrich was aware of the tax controversy pertaining to the American Campaign Academy ("ACA" or "Academy"). In his interview with Mr. Cole he said, "I was aware of [ACA] because * * * the staff director of the [ACA] had been totally involved. I was aware of his briefings and what was involved. * * * I was aware of them at the time and I was aware of them during the court case." (7/18/96 Gingrich Tr. 375–376). "I lived through that case. I mean, I was very well aware of what the [American Campaign Academy] did and what the ruling was." (11/13/96 Gingrich Tr. 61).[69]

Responding to the question of whether he had any involvement with the Academy, Mr. Gingrich said: "I think I actually taught that [sic], but that's the only direct involvement I had." (12/9/96 Gingrich Tr. 58). In an

[67] The information Mr. Gingrich provided to the Committee was that the Kennesaw State College Foundation, a 501(c)(3) organization affiliated with Kennesaw State College, was providing him with a "Content Coordinator to coordinate the videotape inserts and other materials that will be used in the presentations." (Ex. 133, pp. 1–2). He also wrote that none of his staff would perform tasks associated with the course and that the course material would not be based on previous work of his staff. (Ex. 133, p. 1). Finally, he wrote that much of the material from the course would be presented in Special Orders, although the presentations would have some differences. (Ex. 133, p. 2).

[68] *Better Business Bureau of Washington, D.C.* v. *United States*, 326 U.S. 279 (1945).

[69] His adviser, Mr. Gaylord, was a director of the Academy. (12/9/96 Gingrich Tr. 57; *American Campaign Academy* v. *Commissioner*, 92 T.C. 1053, 1056 (1989)). As referred to above, Mr. Gaylord was one of the "five key people" Mr. Gingrich relied on most. (Ex. 3, GDC 11551, GDC 11553).

undated document on GOPAC stationery entitled "Offices of Congressman Newt Gingrich," three offices are listed: GOPAC, FONG, and the American Campaign Academy. (Ex. 143, Kohler 285). Mr. Gingrich did not believe that he had an office at the Academy, but thought it possible that his press secretary, Rich Galen, had an office there. (12/9/96 Gingrich Tr. 58–59).

In speaking about the Renewing American Civilization course, Mr. Gingrich told the *New York Times* that he acted very aggressively in regard to 501(c)(3) law:

"Whoa," [Mr. Gingrich] said, when asked after class one recent Saturday if the course nears the edge of what the law allows. "Goes right up to the edge. What's the beef? Doesn't go over the edge, doesn't break any law, isn't wrong. It's aggressive, it's entrepreneurial, it's risk taking."

New York Times, section A, page 12, column 1 (Feb. 20, 1995). (Ex. 144). In addition, Mr. Gingrich has had involvement with a number of tax-exempt organizations. As Mr. Gingrich's tax lawyer stated, politics and 501(c)(3) organizations are an "explosive mix." (12/12/96 Holden Tr. 132–134, 146).

Despite all of this, he did not seek specific legal advice concerning the application of section 501(c)(3) with respect to AOW/ACTV or the Renewing American Civilization course. Furthermore, he did not know if any one did so on his behalf. With respect to the course, the following exchange occurred:

Mr. Cole: Were you involved in seeking any legal advice concerning the operation of the course under 501(c)(3)?

Mr. Gingrich: No. We sought legal advice about ethics.

Mr. Cole: Did you seek any legal advice concerning the 501(c)(3) issues involving the course?

Mr. Gingrich: No. I did not.

Mr. Cole: Do you know if anybody did on your behalf?

Mr. Gingrich: No.

(7/17/96 Gingrich Tr. 140). With respect to AOW/ACTV, Mr. Gingrich said that he did not get any legal advice regarding the projects. (12/9/96 Gingrich Tr. 54). He said that he assumed Mr. Callaway sought such legal advice. (12/9/96 Gingrich Tr. 54).

Mr. Gingrich said two attorneys involved with GOPAC at the time, Jim Tilton and Dan Swillinger, monitored all GOPAC activities and would have told him if the projects violated the law. (12/9/96 Gingrich Tr. 54–56). Mr. Callaway said neither Mr. Swillinger nor Mr. Tilton was ever told that one of the purposes of ACTV was to recruit people to the Republican party. (12/7/96 Callaway Tr. 41, 47).[70]

Mr. Gingrich explained to the Subcommittee in November 1996 that, in his opinion, there were no "parallels" between the American Campaign Academy and the Renewing American Civilization course. (11/13/96 Gingrich Tr. 61). After this explanation, Mr. Schiff and Mr. Gingrich had the following exchange:

Mr. Schiff: Did you go to a tax expert and say, here is what I have in mind; do you agree that there are no parallels and that there's no problem with the American Campaign Academy case in terms of what I am doing here? I am just asking if you did that?

Mr. Gingrich: The answer is, no. I just want to assert the reason I wouldn't have done it is as a college teacher who had taught on a college campus I didn't think the two cases—I also didn't ask them if it related to spouse abuse. I mean, I didn't think the two cases had any relationship.

(11/13/96 Gingrich Tr. 61–62). During his testimony before the Subcommittee in December, Mr. Schiff raised similar questions with Mr. Gingrich.

Mr. Schiff: What strikes me is without trying to resolve that at this minute, the possibility is out there, the possibility that a violation of 501(c)(3) is very much in evidence to me. And it seems to me that is true all the way along. You did have the American Campaign Academy case of 1989, which you have indicated you were aware of. It's true the facts were different, but nevertheless something sprung up that told somebody there was a 501(c)(3) problem here if you get too close to political entities.

What I am getting at is this, and again to answer any way you wish, wasn't it, if not intentional, wasn't it reckless to proceed with your involvement as a Member of the House of Representatives into at least a couple of—involvements with the 501(c)(3) organizations, whether it was Progress & Freedom or Kennesaw State or Abraham Lincoln Opportunity Foundation, without getting advice from a tax attorney to whom you told everything? You said, this is the whole plan, this is the whole movement of Renewing American Civilization. * * *

Shouldn't that have been presented to somebody who is a tax attorney, and said, now, am I going to have any problems here? Is this okay under the 501(c)(3) laws?

(12/10/96 Gingrich Tr. 32–33). In response to Mr. Schiff's question, Mr. Gingrich explained why he thought there was no need to seek legal advice because the facts of *American Campaign Academy* and Renewing American Civilization were inapposite. (12/10/96 Gingrich Tr. 34–36).

Mr. Gingrich: The facts are the key. I was teaching at an accredited university; [ACA] was an institution being set up as basically a politically training center. My course was open to everybody; [ACA] was a Republican course. My course says nothing about campaigns; [ACA] was a course specifically about campaigns.

There are four standards * * * none of which apply to Renewing American Civilization. * * * Just at an objective level you are going to put these [ACA and RAC] up on a board and say that is not a relevant question.

(12/10/96 Gingrich Tr. 35). After Mr. Gingrich's explanation, Mr. Schiff said the following:

Mr. Schiff: I understand how you distinguish the facts between the American Campaign Academy case and your course. There are those that would argue that the legal holding applies equally to both. In other words, that which brings you to the legal conclusion of not complying with the 501(c)(3) laws, for various reasons that I'd rather not get into now—discuss with Mr. Holden, perhaps—that those are in common even if certain peripheral facts are different.

What I'm getting at is, excuse me for using your own words, but you're not a lawyer. Knowing that there was an attempt to set up a 501(c)(3) training and education academy which floundered in the courts because of something, wouldn't that motivate particularly a Member of the House to want to say, before you start into another one, maybe I ought to sit down with somebody who is a tax expert and tell them the whole plan here, not just course content, but where the course fits into all the strategies here and say, now, do you think I've got a problem? And I don't think you did that. If you did, tell me you did. * * *

(12/10/96 Gingrich Tr. 36–37). Mr. Gingrich's response was three-fold:

Mr. Gingrich: [First,] [i]f you read the speech I gave in January of 1993, which was the core document from which everything else comes, I talk very specifically about a movement in the speech. I talk very simply about 2 million, not 200,000, volunteers, citizen activists, in the speech. I describe it as a cultural movement that has a political component in the speech.

That's the core document I gave to everyone when I would say, here's what I want to try to teach about. Here is what I want to try to do. That document clearly says there is a movement, and this course is designed to outline the principles from which the movement comes. And so, if everybody who was engaged in looking at the course, whether it was Kennesaw Foundation's lawyers or it was Progress & Freedom's lawyers or it was Reinhardt's lawyers, and the president of the college in both cases, everybody had a chance to read the core document which has movement very specifically in it.

Second, the reason I didn't seek unique legal counsel is as a Ph.D. teaching in a State college in an accredited setting, it never occurred—I mean, if I had thought—this is another proof of my ignorance or proof of my innocence, I'll let you decide—it never occurred to me that this is an issue. * * *

[Third,] I think everybody who has actually seen my course will tell you * * * I was very careful. Ironically, Max Cleland, who won the Senate seat, is the only current politician used in the course other than John Lewis.

And so the course was clearly not Republican. It was clearly not designed to send a partisan message. No one I know of who has actually seen the course thinks that it was a partisan vehicle. It has no relationship to the American Campaign Academy.

(12/10/96 Gingrich Tr. 37–39). Officials at KSC and Reinhardt did not seek legal advice pertaining to the application of 501(c)(3) to the course. The only such advice ever sought was by KSCF in connection with the agreement to transfer the course to PFF in November 1993 and in asking its outside lawyers to render a legal opinion concerning the course in 1995. Citing the attorney/client privilege,

[70] A document dated November 13, 1990, entitled *Campaign For A Successful America*, was reviewed by the Subcommittee. (Ex. 145, Eisenach 3086–3142). In a section drafted by Gordon Strauss, an attorney in Ohio, for a consulting group called the Eddie Mahe Company, the following is written:

.[S]ome educational organizations, tax exempt under Section 501(c)(3) of the Internal Revenue Code, have engaged in activities which affect the outcome of elections, though that is theoretically not supposed to occur.

(Ex. 145, Eisenach 3132). The document also contains the following:

A very controversial program is being undertaken by a (c)(3), indicating that it may have involvement in the electorial process, notwithstanding the express prohibition on it. At this time, a (c)(3) is not recommended because it would have to be truly independent of the (c)(4) and its PAC.

(Ex. 145, Eisenach 3134).

There was substantial inquiry about this document during the Preliminary Inquiry. No evidence was uncovered to indicate that Mr. Gingrich had any exposure to this document. (12/5/96 Mahe Tr. 34–35; 12/9/96 Gingrich Tr. 52–54; 12/5/96 Eisenach Tr. 59–61). Mr. Strauss was interviewed and stated that the document had nothing to do with AOW/ACTV, the 501(c)(3) organization referred to in the document was merely one he had heard of in an IRS Revenue Ruling, and that he never gave Mr. Gingrich any advice on the law pertaining section 501(c)(3) in regard to AOW/ACTV, the Renewing American Civilization course, or any other projects. The only legal advice he gave Mr. Gingrich pertained to need for care in the use of official resources for travel expenses.

KSCF officials have refused to disclose to the Subcommittee the advice KSCF received in both instances. (6/13/96 Mescon Tr. 60; 6/13/96 Siegel Tr. 36–37; 6/12/96 Falany Tr. 50–51; 6/13/96 Fleming Tr. 46–48).

In his July 1996 interview, Mr. Eisenach said that he did not seek legal advice pertaining to the application of 501(c)(3) to the course. (7/12/96 Eisenach Tr. 236). In his November 1996 interview, Mr. Eisenach said that he had worked with many attorneys who had experience in 501(c)(3) law. (11/14/96 Eisenach Tr. 84–88). But he was not able to point to any specific consultation with a tax attorney where the entire relationship between the course, the movement, and political goals were fully set forth and found to be within the bounds of 501(c)(3). (11/14/96 Eisenach Tr. 88–91).

VI. Summary of the Report of the Subcommittee's Expert

A. Introduction

Because of differences of opinion among the Members of the Subcommittee regarding the tax issues raised in the Preliminary Inquiry, the Subcommittee determined that it would be helpful to obtain the views of a recognized expert in tax-exempt organizations law, particularly with respect to the "private benefit" prohibition. The expert, Celia Roady, reviewed Mr. Gingrich's activities on behalf of ALOF and the activities of others on behalf of ALOF with Mr. Gingrich's knowledge and approval. She also reviewed Mr. Gingrich's activities on behalf of KSCF, PFF, and Reinhardt College in regard to the Renewing American Civilization course and the activities of others on behalf of those organizations with Mr. Gingrich's knowledge and approval. The purpose of this review was to determine whether those activities violated the status of any of these organizations under section 501(c)(3) of the Internal Revenue Code.

B. Qualifications of the Subcommittee's Expert

Ms. Roady is a partner in the Washington, D.C. office of the law firm Morgan, Lewis & Bockius LLP where she specializes full-time in the representation of tax-exempt organizations. Her practice involves the provision of advice on all aspects of section 501(c)(3). Ms. Roady has written many articles on tax-exempt organization issues for publication in legal periodicals such as the "Journal of Taxation of Exempt Organizations" and the "Exempt Organization Tax Review." She is a frequent speaker on exempt organizations topics, regularly lecturing at national tax conferences such as the ALI/ABA conference on charitable organizations and the Georgetown University Law Center conference on tax-exempt organizations, as well as at local tax conferences and seminars on tax-exempt organization issues. In 1996, she was named the Program Chair of the Georgetown University Law Center's annual conference on tax-exempt organizations. (11/15/96 Roady Tr. 2–7).

Ms. Roady is the immediate past Chair of the Exempt Organizations Committee of the Section of Taxation of the American Bar Association, having served as Chair from 1993 to 1995. She is currently serving a three-year term as a member of the Council of the ABA Section of Taxation, and is the Council Director for the Section's Exempt Organizations Committee. She also serves on the Legal Section Council of the American Society of Association Executives, and is a Fellow of the American College of Tax Counsel. (11/15/96 Roady Tr. 2–7).

Ms. Roady served a three-year term as the Co-Chair of the Exempt Organizations Committee of the District of Columbia Bar's Tax Section from 1989 to 1991. She also served on the Steering Committee of the D.C. Bar's Tax Section from 1989 to 1995, and as Co-Chair of the Steering Committee from 1991 to 1993. (11/15/96 Roady Tr. 2–7).

Each of the attorneys interviewed for the position of expert for the Subcommittee highly recommended Ms. Roady. She was described as being impartial and one of the leading people in the field of exempt organizations law. (11/15/96 Roady Tr. 2).[71]

Ms. Roady is a 1973 magna cum laude graduate of Duke University. She received her law degree from Duke Law School, with distinction, in 1976. She received a masters degree in taxation from the Georgetown University Law Center in 1979.

C. Summary of the Expert's Conclusions

Ms. Roady considered the following issues in her review:

1. whether the content of the television programs broadcast by ALOF or the Renewing American Civilization course were "educational" within the meaning of section 501(c)(3);

2. whether one of the purposes of the activities with respect to the television programs or the course was to provide more than an incidental benefit to GOPAC, Mr. Gingrich, or other Republican entities and candidates in violation of the private benefit prohibition in section 501(c)(3);

3. whether the activities with respect to the television programs or the course provided support to GOPAC or a candidate for public office in violation of the campaign intervention prohibition in section 501(c)(3);

4. whether the activities with respect to the television programs or the course violated the private inurement prohibition in section 501(c)(3); and

5. whether the activities with respect to the television programs or the course violated the lobbying limitations applicable to section 501(c)(3) organizations.

(11/15/96 Roady Tr. 7).[72]

With respect to the last two issues, Ms. Roady did not conclude that the activities with respect to the television programs or the course resulted in impermissible private inurement or violated the lobbying limitations applicable to section 501(c)(3) organizations. Similarly, with respect to the first issue, Ms. Roady concluded that the television programs and the course met the requirements of the methodology test described in Rev. Proc. 86-43 and were "educational" within the meaning of section 501(c)(3) even though they advocated particular viewpoints and positions. Accordingly, Ms. Roady concluded that the activities with respect to the television programs and the course served an educational purpose and would be appropriate activities for section 501(c)(3) organizations, as long as there was no violation of the private benefit prohibition or the campaign intervention prohibition. She found substantial evidence, however, of violations of both such prohibitions and therefore concluded that Mr. Gingrich's activities on behalf of the organizations and the activities of others on behalf of the organizations with Mr. Gingrich's knowledge and approval violated the organizations' status under section 501(c)(3). (11/15/96 Roady Tr. 7). The basis for her conclusions may be summarized briefly as follows:

1. The American Citizens Television Program of ALOF[73]

a. Private benefit prohibition

Under section 501(c)(3) and the other legal authorities discussed above, the analysis of whether there is a violation of the private benefit prohibition does not depend on whether the activities at issue—the television programs—served an exempt purpose. Even though the television programs met the definition of "educational," there is a violation of section 501(c)(3) if another purpose of the activities was to provide more than an insubstantial or incidental benefit to GOPAC or any other private party. As the Supreme Court stated in *Better Business Bureau* v. *United States*, 326 U.S. 276, 283 (1945), "the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes." In making such a determination, the Tax Court has held that the proper focus is "the purpose towards which an organization's activities are directed and not the nature of the activities themselves." American Campaign Academy, 92 T.C. at 1078–79. The determination as to whether there is a violation of the private benefit prohibition cannot, therefore, be made solely by reference to the content of the television programs or whether the activities in relation to the programs served an educational purpose. Rather, the determination requires a factual analysis to determine whether the organization's activities also had another, nonexempt purpose to provide more than an incidental benefit to a private party such as GOPAC or Republican entities and candidates. In this case, there is substantial evidence that these parties were intended to and did receive more than an incidental benefit from the activities conducted by ALOF.

In summary, according to Ms. Roady, the evidence shows that the ACTV project was a continuation of GOPAC's AOW project, and had the same partisan, political goals as AOW. These goals included, among other things, reaching "new groups of voters not traditionally associated with [the Republican] party;" "mobiliz[ing] thousands of people across the nation at the grass roots level [to become] dedicated GOPAC activists;" and "making great strides in continuing to recruit activists all across America to become involved with the Republican

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[71] The one known public comment on the matter by Ms. Roady is found in the following paragraph from a New York Times article: "Clearly, it's an aggressive position," said Celia Roady, a Washington lawyer and chairwoman of the American Bar Association's committee on tax-exempt organizations, who stressed that she was not talking for the association. "Whether it's too aggressive and crosses the line, I don't know. Clearly, it's more aggressive than many exempt organizations would go forward with."

New York Times, section A, page 12 (Feb. 20, 1995). (Ex. 144). In the same article, Mr. Gingrich is quoted as saying that he acted aggressively in regard to 501(c)(3) law: "Whoa," [Mr. Gingrich] said, when asked after class one recent Saturday if the course nears the edge of what the law allows. "Goes right up to the edge. What's the beef? Doesn't go over the edge, doesn't break any law, isn't wrong. It's aggressive, it's entrepreneurial, it's risk taking."

New York Times, section A, page 12, column 1 (Feb. 20, 1995).

[72] A detailed discussion of the law pertaining to organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code is attached as an Appendix to this Report.

[73] After Ms. Roady met with the Subcommittee to discuss the tax-exempt organizations law and her conclusions regarding Renewing American Civilization, she met with the Special Counsel to discuss the ACTV project. Although she did not formally present her conclusions to the Subcommittee, the legal principles she explained during her meetings with the Subcommittee with respect to Renewing American Civilization were equally applicable to the facts surrounding the ACTV project and support her conclusions set forth in this section of the Report.

party." The persons who conducted the ACTV project on behalf of ALOF were GOPAC officers, employees, or consultants. In essence, the transfer of the AOW project from GOPAC to ALOF was more in name than substance, since the same activities were conducted by the same persons in the same manner with the same goals. Through the use of ALOF, however, these persons were able to raise tax-deductible charitable contributions to support the ACTV project, funding that would not have been available to GOPAC on a tax-deductible basis.

Taken together, according to Ms. Roady, the facts as described above show that in addition to its educational purpose, another purpose of the ACTV project was to benefit GOPAC and, through it, Republican entities and candidates, by continuing to conduct the AOW project under a new name and through a section 501(c)(3) organization that could raise funding for the project through tax-deductible charitable contributions. This benefit was not merely incidental. To the contrary, the evidence supports a finding that one of the main purposes for transferring the project to ALOF was to make possible the continuation of activities that substantially benefited GOPAC and Republican entities and candidates.

For these reasons, Ms. Roady concluded that one of the purposes of Mr. Gingrich's activities on behalf of ALOF and the activities of others on behalf of ALOF with Mr. Gingrich's knowledge and approval was to provide more than an incidental benefit to GOPAC and Republican entities and candidates in violation of the private benefit prohibition.

b. Campaign intervention prohibition

As with respect to the private benefit prohibition, the legal authorities discussed above make it clear, according to Ms. Roady, that the analysis of whether there is a violation of the campaign intervention prohibition does not turn on whether the television programs had a legitimate educational purpose. In the IRS CPE Manual, the IRS explained that "activities that meet the [educational] methodology test * * * may nevertheless constitute participation or intervention in a political campaign." IRS CPE Manual at 415. See also New York Bar, 858 F.2d 876 (2d Cir. 1988); Rev. Proc. 86-43. Nor does the analysis turn on the fact that the television programs did not expressly urge viewers to "support GOPAC," "vote Republican," or "vote for Mr. Gingrich." The IRS does not follow the express advocacy standard applied by the FEC, and it is not necessary to advocate the election or defeat of a clearly identified candidate to violate the campaign intervention prohibition. IRS CPE Manual at 413. The determination as to whether there is a violation of the campaign intervention prohibition requires an overall "facts and circumstances" analysis that cannot be made solely by reference to the content of the television programs.

The central issue is whether the television programs provided support to GOPAC. When Congress enacted section 527 in 1974, the legislative history explained that the provision was not intended to affect the prohibition against electioneering activity contained in section 501(c)(3). The IRS regulations under section 527 provide that section 501(c)(3) organizations are not permitted to establish or support a PAC. Treas. Reg. § 1.527-6(g). Under the applicable legal standards, there is a violation of the campaign intervention prohibition with respect to ALOF if the evidence shows that the ACTV project provided support to GOPAC, even though the television programs were educational and were not used as a means to expressly advocate the election or defeat of a particular candidate.

According to Ms. Roady, there is substantial evidence of such support in this case. As discussed above, the evidence shows that the ACTV project conducted by ALOF was a continuation of AOW, a partisan, political project undertaken by GOPAC. Mr. Gingrich himself described ACTV as a continuation of the AOW project. The activities conducted by ALOF with respect to the ACTV project were the same as the activities that had been conducted by GOPAC with respect to the AOW project. The persons who conducted the ACTV project on behalf of ALOF were GOPAC officers, employees, or consultants. Shifting the project to ALOF allowed the parties to raise some tax-deductible charitable contributions to conduct what amounted to the continuation of a GOPAC project for partisan, political purposes. For these reasons, Ms. Roady concluded that Mr. Gingrich's activities on behalf of ALOF and the activities of others on behalf of ALOF with Mr. Gingrich's knowledge and approval provided support to GOPAC in violation of the campaign intervention prohibition.

2. THE RENEWING AMERICAN CIVILIZATION COURSE

a. Private benefit prohibition

The determination of whether there is a violation of the private benefit prohibition does not depend on whether the teaching and dissemination of the course served an educational purpose, and cannot be made simply by analyzing the content of Mr. Gingrich's lectures. The course met the definition of "educational" under section 501(c)(3) and served an educational purpose. (11/15/96 Roady Tr. 7). Nevertheless, there is a violation of section 501(c)(3) if another purpose of the course was to provide more than an incidental private benefit. (11/15/96 Roady Tr. 17). Making this determination requires an analysis of the facts to find out whether Mr. Gingrich's activities on behalf of KSCF, PFF, and Reinhardt and the activities of others with his knowledge and approval had another nonexempt purpose to provide more than an incidental benefit to private parties such as Mr. Gingrich, GOPAC, and other Republican entities and candidates. In this case, there is substantial evidence that these parties were intended to and did receive more than an incidental benefit from the activities conducted with respect to the course. (11/15/96 Roady Tr. 78, 123, 124, 130, 131, 142-145, 173, 195).

In summary, according to Ms. Roady, the evidence shows that the course was developed by Mr. Gingrich in the context of a broader movement. (11/15/96 Roady Tr. 127-130, 134-135, 196). This movement was intended to have political consequences that would benefit Mr. Gingrich in his re-election efforts, GOPAC in its national political efforts, and Republican party entities and candidates in seeking to attain a Republican majority. The goals of the movement were expressed in various ways, and included arousing 200,000 activists interested in renewing American civilization by replacing the welfare state with an opportunity society and having the Republican party adopt the message of Renewing American Civilization so as to attract those activists to the party. It was intended that a Republican majority would be part of the movement, and that the Republican party would be identified with the "opportunity society" and the Democratic party with the "welfare state." (11/15/96 Roady Tr. 128, 130, 142, 145-148, 217-218; 11/19/96 Roady Tr. 35, 41),

The movement, the message of the movement, and the course were all called "Renewing American Civilization." Mr. Gingrich's lectures in the course were based on the same principles as the message of the movement, and the course was an important vehicle for disseminating the message of the movement. Mr. Gingrich stated that the course was "clearly the primary and dominant method [of disseminating the message of the movement.]" Mr. Gingrich used the Renewing American Civilization message in almost every political and campaign speech he made in 1993 and 1994. He was instrumental in determining that virtually the entire political program for GOPAC for 1993 and 1994 would be centered on developing, disseminating, and using the message of Renewing American Civilization. (11/15/96 Roady Tr. 125-127, 144-145, 148-149, 153, 177, 218).

Although GOPAC's financial resources were not sufficient to enable it to carry out all of the political programs at its usual level during this period, it had many roles in regard to the course. These roles included development of the course content which was coordinated in advance with GOPAC charter members, fundraising for the course on behalf of the section 501(c)(3) organizations, and promotion of the course. GOPAC envisioned a partisan, political role for the course. (11/15/96 Roady Tr. 197-202, 208-209).

From 1993 to 1995, KSCF and PFF spent most of the money they had raised for the course on the dissemination of the 20 hours taught by Mr. Gingrich. These funds were raised primarily through tax-deductible charitable contributions to KSCF and to PFF,[74] funding that would not have been available had the project been conducted by GOPAC or another political or noncharitable organization.

According to Ms. Roady, the facts as set forth above show that, although the Renewing American Civilization course served an educational purpose, it had another purpose as well. (11/19/96 Roady Tr. 37, 40). The other purpose was to provide a means for developing and disseminating the message of Renewing American Civilization by replacing the welfare state with an opportunity society. That was the main message of GOPAC and the main message of virtually every political and campaign speech made by Mr. Gingrich in 1993 and 1994. Through the efforts of Mr. Gingrich and others acting with his knowledge and approval, tax-deductible charitable contributions were raised to support the dissemination of a course in furtherance of Mr. Gingrich's political strategies. (11/19/96 Roady Tr. 37, 38). Mr. Gingrich encouraged GOPAC, House Republicans and other Republican entities and candidates to use the course in their political strategies as well. (11/15/96 Roady Tr. 145, 152, 173).

The partisan, political benefit to these parties was intended from the outset, and this benefit cannot be considered merely incidental. To the contrary, the evidence supports a finding that one of Mr. Gingrich's main purposes for teaching the course was to develop and disseminate the ideas, language, and concepts of Renewing American Civilization as an integral part of a broad movement intended to have political consequences that would benefit him in his re-election efforts, GOPAC in its political efforts, and other Republican entities and candidates in seeking to attain a Republican majority. For these reasons, Ms. Roady concluded that one of the purposes of Mr. Gingrich's activities on behalf of KSCF, PFF and Reinhardt in regard

[74] Some funding came from the sale of videotapes and audiotapes of the course. (7/12/96 Eisenach Tr. 283).

to the course entitled "Renewing American Civilization" and the activities of others on behalf of those organizations with Mr. Gingrich's knowledge and approval was to provide more than an incidental benefit to Mr. Gingrich, GOPAC, and other Republican entities and candidates in violation of the private benefit prohibition. (11/15/96 Roady Tr. 122, 125, 127, 143–145, 148, 152, 153, 187–189, 213–217).

b. Campaign intervention prohibition

As discussed above, neither the fact that the content of the Renewing American Civilization course is educational within the meaning of section 501(c)(3) nor the fact that the course lectures do not contain expressions of support or opposition for a particular candidate precludes a finding that there is a violation of the campaign intervention prohibition. Section 501(c)(3) organizations are prohibited from establishing or supporting PACs, and from providing support to candidates in their campaign activities. The relevant issue is whether the course provided support to GOPAC or to Mr. Gingrich in his capacity as a candidate.

According to Ms. Roady, there is substantial evidence of such support in this case. As discussed above, the evidence shows that the course was developed by Mr. Gingrich as a part of a broader political movement to renew American civilization by replacing the welfare state with an opportunity society. The course was an important vehicle for disseminating the message of that movement. The message of replacing the welfare state with the opportunity society was also used in a partisan, political fashion. The "welfare state" was associated with Democrats and the "opportunity society" was associated with Republicans. The message of the course was also the main message of GOPAC during 1993 and 1994 and the main message of virtually every political and campaign speech made by Mr. Gingrich in 1993 and 1994. Through the use of section 501(c)(3) organizations, Mr. Gingrich and others acting with his knowledge and approval raised tax-deductible charitable contributions which were used to support a course designed, developed and disseminated in a manner that provided support to GOPAC in its political programs and to Mr. Gingrich in his re-election campaign. For these reasons, Ms. Roady concluded that Mr. Gingrich's activities on behalf of KSCF, PFF and Reinhardt and the activities of others on behalf of those organizations with Mr. Gingrich's knowledge and approval provided support to GOPAC and to Mr. Gingrich in violation of the campaign intervention prohibition. (11/15/96 Roady Tr. 171–175, 194).

D. Advice Ms. Roady Would Have Given

Had Mr. Gingrich or others associated with ACTV or Renewing American Civilization consulted with Ms. Roady prior to conducting these activities under the sponsorship of 501(c)(3) organizations, she would have advised that they not do so for the reasons set forth above. During her testimony before the Subcommittee, she was asked what her advice would have been to Mr. Gingrich and others associated with ACTV and Renewing American Civilization. She said that she would have recommended the use of a 501(c)(4) organization to pay for the dissemination of the course, as long as the dissemination was not the primary activity of the 501(c)(4) organization. If this had been done, contributions for ACTV and the course would not have been tax-deductible. (11/15/96 Roady Tr. 207–208).

VII. SUMMARY OF CONCLUSIONS OF MR. GINGRICH'S TAX COUNSEL

A. Introduction

During the Preliminary Inquiry, Mr. Gingrich's lawyer forwarded to the Subcommittee a legal opinion letter and follow-on letter regarding the tax questions at issue. The letters were prepared by attorney James P. Holden. At Mr. Gingrich's request, Mr. Holden and his partner who helped him prepare the letters, Susan Serling, met with the Subcommittee on December 12, 1996, to discuss his conclusions. The purpose of the letters was to express Mr. Holden's conclusions regarding whether any violation of section 501(c)(3) occurred with respect to the Renewing American Civilization course.

His understanding of the facts of the matter was based on a review of the course book prepared for the course, videotapes of the course, documents produced by KSC pursuant the Georgia Opens Records Act, PFF's application to the IRS for exemption, newspaper articles, discussions with Mr. Baran, Mr. Eisenach, and counsel to PFF and KSCF.[75]

B. Qualifications of Mr. Gingrich's Tax Counsel

Mr. Holden is a partner at the Washington, D.C. law firm of Steptoe and Johnson. He was an adjunct professor at Georgetown University Law Center from 1970 to 1983. He is co-author of "Ethical Problems in Federal Tax Practice" and "Standards of Tax Practice." He is the author of numerous tax publications and a speaker at numerous tax institutes. He was chair of the American Bar Association Section of Taxation from 1989 to 1990; chair of the Advisory Group to the Commissioner of Internal Revenue from 1992 to 1993; and chair of the IRS Commissioner's Review Panel on Integrity Controls from 1989 to 1990. He was a trustee and president of the American Tax Policy Institute from 1993 to 1995 and a regent of the American College of Tax Counsel. He is or was a member of the following organizations: American Law Institute (consultant, Federal Income Tax Project); Advisory Group to Senate Finance Committee Staff regarding Subchapter C revisions (1984–1985); Board of Advisors, New York University/Internal Revenue Service Continuing Professional Education Program (1987–1990); and BNA Tax Management Advisory Board. He received a J.D. degree from Georgetown University Law Center in 1960 and a B.S. degree from the University of Colorado in 1953.

His experience in 501(c)(3) law stems principally from one client and one case that has been before the IRS for the past six years. (12/12/96 Holden Tr. 21).[76] He said during his testimony, "I don't pretend today to be a specialist in exempt organizations. * * * I pretend to be an expert in the political aspects of such organizations." (12/12/96 Holden Tr. 21). The one case Mr. Holden worked on has not been resolved and he has spent, on average, about 30 percent of his time for the last six years on this case. (12/12/96 Holden Tr. 24). He has never been a member of any organization or committee concerned principally with tax-exempt organizations law. (12/12/96 Holden Tr. 25). He does not have any publications in the exempt organizations field. (12/12/96 Holden Tr. 25). He has never given any speeches on exempt organizations law nor has he been an expert witness with respect to exempt organizations law. (12/12/96 Holden Tr. 26).

When Mr. Baran asked Mr. Holden to prepare his opinion letter, Mr. Baran did not ask what qualifications Mr. Holden had in the exempt organizations area. (12/12/96 Holden Tr. 32). Mr. Holden did not give Mr. Baran any information regarding his background in exempt organizations law other than the names of two references. (12/12/96 Holden Tr. 33).

Mr. Holden's partner who helped prepared the opinion, Susan Serling, does not have experience in the exempt organizations field other than with respect to the one case referred to above that is still before the IRS. (12/12/96 Holden Tr. 27). She is not a member of the ABA Exempt Organizations Committee and does not have any publications in the exempt organizations field. She has never given any speeches pertaining to exempt organizations law and has never testified as an expert witness with respect to exempt organizations law. (12/12/96 Holden Tr. 27).

C. Summary of Conclusions of Mr. Gingrich's Tax Counsel

As set forth in Mr. Holden's opinion letter, his follow-on letter, and in his testimony, it was Mr. Holden's opinion, based on his review of the facts available to him, that "there would be no violation of section 501(c)(3) if an organization described in that section were to conduct 'Renewing American Civilization' as its primary activity." (9/6/96 Holden Ltr. 4). In arriving at this opinion, Mr. Holden evaluated the facts in light of the requirements:

1. that a section 501(c)(3) organization be operated exclusively for an exempt purpose;
2. that the organization serve a public rather than a private interest;
3. that the earnings of an organization not inure to the benefit of any person;
4. that no substantial part of the activities of the organization consist of attempting to influence legislation; and
5. that the organization not participate or intervene in any political campaign in support of or in opposition to any candidate for public office.

(9/6/96 Holden Ltr. 4). A discussion of Mr. Holden's views on the two principal tax questions at issue before the Subcommittee—the private benefit prohibition and campaign intervention prohibition—is set forth below.

1. PRIVATE BENEFIT PROHIBITION

With respect to whether Renewing American Civilization violated the private benefit prohibition described above, Mr. Holden's opinion and follow-on letter focused exclusively on the *American Campaign Academy case*. His letters did not refer to other precedent or IRS statements pertaining to the private benefit prohibition. In evaluating whether Renewing American Civilization created any discernible secondary benefit, in the terms used by the Court in *American Campaign Academy*, Mr. Holden considered whether the course provided an "identifiable benefit" to GOPAC or the Republican party. He concluded that it did not.

Following our review of the course materials, the course syllabi, and video tapes of

[75] Mr. Holden and his partner conferred with Mr. Eisenach for about three hours. (12/12/96 Holden Tr. 38). The conversation with KSCF counsel, via telephone, lasted about 30 minutes. (12/12/96 Holden Tr. 39). The conversation with PFF's counsel lasted about two hours. (12/12/96 Holden Tr. 38–39). Mr. Holden did not talk to Mr. Gingrich prior to writing the opinion. (12/12/96 Holden Tr. 43). He also did not talk to anyone else involved in the course, such as Mr. Hanser, Ms. Rogers, Ms. Nelson, Mr. Mescon, or Ms. Minnix. (12/12/96 Holden Tr. 43–44).

[76] Although Mr. Holden declined to identify the client in this case, he said that the case "is perhaps the largest case the Internal Revenue Service has before it on this whole issue." (12/12/96 Holden Tr. 20–21).

the course lectures, we have not been able to identify any situation in which students of the course were advised to vote Republican, join the Republican party, join GOPAC, or support Republicans in general. Rather, the course explored broad aspects of American civilization through Mr. Gingrich's admittedly partisan viewpoint.

(9/17/96 Holden Ltr. 5). Mr. Holden also wrote:

From our review of the course materials * * * and their presentation, it appears to us that the educational message was not narrowly targeted to benefit particular organizations or persons beyond the students themselves.

(9/6/96 Holden Ltr. 58). During his testimony before the Subcommittee, Mr. Holden said that because the course was educational within the meaning of the "methodology test" referred to above, he could not "conceive" of how the broad dissemination of its message could violate 501(c)(3). (12/12/96 Holden Tr. 71).

Now, when we get into the course—and I am saying I am going to look at the activities, and if I have a clean educational message, then my organization is entitled to disseminate that message as broadly as we have the resources to do [for any purpose as long as it is] serving the public with that in the sense that this message has utility to the public.

(12/12/96 Holden Tr. 113–114). In coming to his conclusion that the course did not violate the private benefit prohibition, Mr. Holden made several findings of fact and several assumptions. For example, he wrote that he considered the facts that established a close connection between individuals who were active in GOPAC and the development and promotion of the course. As he characterized it, GOPAC's former Executive Director and GOPAC employees became employees or contractors to the organizations that conducted the course. Individuals, foundations, and corporations that provided financial support for the course were also contributors to GOPAC or Mr. Gingrich's political campaigns. GOPAC employees solicited contributions for the course. (9/6/96 Holden Ltr. 4). Furthermore, documents he reviewed:

provide[d] evidence that the course was developed in a political atmosphere and as part of a larger political strategy. The documents indicate that Mr. Gingrich and GOPAC evolved a political theme that they denominated "Renewing American Civilization" and that, in their political campaign capacities, they intended to press this theme to the advantage of Republican candidates.

(9/17/96 Holden Ltr. 2). Mr. Holden assumed a political motivation behind the development of the course. As described in his opinion letter:

[T]he individuals who controlled GOPAC and who participated in promoting the course viewed the course as desirable in a political context, and many of their expressions and comments evidence a political motive and interest. * * * Mr. Gingrich is a skilled politician whose ideology finds expression in a political message, and he is interested in maximum exposure of that message and in generating interest in those who might be expected to become advocates of the message. In sum, we have not assumed that the development and promotion of the course were free from political motivation.

(9/6/96 Holden Ltr. 4–5). Furthermore, Mr. Holden said that when preparing his opinion, he made the "critical assumption that the interests of the political persona surrounding GOPAC were advanced by creating this course." (12/12/96 Holden Tr. 72). In this regard, Mr. Holden also said during his testimony:

We have taken as an assumption that the intent [of the course] was to benefit the political message. If someone told me that teaching the course actually resulted in the benefit, I guess I wouldn't be surprised because that was our understanding of the objective. * * * I accept[ed] for purposes of our opinion that there was an intent to advance the political message by utilizing a (c)(3).

(12/12/96 Holden Tr. 83). In Mr. Holden's opinion, however, the political motivation or strategy behind the creation of the course is irrelevant when determining whether a violation of the private benefit prohibition occurred.

It is not the presence of politicians or political ideas that controls. The pertinent law does not turn on the political affiliations or political motivations of the principal participants.

(9/6/96 Holden Ltr. 6). According to Mr. Holden, the issue of whether a violation of 501(c)(3) occurred "may not be resolved by a determination that the individuals who designed and promoted the course acted with political motivation." (9/17/96 Holden Ltr. 4). In his opinion, when determining whether an organization violated the private benefit prohibition, it is necessary to determine whether an organization's activities in fact served a private interest. (12/12/96 Holden Tr. 80). What motivates the activities is irrelevant.

I'm saying it's irrelevant to look to what caused an individual or group of individuals to form a (c)(3) or to utilize a 501(c)(3) organization. The question instead is on the activities—the focus instead is on the activities of the organization and whether they violated the operational test. I think that's a critical distinction.

(12/12/96 Holden Tr. 61). He said that he was "aware of no authority that would hold that because one is motivated to establish a 501(c)(3) organization by business, political, or other motivation, that means that the organization cannot operate in a manner that satisfies 501(c)(3), because we are talking about an operational test." (12/12/96 Holden Tr. 17–18). Mr. Holden cited *American Campaign Academy* as an authority for his conclusion that an organization's activity must itself benefit a targeted group and that motivation of an organization's agents in conducting that activity is irrelevant. Mr. Holden said:

[In American Campaign Academy] [t]he focus was, instead, on the operational test and whether the activities of the organization evidenced a purpose to serve a private interest. But you have to find that in the activities of the organization and not in some general notion of motivation or background purpose.

(12/12/96 Holden Tr. 61). In light of these and similar comments made by Mr. Holden, the Special Counsel asked Mr. Holden to comment on statements found in the *American Campaign Academy* case at page 1064. The statements are in a section of the case under the heading "Operational Test" and are as follows:

The operational test examines the *actual purpose* for the organization's activities and *not* the nature of the activities or the organization's statement of purpose. (citations omitted). (emphasis supplied).

In testing compliance with the operational test, we look beyond the four corners of the organization's charter to discover "the actual objects *motivating* the organization and the subsequent conduct of the organization." (citations omitted). (emphasis supplied).

What an organization's purposes are and what purposes its activities support are questions of fact. (citations omitted).

(12/12/96 Holden Tr. 75–76). After the Special Counsel brought these sections of the case to Mr. Holden's attention, the following exchange occurred:

Mr. Holden: May I refer you to the last sentence before the next heading, "Operating Primarily for Exempt Purposes." The last sentence before that says: "The sole issue for declaration [sic] is whether respondent properly determined that petitioner failed to satisfy the first condition of the operational test by not primarily engaging in activities, which is not for exempt purposes."

It's an activities test. And this is where the courts say this is the sole issue. The stuff before, they're just kind of reciting the law. When he gets to this, he said this is what we have to determine.

Mr. Cole: But in reciting the law, don't they say, in testing compliance with the operational test, we look beyond the four corners of the organization's charter to discover the actual objects motivating the organization? Prior to that, they say the operational test examines the actual purpose for the organization's activities, not the nature of the activities or the organization's statement of purpose.

I grant you that is the statement of the law, but you are saying that has no significance?

Mr. Holden: That's not the case Judge Nims decided. * * *

(12/12/96 Holden Tr. 77).

2. CAMPAIGN INTERVENTION PROHIBITION

In his opinion letter, Mr. Holden wrote that it was "important to note that section 501(c)(3) does not, as is often suggested, bar 'political activity' [by 501(c)(3) organization]." (9/6/96 Holden Ltr. 68). The prohibition is more limited and prohibits an organization from participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office. In order for an organization to violate this prohibition, there must exist a campaign, a candidate, a candidate seeking public office, and an organization that participates or intervenes on behalf of or in opposition to that candidate. (9/6/96 Holden Ltr. 68–69). Mr. Holden concluded that the course did not violate this prohibition.

The [course] materials contain no endorsement of or opposition to the candidacy of any person, whether expressed by name or through the use of a label that might be taken as a stand-in for a candidate. While the materials are critical of what is referred to as the "welfare state" and laudatory of what is described as an "opportunity society," none of this is properly characterized as personalized to candidates, directly or indirectly.

(9/6/96 Holden Ltr. 72). During his testimony before the Subcommittee, Mr. Holden said that the course contained issue advocacy in the sense that it called for the replacement of the welfare state with the opportunity society. (12/12/96 Holden Tr. 103–104). He also said that this issue—the replacement of the welfare state with an opportunity society—was closely identified with Mr. Gingrich and his political campaigns. (12/12/96 Holden Tr. 104). He, however, did not see this as a basis for concluding that the course violated the prohibition on intervention in a political

campaign because "Mr. Gingrich [had not] captured [this issue] to the point where it is not a legitimate public interest issue for discussion in a purely educational setting, even where he is the instructor." (12/12/96 Holden Tr. 104).[77]

D. Advice Mr. Holden Would Have Given

During his appearance before the Subcommittee, Mr. Holden was asked about what type of organization he would have advised Mr. Gingrich and others to use in order to conduct and disseminate Renewing American Civilization had he been asked in advance. He said that he would not have advised the use of a 501(c)(3) organization because the mix of politics and tax-deductible funds is too "explosive."

I would have advised them not to do the activity through a (c)(3). I have already expressed that view to the Speaker. He didn't consult me in advance, but I said, if I had been advising you in advance. He said, why not. I said, because the intersection of political activity and 501(c)(3) is such an explosive mix in terms of the IRS view of things that I would not advise you to move that close to the issue. You should find a way of financing the course that doesn't involve the use of 501(c)(3) funds. That would have been my advice to him.

I said, that doesn't mean I conclude that what you did is a violation. In fact, I think we are kind of fairly far out beyond the frontiers of what has been decided in the past in this area. We are looking at the kind of case that I do not think has ever been presented. I do not see how anyone can conclude that this is an open and shut case. It just is not of that character.

(12/12/96 Holden Tr. 132–134). Mr. Holden said that an appropriate vehicle for the course might have been a 501(c)(4) organization because such an organization can engage in some political activity and the activity would not have used tax-deductible funds.

(12/12/96 Holden Tr. 132–134). Later, Mr. Holden reiterated that he would have not recommended that Renewing American Civilization be sponsored and funded by a 501(c)(3) organization and pointed out such activities are highly likely to attract the attention of the IRS.

[T]hose funds are deductible and the conjunction of politics and a (c)(3) organization is so explosive as a mix that it is bound to attract the attention of the Internal Revenue Service. I wouldn't have been thinking about this committee. I would have been thinking about whether the Internal Revenue Service would have been likely to challenge.

(12/12/96 Holden Tr. 146). After Mr. Holden made this comment, the following exchange occurred:

Ms. Pelosi: So it would have raised questions[?]

Mr. Holden: Yes.

Mr. Goss: Isn't that a little bit akin to having a yacht and an airplane on your tax return for business purposes[?]

Mr. Holden: It is one of those things that stands out.

(12/12/96 Holden Tr. 146–147).

VIII. SUMMARY OF FACTS PERTAINING TO STATEMENTS MADE TO THE COMMITTEE

A. Background

On or about September 7, 1994, Ben Jones, Mr. Gingrich's Democratic opponent in 1994, filed with the Committee a complaint against Mr. Gingrich. The complaint centered on the course. Among other things, it alleged that Mr. Gingrich had used his congressional staff to work on the course and that he had misused organizations that were exempt from taxation under section 501(c)(3) of the Internal Revenue Code because the course was a partisan, political project, with significant involvement by GOPAC, and was not a permissible activity for a section 501(c)(3) organization. (Ex. 135).

On or about October 4, 1994, Mr. Gingrich wrote the Committee in response to the complaint and primarily addressed the issues concerning the use of congressional staff for the course. In doing so he stated:

I would like to make it abundantly clear that those who were paid for course preparation were paid by either the Kennesaw State Foundation, [sic] the Progress and Freedom Foundation or GOPAC. * * * Those persons paid by one of the aforementioned groups include: Dr. Jeffrey Eisenach, Mike DuGally, Jana Rogers, Patty Stechschultez [sic], Pamela Prochnow, Dr. Steve Hanser, Joe Gaylord and Nancy Desmond.

(Ex. 136, p. 2). After the Committee received and reviewed Mr. Gingrich's October 4, 1994 letter, it sent him a letter dated October 31, 1994, asking for additional information concerning the allegations of misuse of tax-exempt organizations in regard to the course. The Committee also asked for information relating to the involvement of GOPAC in various aspects of the course. As set forth in the letter, the Committee wrote:

There is, however, an allegation which requires explanation before the Committee can finalize its evaluation of the complaint. This is the allegation that, in seeking and obtaining funding for your course on Renewing American Civilization, you improperly used tax-exempt foundations to obtain taxpayer subsidization of political activity.

* * * * *

Your answers to [questions set forth in the letter] would be helpful to the Committee in deciding what formal action to take with respect to the complaint.

* * * * *

A number of documents submitted by Ben Jones, however, raise questions as to whether the course was in fact exclusively educational in nature, or instead constituted partisan political activity intended to benefit Republican candidates.

(Ex. 137, pp. 1–2).

B. Statements Made by Mr. Gingrich to the Committee, Directly or Through Counsel

1. MR. GINGRICH'S DECEMBER 8, 1994 LETTER TO THE COMMITTEE

In a letter dated December 8, 1994, Mr. Gingrich responded to the Committee's October 31, 1994 letter. (Ex. 138). In that letter, Mr. Gingrich made the following statements, which he has admitted were inaccurate, incomplete, and unreliable.

1. [The course] was, by design and application, completely non-partisan. It was and remains about ideas, not politics. (Ex. 138, p. 2).

2. The idea to teach "Renewing American Civilization" arose wholly independent of GOPAC, because the course, unlike the committee, is non-partisan and apolitical. My motivation for teaching these ideas arose not as a politician, but rather as a former educator and concerned American citizen * * *. (Ex. 138, p. 4).

3. The fact is, "Renewing American Civilization" and GOPAC have never had any official relationship. (Ex. 138, p. 4).

4. GOPAC * * * is a political organization whose interests are not directly advanced by this non-partisan educational endeavor. (Ex. 138, p. 5).

5. As a political action committee, GOPAC never participated in the administration of "Renewing American Civilization." (Ex. 138, p. 4).

6. Where employees of GOPAC simultaneously assisted the project, they did so as private, civic-minded individuals contributing time and effort to a 501(c)(3) organization. (Ex. 138, p. 4).

7. Anticipating media or political attempts to link the Course to [GOPAC], "Renewing American Civilization" organizers went out of their way to avoid even the appearances of improper association with GOPAC. Before we had raised the first dollar or sent out the first brochure, Course Project Director Jeff Eisenach resigned his position at GOPAC. (Ex. 138, p. 4).

The goal of the letter was to have the complaint dismissed. (11/13/96 Gingrich Tr. 36).

2. MARCH 27, 1995 LETTER OF MR. GINGRICH'S ATTORNEY TO THE COMMITTEE

On January 26, 1995, Representative Bonior filed with the Committee an amended version of the Ben Jones complaint against Mr. Gingrich. (Ex. 139). Among other things, the complaint re-alleged that the Renewing American Civilization course had partisan, political purposes and was in violation of section 501(c)(3). The complaint also alleged substantial involvement of GOPAC in the course. (Ex. 139, pp. 1–7). In a letter dated March 27, 1995, Mr. Baran, Mr. Gingrich's attorney and a partner at the law firm of Wiley, Rein and Fielding, filed a response on behalf of Mr. Gingrich to the amended complaint. (Ex. 140, PFF 4347). Prior to the letter being delivered, Mr. Gingrich reviewed it and approved its submission to the Committee. (7/18/96 Gingrich Tr. 274–275).

Mr. Cole: If there was anything inaccurate in the letter, would you have told Mr. Baran to change it?

Mr. Gingrich: Absolutely.

(7/18/96 Gingrich Tr. 275).

The letter contains the following statements, which Mr. Gingrich has admitted were inaccurate, incomplete, and unreliable.

1. As Ex. 13 demonstrates, the course solicitation * * * materials are completely non-partisan. (Ex. 140, p. 19, fn. 7).

2. GOPAC did not become involved in the Speaker's academic affairs because it is a political organization whose interests are not advanced by this non-partisan educational endeavor. (Ex. 140, p. 35).

3. The Renewing American Civilization course and GOPAC have never had any relationship, official or otherwise. (Ex. 140, p. 35).

4. As noted previously, GOPAC has had absolutely no role in funding, promoting, or administering Renewing American Civilization. (Ex. 140, pp. 34–35).

5. GOPAC has not been involved in course fundraising and has never contributed any

[77] See also 12/12/96 Holden Tr. 103:

Mr. Schiff: But if you are providing 501(c)(3) raised money to pay for that candidate to give the same message, which is his political message, I think, for all substantial purposes, aren't you then, in effect, intervening or even endorsing the candidate by using that type of money to allow him to get his message further than it would get in the absence of that money?

Mr. Holden: I go back to the fact that we have a clean curriculum that we were talking about in a hypothetical and in the judgment that we reached about this case, and I don't believe that merely because a political figure takes a particular set of values and articulates them as a political theme, that that so captures that set of values that a 501(c)(3) organization cannot legitimately educate people about that same set of values.

Mr. Schiff: With the same messenger?

Mr. Holden: It doesn't seem to me that that compels a conclusion that there's a violation of 501(c)(3).

money or services to the course. (Ex. 140, p. 28).

6. Anticipating media or political attempts to link the course to GOPAC, course organizers went out of their way to avoid even the appearance of associating with GOPAC. Prior to becoming Course Project Director, Jeffrey Eisenach resigned his position at GOPAC and has not returned. (Ex. 140, p. 36).

The purpose of Mr. Baran's letter was to have the Committee dismiss the complaints against Mr. Gingrich. (11/13/96 Gingrich Tr. 35–36).

C. Subcommittee's Inquiry Into Statements Made to the Committee

On September 26, 1996, the Subcommittee expanded the scope of the Preliminary Inquiry to determine:

[w]hether Representative Gingrich provided accurate, reliable, and complete information concerning the course entitled "Renewing American Civilization," GOPAC's relationship to the course entitled "Renewing American Civilization," or the Progress and Freedom Foundation in the course of communicating with the Committee, directly or through counsel * * *.

On October 1, 1996, the Subcommittee requested that Mr. Gingrich produce to the Subcommittee all documents that were used or relied upon to prepare the letters at issue—the letters dated October 4, 1994, December 8, 1994 and March 27, 1995. Mr. Gingrich responded to the Committee's request on October 31, 1996. (Ex. 141). In his response, Mr. Gingrich described how extremely busy he was at the time the October 4, 1994, and December 8, 1994 letters were prepared. He said, the October 4, 1994 letter was written "in [the] context of exhaustion and focused effort" on finishing a congressional session, traveling to over a hundred congressional districts, tending to his duties as Whip, and running for re-election in his district. (Ex. 141, p. 1). At the time of the December 8, 1994 letter, he said that he and his staff were "making literally hundreds of decisions" as part of the transition in the House from Democratic to Republican Control. (Ex. 141, p. 2; 11/13/96 Gingrich Tr. 6, 10, 26). With respect to his level of activity at the time the March 27, 1995 letter was created Mr. Gingrich said the following:

[W]e were going through passing the Contract with America in a record 100 days in what many people believe was a forced march. I was, in parallel, beginning to lay out the base for the balanced budget by 2002, and I was, frankly, being too noisy publicly and damaging myself in the process.

I had three projects—four; I was writing a book. So those four projects were ongoing as I was going home to report to my district, and we were being battered as part of this continuum by Bonior and others, and we wanted it handled in a professional, calm manner. We wanted to honor the Ethics process.

(11/13/96 Gingrich Tr. 33–34).

Mr. Gingrich wrote in his October 31, 1996 response to the Subcommittee that "although [he] did not prepare any of the letters in question, in each case [he] reviewed the documents for accuracy." (Ex. 141, p. 3). Specifically, with respect to the October 4, 1994 letter, his assistant, Annette Thompson Meeks, showed him the draft she had created and he "read it, found it accurate to the best of [his] knowledge, and signed it." (Ex. 141, p. 2). With respect to the December 8, 1994 letter, he wrote, "Again I would have read the letter carefully and concluded that it was accurate to the best of my knowledge and then signed it." (Ex. 141, p. 2). With respect to the March 27, 1995 letter, he wrote that he "read [it] to ensure that it was consistent with [his] recollection of events at that time." (Ex. 141, p. 3).

D. Creation of the December 8, 1994 and March 27, 1995 Letters

Mr. Gingrich appeared before the Subcommittee on November 13, 1996 to testify about these letters.[78] He began his testimony by stating that the "ethics process is very important." (11/13/96 Gingrich Tr. 4). He then went on to state:

On Monday I reviewed the 380-page [July 1996] interview with Mr. Cole, and I just want to begin by saying to the [C]ommittee that I am very embarrassed to report that I have concluded that reasonable people could conclude, looking at all the data, that the letters are not fully responsive, and, in fact, I think do fail to meet the standard of accurate, reliable and complete.

(11/13/96 Gingrich Tr. 5). Mr. Gingrich said several times that it was only on the Monday before his testimony—the day when he reviewed the transcript of his July interview with Mr. Cole—that he realized the letters were inaccurate, incomplete, and unreliable. (11/13/96 Gingrich Tr. 5, 8, 10, 149, 150, 195; 12/10/96 Gingrich Tr. 75). In his testimony before the Subcommittee the next month, Mr. Gingrich "apologized for what was clearly a failure to communicate accurately and completely with this [C]ommittee." (12/10/96 Gingrich Tr. 5). Mr. Gingrich said the errors were a result of "a failure to communicate involving my legal counsel, my staff and me."

(12/10/96 Gingrich Tr. 5). Mr. Gingrich went on to say:

After reviewing my testimony, my counsel's testimony, and the testimony of two of his associates, the ball appears to have been dropped between my staff and my counsel regarding the investigation and verification of the responses submitted to the [C]ommittee.

As I testified, I erroneously, it turns out, relied on others to verify the accuracy of the statements and responses. This did not happen. As my counsel's testimony indicates, there was no detailed discussion with me regarding the submissions before they were sent to the [C]ommittee. Nonetheless, I bear responsibility for them, and I again apologize to the [C]ommittee for what was an inadvertent and embarrassing breakdown.

* * * * *

At no time did I intend to mislead the [C]ommittee or in any way be less than forthright.

(12/10/96 Gingrich Tr. 5–7). Of all the people involved in drafting, reviewing, or submitting the letters, the only person who had first-hand knowledge of the facts contained within them with respect to the Renewing American Civilization course was Mr. Gingrich.

1. CREATION OF THE DECEMBER 8, 1994 LETTER

According to Mr. Gingrich, after he received the Committee's October 31, 1994 letter, he decided that the issues in the letter were too complex to be handled by his office and he sought the assistance of an attorney. (11/13/96 Gingrich Tr. 11). Mr. Gaylord, on behalf of Mr. Gingrich, contacted Jan Baran and the Mr. Baran's firm began representing Mr. Gingrich on November 15, 1994. (11/14/96 Gaylord Tr. 16;[79] 11/13/96 Baran Tr. 4;[80] 12/10/96 Gingrich Tr. 5). The response prepared by Mr. Baran's firm became the letter from Mr. Gingrich to the Committee dated December 8, 1994.

According to Mr. Baran, he did not receive any indication from Mr. Gaylord or Mr. Gingrich that Mr. Baran was to do any kind of factual review in order to prepare the response. (11/13/96 Baran Tr. 47–48).[81] Mr. Baran and his staff did not seek or review documents other than those attached to the complaint of Mr. Jones and the Committee's October 31, 1994 letter to Mr. Gingrich[82] and did not contact GOPAC, Kennesaw State College, or Reinhardt College. (11/13/96 Baran Tr. 13, 15, 18). Mr. Baran did not recall speaking to Mr. Gingrich about the letter other than possibly over dinner on December 9, 1994—one day after the letter was signed by Mr. Gingrich. (11/13/96 Baran Tr. 18, 33). Mr. Baran did contact Mr. Eisenach, but did not recall the "nature of the contact." (11/13/96 Baran Tr. 16). Mr. Eisenach said he had no record of ever having spoken to Mr. Baran about the letter and does not believe that he did so. (11/14/96 Eisenach Tr. 18–19, 22). The conversation he had with Mr. Baran concerned matters unrelated to the letter. -(11/14/96 Eisenach Tr. 17–18). Mr. Eisenach also said that no one has ever given him a copy of the December 8, 1994 letter and asked him to verify its contents. (11/14/96 Eisenach Tr. 22).

The other attorney at Wiley, Rein and Fielding involved in preparing the response was Bruce Mehlman. (11/13/96 Baran Tr. 19; 11/19/96 Mehlman Tr. 17). He was a first-year associate who had been at Wiley, Rein and Fielding since September 1994. (11/19/96 Mehlman Tr. 5).[83] Mr. Mehlman's role was to create the first draft. (11/19/96 Mehlman Tr. 15). The materials Mr. Mehlman had available to him to prepare the draft were:

1. correspondence between Mr. Gingrich and the Committee, including the October 4, 1994 letter;
2. course videotapes;
3. the book used in the course called "Renewing American Civilization";
4. a course brochure;
5. the complaint filed by Ben Jones against Mr. Gingrich; and
6. documents produced pursuant to a Georgia Open Records Act request.

(11/19/96 Mehlman Tr. 15–16, 20). Mr. Mehlman said that he did not attempt to gather any other documents because he did not see a

[78] Mr. Gingrich appeared twice before the Subcommittee to discuss these letters. The first time was on November 13, 1996, in response to a request from the Subcommittee that he appear and testify about the matter under oath. The second time was on December 10, 1996, as part of his opportunity to address the Subcommittee pursuant to Rule 17(a)(3) of the Committee's Rules. Pursuant to Committee Rules, that appearance was also under oath.

[79] Mr. Gaylord was the one to contact the firm because his position was "advisor to Congressman Gingrich" and he coordinated "all of the activities that were outside the official purview of [Mr. Gingrich's] congressional responsibilities." (11/14/96 Gaylord Tr. 19; 11/13/96 Baran Tr. 7).

[80] Mr. Gingrich waived his attorney/client privilege and asked Mr. Baran to testify before the Committee. (11/13/96 Gingrich Tr. 5).

[81] Mr. Gaylord said that he did not give any instructions to Mr. Baran about how the response should be prepared. (11/14/96 Gaylord Tr. 16–17). Mr. Baran, however, recalled that Mr. Gaylord said that the response should be completed quickly "because there was hope that the Ethics Committee would meet before the end of the year to consider this matter" and that it should not be too expensive. (11/13/96 Baran Tr. 7, 46–48).

[82] The attachments to the October 31, 1994 letter were selected from materials that were part of the complaint filed by Mr. Jones.

[83] Mr. Mehlman left Wiley, Rein & Fielding in February 1996 and is now an attorney with the National Republican Congressional Committee. (11/19/96 Mehlman Tr. 5).

need to go beyond these materials in order to prepare a response. (11/19/96 Mehlman Tr. 19–20). With the exception of contacting his brother, who had taken the course,[84] Mr. Mehlman did not make any inquiries of people regarding the facts of the matter. (11/19/96 Mehlman Tr. 18). He did not, for example, contact GOPAC or Mr. Eisenach. (11/19/96 Mehlman Tr. 28). After he completed his first draft, he gave it to Mr. Baran. (11/19/96 Mehlman Tr. 22). He assumed that Mr. Baran would make sure that any factual questions would have been answered to his satisfaction before the letter went out. (11/19/96 Mehlman Tr. 51). However, Mr. Mehlman did not know what, if anything, Mr. Baran did with the draft after he gave it to him. (11/19/96 Mehlman Tr. 22).

When Mr. Gaylord asked Mr. Baran to prepare the letter, it was Mr. Baran's understanding that Annette Thompson Meeks, an Administrative Assistant for Mr. Gingrich's office, would help. (11/13/96 Baran Tr. 5, 7). According to Mr. Baran, Ms. Meeks' role was:

basically to take a draft product from us and review it for accuracy [from] her personal knowledge and basically make sure that it was acceptable. And in that regard, I believed that she may have spoken with other people to confirm that, but you will be talking to her, and you will have to confirm it with her. I tried to not talk to her about that.

(11/13/96 Baran Tr. 10). Mr. Baran described the process for reviewing the letter as follows:

Well, you know, as a counsel who was retained relatively late in that process at that time and as someone who had no firsthand knowledge about any of the underlying activities and with a marching order of trying to prepare a draft that was usable by the staff, we were pretty much focused on getting something together and over to Annette Meeks so that it could be used. Verification was something that would have been available through those who had firsthand knowledge about these facts, who had reviewed the draft.

(11/13/96 Baran Tr. 15). Mr. Baran did not, however, know whether the letter was reviewed by others to determine its accuracy. (11/13/96 Baran Tr. 48).

Ms. Meeks said that at the time the letter was being prepared, she had no knowledge of whether:

1. the course was a political or partisan activity by design or application;
2. GOPAC was involved in the course;
3. GOPAC was benefited by the course;
4. GOPAC created, funded, or administered the course;
5. the idea to teach the course arose wholly independent of GOPAC;
6. Mr. Gingrich's motivation for teaching the course arose not as a politician but rather as a historian;
7. Mr. Eisenach resigned his position at GOPAC.

(11/14/96 Meeks Tr. 45–47). Ms. Meeks also said she was unaware that GOPAC's theme was Renewing American Civilization. (11/14/96 Meeks Tr. 88).

Ms. Meeks said she had no role in drafting the letter, did not talk to anyone to verify that the facts in the letter were accurate, and had no knowledge of how the facts in the letter were checked for accuracy. (11/14/96 Meeks Tr. 39, 48, 51). She did not indicate to Mr. Baran that she had given the letter to anyone for the purpose of checking its accuracy. (11/14/96 Meeks Tr. 87). In this regard, Ms. Meeks said:

I will be very frank and tell you I don't know how [Mr. Baran] composed this information as far as who he spoke with. I was not privy to any of that. The only thing I could add to my answer is that once counsel is retained, we were kind of out of the picture as far as the process, other than typing and transmitting.

(11/14/96 Meeks Tr. 92). She said her role was to provide Mr. Baran with: background information about Mr. McCarthy (the Committee's counsel who had conferred with Mr. Gingrich about the course in 1993); a copy of the October 4, 1994 letter from Mr. Gingrich to the Committee; copies of papers relating to Mr. Hanser's employment with Mr. Gingrich's congressional office; and copies of the course videotapes. (11/14/96 Meeks Tr. 36–37).

Mr. Gaylord had a similar expectation in that, by retaining Wiley, Rein and Fielding, the firm was:

both protecting us and had done the proper and correct investigation in the preparation of the letters and that they, in fact, did their job because that's what they were paid to do. And I presumed that they had extracted the information from Dr. Eisenach and others who were involved specifically in the course.

(11/14/96 Gaylord Tr. 62). Mr. Gaylord, however, did not know what inquiry Mr. Baran made in order to prepare the letter. (11/14/96 Gaylord Tr. 17).

After Mr. Baran sent Ms. Meeks a draft of the letter, Ms. Meeks re-typed the letter and sent the new version to Mr. Baran to verify that it was identical to what he had sent her. She then recalled faxing a copy to Mr. Gaylord and to Mr. Gingrich's executive assistant "to get Newt to take a look at it." (11/14/96 Meeks Tr. 43–44). Mr. Gingrich said about his review of the letter:

And I think in my head, I was presented a document—I am not trying to blame anybody, or I am not trying to avoid this, I am trying to explain how it happened. I was presented a document and told, this is what we have collectively decided is an accurate statement of fact. I read the document, and it did not at any point leap out to me and say, boy, you had better modify paragraph 3, or that this phrase is too strong and too definitive. I think I read it one time, so that seems right to me, and I signed it.

(11/13/96 Gingrich Tr. 11). See also 11/13/96 Gingrich Tr. 10 (at the time he read the letter, "nothing leaped out at [him] and said, 'this is wrong'") and 11/13/96 Gingrich Tr. 16 (the letter "seemed accurate" to him).[85]

Mr. Gaylord did not recall whether he reviewed the letter prior to its being sent to the Committee. (11/14/96 Gaylord Tr. 18). Mr. Gaylord said that the statement that GOPAC had no role in the administration of the course was incorrect. (11/14/96 Gaylord Tr. 30–31). Mr. Gaylord said that the statement that GOPAC employees contributed time as private, civic-minded people was incorrect. (11/14/96 Gaylord Tr. 31). Mr. Gaylord was not asked to verify the facts in the letters. (11/14/96 Gaylord Tr. 20, 33).

2. BASES FOR STATEMENTS IN THE DECEMBER 8, 1994 LETTER

During their testimony, those involved in the creation of the letter were unable to explain the bases for many of the statements in the letter. Explanations were, however, given for the bases of some of the statements. A summary of those bases is set forth below.

1. [The course] was, by design and application, completely non-partisan. It was and remains about ideas, not politics. (Ex. 138, p. 2).

Mr. Baran said that the basis for this statement was his review of the course tapes and course materials. (11/13/96 Baran Tr. 19). Mr. Mehlman said the following about his understanding of the basis of this statement:

Well, I don't specifically recall. If I had to assume, it would be some of the [Georgia Open Records Act] documents or some of the course materials that purport to be nonpartisan, or to have created a course that was nonpartisan, that certainly would explain design.

As far as in application, probably the reference made by my brother who had seen the course, who had participated in it, I suppose, and my general basic review of the initial writings about the course and viewing the first videotape of the course, suggested that the course was nonpartisan.

(11/19/96 Mehlman Tr. 24–25).

According to Mr. Baran, the letter to the College Republicans—which was one of the attachments to the September 7, 1994 Jones complaint (Ex. 81)—did not raise a question in his mind that the course was partisan or about politics. (11/13/96 Baran Tr. 23).

2. "The idea to teach 'Renewing American Civilization' arose wholly independent of GOPAC, because the course, unlike the committee, is non-partisan and apolitical. My motivation for teaching these ideas arose not as a politician, but rather as a former educator and concerned American citizen * * *." (Ex. 138, p. 4).

Mr. Baran said that the basis of this statement was a review of the course tapes and the belief that the course had originated from a January 25, 1993 speech Mr. Gingrich had given on the House floor. (11/13/96 Baran Tr. 24–25). At the time the letter was drafted, Mr. Baran was unaware of Mr. Gingrich's December 1992 meeting with Owen Roberts where Mr. Gingrich first laid out his ideas for the Renewing American Civilization movement and course. (11/13/96 Baran Tr. 25). Mr. Mehlman did not speak with Mr. Gingrich about his motivations for the course and did not know if Mr. Baran had spoken with Mr. Gingrich about his motivations for teaching the course. (11/19/96 Mehlman Tr. 27).

3. "The fact is, 'Renewing American Civilization' and GOPAC have never had any official relationship." (Ex. 38, p. 4).

[84] The information obtained from his brother used as the basis of the statement in Mr. Gingrich's response that the course contained "as many references to Franklin Roosevelt, Jimmy Carter, and Martin Luther King, Jr. as there are to Ronald Reagan or Margaret Thatcher." (11/19/96 Mehlman Tr. 20). Mr. Mehlman, however, personally reviewed only one course videotape. (11/19/96 Mehlman Tr. 21).

[85] In early July 1993, Mr. Gingrich was interviewed about the course by a student reporter with the KSC newspaper. In that interview the following exchange took place:

Interviewer: And how is GOPAC involved in this?

Mr. Gingrich: It's not involved in this at all.

Interviewer: Are you going to bring a lot of your ideas to GOPAC though?

Mr. Gingrich: Absolutely. Every single one of them.

(Ex. 142, p. 10).

In other interviews over the past few years, Mr. Gingrich has made other statements about GOPAC's involvement in the course. They have included, for example, the following:

1. "GOPAC had the most incidental involvement at the very beginning of the process." (Atlanta Constitution, section A, page 1 (Sept. 19, 1993)).

2. "GOPAC provided some initial ideas on who might be interested in financing the course; that's all they did." (Associated Press, AM cycle, (Sept. 2, 1993)).

3. "The initial work was done before we talked with Kennesaw State College at GOPAC in organizing our thoughts." (The Hotline, American Political Network, Inc. (Sept. 7, 1993)).

Mr. Baran said about this statement:

Well, I think the basis of [this] statement[] [was] essentially the characterizations that had been placed on the relationship between the course and GOPAC by people like Jeff Eisenach[86] at that time, and it was consistent with my limited knowledge of GOPAC's association with the course at that time. . . .

You know, the various materials, some of which we went through this morning, were items that came to my attention in the course of the document production, which commenced, I think, around April of this year and took quite a bit of time, or that came up in the course of your interviews with Mr. Gingrich.

* * * * *

Well, I think the basis is that these statements were being reviewed by people who would presumably be in a position to correct me if there [sic] was wrong.

(11/13/96 Baran Tr. 36–37).

When asked about the appearance of GOPAC fax cover sheets on documents pertaining to the course, Mr. Baran said that such faxes raised questions in his mind but that he "had an understanding at that time that those questions were addressed by an explanation that there were either incidental or inadvertent uses of GOPAC resources or there were uses of GOPAC resources that were accounted for by Mr. Eisenach." (11/13/96 Baran Tr. 21). Mr. Baran could not recall how he came to this understanding. (11/13/96 Baran Tr. 21–22).

With respect to whether Mr. Baran knew that GOPAC was involved in raising funds for the course, Mr. Baran said:

At that time my recollection of quote, GOPAC being involved in fund-raising [unquote] was focused on Ms. Prochnow, the finance director who I don't know and have never met, but whose role was characterized, I believe, by Jeff Eisenach to me at some point, as having helped raise a couple of contributions, I think, Cracker Barrel was one of them, that is a name that sticks in my mind. But it was characterized as being sort of ancillary and just really not material.

(11/13/96 Baran Tr. 41).

3. CREATION OF THE MARCH 27, 1995 LETTER

In addition to the associate, Mr. Mehlman, who had worked with Mr. Baran in drafting Mr. Gingrich's December 8, 1994 letter to the Committee, another associate, Michael Toner, helped Mr. Baran draft what became the March 27, 1995 letter.[87] (11/19/96 Toner Tr. 10–11). As with the December 8, 1994 letter, Mr. Baran did not receive any indication from Mr. Gaylord or Mr. Gingrich that Mr. Baran was to do any kind of factual review in order to prepare the March 27, 1995 letter. (11/13/96 Baran Tr. 48). Mr. Baran did not recall contacting anyone outside the law firm for facts relevant to the preparation of the letter with respect to the course. He said that "the facts about the course, frankly, didn't seem to have changed any from the December period to the March period. And our focus seemed to be elsewhere." (11/13/96 Baran Tr. 28). Both Mr. Mehlman and Mr. Toner said that they did not contact anyone with knowledge of the facts at issue in order to prepare the letter. (11/19/96 Toner Tr. 21–22, 38; 11/19/96 Mehlman Tr. 38).

Ms. Meeks said that she had no role in the preparation of the letter. (11/14/96 Meeks Tr. 50). She saw it for the first time one day prior to her testimony before the Subcommittee in November 1996. (11/14/96 Meeks Tr. 50). Mr. Eisenach said that he did not have any role in the preparation of the letter nor was he asked to review it prior to its submission to the Committee. (11/14/96 Eisenach Tr. 24–25). Mr. Gaylord said that he had no role in the preparation of the letter and did not provide any information that is in the letter. (11/14/96 Gaylord Tr. 20). He also said that he did not discuss the letter with Mr. Gingrich or Mr. Baran at the time of its preparation. (11/14/96 Gaylord Tr. 21). Mr. Gaylord said that he did not know where Baran obtained the facts for the letter. He "presumed" that Mr. Baran and his associates had gathered the facts. (11/14/96 Gaylord Tr. 21–22).

Mr. Baran said that his role in creating the letter was to meet with Mr. Mehlman and Mr. Toner, review the status of their research and drafting and review their drafts. (11/13/96 Baran Tr. 28). Mr. Mehlman and Mr. Toner divided responsibility for drafting portions of the letter. (11/19/96 Toner Tr. 12–14; 11/19/96 Mehlman Tr. 36, 37, 40). Mr. Baran also made edits to the letter. (11/19/96 Mehlman Tr. 40). During his interview, Mr. Toner stressed that there were many edits to the letter by Mr. Baran, Mr. Mehlman, and himself and he could, therefore, not explain who had drafted particular sentences in the letter. (*see, e.g.*, 11/19/96 Toner Tr. 34).

After the letter was drafted, Mr. Baran said that Mr. Baran and his associates then "would have sent a draft that they felt comfortable with over to the Speaker's office." (11/13/96 Baran Tr. 28). Mr. Baran, Mr. Toner, and Mr. Mehlman each said during their testimony that they assumed that Mr. Gingrich or someone in his office reviewed the letter for accuracy before it was submitted to the Committee. (11/19/96 Toner Tr. 16, 40, 44; 11/13/96 Baran Tr. 32–33, 37–38; Mehlman Tr. 41). They, however, did not know whether Mr. Gingrich or anyone in his office with knowledge of the facts at issue ever actually reviewed the letter prior to its submission to the Committee. (11/19/96 Toner Tr. 17, 40, 44; 11/13/96 Baran Tr. 37–38; Mehlman Tr. 41).

With respect to Mr. Baran's understanding of whether Mr. Gingrich reviewed the letter, the following exchange occurred:

Mr. Cole: Did you have any discussions with Mr. Gingrich concerning this letter prior to it going to the committee?

Mr. Baran: I don't recall any. I just wanted to make sure that he did review it before it was submitted.

Mr. Cole: How did you determine that he had reviewed it?

Mr. Baran: I don't recall today, but I would not file anything until I had been assured by somebody that he had read it.

Mr. Cole: Would that assurance also have involved him reading it and not objecting to any of the facts that are asserted in the letter?

Mr. Baran: I don't know what his review process was regarding this letter.

* * * * *

Mr. Cole: If he just read it, you may still be awaiting comments from him. Would you have made sure that he had read it and approved it, or just the fact that he read it is all you would have been interested in, trying to make sure that we don't blur that distinction?

Mr. Baran: No, I would have wanted him to be comfortable with this on many levels.

Mr. Cole: And were you satisfied that he was comfortable with it prior to filing it with the committee?

Mr. Baran: Yes.

Mr. Cole: Do you know how you were satisfied?

Mr. Baran: I can't recall the basis upon which that happened.

(11/13/96 Baran Tr. 32–33).

4. BASES FOR STATEMENTS IN THE MARCH 27, 1995 LETTER

With respect to the bases for the statements in the letter in general, Mr. Baran said that it was largely based on the December 8, 1994 letter and any information he and his associates relied on to prepare it. (11/13/96 Baran Tr. 37–38).

IX. ANALYSIS AND CONCLUSION

A. Tax Issues

In reviewing the evidence concerning both the AOW/ACTV project and the Renewing American Civilization project, certain patterns became apparent. In both instances, GOPAC had initiated the use of the messages as part of its political program to build a Republican majority in Congress. In both instances there was an effort to have the material appear to be non-partisan on its face, yet serve as a partisan, political message for the purpose of building the Republican Party.

Under the "methodology test" set out by the Internal Revenue Service, both projects qualified as educational. However, they both had substantial partisan, political aspects. Both were initiated as political projects and both were motivated, at least in part, by political goals.

The other striking similarity is that, in both situations, GOPAC was in need of a new source of funding for the projects and turned to a 501(c)(3) organization for that purpose. Once the projects had been established at the 501(c)(3) organizations, however, the same people continued to manage it as had done so at GOPAC, the same message was used as when it was at GOPAC, and the dissemination of the message was directed toward the same goal as when the project was at GOPAC—building the Republican Party. The only significant difference was that the activity was funded by a 501(c)(3) organization.

This was not a situation where one entity develops a message through a course or a television program for purely educational purposes and then an entirely separate entity independently decides to adopt that message for partisan, political purposes. Rather, this was a coordinated effort to have the 501(c)(3) organization help in achieving a partisan, political goal. In both instances the idea to develop the message and disseminate it for partisan, political use came first. The use of the 501(c)(3) came second as a source of funding.

This factual analysis was accepted by all Members of the Subcommittee and the Special Counsel. However, there was a difference of opinion as to the result under 501(c)(3) when applying the law to these facts. Ms. Roady, the Subcommittee's tax expert, was of the opinion that the facts presented a clear violation of 501(c)(3) because the evidence showed that the activities were intended to benefit Mr. Gingrich, GOPAC, and other Republican candidates and entities. Mr. Holden, Mr. Gingrich's tax attorney, disagreed. He found that the course was nonpartisan in its content, and even though he assumed that the motivation for disseminating it involved partisan, political goals, he did not find a sufficiently narrow targeting of the dissemination to conclude that it was a private benefit to anyone.

[86] Earlier in his testimony and as described above, Mr. Baran said that he had contacted Mr. Eisenach at the time the letter was being prepared, but did not recall the "nature of the contact." (11/13/96 Baran Tr. 16). As also discussed above, Mr. Eisenach recalled having a discussion with Mr. Baran at the time the letter was being prepared, but about topics unrelated to the letter. (11/14/96 Eisenach Tr. 17–18).

[87] Mr. Toner has been an associate attorney with Wiley, Rein and Fielding since September 1992, except for a period during which we he worked with the Dole/Kemp campaign. (11/19/96 Toner Tr. 6).

Some Members of the Subcommittee and the Special Counsel agreed with Ms. Roady and concluded that there was a clear violation of 501(c)(3) with respect to AOW/ACTV and Renewing American Civilization. Other Members of the Subcommittee were troubled by reaching this conclusion and believed that the facts of this case presented a unique situation that had not previously been addressed by the legal authorities. As such, they did not feel comfortable supplanting the functions of the Internal Revenue Service or the Tax Court in rendering a ruling on what they believed to be an unsettled area of the law.

B. Statements Made to the Committee

The letters Mr. Gingrich submitted to the Committee concerning the Renewing American Civilization complaint were very troubling to the Subcommittee. They contained definitive statements about facts that went to the heart of the issues placed before the Committee. In the case of the December 8, 1994 letter, it was in response to a direct request from the Committee for specific information relating to the partisan, political nature of the course and GOPAC's involvement in it.

Both letters were efforts by Mr. Gingrich to have the Committee dismiss the complaints without further inquiry. In such situations, the Committee does and should place great reliance on the statements of Members.

The letters were prepared by Mr. Gingrich's lawyers. After the Subcommittee deposed the lawyers, the reasons for the statements being in the letters was not made any clearer. The lawyers did not conduct any independent factual research. Looking at the information the lawyers used to write the letters, the Subcommittee was unable to find any factual basis for the inaccurate statements contained therein. A number of exhibits attached to the complaint were fax transmittal sheets from GOPAC. While this did not on its face establish anything more than GOPAC's fax machine having been used for the project, it certainly should have put the attorneys on notice that there was some relationship between the course and GOPAC that should have been examined before saying that GOPAC had absolutely no involvement in the course.

The lawyers said they relied on Mr. Gingrich and his staff to ensure that the letters were accurate; however, none of Mr. Gingrich's staff had sufficient knowledge to be able to verify the accuracy of the facts. While Mr. Gaylord and Mr. Eisenach did have sufficient knowledge to verify many of the facts, they were not asked to do so. The only person who reviewed the letters for accuracy, with sufficient knowledge to verify those facts, was Mr. Gingrich.

The Subcommittee considered the relevance of the reference to GOPAC in Mr. Gingrich's first letter to the Committee dated October 4, 1994. In that letter he stated that GOPAC was one of the entities that paid people to work on the course. Some Members of the Subcommittee believed that this was evidence of lack of intent to deceive the Committee on Mr. Gingrich's part because if he had planned to hide GOPAC's involvement, he would not have made such an inconsistent statement in the subsequent letters. Other Members of the Subcommittee and the Special Counsel appreciated this point, but believed the first letter was of little value. The statement in that letter was only directed to establishing that Mr. Gingrich had not used congressional resources in developing the course. The first letter made no attempt to address the tax issues, even though it was a prominent feature of the complaint. When the Committee specifically focused Mr. Gingrich's attention on that issue and questions concerning GOPAC's involvement in the course, his response was not accurate.

During his testimony before the Subcommittee, Mr. Gingrich stated that he did not intend to mislead the Committee and apologized for his conduct. This statement was a relevant consideration for some Members of the Subcommittee, but not for others.

The Subcommittee concluded that because these inaccurate statements were provided to the Committee, this matter was not resolved as expeditiously as it could have been. This caused a controversy over the matter to arise and last for a substantial period of time, it disrupted the operations of the House, and it cost the House a substantial amount of money in order to determine the facts.

C. Statement of Alleged Violation

Based on the information described above, the Special Counsel proposed a Statement of Alleged Violations ("SAV") to the Subcommittee on December 12, 1996. The SAV contained three counts: (1) Mr. Gingrich's activities on behalf of ALOF in regard to AOW/ACTV, and the activities of others in that regard with his knowledge and approval, constituted a violation of ALOF's status under section 501(c)(3); (2) Mr. Gingrich's activities on behalf of Kennesaw State College Foundation, the Progress and Freedom Foundation, and Reinhardt College in regard to the Renewing American Civilization course, and the activities of others in that regard with his knowledge and approval, constituted a violation of those organizations' status under section 501(c)(3); and (3) Mr. Gingrich had provided information to the Committee, directly or through counsel, that was material to matters under consideration by the Committee, which Mr. Gingrich knew or should have known was inaccurate, incomplete, and unreliable.

1. DELIBERATIONS ON THE TAX COUNTS

There was a difference of opinion regarding whether to issue the SAV as drafted on the tax counts. Concern was expressed about deciding this tax issue in the context of an ethics proceeding. This led the discussion to the question of the appropriate focus for the Subcommittee. A consensus began to build around the view that the proper focus was on the conduct of the Member, rather than a resolution of issues of tax law. From the beginning of the Preliminary Inquiry, there was a desire on the part of each of the Members to find a way to reach a unanimous conclusion in this matter. The Members felt it was important to confirm the bipartisan nature of the ethics process.

The discussion turned to what steps Mr. Gingrich had taken in regard to these two projects to ensure they were done in accord with the provisions of 501(c)(3). In particular, the Subcommittee was concerned with the fact that: (1) Mr. Gingrich had been "very well aware" of the *American Campaign Academy* case prior to embarking on these projects; (2) he had been involved with 501(c)(3) organizations to a sufficient degree to know that politics and tax-deductible contributions are, as his tax counsel said, an "explosive mix;" (3) he was clearly involved in a project that had significant partisan, political goals, and he had taken an aggressive approach to the tax laws in regard to both AOW/ACTV; and (4) Renewing American Civilization projects. Even Mr. Gingrich's own tax lawyer told the Subcommittee that if Mr. Gingrich had come to him before embarking on these projects, he would have advised him to not use a 501(c)(3) organization for the dissemination of AOW/ACTV or Renewing American Civilization. Had Mr. Gingrich sought and followed this advice, he would not have used the 501(c)(3) organizations, would not have had his projects subsidized by taxpayer funds, and would not have created this controversy that has caused significant disruption to the House. The Subcommittee concluded that there were significant and substantial warning signals to Mr. Gingrich that he should have heeded prior to embarking on these projects. Despite these warnings, Mr. Gingrich did not seek any legal advice to ensure his conduct conformed with the provisions of 501(c)(3).

In looking at this conduct in light of all the facts and circumstances, the Subcommittee was faced with a disturbing choice. Either Mr. Gingrich did not seek legal advice because he was aware that it would not have permitted him to use a 501(c)(3) organization for his projects, or he was reckless in not taking care that, as a Member of Congress, he made sure that his conduct conformed with the law in an area where he had ample warning that his intended course of action was fraught with legal peril. The Subcommittee decided that regardless of the resolution of the 501(c)(3) tax question, Mr. Gingrich's conduct in this regard was improper, did not reflect creditably on the House, and was deserving of sanction.

2. DELIBERATIONS CONCERNING THE LETTERS

The Subcommittee's deliberation concerning the letters provided to the Committee centered on the question of whether Mr. Gingrich intentionally submitted inaccurate information. There was a belief that the record developed before the Subcommittee was not conclusive on this point. The Special Counsel suggested that a good argument could be made, based on the record, that Mr. Gingrich did act intentionally, however it would be difficult to establish that with a high degree of certainty.

The culmination of the evidence on this topic again left the Subcommittee with a disturbing choice. Either Mr. Gingrich intentionally made misrepresentations to the Committee, or he was again reckless in the way he provided information to the Committee concerning a very important matter.

The standard applicable to the Subcommittee's deliberations was whether there is reason to believe that Mr. Gingrich had acted as charged in this count of the SAV. All felt that this standard had been met in regard to the allegation that Mr. Gingrich "knew" that the information he provided to the Committee was inaccurate. However, there was considerable discussion to the effect that if Mr. Gingrich wanted to admit to submitting information to the Committee that he "should have known" was inaccurate, the Subcommittee would consider deleting the allegation that he knew the information was inaccurate. The Members were of the opinion that if there were to be a final adjudication of the matter, taking into account the higher standard of proof that is involved at that level, "should have known" was an appropriate framing of the charge in light of all the facts and circumstances.

3. DISCUSSIONS WITH MR. GINGRICH'S COUNSEL AND RECOMMENDED SANCTION

On December 13, 1996, the Subcommittee issued an SAV charging Mr. Gingrich with

three counts of violations of House Rules. Two counts concerned the failure to seek legal advice in regard to the 501(c)(3) projects, and one count concerned providing the Committee with information which he knew or should have known was inaccurate.

At the time the Subcommittee voted this SAV, the Members discussed the matter among themselves and reached a consensus that it would be in the best interests of the House for the matter to be resolved without going through a disciplinary hearing. It was estimated that such a hearing could take up to three months to complete and would not begin for several months. Because of this, it was anticipated that the House would have to deal with this matter for another six months. Even though the Subcommittee Members felt that it would be advantageous to the House to avoid a disciplinary hearing, they all were committed to the proposition that any resolution of the matter had to reflect adequately the seriousness of the offenses. To this end, the Subcommittee Members discussed and agreed upon a recommended sanction that was fair in light of the conduct reflected in this matter, but explicitly recognized that the full Committee would make the ultimate decision as to the recommendation to the full House as to the appropriate sanction. In determining what the appropriate sanction should be in this matter, the Subcommittee and Special Counsel considered the seriousness of the conduct, the level of care exercised by Mr. Gingrich, the disruption caused to the House by the conduct, the cost to the House in having to pay for an extensive investigation, and the repetitive nature of the conduct.

As is noted above, the Subcommittee was faced with troubling choices in each of the areas covered by the Statement of Alleged Violation. Either Mr. Gingrich's conduct in regard to the 501(c)(3) organizations and the letters he submitted to the Committee was intentional or it was reckless. Neither choice reflects creditably on the House. While the Subcommittee was not able to reach a comfortable conclusion on these issues, the fact that the choice was presented is a factor in determining the appropriate sanction. In addition, the violation does not represent only a single instance of reckless conduct. Rather, over a number of years and in a number of situations, Mr. Gingrich showed a disregard and lack of respect for the standards of conduct that applied to his activities.

Under the Rules of the Committee, a reprimand is the appropriate sanction for a serious violation of House Rules and a censure is appropriate for a more serious violation of House Rules. Rule 20(g), Rules of the Committee on Standards of Official Conduct. It was the opinion of the Subcommittee that this matter fell somewhere in between. Accordingly, the Subcommittee and the Special Counsel recommend that the appropriate sanction should be a reprimand and a payment reimbursing the House for some of the costs of the investigation in the amount of $300,000. Mr. Gingrich has agreed that this is the appropriate sanction in this matter.

Beginning on December 15, 1996, Mr. Gingrich's counsel and the Special Counsel began discussions directed toward resolving the matter without a disciplinary hearing. The discussions lasted through December 20, 1996. At that time an understanding was reached by both Mr. Gingrich and the Subcommittee concerning this matter. That understanding was put on the record on December 21, 1996 by Mr. Cole follows:

Mr. Cole: The subcommittee has had an opportunity to review the facts in this case, and has had extensive discussion about the appropriate resolution of this matter.

Mr. Cardin: If I might just add here to your next understanding, the Members of the subcommittee, prior to the adoption of the Statement of Alleged Violation, were concerned that the nonpartisan deliberations of the subcommittee continue beyond the findings of the subcommittee. Considering the record of the full Ethics Committee in the 104th Congress and the partisan environment in the full House, the Members of the subcommittee felt that it was important to exercise bipartisan leadership beyond the workings of the subcommittee. * * *

Mr. Cole: It was the opinion of the Members of the subcommittee and the Special Counsel, that based on the facts of this case as they are currently known, the appropriate sanction for the conduct described in the original Statement of Alleged Violations is a reprimand and the payment of $300,000 toward the cost of the preliminary inquiry.

In light of this opinion, the subcommittee Members and the Special Counsel intend to recommend to the full committee that this be the sanction recommended by the full committee to the House. The Members also intend to support this as the sanction in the committee and on the Floor of the House.

However, if new facts are developed or brought to the attention of the Members of the subcommittee, they are free to change their opinions.

The Subcommittee, through its counsel, has communicated this to Mr. Gingrich, through his counsel. Mr. Gingrich has agreed that if the subcommittee will amend the Statement of Alleged Violations to be one count, instead of three counts, however, still including all of the conduct described in the original Statement of Alleged Violations, and will allow the addition of some language which reflects aspects of the record in this matter concerning the involvement of Mr. Gingrich's counsel in the preparation of the letters described in the original Count 3 of the Statement of Alleged Violations,[88] he will admit to the entire Statement of Alleged Violation and agree to the view of the subcommittee Members and the Special Counsel as to the appropriate sanction.

In light of Mr. Gingrich's admission to the Statement of Alleged Violation, the subcommittee is of the view that the rules of the committee will not require that an adjudicatory hearing take place; however, a sanction hearing will need to be held under the rules.

The subcommittee and Mr. Gingrich desire to have the sanction hearing concluded as expeditiously as possible, but it is understood that this will not take place at the expense of orderly procedure and a full and fair opportunity for the full committee to be informed of any information necessary for each Member of the full committee to be able to make a decision at the sanction hearing.

After the subcommittee has voted a new Statement of Alleged Violation, Mr. Gingrich will file his answer admitting to it. The subcommittee will seek the permission of the full committee to release the Statement of Alleged Violation, Mr. Gingrich's answer, and a brief press release which has been approved by Mr. Gingrich's counsel. At the same time, Mr. Gingrich will release a brief press release that has been approved by the subcommittee's Special Counsel.

Both the subcommittee and Mr. Gingrich agree that no public comment should be made about this matter while it is still pending. This includes having surrogates sent out to comment on the matter and attempt to mischaracterize it.

Accordingly, beyond the press statements described above, neither Mr. Gingrich nor any Member of the subcommittee may make any further public comment. Mr. Gingrich understands that if he violates this provision, the subcommittee will have the option of reinstating the original Statement of Alleged Violations and allowing Mr. Gingrich an opportunity to withdraw his answer.

And I should note that it is the intention of the subcommittee that "public comments" refers to press statements; that, obviously, we are free and Mr. Gingrich is free to have private conversations with Members of Congress about these matters.[89]

After the Subcommittee voted to issue the substitute SAV, the Special Counsel called Mr. Gingrich's counsel and read to him what was put on the record concerning this matter. Mr. Gingrich's counsel then delivered to the Subcommittee Mr. Gingrich's answer admitting to the Statement of Alleged Violation.

D. Post-December 21, 1996 Activity

Following the release of this Statement of Alleged Violation, numerous press accounts appeared concerning this matter. In the opinion of the Subcommittee Members and the Special Counsel, a number of the press accounts indicated that Mr. Gingrich had violated the agreement concerning statements about the matter. Mr. Gingrich's counsel was notified of the Subcommittee's concerns and the Subcommittee met to consider what action to take in light of this apparent violation. The Subcommittee determined that it would not nullify the agreement. While there was serious concern about whether Mr. Gingrich had complied with the agreement, the Subcommittee was of the opinion that the best interests of the House still lay in resolving the matter without a disciplinary hearing and with the recommended sanction that its Members had previously determined was appropriate. However, Mr. Gingrich's counsel was informed that the Subcommittee believed a violation of the agreement had occurred and retained the right to withdraw from the agreement with appropriate notice to Mr. Gingrich. To date no such notice has been given.

X. SUMMARY OF FACTS PERTAINING TO USE OF UNOFFICIAL RESOURCES

The Subcommittee investigated allegations that Mr. Gingrich had improperly utilized the services of Jane Fortson, an employee of the Progress in Freedom Foundation ("PFF"), in violation of House Rule 45, which prohibits the use of unofficial resources for official purposes.

Ms. Fortson was an investment banker and chair of the Atlanta Housing Project who had experience in urban and housing issues. In January 1995 she moved to Washington, D.C., from Atlanta to work on urban and housing issues as a part-time PFF Senior Fellow and subsequently became a full-time PFF Senior Fellow in April, 1995.

The Subcommittee determined that Mr. Gingrich sought Ms. Fortson's advice on urban and housing issues on an ongoing and meaningful basis. During an interview with Mr. Cole, Mr. Gingrich stated that although

[88] These changes included the removal of the word "knew" from the original Count 3, making the charge read that Mr. Gingrich "should have known" the information was inaccurate.

[89] It was also agreed that in the private conversations Mr. Gingrich was not to disclose the terms of the agreement with the Subcommittee.

he believed he lacked the authority to give Ms. Fortson assignments, he often requested her assistance in connection with urban issues in general and issues pertaining to the District of Columbia in particular. The investigation further revealed that Ms. Fortson appeared to have had unusual access to Mr. Gingrich's official schedule and may have occasionally influenced his official staff in establishing his official schedule.

In her capacity as an unofficial policy advisor to Mr. Gingrich, Ms. Fortson provided ongoing advice to Mr. Gingrich and members of Mr. Gingrich's staff to assist Mr. Gingrich in conducting official duties related to urban issues. Ms. Fortson frequently attended meetings with respect to the D.C. Task Force during which she met with Members of Congress, officials of the District of Columbia, and members of their staffs. Although Mr. Gingrich and principal members of his staff advised the Subcommittee that they perceived Ms. Fortson's assistance as limited to providing information on an informal basis, the Subcommittee discovered other occurrences which suggested that Mr. Gingrich and members of his staff specifically solicited Ms. Fortson's views and assistance with respect to official matters.

The Subcommittee acknowledges that Members may properly solicit information from outside individuals and organizations, including nonprofit and for-profit organizations. Regardless of whether auxiliary services are accepted from a nonprofit or for-profit organization, Members must exercise caution to limit the use of outside resources to ensure that the duties of official staff are not improperly supplanted or supplemented. The Subcommittee notes that although Mr. Gingrich received two letters of reproval from the Committee on Standards regarding the use of outside resources, Ms. Fortson's activities ceased prior to the date the Committee issued those letters to Mr. Gingrich. While the Subcommittee did not find that Ms. Fortson's individual activities violated House Rules, the Subcommittee determined that the regular, routine, and ongoing assistance she provided Mr. Gingrich and his staff over a ten-month period could create the appearance of improper commingling of unofficial and official resources. The Subcommittee determined, however, that these activities did not warrant inclusion as a Count in the Statement of Alleged Violation.

XI. Availability of Documents to Internal Revenue Service

In light of the possibility that documents which were produced to the Subcommittee during the Preliminary Inquiry might be useful to the IRS as part of its reported ongoing investigations of various 501(c)(3) organizations, the Subcommittee decided to recommend that the full Committee make available to the IRS all relevant documents produced during the Preliminary Inquiry. It is the Committee's recommendation that the House Committee on Standards of Official Conduct in the 105th Congress establish a liaison with the IRS to fulfill its recommendation and that this liaison be established in consultation with Mr. Cole.

APPENDIX

Summary of Law Pertaining to Organizations Exempt from Federal Income Tax Under Section 501(c)(3) of the Internal Revenue Code

A. Introduction

Section 501(a) of the Internal Revenue Code generally exempts from federal income taxation numerous types of organizations. Among these are section 501(c)(3) organizations which include corporations: Organized and operated exclusively for religious, charitable, scientific * * * or educational purposes * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, * * * and which does not participate in, or intervene in * * * any political campaign on behalf of (or in opposition to) any candidate for public office.

I.R.C. §501(c)(3). Organizations described in section 501(c)(3) are generally referred to as "charitable" organizations and contributions to such organizations are generally deductible to the donors. I.R.C. §170(a)(1), (c)(2).

B. The Organizational Test and the Operational Test

The requirement that a 501(c)(3) organization be "organized and operated exclusively" for an exempt purpose has given rise to an "organizational test" and an "operational test." Failure to meet either test will prevent an organization from qualifying for exemption under section 501(c)(3). Treas. Reg. §1.501(c)(3)–1(a); *Levy Family Tribe Foundation* v. *Commissioner*, 69 T.C. 615, 618 (1978).

1. ORGANIZATIONAL TEST

To satisfy the organizational test, an organization must meet three sets of requirements. First, its articles of organization must: (a) limit its purposes to one or more exempt purposes, and (b) not expressly permit substantial activities that do not further those exempt purposes. Treas. Reg. §1.501(c)(3)–1(b)(1). Second, the articles must not permit: (a) devoting more than an insubstantial part of its activities to lobbying, (b) any participation or intervention in the campaign of a candidate for public office, and (c) objectives and activities that would characterize it as an "action" organization. Treas. Reg. §1.501(c)(3)–1(b)(3). Third, the organization's assets must be dedicated to exempt purposes. Treas. Reg. §1.501(c)(3)–1(b)(4). The IRS determines compliance with the organizational test solely by reference to an organization's articles of organization.

2. OPERATIONAL TEST

To satisfy the operational test, an organization must be operated "exclusively" for an exempt purpose. Though "exclusively" in this context does not mean "solely," the presence of a substantial nonexempt purpose will cause an organization to fail the operational test. Treas. Reg. §1.501(c)(3)–1(c)(1); *The Nationalist Movement* v. *Commissioner*, 102 T.C. 558, 576 (1994). The presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. *Better Business Bureau of Washington, D.C.* v. *United States*, 326 U.S. 276, 283 (1945); *Manning Association* v. *Commissioner*, 93 T.C. 596, 611 (1989).

To meet the operational test under section 501(c)(3) organization, the organization must satisfy the following requirements:[90]

1. The organization must be operated for an exempt purpose, and must serve a public benefit, not a private benefit. Treas. Reg. §1.501(c)(3)–1(d)(1)(ii).

2. It must not be an "action" organization. Treas. Reg. §1.501(c)(3)–1(c)(3). An organization is an "action" organization if:

a. it participates or intervenes in any political campaign (Treas. Reg. §1.501(c)(3)–1(c)(3)(iii));

b. a substantial part of its activities consists of attempting to influence legislation (Treas. Reg. §1.501(c)(3)–1(c)(3)(ii)); or

c. its primary objective may be attained: only by legislation or defeat of proposed legislation, and it advocates the attainment of such primary objective (Treas. Reg. §1.501(c)(3)–1(c)(3)(iv)).

3. Its net earnings must not inure to the benefit of any person in a position to influence the organization's activities. Treas. Reg. §1.501(c)(3)–1(c)(2).

"[F]ailure to satisfy any of the [above] requirements is fatal to [an organization's] qualification under section 501(c)(3)." *American Campaign Academy* v. *Commissioner*, 92 T.C. 1053, 1062 (1989).

The application of these requirements, moreover, is a factual exercise. *Id.* at 1064; *Christian Manner International* v. *Commissioner*, 71 T.C. 661, 668 (1979). Thus, in testing compliance with the operational test, courts look "beyond the four corners of the organization's charter to discover 'the actual objects motivating the organization and the subsequent conduct of the organization.'" *American Campaign Academy*, 92 T.C. at 1064 (citing *Taxation with Representation* v. *United States*, 585 F.2d 1219, 1222 (4th Cir. 1978)); *see also Sound Health Association* v. *Commissioner*, 71 T.C. 158, 184 (1978) ("It is the purpose toward which an organization's activities are directed that is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization.")

"What an organization's purposes are and what purposes its activities support are questions of fact." *American Campaign Academy*, 92 T.C. at 1064 (citing *Christian Manner International* v. *Commissioner*, 71 T.C. 661, 668 (1979)). Courts may "draw factual inferences" from the record when determining whether organizations meet the requirements of the tax-exempt organization laws and regulations. *Id.* (citing *National Association of American Churches* v. *Commissioner*, 82 T.C. 18, 20 (1984)).

a. "Educational" Organizations May Qualify for Exemption Under Section 501(c)(3)

As discussed above, an organization may qualify for exemption under section 501(c)(3) if it is "educational."[91] The Regulations define the term "educational" as relating to:

(a) [t]he instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) [t]he instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. §1.501(c)(3)–1(d)(3)(i). The Regulations continue:

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

[90] 501(c)(3) organizations must also: (a) not be operated primarily to conduct an unrelated trade or business (Treas. Reg. §1.501(c)(3)–1(e)(1)), and (b) not violate "public policy." *See Bob Jones University* v. *United States*, 461 U.S. 574 (1983) (educational organization's tax-exempt status denied because of its racially discriminatory policies).

[91] An organization may also qualify for section 501(c)(3) exemption if it is organized and operated for, *e.g.*, "religious," "charitable," or "scientific" purposes. The other methods by which an organization can qualify for exemption are not discussed in this summary.

Id. Guidance on the phrase "advocates a particular position or viewpoint" can be found in the preceding section in the Regulations pertaining to the definition of "charitable."

The fact that an organization, in carrying out its primary purpose, advocates social or civil changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "action" organization.* * *

Treas. Reg. §1.501(c)(3)–1(d)(2).

In applying the Regulations under section 501(c)(3) pertaining to educational organizations, the IRS has stated that its goal is to eliminate or minimize the potential for any public official to impose his or her preconceptions or beliefs in determining whether the particular viewpoint or position is educational. Rev. Proc. 86–43, 1986–2 C.B. 729. IRS policy is to "maintain a position of disinterested neutrality with respect to the beliefs advocated by an organization." *Id.* The focus of the Regulations pertaining to educational organizations and of the IRS's application of these Regulations "is not upon the viewpoint or position, but instead upon the method used by the organization to communicate its viewpoint or positions to others." *Id.*

Two court decisions considered challenges to the constitutionality of the definition of "educational," in the Regulations cited above. One decision held that the definition was unconstitutionally vague. *Big Mama Rag, Inc.* v. *United States*, 631 F.2d 1030 (D.C. Cir. 1980). In *National Alliance* v. *United States*, 710 F.2d 868 (D.C. Dir. 1983), the court upheld the IRS's position that the organization in question was not educational. Without ruling on the constitutionality of the "methodology test" used by the IRS in that case to determine whether the organization was educational, the court found that the application of that test reduced the vagueness found in *Big Mama Rag*. The IRS later published the methodology test in Rev. Proc. 86–43 in order to clarify its position on how to determine whether an organization is educational when it advocates particular viewpoints or positions. As set forth in the Revenue Procedure:

The presence of any of the following factors in the presentations made by an organization is indicative that the method used by the organization to advocate its viewpoints or positions is not educational.

(a) The presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications.

(b) The facts that purport to support the viewpoints or positions are distorted.

(c) The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations.

(d) The approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

According to Rev. Proc. 86–43, the IRS uses the methodology test in all situations where the educational purpose of an organization that advocates a viewpoint or position is in question. However, "[e]ven if the advocacy undertaken by an organization is determined to be educational under [the methodology test], the organization must still meet all other requirements for exemption under section 501(c)(3) * * *" Rev. Proc. 86–43. That is, organizations deemed to be "educational" must also abide by the section 501(c)(3) prohibitions on: (a) private benefit, (b) participating or intervening in a political campaign, (c) engaging in more than insubstantial lobbying activities, and (d) private inurement.

b. To Satisfy the Operational Test, an Organization Must Not Violate the "Private Benefit" Prohibition

Section 501(c)(3) requires, inter alia, that an organization be organized and operated exclusively for one or more exempt purposes. Treas. Reg. 1.501(c)(3)–1(d)(1)(ii) provides that an organization does not meet this requirement:

unless it serves a public rather than a private purpose. Thus, * * * it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The "private benefit" prohibition serves to ensure that the public subsidies flowing from section 501(c)(3) status, including income tax exemption and the ability to receive tax-deductible charitable contributions, are reserved for organizations that are formed to serve public and not private interests. Treas. Reg. 1.501(c)(3)–1(c)(1) defines the application of the private benefit prohibition in the context of the operational test:

An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The Regulations and cases applying them make it clear that the private benefit test focuses on the purpose or purposes served by an organization's activities, and not on the nature of the activities themselves. See, e.g., *B.S.W. Group, Inc.* v. *Commissioner*, 70 T.C. 352 (1978). Where an organization's activities serve more than one purpose, each purpose must be separately examined to determine whether it is private in nature and, if so, whether it is more than insubstantial. *Christian Manner International* v. *Commissioner*, 71 T.C. 661 (1979).

The leading case on the application of the private benefit prohibition in the context of an organization whose activities served both exempt and nonexempt purposes is *Better Business Bureau* v. *United States*, 326 U.S. 279 (1945). Better Business Bureau was a nonprofit organization formed to educate the public about fraudulent business practices, to elevate business standards, and to educate consumers to be intelligent buyers. The Court did not question the exempt purpose of these activities. The Court found, however, that the organization was "animated" by the purpose of promoting a profitable business community, and that such business purpose was both nonexempt and more than insubstantial. The Court denied exemption, stating (in language that is cited in virtually all later private benefit cases), that:

[I]n order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.

Id. at 283.

Many of the cases interpreting the private benefit prohibition involve private benefits that are provided in a commercial context—as in the *Better Business Bureau* case. Impermissible private benefit, however, need not be financial in nature. *Callaway Family Association* v. *Commissioner*, 71 T.C. 340 (1978), involved a family association formed as a nonprofit corporation to study immigration to and migration within the United States by focusing on its own family history and genealogy. The organization's activities included researching the genealogy of Callaway family members in order to publish a family history. The organization argued that its purposes were educational and intended to benefit the general public, asserting that its use of a research methodology focusing on one family's development was a way of educating the public about the country's history.

In *Callaway*, the court noted (and the IRS conceded) that the organization's activities served an educational purpose. The issue was not whether the organization had any exempt purposes, but whether it also engaged in activities that furthered a nonexempt purpose more than insubstantially. Agreeing with the IRS that "petitioner aimed its organizational drive at Callaway family members, and appealed to them on the basis of their private interests," the court concluded that the organization "engages in nonexempt activities serving a private interest, and these activities are not insubstantial." *Id.* at 343–44. Accordingly, the court held that the organization did not qualify for exemption under section 501(c)(3).

Kentucky Bar Foundation v. *Commissioner*, 78 T.C. 921 (1982), is one of the relatively few cases in which a court found private benefit to be insubstantial and therefore not to preclude exemption under section 501(c)(3). The Kentucky Bar Foundation was formed to conduct a variety of activities recognized by the IRS to serve exclusively educational purposes, including a continuing legal education program and the operation of a public law library. The IRS, however, asserted that the Foundation's operation of statewide lawyer referral service also served private purposes. Through the referral service, a person seeking a lawyer was referred to an attorney selected on a rotating basis within a convenient geographic area. The fee for an initial half-hour consultation was $10; any charge for further consultation or work had to be agreed upon by the attorney and the client. The court found that the purposes of the referral service were to assist the general public in locating an attorney to provide a consultation for a reasonable fee, to encourage lawyers to recognize the obligation to provide legal services to the general public, and to acquaint people in need of legal services with the value of consultation with a lawyer to identify and solve legal problems.

The IRS asserted that a purpose of the referral service was to benefit lawyers, particularly to help young law school graduates establish a practice, and that this was a substantial nonexempt purpose. Based on a careful examination of the facts, however, the court found that:

[t]he referral service is open to all responsible attorneys, and there is no evidence a selected group of attorneys are the primary beneficiaries of the service. The referral service is intended to benefit the public and not to serve as a source of referrals. We find any nonexempt purpose served by the referral service and any occasional economic benefit flowing to individual attorneys through a referral incidental to the broad charitable purpose served.

Id. at 926.

Reiterating the proposition that "the proper focus is the purpose or purposes toward which the activities are directed," the court found that the purpose of the legal referral service was to benefit the public, that any private benefit was broadly distributed, not conferred on any select group of attorneys and incidental to the public purpose, and that the organization qualified for exemption under section 501(c)(3). *Id.* at 923, 925–26 (citing *B.S.W. Group* v. *Commissioner*, 70 T.C. 352, 356–57 (1978)).

As the cases described above show, the determination as to whether private benefit is incidental (and therefore permissible) or more than incidental (and therefore prohibited) is inherently factual, and each case must be decided on its own facts and circumstances. See also *Manning Association* v. *Commissioner*, 93 T.C. 596 (1989). The IRS has issued several published and private rulings and general counsel memoranda[92] that further explain the private benefit prohibition. For example, in Rev. Rul. 70–186, 1970–1 C.B. 128, an organization was formed to preserve a lake as a public recreational facility and to improve the lake water's condition. Although the organization's activities benefited the public at large, there were necessarily significant benefits to the individuals who owned lake-front property. The IRS, however, determined that the private benefit to the lake-front property owners was incidental because:

[t]he benefits to be derived from the organization's activities flow principally to the general public through the maintenance and improvement of public recreational facilities. Any private benefits derived by the lakefront property owners do not lessen the public benefits flowing from the organization's operations. In fact, it would be impossible for the organization to accomplish its purposes without providing benefits to the lakefront property owners.

Id.

In Rev. Rul. 75–196, 1975–1 C.B. 155, the IRS ruled that a 501(c)(3) organization operating a law library whose rules essentially limited access and use to local bar association members conferred only incidental benefits to the bar association members. The library's availability only to a designated class of persons was not a bar to recognition of exemption because:

[w]hat is of importance is that the class benefited be broad enough to warrant a conclusion that the educational facility or activity is serving a broad public interest rather than a private interest, and is therefore exclusively educational in nature.

Id. The library was available to a significant number of people, and the restrictions on the library's use were due to the limited size of its facilities. Although attorneys who used the library might derive personal benefit in their practice, the IRS ruled that this benefit was incidental to the library's exempt purpose and a "logical by-product of an educational process."

Id.

Two other revenue rulings with similar fact patterns are also helpful in understanding the application of the "incidental benefits" concept. In one ruling, the IRS ruled that an organization that limited membership to the residents of one city block did not qualify as a 501(c)(3) organization because the organization's members benefited directly, thus not incidentally, from the organization's activities. Rev. Rul. 75–286, 1975–2 C.B. 210. In another, the IRS ruled that an organization dedicated to beautification of an entire city qualified as a 501(c)(3) organization because benefits flowed to the city's entire population and were not targeted to the organization's members. Rev. Rul. 68–14, 1968–1 C. B. 243. The benefits to the organization's members of living in a cleaner city were considered incidental.

The IRS issued a recent warning about the importance of the private benefit prohibition in Rev. Proc. 96–32, 1996–20 I.R.B. 14, a Revenue Procedure issued for the purpose of establishing standards as to whether organizations that own and operate low income housing (an activity conducted by both nonprofit and for-profit organizations) may qualify for exemption under section 501(c)(3). After reviewing the substantive criteria that must be present to establish that the organization is formed for a charitable purpose, the IRS added a final caution:

If an organization furthers a charitable purpose such as relieving the poor and distressed, it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

Id.

One of the most detailed explanations of the private benefit prohibition is contained in G.C.M. 39862 (Nov. 22, 1991), involving the permissibility of a hospital's transaction with physicians. In the G.C.M., the IRS explained the prohibition as follows:

Any private benefit arising from a particular activity must be "incidental" in both a qualitative and quantitative sense to the overall public benefit achieved by the activity if the organization is to remain exempt. To be qualitatively incidental, a private benefit must occur as a necessary concomitant of the activity that benefits the public at large; in other words, the benefit to the public cannot be achieved without necessarily benefiting private individuals. Such benefits might also be characterized as indirect or unintentional. To be quantitatively incidental, a benefit must be insubstantial when viewed in relation to the public benefit conferred by the activity.

Id.

The IRS also explained that the insubstantiality of the private benefit is measured only in relationship to activity in which the private benefit is present, and not in relation to the organization's overall activities:

It bears emphasis that, even though exemption of the entire organization may be at stake, the private benefit conferred by an activity or arrangement is balanced only against the public benefit conferred by that activity or arrangement, not the overall good accomplished by the organization.

Id.

In G.C.M. 39862, the IRS balanced the private benefits to the physicians from the transaction at issue with the public purposes served by that particular activity—and not the public purposes served by the hospital as a whole. Finding the private purposes from the activity at issue to be more than incidental in relation to the public purposes, the IRS determined that the hospital had jeopardized its exemption under section 501(c)(3).

Although most of the cases and IRS rulings (both public and private) follow the general analysis described above in determining whether or not private benefit is insubstantial, a fairly recent Tax Court case, *American Campaign Academy* v. *Commissioner*, 92 T.C. 1053 (1989) adopts a slightly different approach. In that case, the primary activity of American Campaign Academy ("ACA" or "the Academy") was the operation of a school to train people to work in political campaigns. The IRS denied ACA's application for exemption under section 501(c)(3), and ACA appealed the denial to the Tax Court. The Tax Court upheld the IRS's denial of ACA's application for exemption because ACA's activities conferred an impermissible private benefit on Republican candidates and entities.

The school operated by ACA was an "outgrowth" of programs the National Republican Congressional Committee ("NRCC") once sponsored to train candidates and to train campaign professionals for Republican campaigns. The Academy program, however, differed from its NRCC predecessor in that it limited its students to "campaign professionals." *Id.* at 1056. Without discussion, the IRS stated that the Academy did not train candidates, participate in any political campaign or attempt to influence legislation. *Id.* at 1056–57. The Academy did not use training materials developed by the NRCC, generally did not use NRCC faculty, and developed its own courses. *Id.* at 1057. Students were not explicitly required to be affiliated with any particular party, nor were they required to take positions with partisan organizations upon graduation. *Id.* at 1058.

The Academy had a number of direct and indirect connections to Republican organizations. The NRCC contributed furniture and computer hardware to the Academy. *Id.* at 1056. One of the Academy's three directors, Joseph Gaylord, was the Executive Director of the NRCC; another director, John McDonald, was a member of the Republican National Committee. *Id.* Jan Baran, General Counsel of the NRCC at the time of the Academy's application to IRS, incorporated the Academy. *Id.* at 1070. The National Republican Congressional Trust funded the Academy. *Id.* The Academy curriculum included studies of the "Growth of NRCC, etc." and "Why are people Republicans," but did not contain comparable studies pertaining to the Democratic or other political parties. *Id.* at 1070–71. People on the admissions panel were affiliated with the Republican Party. *Id.* at 1071. Furthermore, while the applicants were not required to declare a party affiliation on their application, the political references students were required to submit "often permit[ted] the admission panel to deduce the applicant's political affiliation." *Id.* Finally, the Court found that all but one of the Academy graduates who could be identified as later serving in political positions ended up serving Republican candidates or Republican organizations. *Id.* at 1060, 1071, 1072.

In light of these facts, the Tax Court upheld the IRS's denial of the Academy's application for exemption under section 501(c)(3) because the Academy "conducted its educational activities with the partisan objective of benefiting Republican candidates and entities." *Id.* at 1070. Any one of the

[92] Private letter rulings and general counsel memoranda are made available to the public under section 6110 of the Code. These documents are based on the facts of particular cases, and may not be relied on as precedent. However, they provide useful insights as to how the IRS interprets and applies the law in particular factual situations.

facts listed in the previous paragraph did not alone support the IRS's finding or the court's holding that the Academy was organized for a non-exempt purpose. The IRS did not argue, and the court did not hold, for example, that individuals who are all members of the same political party are prohibited from operating a 501(c)(3) organization, or that an organization may not receive an exemption under section 501(c)(3) if a partisan organization funds it. Rather, the Tax Court focused on the purpose behind ACA's activities. In determining this, it drew "factual inferences" from the record to discern that purpose. Those inferences led to the court's conclusion that the Academy "targeted Republican entities and candidates to receive the secondary benefit through employing its alumni * * *." *Id.* at 1075.

The Tax Court's analysis distinguished between "primary" private benefit and "secondary" private benefit, and made clear that the latter can be a bar to section 501(c)(3) qualification. In this case, the students received the primary private benefit of the Academy, and this benefit was permissible and consistent with the Academy's educational purposes. The students' ultimate employers, Republican candidates and entities, received the secondary benefits of the Academy. "[W]here the training of individuals is focused on furthering a particular targeted private interest [e.g., Republican candidates and entities], the conferred secondary benefit ceases to be incidental to the providing organization's exempt purposes." *Id.* at 1074.

For the Academy to have prevailed, according to the Tax Court, it needed to demonstrate: (1) that the candidates and entities who received the benefit of trained campaigned workers possessed the characteristics of a "charitable class,"[93] and (2) that it did not distribute benefits among that class in a select manner. *Id.* at 1076. The Academy argued that Republican candidates and entities were "charitable" because the Republican party consists of millions of people with "like 'political sympathies'" and their activities benefited the community at large. *Id.* The Court ruled, however, that size alone does not transform a benefited class into a charitable class and that ACA had failed to demonstrate that political entities and candidates possessed the characteristics of a charitable class. *Id.* At 1077. Moreover, the Tax Court held that even if political candidates and entities could be found to constitute a "charitable class," ACA's benefits were distributed in a select manner to Republican candidates and entities. *Id.*

Finally, the Academy argued that although it hoped that alumni would work in Republican organizations or for Republican candidates, it had no control over whether they would do so. Absent an ability to control the students' employment, the Academy argued, it lacked the ability to confer secondary benefits to Republican candidates and entities. *Id.* at 1078. The Court found that there was no authority for the proposition that the organization must be able to control non-incidental benefits. Furthermore, the Court reiterated that the record supported the IRS's determination that the Academy was formed "with a substantial purpose to train campaign professionals for service in Republican entities and campaigns, an activity previously conducted by NRCC." *Id.* According to the Court, accepting the Academy's argument regarding its inability to control non-incidental benefits would "cloud the focus of the operational test, which probes to ascertain the purpose towards which an organization's activities are directed and not the nature of the activities themselves." *Id.* at 1078–79 (citing *B.S.W. Group* v. *Commissioner*, 70 T.C. 352, 356–57 (1978)). The Court noted that had the record demonstrated that "the Academy's activities were nonpartisan in nature and that its graduates were not intended to primarily benefit Republicans," the Court would have found for the Academy. *Id.* at 1079.

The *American Campaign Academy* case follows existing precedent. In reaching its decision, the court relies on *Better Business Bureau* and *Kentucky Bar Foundation*, among other cases, for the legal standards governing the private benefit prohibition. The court recognizes that the ACA's activities were intended to serve multiple purposes, including the education of students (the permissible primary benefit) and the provision of trained campaign professionals for candidates and entities (the secondary benefit). Finding the secondary benefit to be targeted to a select group—Republican candidates and entities—the court concludes that such benefit is more than incidental and therefore precludes exemption under section 501(c)(3).

c. To Satisfy The Operational Test, An Organization Must Not Be An "Action" Organization

An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization. Treas. Reg. §1.501(c)(3)–1(c)(3). Such an organization cannot qualify for exemption under section 501(c)(3). Treas. Reg. §1.501(c)(3)–1(c)(3)(v). An organization is an action organization if:

(i) It "participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office;"

(ii) a "substantial part" of its activities consists of "attempting to influence legislation by propaganda, or otherwise;" or

(iii) its primary objective may be attained "only by legislation or a defeat of proposed legislation," and "it advocates, or campaigns for, the attainment" of such primary objective.

Treas. Reg. §1.501(c)(3)–1(c)(3).

(i) If an Organization Participates in a Political Campaign, It is an Action Organization Not Entitled to Exemption Under Section 501(c)(3)

Section 501(c)(3) provides that an organization is not entitled to exemption if it "participate[s] in, or intervene[s] in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office." The reason for this prohibition is clear. Contributions to section 501(c)(3) organizations are deductible for federal income tax purposes, but contributions to candidates and political action committees ("PACs") are not. The use of section 501(c)(3) organizations to support or oppose candidates or PACs would circumvent federal tax law by enabling candidates or PACs to attract tax-deductible contributions to finance their election activities. As the U.S. Court of Appeals for the Tenth Circuit explained, "[t]he limitations in Section 501(c)(3) stem from the congressional policy that the United States Treasury should be neutral in political affairs and that substantial activities directed to attempts to * * * affect a political campaign should not be subsidized." *Christian Echoes National Ministry, Inc.* v. *United States*, 470 F.2d 849, 854 (1972), *cert. denied*, 419 U.S. 1107 (1975) (emphasis in original).

The prohibition on political campaign intervention was added to the Internal Revenue Code as a floor amendment to the 1954 Revenue Act offered by Senator Lyndon Johnson, who believed that a section 501(c)(3) organization was being used to help finance the campaign of an opponent. In introducing the amendment, Senator Johnson said that it was to "deny[] tax-exempt status to not only those people who influence legislation but also to those who intervene in any political campaign on behalf of any candidate for any public office." 100 Cong. Rec. 9604 (1954) (discussed in Bruce R. Hopkins, "The Law of Tax-Exempt Organizations," 327 (6th ed. 1992)). No congressional hearing was held on the subject and the conference report did not contain any analysis of the provision. Judith E. Kindell and John F. Reilly, "Election Year Issues," 1993 Exempt Organizations Continuing Professional Education Technical Instruction Program 400, 401 (hereinafter "IRS CPE Manual").[94]

Although the prohibition on political campaign intervention was not formally added to section 501(c)(3) until 1954, the concept that charities should not participate in political campaigns was not new. As the Second Circuit noted, "[t]his provision merely expressly stated what had always been understood to be the law. Political campaigns did not fit within any of the specified purposes listed in [Section 501(c)(3)]." *The Association of the Bar of the City of New York* v. *Commissioner*, 858 F.2d 876, 879 (2d Cir. 1988) (hereinafter "*New York Bar*") (quoting 9 Mertens, Law of Federal Income Taxation §34.05 at 22 (1983)).[95] Furthermore, congressional concerns that the government not subsidize political activity have existed since at least the time when Judge Learned Hand wrote "[p]olitical agitation * * * however innocent

[93] This part of the Tax Court's analysis in *American Campaign Academy* has been criticized by a few commentators, who have disagreed with the court's application of the "charitable class" doctrine in the context of an educational organization. See, e.g., Bruce R. Hopkins, Republican Campaign School Held Not Tax Exempt, The Nonprofit Counsel, July 1989, at 3; Laura B. Chisolm, Politics and Charity: A Proposal for Peaceful Coexistence, 58 Geo. Wash. L. Rev. 308, 344 n.159 (1990).

Typically an educational organization is expected to serve a broad class representative of the public interest, but not a "charitable class" per se. The court's consideration of the question as to whether political candidates and entities could constitute a charitable class might be misplaced, but is not critical to its holding. As the court notes, "even were we to find political entities and candidates to generally comprise a charitable class, petitioner would bear the burden of proving that its activities benefited the members of the class in a nonselect manner." The court's finding that such benefits were conferred in a select manner—to Republican candidates and entities—was the basis for its holding that the organization served private purposes more than incidentally and, therefore, failed to qualify for exemption under section 501(c)(3).

[94] The 1993 Exempt Organizations Continuing Professional Education (CPE) Technical Instruction Program text was prepared by the IRS Exempt Organizations Division for internal training purposes.

[95] Indeed, under the common law of charitable trusts—the genesis of modern day section 501(c)(3)—it was recognized that "a trust to promote the success of a particular political party is not charitable," for the reason that "there is no social interest in the underwriting of one or another of the political parties." Restatement (Second) of Trusts §374 (1959). The continued importance of the common law doctrine of "charitability" to the standards for exemption under section 501(c)(3) is reflected in the Supreme Court decision in *Bob Jones University* v. *United States*, 461 U.S. 574 (1983), in which the Supreme Court denied exemption to a private university that practiced racial discrimination, on the ground that racial discrimination was contrary to public policy and therefore inconsistent with the common law standards for charitability.

the aim * * * must be conducted without public subvention * * *." *Slee* v. *Commissioner*, 42 F.2d 184, 185 (2d Cir. 1930), quoted in *New York Bar*, 858 F.2d at 879.

In 1987, Congress amended section 501(c)(3) to clarify that the prohibition on political campaign activity applied to activities in opposition to, as well as on behalf of, any candidate for public office. Omnibus Budget Reconciliation Act, Pub. L. No. 100-203, §10711, 101 Stat. 1330, 1330-464 (1987). The House Report accompanying the bill stated that "[t]he prohibition on political campaign activities * * * reflect[s] congressional policies that the U.S. Treasury should be neutral in political affairs * * *." H.R. Rep. No. 100-391, at 1625 (1987); see also S. Rep. No. 91-552, at 46-49 (Tax Reform Act of 1969) (interpreting section 501(c)(3) to mean that "no degree of support for an individual's candidacy for public office is permitted").

The scope of the prohibition on political campaign intervention has been the subject of much discussion. While certain acts are clearly proscribed, others may be permissible or prohibited, depending on the purpose and effect of the activity. The regulations interpreting the prohibition add little to the statutory definition:

Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

Treas. Reg. §1.501(c)(3)-1(c)(3)(iii). Under this provision, a section 501(c)(3) organization is prohibited from making a written or oral endorsement of a candidate and from distributing partisan campaign literature. IRS CPE Manual at 410. Following the enactment of section 527 of the Code in 1974 (governing the federal tax treatment of PACs), the prohibition also prevents section 501(c)(3) organizations from establishing or supporting a PAC. IRS CPE Manual at 437. (The application of the prohibition in this context is discussed further below.)

It is clear, however, that section 501(c)(3) organizations also may violate the prohibition by engaging in activity that falls short of a direct endorsement, and even may—on its face—appear neutral, if the purpose or effect of the activity is to support or oppose a candidate. The IRS CPE Manual describes a variety of situations in which section 501(c)(3) organizations may violate the prohibition without engaging in a direct candidate endorsement, including inviting a particular candidate to make an appearance at an organization event, holding candidate forums or distributing voter guides which evidence a bias for or against a candidate, and similar activities that may support or oppose a particular candidate. IRS CPE Manual at 419-424, 430-432. In a recent election year news release, the IRS reminded 501(c)(3) organizations of the breadth of the prohibition, stating not only that they cannot endorse candidates or distribute statements in support of or opposition to candidates, but also that they cannot "become involved in any other activities that may be beneficial or detrimental to any candidate." IRS News Release IR-96-23 (Apr. 24, 1996).

While it is easy for the IRS to determine whether the prohibition on political campaign intervention has been violated when a section 501(c)(3) organization endorses a candidate or distributes partisan campaign literature, it is more difficult to determine whether there is a violation if the activity at issue is not blatant or serves a nonpolitical purpose as well. The IRS relies on a "facts and circumstances" test in analyzing ambiguous behavior to determine whether there has been a violation. According to the IRS:

[i]n situations where there is no explicit endorsement or partisan activity, there is no bright-line test for determining if the IRC 501(c)(3) organization participated or intervened in a political campaign. Instead, all the facts and circumstances must be considered.

IRS CPE Manual at 410.

Despite the lack of bright-line standards concerning all aspects of the prohibition, there is a substantial body of authority concerning what section 501(c)(3) organizations can and cannot do, and many section 501(c)(3) organizations have little difficulty applying existing precedents to develop internal guidelines for what activities are permissible and prohibited. For example, the Office of General Counsel of the United States Catholic Conference issued guidelines on political activities to Catholic organizations on February 14, 1996, in anticipation of the 1996 election season.[96] The guidelines outline the parameters of permissible activity, including unbiased voter education, nonpartisan get-out-the-vote drives, and nonpartisan public forums. They also describe what activity is prohibited, including the endorsement of candidates, the distribution of campaign literature in support or opposition to candidates, and the provision of financial and in-kind support to candidates or PACs. With respect to the latter, the guidelines state flatly that:

[A] Catholic organization may not provide financial support to any candidate, PAC, or political party. Likewise, it may not provide or solicit in-kind support, such as free or selective use of volunteers, paid staff, facilities, equipment, mailing lists, etc.

"Political Activity Guidelines for Catholic Organizations" (United States Catholic Conference, Office of the General Counsel, Washington, D.C.), Feb. 14, 1996, reprinted in Paul Streckfus' EO Tax Journal, November 1996 at 35, 42.

The generally accepted aspects of the campaign intervention prohibition, as well as some areas of uncertainty, are discussed below.

(a) The Prohibition Is "Absolute"

The prohibition on political campaign intervention or participation is "absolute." IRS CPE Manual at 416. Unlike the prohibition on lobbying, there is no requirement that political campaign participation or intervention be substantial. *New York Bar*, 858 F.2d at 881. It is, therefore, irrelevant that the majority, or even all but a small portion, of an organization's activities would, by themselves, support exemption under section 501(c)(3). *United States* v. *Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981); see also G.C.M. 39694 (Jan. 22, 1988) ("An organization described in section 501(c)(3) is precluded from engaging in any political campaign activities") and P.L.R. 9609007 (Dec. 6, 1995). ("For purposes of section 501(c)(3), intervention in a political campaign may be subtle or blatant. It may seem to be justified by the press of events. It may even be inadvertent. The law prohibits all forms of participation or intervention in 'any' political campaign.")[97]

Although the prohibition on political campaign intervention under section 501(c)(3) is absolute, Congress recognized that the sanction of loss of tax exemption could, in some cases, be disproportionate to the violation. In 1987, Congress added section 4955 to the Code, which imposes excise tax penalties on section 501(c)(3) organizations that make "political expenditures" in violation of the prohibition, as well as organization managers who knowingly approve such expenditures. The legislative history provides that the enactment of section 4955 was not intended to modify the absolute prohibition of section 501(c)(3), but to provide an alternative remedy that could be used by the IRS in cases where the penalty of revocation seems disproportionate to the violation:

i.e., where the expenditure was unintentional and involved only a small amount and where the organization subsequently has adopted procedures to assure that similar expenditures would not be made in the future.

H.R. Rep. No. 100-391, at 1623-24 (1987).

The legislative history also provides that the excise tax may be imposed in cases involving significant, uncorrected violations of the prohibition, where revocation alone may be ineffective because the organization has ceased operations after diverting its assets to an improper purpose. In these cases, the excise tax penalty on organization managers may be the only effective way to penalize the violation. *Id.* at 1624-25.

The IRS has shown an inclination to impose the excise tax under section 4955 in lieu of revocation of exemption in cases where the violation appears to be minor in relation to the organization's other exempt purpose activities.[98] For example, P.L.R. 9609007 (Dec.

[96] Some churches assert that they have a First Amendment right to participate in political campaign activities where doing so furthers their religious beliefs. However, courts have ruled that tax exemption is a privilege and not a right, and that section 501(c)(3) does not prohibit churches from participating in political campaigns but merely provides that they will not be entitled to tax exemption if they do so. See, e.g., *Christian Echoes National Ministry, Inc.* v. *United States*, 470 F.2d 849 (10th Cir. 1972).

[97] See also G.C.M. 38137 (Oct. 22, 1979): [T]he prohibition on political activity makes no reference to the intent of the organization. An organization can violate the proscription even if it acts for reasons other than intervening in a political campaign. For example, an organization that hires a political candidate to do commercials for its charity drive and runs the commercials frequently during the political campaign may have no interest in supporting the candidate's campaign. Nevertheless, its action would constitute, at least, indirect intervention or support of the political campaign.

However, the same G.C.M. goes on to say:

We do not mean to imply that every activity that has an effect on a political campaign is prohibited political activity. We recognize that organizations may inadvertently support political candidates. In these instances the organizations have not "intervened" or "participated" in political campaigns. A hospital that provides emergency health care for a candidate acts on behalf of the candidate during the election, but only inadvertently supports his campaign.

[98] Prior to the enactment of section 4955 in 1987, the IRS was reluctant to impose revocation in cases where the violation was not blatant and the organization had a record of otherwise charitable activities. For example, P.L.R. 8936002 (May 24, 1989) involved a section 501(c)(3) organization that engaged in voter education and issue advocacy relating to the 1984 Presidential election. Describing the case as "a very close call," the IRS "reluctantly" concluded that the organization's voter education activities did not constitute prohibited political campaign intervention, despite the use of "code words" that could be viewed as evidencing support for a particular candidate.

The IRS appeared unwilling to seek revocation with respect to the organization, probably because of its history of legitimate educational activities. Had section 4955 been in effect when the activity took place, the IRS would have had another enforcement alternative: it could have imposed excise tax

6, 1995) involved a section 501(c)(3) organization that sent out a fundraising letter linking the organization to issues raised in the particular campaigns. The IRS concluded that the letters evidenced a bias for one candidate over the other. The organization sought to defend itself by saying only a few of the letters were sent to the states whose elections were mentioned in the letters. The IRS rejected this defense, stating that:

[I]t is common knowledge that in recent times the primary source of a candidate's support in such elections is often derived from out-of-state sources. Although a particular reader may not have been eligible to actually vote for the described candidate, he or she could have been charged by [the organization], in our view, to participate in the candidate's campaign through direct monetary or in-kind support, volunteerism, molding of public opinion, or the like.

Id. The IRS found that the organization violated the political campaign intervention prohibition and imposed an excise tax on the organization under section 4955; it did not, however, propose revocation of the organization's exemption under section 501(c)(3).

(b) Section 501(c)(3) Organizations May Not Establish or Support a PAC

Although organizations exempt from tax under some categories of section 501(c) are permitted to establish or support PACs,[99] those exempt under section 501(c)(3) are not. When section 527 (governing the tax treatment of PACs) was added to the Code in 1974, the legislative history provided that "this provision is not intended to affect in any way the prohibition against certain exempt organizations (*e.g.*, sec. 501(c)(3)) engaging in 'electioneering' * * *" S. Rep. No. 93–1357 (1974), *reprinted* in 1975–1 C.B. 517, 534. The regulations under section 527 reflect this congressional intent:

Section 527(f) and this section do not sanction the intervention in any political campaign by an organization described in section 501(c) if such activity is inconsistent with its exempt status under section 501(c). For example, an organization described in section 501(c)(3) is precluded from engaging in any political campaign activities. The fact that section 527 imposes a tax on the exempt function income (as defined in section 1.527–2(c)) expenditures of section 501(c) organizations and permits such organizations to establish separate segregated funds to engage in campaign activities does not sanction the participation in these activities by section 501(c)(3) organizations.

Treas. Reg. §1.527–6(g).

Since the enactment of section 527 in 1974, it has been clear that a section 501(c)(3) organization will violate the prohibition on political campaign intervention by providing financial or nonfinancial support for a PAC. IRS CPE Manual at 438–40. While the use of a section 501(c)(3)'s facilities, personnel, or other financial resources for the benefit of a PAC is impermissible, the prohibition does not stop there. In its CPE Manual, the IRS also noted that "[a]n IRC 501(c)(3) organization's resources include intangible assets, such as its goodwill, that may not be used to support the political campaign activities of another organization." *Id.* at 440. Some leading practitioners have interpreted this provision to prohibit a charity from allowing its name to be used by a PAC, even if the charity provides no financial support or assistance; by allowing a PAC to use its name, the charity implies to its employees and to the public that it endorses the activity of the PAC. *See* Gregory L. Colvin *et al., Commentary on Internal Revenue Service 1993 Exempt Organizations Continuing Professional Education Technical Instruction Program Article on "Election Year Issues,"* 11 Exempt Org. Tax Rev. 854, 871 (1995) [hereinafter "EO Comments"].

(c) "Express Advocacy" is Not Required, and Issue Advocacy is Prohibited if Used to Convey Support for or Opposition to a Candidate

An organization does not need to violate the "express advocacy" standard applied under federal election law for it to violate the political campaign prohibition of section 501(c)(3),[100] T.A.M. 8936002 (May 24, 1989). That is, it is not necessary to advocate the election or defeat of a clearly identified candidate to violate the prohibition. IRS CPE Manual at 412–13.

Moreover, an organization may violate the prohibition even if it does not identify a candidate by name. The IRS has stated that "issue advocacy" may serve as "the opportunity to intervene in a political campaign in a rather surreptitious manner" if a label or other coded language is used as a substitute for a reference to identifiable candidates. *Id.* at 411.

The concern is that an IRC 501(c)(3) organization may support or oppose a particular candidate in a political campaign without specifically naming the candidate by using code words to substitute for the candidate's name in its messages, such as "conservative," "liberal," "pro-life," "pro-choice," "anti-choice," "Republican," "Democrat," etc., coupled with a discussion of the candidacy or the election. When this occurs, it is quite evident what is happening—an intervention is taking place.

Id. 411–412. Furthermore:

[a] finding of political campaign intervention from the use of coded words is consistent with the concept of "candidate"—the words are not tantamount to advocating support for or opposition to an entire political party, such as "Republican," or a vague and unidentifiably large group of candidates, such as "conservative" because the sender of the message does not intend the recipient to interpret them that way. Code words, in this context, are used with the intent of conjuring favorable or unfavorable images—they have pejorative or commendatory connotations.

Id. at 412 n. 6.

(d) Educational Activities May Constitute Participation or Intervention

As discussed above, the IRS considers activities that satisfy the "methodology test" to be "educational." Just as educational activities may result in impermissible private benefit, however, so too may they violate the prohibition on political campaign intervention. The IRS takes the position that "[a]ctivities that meet the methodology test * * * may nevertheless constitute participation or intervention in a political campaign." IRS CPE Manual at 415.

New York Bar, 858 F.2d 876 (2d Cir. 1988), referred to above, is the leading case on point. In that case, a bar association published ratings of judicial candidates. The ratings were distributed to bar members and law libraries. The Association also issued press releases regarding its ratings, but did not conduct publicity campaigns to announce its ratings. *Id.* at 877. The Second Circuit held that although the Association's publications were educational, the distribution of the publications constituted prohibited campaign intervention. By disseminating the educational publications with the hope that they would "'ensure' that candidates whom [the Association] consider[ed] to be 'legally and professionally unqualified'" would not be elected, the court held that the Association "indirectly" participated in a political campaign on behalf of or in opposition to a candidate for public office. *Id.* at 881.

An implication of the holding in *New York Bar* is that one must consider not only whether the activity itself, *e.g.*, publishing educational materials such as candidate ratings, violates the political campaign prohibition, but also whether the intended consequences of the activity violates the prohibition.[101] The need to consider the consequences of an otherwise educational activity is clear from a review of several IRS rulings finding that an organization violated the prohibition by disseminating material that was deemed educational, but nonetheless affected voter preferences in violation of the prohibition.

For example, in Rev. Rul. 67–71, 1967–1 C.B. 125, the IRS ruled that a 501(c)(3) organization created to improve the public educational system by engaging in campaigns on behalf of candidates for school board was not exempt. Every four years, when the school board was to be elected, the organization considered the qualification of the candidates and selected those it thought most qualified. The organization then "engage[d] in a campaign on their behalf by publicly announcing its slate of candidates and by publishing and distributing a complete biography of each." *Id.* Although the selection process "may have been completely objective and unbiased and was intended primarily to educate and inform the public about the candidates," the IRS nonetheless

penalties on the organization's expenditures for the activities it found so troublesome.

[99] For example, section 501(c)(4) and (6) organizations are permitted to establish and/or support PACs. If these exempt organizations provide support for PACs, they are subject to tax, under section 527, on the lesser of their net investment income or their "exempt function" income.

[100] The FEC's "express advocacy" standard came into being because the Supreme Court held a provision of the Federal Elections Campaign act relating to contributions "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *See* IRS CPE Manual at 412 (quoting *Buckley* v. *Valeo*, 424 U.S. 1, 77 (1976)). Examples of "express advocacy" include "vote for," "elect," and "Smith for Congress" or "vote against," "defeat," and "reject." *Id.* at 413 (referring to 11 C.F.R. §109.1(b)(2)).

[101] *See also* T.A.M. 9635003 (Apr. 19, 1996). T.A.M. 9635003 involved a section 501(c)(3) organization that conducted "citizens' juries," a form of voter education in which a cross-section of citizens are selected to determine which issues are most relevant in the context of a particular campaign, to hear presentations by candidates on those issues, and to rate the candidates' positions on the issues. The section 501(c)(3) organization disseminated the citizen jury's report, including the candidate ratings. In its dissemination, the organization made it clear that it did not support or oppose any candidate, and that the views expressed were those of the citizen jurors and not the organization. The IRS found that the dissemination of the report constituted impermissible participation in a political campaign, and that all expenditures in connection with the conduct of the citizens' jury—and not just the expenditures of the dissemination—constituted "political expenditures" under section 4955: This culmination shows that all the activity of the organization leading up to the final report is intimately connected with and a part of the process to put on the [citizens' jury], and thus publication of the final report makes the entire process with respect to the [citizens' jury] a proscribed political activity.

ruled it to be intervention or participation in a political campaign. *Id.*

In Rev. Rul. 76–456, 1976–2 C.B. 151, the IRS ruled that an organization formed for the purpose of elevating the morals and ethics of political campaigning was nevertheless intervening in a political campaign when it solicited candidates to sign a code of fair campaign practices and released the names of those candidates who signed and those candidates who refused to sign. The IRS stated that this was done to educate citizens about the election process and so that they could "participate more effectively in their selection of government officials." *Id.* at 152. Nonetheless, such activity, although educational, "may result * * * in influencing voter opinion" and thus constituted a prohibited participation or intervention in a political campaign. *Id.*

(e) Nonpartisan Activities May Constitute Prohibited Political Campaign Participation

The IRS takes the position that the nonpartisan motivation for an organization's activities is "irrelevant when determining whether the political campaign prohibition" has been violated. IRS CPE Manual at 415. As support for this position, the IRS cites Rev. Rul. 76–456 and *New York Bar*, both of which are discussed above. In those cases, the court or the IRS found that the activities in question were nonpartisan, but nevertheless held that they constituted participation in a political campaign. As noted by the IRS in its CPE Manual, the court in *New York Bar* "made the rather wry observation [that] [a] candidate who receives a 'not qualified' rating will derive little comfort from the fact that the rating may have been made in a nonpartisan manner." IRS CPE Manual at 416. Similarly, in G.C.M. 35902 (July 15, 1974), the IRS stated:

The provision in the Code prohibiting participation or intervention in "any political campaign" might conceivably be interpreted to refer only to participation or intervention with a partisan motive; but the provision does not say this. It seems more reasonable to construe it as referring to any statements made in direct relation to a political campaign which affect voter acceptance or rejection of a candidate * * *

(f) The IRS Has Found Violations of the Prohibition on Political Campaign Participation When an Activity Could Affect or Was Intended to Affect Voters' Preferences

As discussed above, the courts and the IRS have found prohibited political campaign intervention when the activity in question, although educational, affected or could reasonably be expected to affect voter preferences, even where the organization's motives in undertaking the activity were nonpartisan. G.C.M. 35902 is to similar effect. In that case, the IRS held that a public broadcasting station's nonpartisan educational motivation was irrelevant in determining whether its provision of free air time to candidates for elective office was permissible under section 501(c)(3). The IRS found that the station's procedures for providing air time, including an equal time doctrine for all candidates and an on-air disclaimer of support for any particular candidate, were sufficient to ensure that the activity would not constitute an impermissible political campaign intervention. The fact that the station's motivation was to educate the public and not to influence an election, however, was deemed to be irrelevant.

The cases and rulings cited above make it clear that simply having an educational or nonpartisan motive for engaging in prohibited political activity is not a defense to a finding of violation. The relevance and irrelevance of motive is sometimes misstated, however. While the absence of an improper political motivation is irrelevant, evidence showing the existence of a political motivation is relevant and one of the facts and circumstances that the IRS will consider in determining whether there is a violation. Indeed, the IRS has found the existence of evidence showing an intent to participate in a political campaign to be sufficient to support a finding of violation, despite the lack of evidence that the activity achieved the intended results.

For example, in G.C.M. 39811 (Feb. 9, 1990), a religious organization encouraged its members to seek election to positions as precinct committee-persons in the Republican or Democratic Party structures. Although none of the organization's members actually ran for such positions, the IRS found that urging its members to become involved in the local party organizations was part of the organization's larger plans to "someday control the political parties."

The first step in the Foundation's long-term strategy was to encourage members to be elected as precinct committeemen. These individuals could then exert influence within the party apparatus, beginning with the county central committee. Precinct committeemen could sway the precinct caucuses, a step in the selection of delegates to the party's presidential nominating convention. * * * Intervention at this early stage in the elective process in order to influence political parties to nominate such candidates is, we believe, sufficient to constitute intervention in a political campaign.

Id. The IRS went on to say:

In its discussion of the Tax Court opinion [in *New York Bar*], the [Second Circuit] observed that the ratings of candidates were "published with the hope that they will have an impact on the voter." The effort, and not the effect, constituted intervention in a political campaign. Therefore, whether anyone heeded the call to run for precinct committee, whether that individual was elected, and if so, what he or she subsequently did are all immaterial.

Id.

In G.C.M. 39811, the IRS did not contend that the organization's urging of members to run for office alone constituted the violation. Rather, the organization's "long-term strategy" of seeking to influence the political parties' nomination of candidates by having its members elected to office, and its urging of members to run for office so as to carry out that strategy, were sufficient to support a finding of impermissible campaign participation, despite the fact that the effort was not successful.

Other cases and rulings have also looked to an organization's intent as an important element of a finding of prohibited participation or intervention. In 1972, a court held that an organization violated the participation or intervention prohibition when it "used its publications and broadcasts to attack candidates and incumbents who were considered too liberal." *Christian Echoes National Ministry, Inc.* v. *United States*, 470 F.2d 849, 856 (10th Cir. 1972). The court did not discuss whether the activities actually influenced voters or were reasonably likely to do so. Rather, it concluded that the organization's "attempts to elect or defeat certain political leaders reflected [the organization's] objective to change the composition of the federal government." *Id.*

The IRS also found an organization's intent relevant in P.L.R. 9117001 (Sept. 5, 1990). As described in that ruling, an organization mailed out material indicating that it was intending to help educate conservatives on the importance of voting in the 1984 general election. According to facts stated in the ruling letter, the material contained language "intended" to induce conservative voters to vote for President Reagan, even though his name was not included in the materials. The IRS thus concluded that "the material was targeted to influence a segment of voters to vote for President Reagan." *Id.*

Based on the above, the IRS position is that an organization can violate the political campaign prohibition by either: (a) conducting activities that could have the effect of influencing voter acceptance or rejection of a candidate or group of candidates (the "effect" standard), or (b) engaging in activities that are intended to influence voter acceptance or rejection of a candidate or group of candidates, whether they do so or not (the "effort" standard). Most of the uncertainty over the scope of the prohibition on political campaign intervention relates to the "effect" standard—the possibility that an organization may, without intending to do so, engage in an activity that could have the effect of influencing voter acceptance of a candidate and, as a result, place its tax exemption in jeopardy and/or risk incurring excise tax penalties under section 4955. The legislative history of section 4955 makes it clear that an inadvertent action may indeed violate section 501(c)(3), and suggests that the IRS may appropriately apply the excise tax penalty rather than revocation as a sanction in such situations. Nevertheless, some practitioners have expressed the view that, in interpreting whether ambiguous behavior is violative of the campaign intervention prohibition, primary reliance should be placed on whether there was a political purpose to the behavior at issue. *See* EO Comments at 856–57. In other words, "to violate the 501(c)(3) prohibition, the organization's actions have to include an intentional 'tilt' for or against one or more people running for public office." *Id.* at 857. In this regard, it was noted that:

In most cases, the presence of a political purpose will be clear from the charity's paper trail, because organizational activities in the political arena are usually accompanied by assertive behavior, much internal discussion, and explicit written communications. * * *

Id.

To date, the IRS has shown no intention to abandon its position that an organization may violate the prohibition against political campaign intervention based on the unintended or inadvertent effect of its actions, as well as by an engaging in activities with "an intentional tilt" in favor of a candidate or in support of a PAC. Indeed, its recent election year warning to section 501(c)(3) organizations not to "become involved in any other activities that may be beneficial or detrimental to any candidate" (discussed above) evidences an apparent intention to adhere to a broad interpretation of the prohibition. IRS News Release IR–96–23 (Apr. 24, 1996).

(ii) If a Substantial Part of an Organization's Activities is Attempting to Influence Legislation, or its Primary Goal can only be Accomplished through Legislation, it is an "Action" Organization

Section 501(c)(3) provides that an organization cannot be tax-exempt if a "substantial part" of its activities is "carrying on propaganda, or otherwise attempting, to influence

legislation." Although there is virtually no legislative history on the prohibition, courts have declared that the limitations in section 501(c)(3) "stem from the policy that the United States Treasury should be neutral in political affairs and that substantial activities directed to attempts to influence legislation should not be subsidized." *Haswell* v. *United States*, 500 F.2d 1133, 1140 (Ct. Cl. 1974), *cert. denied*, 419 U.S. 1107 (1975). (The court also noted that "[t]ax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions." *Id.*)

The Regulations provide that an organization is an "action" organization if "a substantial part of its activities is attempting to influence legislation by propaganda or otherwise." Treas. Reg. §1.501(c)(3)–1(c)(3)(ii). The Regulations also provide that an organization is an "action" organization if it has the following two characteristics:

(a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objective) may be attained only by legislation or a defeat of proposed legislation; and

(b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public.

Treas. Reg. §1.501(c)(3)–1(c)(3)(iv).

To determine whether a substantial part of an organization's activities is attempting to influence legislation, two alternative tests exist. Each test contains its own definition of "legislation" and what constitutes an attempt to influence legislation. The two tests also contain different ways of determining substantiality. One test is referred to as the "substantial-part test." The other test, referred to as the "expenditure test,"[102] was added to tax law in 1976 at sections 501(h) and 4911 as a result of uncertainty over the meaning of the word "substantial."

The "expenditure test" sets forth specific, dollar levels of permissible lobbying expenditures. Section 501(h) did not amend section 501(c)(3), but rather provided charitable organizations an alternative to the vague "substantial-part" limitations of section 501(c)(3). A charitable organization may elect the "expenditure test" as a substitute for the substantial-part test. A public charity that does not elect the expenditure test remains subject to the substantial part test. Treas. Reg. §1.501(h)–1(a)(4). Joint Committee in its General Explanation of the Tax Reform Act of 1976, 1976–3 C.B. (Vol. 2) 419.

The substantial-part test is applied without regard to the provisions of section 501(h). The law, regulations and rulings regarding the expenditure test may not be used to interpret the law, regulations and rulings of the substantial-part test. Section 501(h)(7) ("nothing [in section 501(h)] shall be construed to affect the interpretation of the phrase 'no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation,' under [section 501(c)(3)]").

Determining whether an organization violated the lobbying limitation requires an understanding of what constitutes: i. "legislation;" ii. an attempt to "influence" legislation; and iii. a "substantial" part of an organization's activities. It is also necessary to understand the circumstances under which an organization's "objectives can be achieved only through the passage of legislation."

(a) Definition of "Legislation"

The Regulations define "legislation" to include "action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure." Treas. Reg. §501(c)(3)–1(c)(3)(ii). "Action by the Congress" includes the "introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items." G.C.M. 39694 (Jan. 22, 1988). This definition does not include Executive Branch actions, or actions of independent agencies. P.L.R. 6205116290A (May 11, 1962). Requesting executive bodies to support or oppose legislation, however, is prohibited. The IRS does not recognize a distinction between "good" legislation and "bad" legislation. For example, in Rev. Rul. 67–293, 1967–2 C.B. 185, the IRS ruled that an organization substantially engaged in promoting legislation to protect animals was not exempt even though the legislation would have benefited the community.

(b) Definition of "attempting to influence legislation"

Under the Regulations, an organization will be regarded as "attempting to influence legislation" if it:

(a) contacts members of a legislative body for the purpose of proposing, supporting, or opposing legislation (Treas. Reg. §1.501(c)(3)–1(c)(3)(ii)(a)) (referred to as "direct lobbying");

(b) urges the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation (*id.*) (referred to as "grassroots lobbying"); or

(c) advocates the adoption or rejection of legislation (Treas. Reg. §1.501(c)(3)–1(c)(3)(ii)(b)).

Section 4945(e) of the Internal Revenue Code provides additional guidance regarding the meaning of "attempting to influence legislation."[103] According to that provision, a taxable expenditure includes any amount paid or incurred for:

(a) any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and

(b) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a government body or to a committee or other subdivision thereof in response to a written request by such body or subdivision . * * *) other than through making available the results of nonpartisan analysis, study, or research.

Treas. Reg. §53.4945–2(d)(4), which is applicable to non-electing public charities,[104] discusses "nonpartisan analysis, study, or research" as follows:

Examinations and discussions of broad social, economic, and similar problems are [not lobbying communications] even if the problems are of the type with which government would be expected to deal ultimately * * * For example, [an organization may discuss] problems such as environmental pollution or population growth that are being considered by Congress and various State legislatures, but only where the discussions are not directly addressed to specific legislation being considered, and only where the discussions do not directly encourage recipients of the communication to contact a legislator, an employee of a legislative body, or a government official or employee who may participate in the formulation of legislation.[105]

Even if specific legislation is not mentioned, however, an indirect campaign to "mold public opinion" may violate the legislative lobbying prohibition. In *Christian Echoes National Ministry, Inc.* v. *United States*, 470 F.2d 849 (10th Cir. 1972), the organization in question produced religious radio and television broadcasts, distributed publications, and engaged "in evangelistic campaigns and meetings for the promotion of the social and spiritual welfare of the community, state and nation." *Id.* at 852. The court found the publications attempted to influence legislation "by appeals to the public to react to certain issues." *Id.* at 855.[106]

Under the expenditure test, "grassroots lobbying" is "any attempt to influence legislation through an attempt to affect the opinions of the general public or any segment thereof." Treas. Reg. §56.4911–2(b)(2)(i). Such a communication will be considered grassroots lobbying if it: (a) refers to specific legislation, (b) reflects a view on such legislation, (c) [e]ncourages the recipient to take action with respect to such legislation.

Treas Reg. §56.4911–2(b)(2)(ii).[107]

(c) Definition of "Substantial"

A bright-line test for determining when a "substantial" part of an organization's activities are devoted to influencing legislation does not exist. Neither the regulations

[102] As stated in the legislative history with respect to I.R.C. §501(h): "The language of the lobbying provision was first enacted in 1934. Since that time neither Treasury regulations nor court decisions gave enough detailed meaning to the statutory language to permit most charitable organizations to know approximately where the limits were between what was permitted by the statute and what was forbidden by it. This vagueness was, in large part, a function of the uncertainty in the meaning of the terms 'substantial part' and 'activities'. * * * Many believed that the standards as to the permissible level of activities under prior law was too vague and thereby tended to encourage subjective and selective enforcement."

[103] I.R.C. §§4945(d) and (e) contain definitions of "attempting to influence legislation" with respect to taxable expenditures by private foundations, not public charities. However, "[a]ctivities which constitute an attempt to influence legislation under Code §4945 * * * also constitute an attempt to influence legislation under Code §501(c)(3)." G.C.M. 36127 (Jan. 2, 1975). Congress viewed section 4945(e) as a clarification of the phrase "attempting to influence legislation" in tax-exempt law generally, not just with respect to private foundations. *Id.*

[104] See G.C.M. 36127 (Jan. 2, 1975) and *Haswell* v. *United States*, 500 F.2d 1133 (Ct. Cl. 1974).

[105] See also G.C.M. 36127 (Jan. 2, 1975).

[106] For example, the publications urged its readers to: "write their Congressmen in order to influence the political decisions in Washington;" "work in politics at the precinct level;" "maintain the McCarran-Walter Immigration law;" "reduce the federal payroll by discharging needless jobholders, stop waste of public funds and balance the budget;" "stop federal aid to education, socialized medicine and public housing;" "abolish the federal income tax;" and "withdraw from the United Nations." *Christian Echoes National Ministry*, 470 F.2d at 855. In light of these facts, the court upheld the IRS position that the organization failed to qualify as a 501(c)(3) organization.

[107] The IRS has also concluded that an organization formed to "facilitate" the inauguration of a state's governor-elect and the "orderly transition of power from one political party to another by legislative and personnel studies" violated the prohibition on attempting to influence legislation. G.C.M. 35473 (Sept. 10, 1973). The IRS "saw no logical way to avoid concluding that [the organization's] active advocacy of a proposed legislative program requires it to be [classified as an action organization. * * *]" *See also* Rev. Rul. 74–117, 1974–1 C.B. 128.

nor case law provide useful guidance as to whether the determination must be based on activity or expenditures or both. In *Seasongood* v. *Commissioner*, 227 F.2d 907 (6th Cir. 1955), the court held that attempts to influence legislation that constituted less than five percent of total activities were not substantial. The percentage test of *Seasongood* was, however, explicitly rejected in *Christian Echoes National Ministry, Inc.*

The political [i.e. legislative] activities of an organization must be balanced in the context of the objects and circumstances of the organization to determine whether a substantial part of its activities was to influence legislation. (citations omitted.) A percentage test to determine whether the activities were substantial obscures the complexity of balancing the organization's activities in relation to its objects and circumstances.

Id. at 855. Yet in *Haswell* v. *United States*, 500 F.2d 1133, 1145 (Ct. Cl. 1974), the court determined that while a percentage test is not the only measure of substantiality, it was a strong indication that the organization's purposes were no longer consistent with charity. In that case, the court concluded that approximately 20 percent of the organization's total expenditures were attributable to attempts to influence legislation, and they were found to be substantial. *Id.* at 1146.

The IRS has characterized the ambiguity over the meaning of "substantial" as a "problem [that] does not lend itself to ready numerical boundaries." G.C.M. 36148 (January 28, 1975). In attempting to give some guidance on the subject, however, the IRS said:

[t]he percentage of the budget dedicated to a given activity is only one type of evidence of substantiality. Others are the amount of volunteer time devoted to the activity, the amount of publicity the organization assigns to the activity, and the continuous or intermittent nature of the organization's attention to it.

(d) Circumstances under which an organization's "objectives can be achieved only through the passage of legislation"

The Regulations require that when determining whether an organization's objectives can be achieved only through the passage of legislation that "all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered." Treas. Reg. §1.501(c)(3)–1(c)(3)(iv). There is little additional IRS or court guidance on the subject. In one of the few comments on this section of the Regulations, the IRS said in G.C.M. 33617 (Sep. 12, 1967) that an organization that was "an active advocate of a political doctrine" was an action organization because its objectives could only be attained by legislation. In its publications, the organization stated that its objectives included:

the mobilization of public opinion; resisting every attempt by law or the administration of law which widens the breach in the wall of [redacted by IRS] working for repeal of any existing state law which sanctions the granting of public aid to [redacted by IRS]; and uniting all 'patriotic' citizens in a concerted effort to prevent the passage of any federal law [redacted by IRS]. * * *"

By advocating its position to others, thereby attempting to secure general acceptance of its beliefs; by engaging in general legislative activities to implement its views; by urging the enactment or defeat of proposed legislation which was inimical to its principles: the organization ceased to function exclusively in the educator's role of informant in that its advocacy was not merely to increase the knowledge of the organization's audience, but was to secure acceptance of, and action on, the organization's views concerning legislative proposals, thereby encroaching upon the proscribed legislative area.

In Rev. Rul. 62–71, 1962–1 C.B. 85, an organization was formed "for the purpose of supporting an educational program for the stimulation of interest in the study of the science of economics or political economy, particularly with reference to a specified doctrine or theory." It conducted research, made surveys on economic conditions available, moderated discussion groups and published books and pamphlets. The research activities were principally concerned with determining the effect various real estate taxation methods would have on land values with reference to the "single tax theory of taxation." "It [was] the announced policy of the organization to promote its philosophy by educational methods as well as by the encouragement of political action." *Id.* The tax theory advocated in the publications, although educational within the meaning of section 501(c)(3), could be put into effect only by legislative action. Without further elaboration of the facts involved or how the theory could only be put into effect through legislative action, the IRS ruled the organization was an action organization, and thus not operated exclusively for an exempt purpose.

In G.C.M. 37247 (Sept. 8, 1977), the IRS discussed whether an organization whose guiding doctrine was to propagate a "nontheistic, ethical doctrine" of volunteerism could be considered a 501(c)(3) organization. The "ultimate goal" of the guiding doctrine was "freedom from governmental and societal control." According to the IRS:

[t]his objective can obviously only be attained legally through legislation, including constitutional amendments, or illegally through revolution. If [the organization] should advocate illegal activities, then it is not charitable; if it advocates legal attainment of its doctrine's goal through legislation, then it is an action organization.

The IRS did not conclude that organization was an action organization, only that there was such a possibility and further investigation was warranted. Research has not uncovered further information about this case.

d. To Satisfy the Operational Test, an Organization Must Not Violate the "Private Inurement" Prohibition

To qualify for tax-exempt status, section 501(c)(3) provides that an organization must be organized and operated so that "no part of [its] net earnings * * * inures to the benefit of any private shareholder or individual." The Regulations add little clarification to this provision other than saying that "[a]n organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals." Treas. Reg. §1.501(c)(3)–1(c)(2).

Although the private benefit and private inurement prohibitions share common and often overlapping elements, the two are distinct requirements which must be independently satisfied. *American Campaign Academy*, 92 T.C. at 1068. The private inurement prohibition may be "subsumed" within the private benefit analysis, but the reverse is not true. "[W]hen the Court concludes that no prohibited inurement of earnings exists, it cannot stop there but must inquire further and determine whether a prohibited private benefit is conferred." *Id.* at 1069. It should be noted that the private inurement prohibition pertains to net earnings of an organization, while the private benefit prohibition can apply to benefits other than those that have monetary value. Furthermore, unlike with the private benefit prohibition, the prohibition on private inurement is absolute. "There is no de minimis exception to the inurement prohibition." G.C.M. 39862 (Nov. 22, 1991).

The IRS has described "private shareholders or individuals" as "persons who, because of their particular relationship with an organization, have an opportunity to control or influence its activities." *Id.* "[I]t is generally accepted that persons other than employees or directors may be in a position to exercise the control over an organization to make that person an insider for inurement purposes." Hill, F. and Kirschten, B., *Federal and State Taxation of Exempt Organizations* 2–85 (1994). "The inurement prohibition serves to prevent anyone in a position to do so from siphoning off any of a charity's income or assets for personal use." G.C.M. 39862 (Nov. 22, 1991). Furthermore, the IRS has stated that:

[I]nurement is likely to arise where the financial benefit represents a transfer of the organization's financial resources to an individual solely by virtue of the individual's relationship with the organization, and without regard to accomplishing exempt purposes.

G.C.M. 38459 (July 31, 1980). *Also* IRS Exempt Organizations Handbook (IRM 7751) §381.1(4) ("The prohibition of inurement in its simplest terms, means that a private shareholder or individual cannot pocket the organization's funds except as reasonable payment for goods or services"); and Hopkins, *supra*, at 267 (Proscribed private inurement "involves a transaction or series of transactions, such as unreasonable compensation, unreasonable rental charges, unreasonable borrowing arrangements, or deferred or retained interests in the organization's assets").

Mr. TAYLOR of Mississippi. Mr. Speaker, today I rise to discuss the ethics charges facing NEWT GINGRICH, Speaker of the House of Representatives.

The House Ethics Committee voted 7–1 to reprimand and assess a penalty of $300,000 for Speaker GINGRICH.

In recommending a sanction and a $300,000 fine, the committee stated on page 94 of its report the following: "* * * the violation does not represent only a single instance of reckless conduct. Rather, over a number of years and in a number of situations, Mr. GINGRICH showed a disregard and lack of respect for the standards of conduct that applied to his activities."

Based on this, I find it inconceivable that the Ethics Committee would recommend a resolution to this body which would not specifically prohibit the Speaker from paying his fine from campaign funds. Mr. GINGRICH's campaign organization can raise these funds in a matter of minutes. During the Speaker's most recent general election campaign, he spent $5.4 million to defeat his challenger. At the end of November, Federal Election Commission reports indicate that he has over $1 million remaining in his campaign fund.

The Speaker used funds from tax-exempt organizations to promote his political agenda. If a Member violates the rules of the House, the Member, not their campaign, should be held responsible for whatever fine is levied.

Mr. Speaker, I therefore voted against approving the resolution recommended by the committee.

Mr. CANADY of Florida. Mr. Speaker, today I cast my vote in support of the recommendation of the Committee on Standards of Official Conduct that Mr. GINGRICH be reprimanded and subjected to a $300,000 cost assessment. I do so after reviewing the report of the committee and the report of counsel for Mr. GINGRICH.

In making a judgment regarding this matter, I have been guided by the dual goals of maintaining the integrity of the House, and ensuring that Mr. GINGRICH be treated fairly. I have attempted to base my decision on this matter on all the relevant facts. In my view, the committee was well justified in concluding that Mr. GINGRICH engaged in conduct which did not reflect creditably on the House.

The most serious finding against Mr. GINGRICH involves the submission of inaccurate information to the committee. The circumstances surrounding the submission of incorrect statements indicates that Mr. GINGRICH was woefully remiss in meeting his obligation as a respondent in the ethics process. Although the committee did not conclude that Mr. GINGRICH intentionally misled the committee, it is clear that at the least Mr. GINGRICH was reckless in responding to a series of inquiries from the committee.

The sequence of events is particularly disturbing because after the initial submission of inaccurate information in December 1994, Mr. GINGRICH had multiple opportunities to correct the misstatements but failed to do so until his November 13, 1996, appearance before the investigative subcommittee. Most distressing is the fact that when the scope of the investigation was expanded on September 26, 1996, to include the issue of whether Mr. GINGRICH provided accurate, reliable, and complete information to the committee, Mr. GINGRICH failed to make an immediate diligent effort to determine if he had in fact submitted incorrect information to the committee, and to correct any errors that may have been made.

Indeed, in response to the investigative subcommittee's letter of October 1, 1996, requesting that Mr. GINGRICH produce all documents relied on to prepare the letters previously submitted to the committee, Mr. GINGRICH wrote to the subcommittee stating how busy he was at the time the various letters were submitted, but also affirming that he had reviewed the submissions to verify their accuracy. Mr. GINGRICH's failure to set the record straight at this point was under the most charitable view grossly reckless.

The committee was also justified in concluding that Mr. GINGRICH erred in failing to consult a tax attorney regarding certain of his activities involving organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code. Although legal experts may disagree about the propriety of Mr. GINGRICH's conduct, Mr. GINGRICH's own expert witness acknowledged that the combination of politics and 501(c)(3) organizations is an "explosive mix," and stated that he would have advised Mr. GINGRICH not to use 501(c)(3) entities for the purposes for which he used them. There was more than an adequate basis for the committee to conclude that "there were significant and substantial warning signals to Mr. GINGRICH that he should have heeded prior to embarking on "the projects involving tax-exempt entities. In 1995 Mr. GINGRICH himself told the New York Times that his activity involving section 501(c)(3) entities "[g]oes right up to the edge. * * * [I]t's risk taking." Such comments betray a disturbing lack of concern by Mr. GINGRICH about the prospect that his conduct might bring discredit on the House.

In light of all these circumstances, I believe that the penalty recommended by the committee represents the minimum appropriate sanction. Even if he did not intend to mislead the committee or abuse the tax laws, Mr. GINGRICH's conduct was culpable because it was reckless. Such conduct undermines public confidence in the integrity of our system of Government. It is conduct that cannot be excused. The reprimand combined with the stiff cost assessment sends a strong signal that the House will deal firmly with such transgressions of the rules of the House.

Mr. BLUMENAUER. Mr. Speaker, for me, the Gingrich episode represents much of what is wrong about the American political system today. It is unfortunately a failing which occurs on many levels.

At its core is the behavior of the man twice removed from the Presidency. It is very difficult for anyone who has read the Cole report to reach any conclusion other than that Mr. GINGRICH consistently did not tell the truth, in a desperate attempt to avoid responsibility for the misuse of taxpayer funds for partisan gain.

In turn, Mr. GINGRICH's transgressions engendered a series of behaviors from people in both parties and in the press that play to their worst instincts, and that undermine the confidence people have in their Government.

Last but not least, the blame resides as well with the House ethics process, a process so open to perversion that it raises questions about its ability to protect individual rights. It has unfortunately become so susceptible to manipulation that the House leadership and committee chair can, and has, unilaterally distorted its most sensitive proceedings, denying the House and the American public the time to reflect.

Over the weekend, I read the Cole report. I come away from it believing that Mr. GINGRICH knew exactly what he was doing, based on his intimate familiarity with the 1989 case involving the American Campaign Academy. In that case, the IRS and a tax court found that the academy, which was run by Mr. GINGRICH's closest personal advisor and which was represented by Mr. GINGRICH's lawyer, was ineligible for tax-exempt status because it served private, rather than public interests.

But Mr. GINGRICH was not deterred by the lessons of the American Campaign Academy ruling. Far from it. Instead, over a million dollars was diverted knowingly and improperly from charities for political purposes in violation of the law and of House ethical rules. As revealed with great clarity by Mr. Cole, Mr. GINGRICH engaged in a deliberate strategy to use money contributed for charitable purposes to fund his own partisan agenda.

And it is impossible to read the Cole report without also understanding Mr. GINGRICH's use of the enhanced power and prestige of the Speakership for personal enrichment. The evidence goes far beyond the salary and perquisites of the Speakership. A telling example is Mr. GINGRICH's acceptance of a $4.3 million book advance, which flowed directly from his new position and the materials from what we now know was a taxpayer sponsored college course. Although Mr. GINGRICH was eventually forced to give up the advance, he has collected royalties far in excess of any money involved in the case of former Speaker Jim Wright.

Ultimately, this episode is about the failure to be honest. Nothing speaks more eloquently to that point than Mr. GINGRICH's final and belated admission, not to guilt, but only to being naive. Everyone who reads the Cole report, and, I submit, anyone who carefully observes Mr. GINGRICH's personal behavior during these last few days, knows how hollow this rings. Mr. GINGRICH is not naive. He has devoted a quarter of a century in pursuit of political power for himself and his party. It has been at times brilliant, calculating, and shrewd. But it has never been naive. Mr. GINGRICH pushed the envelop, and got caught.

Mr. PACKARD. Mr. Speaker, honesty, fairness, and dealing justly with others has been an overriding principle of my entire life. The Speaker admitted he made mistakes. I believe this body should admonish the Speaker's actions. However, the Ethics Committee's recommendations go much too far. The penalty far exceeds the infraction.

First and foremost, the Ethics Committee serves to ensure fairness. With that in mind, the Committee must level equitable sanctions. This recommendation fails to do so.

In the past, the Committee chose to dispense with similar matters with a letter against the offender. For violations, which I consider morally and ethically far worse, Members were given little more than a perfunctory slap on the hand.

I consider this action against the Speaker excessive and unwarranted. For that reason, I intend to vote against the Ethics Committee's recommendation. A letter of reproval should be sufficient as it was for the Minority Leader, RICHARD GEPHARDT; Minority Whip, DAVID BONIOR and for violations far more serious than the Speaker's.

Mr. CONYERS. Mr. Speaker, this is a sad day for the House of Representatives and for the American people. For the first time in history, our body will be voting to punish the Speaker of the House. How we as a body act to punish Mr. GINGRICH will send a message to the American public. It will say whether we are able to monitor our own institution; it will say whether we prefer party loyalty to truth and integrity; it will say whether Mr. GINGRICH is the Member best suited to represent our institution.

The punishment contained in House Resolution 31 is inadequate. The punishment neither reflects the seriousness of the misdeeds admitted to by Mr. GINGRICH nor Mr. GINGRICH's history of abuse of the rules of the House.

Make no mistake about the gravity of the charges against GINGRICH. Certain Members of the majority have attempted to portray Mr. GINGRICH's misleading statements as oversight, and they have attempted to portray the tax law he violated as arcane. Do not let these statements mislead the entire body.

Speaker GINGRICH has admitted to all of the violations alleged by the subcommittee. He acknowledged that "in my name and over my

signature, inaccurate, incomplete, and unreliable statements were given to the committee" and that "he brought down on the people's House a controversy which could weaken the faith people have in their Government." The special prosecutor has make it clear that he believes that Mr. GINGRICH intentionally misled the ethics counsel. The special prosecutor and the ethics committee also made it clear that Mr. GINGRICH violated the agreement that forbid him to conduct a media strategy to minimize, or spin, the findings of the Ethics Committee. And after review of the committee's report, it seems very likely that Mr. GINGRICH has violated tax law. And GINGRICH did not violate arcane tax law, but rather the very basic premise that you cannot use tax-exempt funds for political purposes. He used tax-exempt funds to help build a political machine.

And it is clear that this is not the end of Mr. GINGRICH's ethical and legal troubles. The committee will make available to the IRS all relevant documents produced during the subcommittee's inquiry and establish a liaison with the IRS. The Department of Justice may further investigate the actions of Mr. GINGRICH. We have no idea what these, or other investigations, find. But, it does not matter. Because what we already know is enough for us to say, enough is enough, let us show the American public that will have the strength and integrity to punish our Members. And a slap on the wrist of Mr. GINGRICH that allows him to retain the Speaker's gavel, does not show our strength or integrity.

Further, this is not the first time that Mr. GINGRICH has been found to have violated House rules. The Speaker has already been cited six times for his disregard of the House rules. It has become very clear that Mr. GINGRICH has shown a willful disregard for our rules. In fact, Mr. James Cole has found that "over a number of years and in a number of situations * * * Mr. GINGRICH showed a disregard and lack of respect for the standards of conduct that applied to his activities."

This willful "disregard and lack of respect for the standards of conduct" make it clear that the punishment of reprimand does not reflect the seriousness of Mr. GINGRICH'S multiple offenses. Comparable offenses historically have met with more severe punishment. In 1979, the House voted to censure a representative for diverting staff salaries for personal use and in 1980, the House censured another representative of financial misconduct. Mr. GINGRICH diverted tax exempt funds for political purposes and then attempted over several years to cover his tracks by misleading the committee. Certainly, these actions are deserving of at least a censure.

Unfortunately Mr. Speaker, Mr. GINGRICH's actions have weakened the American public's faith in their Government. I find it unconscionable that my colleagues in the majority, after hearing Mr. GINGRICH's admission, would vote to reinstate him as Speaker of the House. Are they saying that Mr. GINGRICH is the best person among their ranks to lead their party and to lead the House of Representatives? Mr. GINGRICH himself has said that Ethics Committee investigations of a Speaker must "meet a higher standard of public accountability" than those involving other Members of the House. By voting for this resolution, will we really be meeting that higher standard?

I urge my colleagues on the other side of the aisle to reconsider keeping Mr. GINGRICH as Speaker. Although the majority's rules may allow him to remain Speaker, the ethical lapses of Mr. GINGRICH demand that he step aside. As the January 21, 1997, Atlanta Journal-Constitution has stated, "Mr. GINGRICH will dishonor the House every time he picks up the Speaker's gavel." The New York Times also urges Mr. GINGRICH to step aside: "That finding [of James Cole], and the considerable evidence that backs it up, make it clear that Mr. GINGRICH has no business serving as Speaker. His ego got him into this mess, and that same ego is now driving him to compound the damage." As William Carlos Williams noted, "Leadership passes into empire; empire begets insolence; insolence brings ruin." It is time for the majority to do the right thing.

Mr. STOKES. Mr. Speaker, I am reminded today of what occurred in the House of Representatives a few years ago when I chaired the Ethics Committee. We had undertaken an extensive investigation, led by Joseph Califano, a noted Washington lawyer whom I had hired as special counsel. Mr. Califano's position to our committee was the same as the position of Mr. James M. Cole, special counsel to this committee. This particular investigation surrounded allegations of sex and drugs involvement between Members of Congress and House pages.

At the end of our investigation, the Ethics Committee brought charges against two Members of the House. These charges resulted in findings that these two Members had been involved in sex with House pages. Our recommendation to the House in both cases was a reprimand for both Members. As chairman of the Ethics Committee, I presented the committee's case on the floor of the House. Following my presentation, the leadership on both sides of the aisle joined together on a resolution to raise the recommendation of reprimand to a greater penalty, that of censure. The vote was taken and both Members were censured. That occurred, of course, in a Congress where the leadership on neither side was involved in breaking the rules of the House.

Today, we are faced with the leader of the House who not only has broken the rules of the House, but has been described by Mr. James M. Cole, special counsel, as being involved in conduct where the violation did not represent only a single instance of reckless conduct, but rather over a number of years and in a number of situations, Mr. Cole states emphatically that the Speaker, Mr. GINGRICH, showed a disregard and lack of respect for the standard of conduct that applied to his activities.

Moreover, the committee found that Speaker GINGRICH has admitted that he submitted information to the committee which was inaccurate, incomplete, and unreliable. In recommending a reprimand, Special Counsel Cole stated that the Ethics Committee, in recommending a reprimand, recognized that this matter fell somewhere in between a reprimand and censure. It would seem to me that this is an important fact, that the subcommittee which investigated this case did not feel comfortable with a finding of reprimand.

Additionally, this investigation undertaken by the House has now been referred to the Internal Revenue Service for further investigation relative to Tax Code violations. And last, the imposition of a $300,000 fine, unprecedented in the history of the institution, should convince every Member that this is not an offense which is made into a simple reprimand by levying such a harsh fine. Rather, the fine is indicative that this matter is more severe than a reprimand and should be taken up to censure.

A censure would then solve the problem of removing a Speaker who lacks the decency to remove himself from office. The total lack of respect he shows for the House and thereby the American people warrants this House to reject the committee's recommendation and impose a sanction of censure.

The imposition of a mere reprimand today will leave a stigma over this Speaker that will haunt every Member of the House for the rest of this Congress.

Mrs. JOHNSON of Connecticut. Mr. Speaker, 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.

RECORDED VOTE

Mr. CARDIN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 395, noes 28, answered "present" 5, not voting 6, as follows:

[Roll No. 8]

AYES—395

Ackerman	Calvert	Dicks
Aderholt	Camp	Dingell
Allen	Campbell	Dixon
Andrews	Canady	Doggett
Archer	Cannon	Dooley
Armey	Capps	Doyle
Bachus	Cardin	Dreier
Baesler	Castle	Duncan
Baker	Chabot	Dunn
Baldacci	Chambliss	Edwards
Ballenger	Chenoweth	Ehlers
Barcia	Christensen	Ehrlich
Barrett (NE)	Clay	Emerson
Barrett (WI)	Clayton	Engel
Bass	Clement	English
Bateman	Clyburn	Ensign
Becerra	Coble	Eshoo
Bentsen	Collins	Etheridge
Bereuter	Combest	Evans
Berman	Condit	Everett
Berry	Cook	Ewing
Bilbray	Cooksey	Farr
Bilirakis	Costello	Fattah
Bishop	Cox	Fawell
Blagojevich	Coyne	Fazio
Bliley	Cramer	Filner
Blumenauer	Crane	Flake
Blunt	Crapo	Foglietta
Boehlert	Cubin	Foley
Boehner	Cummings	Forbes
Bonilla	Cunningham	Ford
Bonior	Danner	Fowler
Bono	Davis (FL)	Fox
Borski	Davis (IL)	Frank (MA)
Boswell	Davis (VA)	Franks (NJ)
Boucher	Deal	Frelinghuysen
Boyd	DeFazio	Frost
Brady	DeGette	Furse
Brown (CA)	Delahunt	Gallegly
Brown (FL)	DeLauro	Ganske
Brown (OH)	Dellums	Gejdenson
Bryant	Deutsch	Gekas
Bunning	Diaz-Balart	Gephardt
Burr	Dickey	Gibbons

Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Hill
Hilleary
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kim
Kind (WI)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kucinich
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Molinari
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Reyes
Richardson
Riggs
Riley
Rivers
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Schiff
Schumer
Scott
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Souder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Stokes
Strickland
Stupak
Sununu
Talent
Tanner
Tauscher
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt
Tierney
Torres
Towns
Traficant
Turner
Upton
Velázquez
Vento
Visclosky
Walsh
Wamp
Watkins
Watt (NC)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wise
Wolf
Woolsey
Wynn
Yates
Young (FL)

NOES—28

Barr
Bartlett
Barton
Burton
Buyer
Callahan
Coburn
DeLay
Doolittle
Herger
Hilliard
Hunter
Johnson, Sam
King (NY)
Lewis (CA)
Livingston
McKeon
Mica
Myrick
Packard
Sessions
Smith (TX)
Solomon
Stump
Taylor (MS)
Taylor (NC)
Wicker
Young (AK)

ANSWERED "PRESENT"—5

Abercrombie
Conyers
Hastings (FL)
McDermott
Waters

NOT VOTING—6

Carson
Granger
Kolbe
Tauzin
Tejeda
Watts (OK)

□ 1407

Mr. RAMSTAD changed his vote from "no" to "aye."

So the resolution 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. TAUZIN. Mr. Speaker, I was unavoidably detained for the last vote. If I were here, I would have voted "yes."

PERSONAL EXPLANATION

Mr. WATTS of Oklahoma. Mr. Speaker, on rollcall No. 8, I was unavoidably detained with a constituent. Had I been present, I would have voted "yes."

GENERAL LEAVE

Mrs. JOHNSON of Connecticut. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just adopted.

The SPEAKER pro tempore Mr. LAHOOD. Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON VETERANS' AFFAIRS

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Veterans' Affairs:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 21, 1997.

Re request to take leave from Veterans Committee.

Hon. NEWT GINGRICH,
The Capitol,
Washington, DC.

DEAR NEWT: In light of my new assignment to the House Committee on Government Reform and Oversight, I hereby request that I be granted a leave of absence from my assigned slot on the Committee on Veterans' Affairs.

Thank you for your consideration.

With warmest regards, I am,

Very truly yours,

BOB BARR.
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

ELECTION OF MAJORITY MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. BOEHNER. Mr. Speaker, by direction of the Republican Conference, I offer a privileged resolution (H. Res. 32) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 32

Resolved, That the following named Members be, and they are hereby, elected to the following standing committees:

Committee on Banking: Mr. La Tourette to rank following Mr. Sessions.

Committee on Education and the Workforce: Mr. Paul; Mr. Bob Schaffer of Colorado; Mr. Peterson of Pennsylvania; Mr. Upton; Mr. Deal of Georgia; Mr. Hilleary; and Mr. Scarborough; all to rank in the named order following Mr. Norwood of Georgia.

Committee on Government Reform and Oversight: Mr. Barr of Georgia to rank following Mr. Snowbarger.

Committee on International Relations: Mr. Brady to rank following Mr. Moran of Kansas.

Committee on Resources: Mr. Crapo to rank following Mr. Gibbons.

Committee on Science: Mr. Boehlert; Mr. Fawell; Mrs. Morella; Mr. Weldon of Pennsylvania; Mr. Rohrabacher; Mr. Schiff; Mr. Barton of Texas; Mr. Calvert; Mr. Bartlett of Maryland; Mr. Ehlers; Mr. Weldon of Florida; Mr. Salmon; Mr. Davis; Mr. Gutknecht; Mr. Foley; Mr. Ewing; Mr. Pickering; Mr. Cannon; Mr. Brady; and Mr. Cook.

Committee on Small Business: Mr. Combest; Mr. Hefley; Mr. Manzullo; Mr. Bartlett of Maryland; Mrs. Smith of Washington; Mr. LoBiondo; Mrs. Kelly; Mr. Jones; Mr. Souder; Mr. Chabot; Mr. Ryun; Mr. Snowbarger; Mr. Pappas; Mr. English; Mr. McIntosh; and Mrs. Emerson.

Committee on Veterans' Affairs: Mr. Smith of New Jersey; Mr. Bilirakis; Mr. Spence; Mr. Everett; Mr. Buyer; Mr. Quinn; Mr. Bachus; Mr. Stearns; Mr. Dan Schaefer of Colorado; Mr. Moran of Kansas; Mr. Cooksey; Mr. Hutchinson; Mr. Hunter; Mr. Hayworth; and Mrs. Chenoweth.

Mr. BOEHNER (during the reading). Mr. Speaker, I ask unanimous consent that the privileged resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

ELECTION OF MINORITY MEMBER TO COMMITTEE ON COMMERCE

Mr. FAZIO of California. Mr. Speaker, I offer a privileged resolution (H. Res. 33) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 33

Resolved, That the following named Member, be elected to the Committee on Commerce, be designated to rank on that committee as follows:

Tom Sawyer of Ohio, to rank directly below Eliot Engel of New York.

The resolution was agreed to.

A motion to reconsider was laid on the table.

HOUR OF MEETING FOR MORNING HOUR DEBATE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that on Mondays and Tuesdays of each week through the second session of the 105th Congress, the House shall convene 90 minutes earlier than the time otherwise established by order of the House solely for the purpose of conducting morning hour debate and that the time for such debate shall be limited to 30 minutes allocated to each party; except that on Tuesdays of each week after the first Tuesday in May of a session the House shall convene for morning hour debate 1 hour earlier than the time otherwise established by order of the House, that the time for such debate shall be limited to 25 minutes allocated to each party, and that in no event shall morning hour debate continue beyond 10 minutes before the hour appointed for the resumption of the House session; and that all morning hour debate shall be conducted under the following conditions:

First, the prayer by the Chaplain, the approval of the Journal, and the Pledge of Allegiance to the flag shall be postponed until resumption of the House session following morning hour debate; second, initial and subsequent recognition for debate shall alternate between parties; third, recognition shall be conferred by the Speaker only pursuant to lists submitted by the majority leader or the minority leader; fourth, no Member may address the House for more than 5 minutes except for the majority leader, the minority leader, or the minority whip; and, fifth, pursuant to clause 12 of rule I the Speaker shall declare a recess following morning hour debate until the hour appointed for the resumption of the House session.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

□ 1415

JOINT SESSION OF CONGRESS—STATE OF THE UNION ADDRESS

Mr. BOEHNER. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 9) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. CON. RES. 9

Resolved by the House of Representatives (the Senate concurring), That the two Houses of Congress assemble in the Hall of the House of Representatives on Tuesday, February 4, 1997, at 9 p.m., for the purpose of receiving such communication as the President of the United States shall be pleased to make to them.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

CONTINUATION OF NATIONAL EMERGENCY WITH RESPECT TO MIDDLE EAST VIOLENCE—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 105–28)

The SPEAKER pro tempore laid before the House a message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the Federal Register and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the Federal Register for publication, stating that the emergency declared with respect to grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process, is to continue in effect beyond January 23, 1997. The first notice continuing this emergency was published in the Federal Register last year on January 22, 1996.

The crisis with respect to the grave acts of violence committed by foreign terrorists that threaten to disrupt the Middle East peace process that led to the declaration of a national emergency, on January 23, 1995, has not been resolved. Terrorist groups continue to engage in activities with the purpose or effect of threatening the Middle East peace process, and which are hostile to U.S. interests in the region. Such actions threaten vital interests of the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to maintain in force the broad authorities necessary to deny any financial support from the United States for foreign terrorists that threaten to disrupt the Middle East peace process.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *January 21, 1997.*

REPORT OF FEDERAL AGENCIES REGARDING WEAPONS OF MASS DESTRUCTION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 105–)

The SPEAKER pro tempore laid before the House a message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on National Security and ordered to be printed.

To the Congress of the United States:

As required by section 1416 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201), I transmit herewith a report describing the respective policy functions and operational roles of Federal agencies in countering the threat posed by the use or potential use of biological and chemical weapons of mass destruction (WMD) within the United States.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *January 21, 1997.*

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON THE BUDGET REGARDING CURRENT LEVELS OF SPENDING AND REVENUES REFLECTING ACTION COMPLETED AS OF OCTOBER 4, 1996, FOR FISCAL YEARS 1997–2001

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. KASICH] is recognized for 5 minutes.

Mr. KASICH. Mr. Speaker, on behalf of the Committee on the Budget and pursuant to sections 302 and 311 of the Congressional Budget Act, I am submitting for printing in the CONGRESSIONAL RECORD an updated report on the current levels of on-budget spending and revenues for fiscal year 1997 and for the 5-year period fiscal year 1997 through fiscal year 2001.

This report is to be used in applying the fiscal year 1997 budget resolution (H. Con. Res. 178), for legislation having spending or revenue effects in fiscal years 1997 through 2001.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, January 20, 1997.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: To facilitate application of sections 302 and 311 of the Congressional Budget Act, I am transmitting a status report on the current levels of on-budget spending and revenues for fiscal year 1997 and for the 5-year period fiscal year 1997 through fiscal year 2001.

The term "current level" refers to the amounts of spending and revenues estimated for each fiscal year based on laws enacted or awaiting the President's signature as of October 4, 1996.

The first table in the report compares the current level of total budget authority, outlays, and revenues with the aggregate levels set by H. Con. Res. 178, the concurrent resolution on the budget for fiscal year 1997. This comparison is needed to implement section 311(a) of the Budget Act, which creates a point of order against measures that would breach the budget resolution's aggregate levels. The table does not show budget authority and outlays for years after fiscal year 1997 because appropriations for those years have not yet been considered.

The second table compares the current levels of total budget authority, outlays, and new entitlement authority of each direct spending committee with the "section 602(a)" allocations for discretionary action made under H. Con. Res. 178 for fiscal year 1997 and for fiscal years 1997 through 2001. "Discretionary action" refers to legislation enacted after adoption of the budget resolution. This comparison is needed to implement section 302(f) of the Budget Act, which creates a point of order against measures that would breach the section 602(a) discretionary action allocation of new budget authority or entitlement authority for the committee that reported the measure. It is also needed to implement section 311(b), which exempts committees that comply with their allocations from the point of order under section 311(a).

The third table compares the current levels of discretionary appropriations for fiscal year 1997 with the revised "section 602(b)" sub-allocations of discretionary budget authority and outlays among Appropriations subcommittees. This comparison is also needed to implement section 302(f) of the Budget Act, because the point of order under that section also applies to measures that would breach the applicable section 602(b) sub-allocation. The revised section 602(b) sub-allocations were filed by the Appropriations Committee on September 27, 1996.

Sincerely,

JOHN R. KASICH,
Chairman.

Enclosures.

REPORT TO THE SPEAKER FROM THE COMMITTEE ON THE BUDGET—STATUS OF THE FISCAL YEAR 1997 CONGRESSIONAL BUDGET ADOPTED IN HOUSE CONCURRENT RESOLUTION 178

[Reflecting action completed as of October 4, 1996]
[On-budget amounts, in millions of dollars]

	Fiscal year 1997	Fiscal year 1997–2001
Appropriate Level (as set by H. Con. Res. 178):		
Budget authority	1,314,785	6,956,507
Outlays	1,311,171	6,898,627
Revenues	1,083,728	5,913,303
Current Level:		
Budget authority	1,331,836	(1)
Outlays	1,323,900	(1)
Revenues	1,101,533	5,973,242
Current Level over(+)/under(−) Appropriate Level:		
Budget authority	17,051	(1)
Outlays	12,729	(1)
Revenues	17,805	59,939

[1] Not applicable because annual appropriations Acts for Fiscal Years 1997 through 2001 will not be considered until future sessions of Congress.

BUDGET AUTHORITY

FY 1997 budget authority exceeds the appropriate level set by H. Con. Res. 178. Enactment of measures providing any new budget authority for FY 1997 would be subject to point of order under section 311(a) of the Congressional Budget Act of 1974.

OUTLAYS

FY 1997 outlays exceed the appropriate level set by H. Con. Res. 178. Enactment of measures providing any new outlays for FY 1997 would be subject to point of order under section 311(a) of the Congressional Budget Act of 1974.

REVENUES

Enactment of any measure that would result in any revenue loss in excess of $17,805,000,000 for FY 1997 (if not already included in the current level estimate) or in excess of $59,939,000,000 for FY 1997 through 2001 (if not already included in the current level) would increase the amount by which revenues are less than the recommended levels of revenue set by H. Con. Res. 178.

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH COMMITTEE ALLOCATIONS PURSUANT TO BUDGET ACT SECTION 602(a) REFLECTING ACTION COMPLETED AS OF NOVEMBER 15, 1996

[Fiscal years, in millions of dollars]

	1997			1997–2001		
	BA	Outlays	NEA	BA	Outlays	NEA
House Committee:						
Agriculture:						
Allocation	0	0	0	0	0	4,996
Current level	5	5	5	55	55	55
Difference	5	5	5	55	55	−4,941
National Security:						
Allocation	−1,579	−1,579	0	−664	−664	0
Current level	−102	−102	−21	−289	−289	−34
Difference	1,477	1,477	−21	375	375	−34
Banking, Finance and Urban Affairs:						
Allocation	−128	−3,700	0	−711	−4,004	0
Current level	0	−6	0	0	0	0
Difference	128	3,694	0	711	4,004	0
Economic and Educational Opportunities:						
Allocation	−912	−800	−152	−3,465	−3,153	7,669
Current level	1,967	1,635	1,816	11,135	10,296	8,852
Difference	2,879	2,435	1,968	14,600	13,449	1,183
Commerce:						
Allocation	0	0	370	−14,540	−14,540	−41,710
Current level	3	3	492	242	195	1,430
Difference	3	3	122	14,782	14,735	43,140
International Relations:						
Allocation	0	0	0	0	0	0
Current level	−1	−1	0	−1	−1	0
Difference	−1	−1	0	−1	−1	0
Government Reform and Oversight:						
Allocation	−1,078	−1,078	−289	−4,605	−4,605	−1,668
Current level	0	0	0	0	0	0
Difference	1,078	1,078	289	4,605	4,605	1,668
House Oversight:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
Resources:						
Allocation	−91	−90	−12	−1,401	−1,460	−59
Current level	−19	−20	0	−144	−167	0
Difference	72	70	12	1,257	1,293	59
Judiciary:						
Allocation	0	0	0	−357	−357	0
Current level	3	3	0	45	45	0
Difference	3	3	0	402	402	0
Transportation and Infrastructure:						
Allocation	2,280	0	0	125,989	521	2
Current level	2,345	65	12	4,748	121	56
Difference	65	65	12	−121,241	−400	54
Science:						
Allocation	0	0	0	−13	−13	0
Current level	0	0	0	0	0	0
Difference	0	0	0	13	13	0
Small Business:						
Allocation	0	0	0	0	0	0

Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
Veterans' Affairs:						
Allocation	−90	−90	224	−919	−919	3,475
Current level	0	0	3	0	0	−52
Difference	90	90	−221	919	919	−3,527
Ways and Means:						
Allocation	−8,973	−9,132	−2,057	−134,211	−134,618	−10,743
Current level	8,338	8,302	−2,840	73,457	73,476	−38,717
Difference	17,311	17,434	−783	207,668	208,094	−27,974
Select Committee on Intelligence:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	2	2	0
Difference	0	0	0	2	2	0
Total authorized:						
Allocation	−10,571	−16,469	−1,916	−34,897	−163,812	−38,038
Current level	12,539	9,884	−533	89,250	83,733	−28,410
Difference	23,110	26,353	1,383	124,147	247,545	9,628

DISCRETIONARY APPROPRIATIONS FOR FISCAL YEAR 1997—COMPARISON OF CURRENT LEVEL WITH SUBALLOCATIONS PURSUANT TO BUDGET ACT SECTION 602(b)

[In millions of dollars]

	Revised 602(b) suballocations (September 27, 1996)				Current level reflecting action completed as of October 4, 1996				Defense			
	General purpose		Violent crime		General purpose		Violent crime		General purpose		Violent crime	
	BA	O	BA	O	BA	O	BA	O	BA	O	BA	O
Agriculture, Rural Development	12,960	13,380	0	0	13,009	13,373	0	0	49	−7	0	0
Commerce, Justice, State	24,493	24,939	4,525	2,951	24,838	25,065	4,526	2,954	345	126	1	3
Defense	245,065	243,372	0	0	243,851	242,875	0	0	−1,214	−497	0	0
District of Columbia	719	719	0	0	719	719	0	0	0	0	0	0
Energy & Water Development	19,421	19,652	0	0	19,973	19,923	0	0	552	271	0	0
Foreign Operations	11,950	13,311	0	0	12,267	13,310	0	0	317	−1	0	0
Interior	12,118	12,920	0	0	12,503	13,178	0	0	385	258	0	0
Labor, HHS & Education	65,775	69,842	61	38	71,026	71,517	61	39	5,251	1,675	0	1
Legislative Branch	2,180	2,148	0	0	2,170	2,132	0	0	−10	−16	0	0
Military Construction	9,983	10,360	0	0	9,982	10,344	0	0	−1	−16	0	0
Transportation	12,190	35,453	0	0	12,080	35,482	0	0	−110	29	0	0
Treasury-Postal Service	11,016	10,971	97	84	11,620	11,292	97	83	604	321	0	−1
VA–HUD-Independent Agencies	64,354	78,803	0	0	64,522	79,196	0	0	168	393	0	0
Reserve/Offsets	618	69	0	0	−2,750	−5,850	0	0	−3,368	−5,919	0	0
Grand total	492,842	535,939	4,683	3,073	495,810	532,556	4,684	3,076	2,968	−3,383	1	3

Note.—Amounts in Current Level column for Reserve/Offsets are for Spectrum sales and BIF/SAIF. Those items are credited to the Appropriations Committee for FY 1997 only.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 9, 1997.

Hon. JOHN KASICH,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, this letter and supporting detail provide an up-to-date tabulation of the on-budget current levels of new budget authority, estimated outlays, and estimated revenues for fiscal year 1997. These estimates are compared to the appropriate levels for those items contained in the 1977 Concurrent Resolution on the Budget (H. Con. Res. 178) and are current through January 8, 1997. A summary of this tabulation follows:

[In millions of dollars]

	House current level	Budget resolution (H. Con. Res. 178)	Current level +/− resolution
Budget Authority	1,331,836	1,314,785	+17,051
Outlays	1,323,900	1,311,171	+12,729
Revenues:			
1997	1,101,533	1,083,728	+17,805

[In millions of dollars]

	House current level	Budget resolution (H. Con. Res. 178)	Current level +/− resolution
1997–2001	5,973,242	5,913,303	+59,939

This is my first report for the first session of the 105th Congress.

Sincerely,

JUNE E. O'NEILL,
Director.

PARLIAMENTARIAN STATUS REPORT—105TH CONGRESS, 1ST SESSION, HOUSE ON-BUDGET SUPPORTING DETAIL FOR FISCAL YEAR 1997, AS OF CLOSE OF BUSINESS OCTOBER 4, 1996

[In millions of dollars]

	Budget authority	Outlays	Revenues
PREVIOUSLY ENACTED			
Revenues			1,100,355
Permanents and other spending legislation	843,140	804,154	
Appropriation legislation		238,523	
Offsetting receipts	−199,772	−199,772	
Total previously enacted	643,368	842,905	1,100,355
ENACTED IN 104TH CONGRESS, 2D SESSION			
Appropriation Bills:			
Agriculture (P.L. 104–180)	52,345	44,922	
District of Columbia (P.L. 104–194)	719	719	
Energy and Water Development (P.L. 104–206)	19,973	13,090	
Legislative Branch (P.L. 104–197)	2,166	1,917	
Military Construction (P.L. 104–196)	9,982	3,140	
Transportation (P.L. 104–205)	12,599	12,270	
Veterans, HUD, Independent Agencies (P.L. 104–204)	84,303	49,666	
Omnibus Consolidated Appropriations Act (P.L. 104–208)[1]	499,841	352,017	
Authorization Bills:			
Taxpayer Bill of Rights 2 (P.L. 104–168)			−15
Federal Oil & Gas Royalty Simplification & Fairness Act, 1996 (P.L. 104–185)	−2	−2	
Small Business Job Protection Act of 1996 (P.L. 104–188)	−76	−76	550
Authorize Voluntary Separation Incentives at the A.I.D. (P.L. 104–190)	−1	−1	
Health Insurance Portability & Accountability Act of 1996 (P.L. 104–191)	305	315	590
Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104–193)	10,080	9,702	60
National Defense Authorization Act (P.L. 104–201)	−102	−102	
Railroad Unemployment Insurance Amendments Act of 1996 (P.L. 104–251)	12	12	
Federal Aviation Administration Authorization Act of 1996 (P.L. 104–264)	2,330	50	
Central Utah Project Completion Act (P.L. 104–296)	−72	−72	
Technical Corrections and Amendments to Trade Laws (P.L. 104–295)	1	1	−8
Sustainable Fisheries Act (P.L. 104–297)		−1	1

PARLIAMENTARIAN STATUS REPORT—105TH CONGRESS, 1ST SESSION, HOUSE ON-BUDGET SUPPORTING DETAIL FOR FISCAL YEAR 1997, AS OF CLOSE OF BUSINESS OCTOBER 4, 1996—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Navajo-Hopi Land Dispute Settlement Act of 1996 (P.L. 104–301)	48	48	
Accountable Pipeline Safety & Partnership Act of 1996 (P.L. 104–304)	3	3	
Fairness in Compensating Owners of Patents Used by the U.S. (P.L. 104–308)	3	3	
Emergency Drought Relief Act of 1996 (P.L. 104–318)	7	7	
Coast Guard Authorization Act of 1995 (P.L. 104–324)	3	3	
United States Commemorative Coin Act of 1996 (P.L. 104–329)		−6	
Total enacted this session	694,467	487,625	1,178
APPROPRIATED ENTITLEMENT AND MANDATORIES			
Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted	−5,999	−6,630	
Total Current Level	1,331,836	1,323,900	1,101,533
Total Budget Resolution	1,314,785	1,311,171	1,083,728
Amount remaining:			
Under Budget Resolution			
Over Budget Resolution	17,051	12,729	17,805
ADDENDUM			
Emergencies:			
Funding that has been designated as an emergency requirement by the President and the Congress	1,550	1,205	
Funding that has been designated as an emergency requirement only by the Congress and is not available for obligation until requested by the President	364	323	
Total emergencies	1,914	1,528	
Total current level including emergencies	1,333,750	1,325,428	1,101,533

[1]This act includes 1997 funding for six appropriation bills (Commerce/Justice, Defense, Foreign Operations, Interior, Labor/HHS/Education, and Treasury) and additional appropriations for hurricane and flood recovery, firefighting and antiterrorism. There are also several provisions that affect the following direct spending programs: FCC auction receipts, Bank Insurance Funds, the Food Stamp program, and the Small Business Administration loan program account.

TRIBUTE TO THE HONORABLE BURTON BARR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. HAYWORTH] is recognized for 5 minutes.

Mr. HAYWORTH. Mr. Speaker, I rise this afternoon to honor the memory of one from my home State who qualifies as a legislative legend. His name was Burton Barr, and for more than 20 years he served with distinction in the Arizona House of Representatives.

Indeed, Mr. Speaker, as we embark in this 105th Congress to do the people's business, we are confronted by a curious paradox. It is one that surrounds every legislative body, and it principally centers on this challenge: How do we, in the spirit of bipartisanship, at the same time recognize legitimate differences of opinion and work for the common good?

Mr. Speaker, I submit that for a sterling example of how to move forward in a bipartisan way, we need look only so far as to the legislative career of the late Burton Barr.

Burton Barr in his role as Speaker of the Arizona statehouse worked effectively with members of that body from all different walks of life and from both major political parties. Indeed, Mr. Speaker, no less a person than the current Secretary of the Interior and former Arizona Governor Bruce Babbitt attests to the legislative ability of Burton Barr.

There were those who were cynics and critics who referred to Mr. Barr as the great salesman, but he was more than that. For in recognizing legitimate differences, and yet trying to achieve a consensus, Burton Barr went about the people's business. He was a public servant in the truest sense of the word.

To his family and to the people of Arizona, this House should offer our condolences and sympathy. And, again, for a sterling example, we should turn to this legislative leader who showed by example that the people's business can be done, that we can work together constructively, at times championing our differences, at times legitimately discussing those challenges at hand.

Burton Barr was more than simply a legislative leader. He was a husband and devoted father, and he was a hero of World War II. He earned two Silver Stars for gallantry. But for the people of Arizona, his star in the firmament will be his dedication to the people of the Grand Canyon State and his record of accomplishment in leading a legislative body to success in a bipartisan manner.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mrs. CARSON (at the request of Mr. GEPHARDT), for today, 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 Member (at the request of Mr. PALLONE) to revise and extend their remarks and include extraneous material:)

Mr. MENENDEZ, for 5 minutes, today.

(The following Members (at the request of Mr. HULSHOF) to revise and extend their remarks and include extraneous material:)

Mr. KASICH, for 5 minutes, today.

Mr. GEKAS, for 5 minutes, today.

Mr. HAYWORTH, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. PALLONE) and to include extraneous material:)

Mr. CARDIN.
Mr. COSTELLO.
Mr. CAPPS.
Mr. SERRANO.
Mr. VISCLOSKY.
Mrs. MEEK of Florida.
Mr. BENTSEN.
Mr. BERMAN.
Mr. KLECZKA.
Mr. MARTINEZ.
Mr. WAXMAN.

(The following Members (at the request of Mr. HULSHOF) and to include extraneous material:)

Mr. YOUNG of Florida.
Mr. GALLEGLY.
Ms. ROS-LEHTINEN in two instances.
Mr. KING.
Mr. BASS.
Mr. SOLOMON in three instances.
Mr. EHRLICH.
Mr. HASTERT.
Mr. CAMP.
Mr. SAXTON.
Mr. RADANOVICH.
Mr. BILIRAKIS.
Mr. SMITH of Michigan.
Mr. PACKARD.
Mr. CUNNINGHAM.

ADJOURNMENT

Mr. HAYWORTH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER pro tempore. Pursuant to the provisions of Senate Concurrent Resolution 3, 105th Congress, the House stands adjourned until 12:30 p.m. on Tuesday, February 4, 1997, for morning hour debate.

Thereupon (at 2 o'clock and 24 minutes p.m.), pursuant to Senate Concurrent Resolution 3, the House adjourned

until Tuesday, February 4, 1997, at 12:30 p.m.

EXECUTIVE COMMUNICATIONS ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1209. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Regulations Issued Under the Export Apple and Pear Act; Relaxation of Grade Requirements for Apples and Pears Shipped to Pacific Ports of Russia [Docket No. FV96-33-1FIR] received January 10, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1210. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1996-97 Marketing Year [Docket No. FV96-982-2IFR] received January 10, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1211. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Onions Grown in South Texas; Assessment Rate [Docket No. FV96-959-1IFR] received January 10, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1212. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Change in Reporting Requirements [Docket No. FV96-929-2FR] received January 10, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1213. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Milk in the Iowa Marketing Area; Temporary Revision of Pool Supply Plant Shipping Percentage [DA-96-16] received January 10, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1214. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Olives Grown in California and Imported Olives; Establishment of Minimum Quality Requirements for California and Imported Olives, and Revision of Outgoing Inspection Requirements and Procedures for California Olives [Docket No. FV96-932-2FR] received January 13, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1215. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1996-97 Marketing Year [Docket No. FV96-985-3FR] received January 13, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1216. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Peanuts Marketed in the United States; Changes in Handling and Disposition Requirements [Docket Nos. FV96-997-1FR; FV96-998-4FR; FV96-999-3FR] received January 13, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1217. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Cotton Research and Promotion Program: Determination of Sign-up Eligibility, and Procedure for the Conduct of a Sign-up Period for Determination of Whether to Conduct a Referendum Regarding the 1990 Amendments to the Cotton Research and Promotion Act [CN-96-008] received January 14, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1218. A communication from the President of the United States transmitting his request to make available appropriations totaling $5 million in budget authority for the Department of Health and Human Services' Low Income Home Energy Assistance Program, and designate the amount made available as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, pursuant to 31 U.S.C. 1107 (H. Doc. No. 105-26); to the Committee on Appropriations and ordered to be printed.

1219. A letter from the Under Secretary of Defense (Comptroller), Department of Defense, transmitting a report on a violation of the Anti-Deficiency Act—Army violation, case number 97-02, which totaled $27,122, occurred in the fiscal year 1995 operation and maintenance, Army [O&M, A] appropriation at the Yakima Training Center, Yakima, WA, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

1220. A letter from the Chair, Defense Environmental Response Task Force, transmitting the report on the actions of the Defense Environmental Response Task Force for fiscal year 1996, pursuant to Public Law 101-510, section 2923(c)(1) (104 Stat. 1821); to the Committee on National Security.

1221. A letter from the Assistant Secretary (Installations and Environment), Department of the Navy, transmitting notification of the Department's decision to study certain functions performed by military and civilian personnel in the Department of the Navy [DON] for possible performance by private contractors, pursuant to 10 U.S.C. 2304 note; to the Committee on National Security.

1222. A letter from the Secretary of Defense, transmitting notification that the Secretary has approved the retirement of Adm. William J. Flanagan, Jr., U.S. Navy, and certification that Admiral Flanagan has served satisfactorily on active duty in his current grade; to the Committee on National Security.

1223. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving United States exports to the Czech Republic, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking and Financial Services.

1224. A letter from the Assistant Secretary of Labor for OSHA, Occupational Safety and Health Administration, transmitting the Administration's "Major" final rule—Occupational Exposure to Methylene Chloride (RIN: 1218-AA98) received January 10, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

1225. A letter from the Secretary of Energy, transmitting a copy of the annual report on the Coke Oven Emission Control Program for fiscal year 1995, pursuant to Public Law 101-549, section 301 (104 Stat. 2559); to the Committee on Commerce.

1226. A letter from the Chief Financial Officer, National Aeronautics and Space Administration, transmitting the Administration's 1996 annual report to Congress on the Federal Facilities Compliance Act mixed waste activities, pursuant to 42 U.S.C. 6965; to the Committee on Commerce.

1227. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's report on nuclear nonproliferation in South Asia for the period April 1, 1996, through September 30, 1996, pursuant to 22 U.S.C. 237; to the Committee on International Relations.

1228. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 97-14: Drawdown from DOD Articles and Services for Assistance for Victims of Conflict and Other Persons at Risk from Northern Iraq, pursuant to 22 U.S.C. 2601(c)(3); to the Committee on International Relations.

1229. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 97-12: Drawdown of Commodities and Services from the Inventory and Resources of the Department of Defense to Support a Peace Monitoring Force in Northern Iraq, pursuant to 22 U.S.C. 2348a; to the Committee on International Relations.

1230. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 97-9: Drawdown of Articles, Services, and Military Education and Training from DOD to Provide Anti-Narcotics Assistance to Mexico, pursuant to 22 U.S.C. 2348a; to the Committee on International Relations.

1231. A communication from the President of the United States, transmitting a report on developments since his last report on July 22, 1996, concerning the national emergency with respect to Libya that was declared in Executive Order No. 12543 of January 7, 1986, pursuant to 50 U.S.C. 1703(c). (H. Doc. No. 105-25); to the Committee on International Relations and ordered to be printed.

1232. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification that effective December 23, 1996, the danger pay rate for Peru was designated at the 15 percent level, pursuant to 5 U.S.C. 5928; to the Committee on International Relations.

1233. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification that effective December 26, 1996, the danger pay rate for Chechnya was designated at the 20 percent level, pursuant to 5 U.S.C. 5928; to the Committee on International Relations.

1234. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification that effective December 26, 1996, the danger pay rate for the Central African Republic was designated at the 20 percent level, pursuant to 5 U.S.C. 5928; to the Committee on International Relations.

1235. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-337, "Highway Trust Fund Establishment Act and the Water and Sewer Authority Amendment Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1236. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-338, "Business Corporation Two-Year Report Amendment Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1237. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-339, "Fire Code Amendment Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1238. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-342, "International Registration Plan Agreement Temporary Amendment Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1239. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-347, "Health Services Planning Program Re-establishment Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233 (c)(1); to the Committee on Government Reform and Oversight.

1240. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-349, "Oak Hill Youth Center Educational Contracting Temporary Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1241. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-358, "Extension of the Moratorium on Retail Service Station Conversions and the Gas Station Advisory Board Amendment Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1242. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-354, "Board of Real Property Assessments and Appeals Membership Qualification Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1243. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-355, "Holy Comforter-Saint Cyprian Roman Catholic Church Equitable Real Property Tax Relief Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1244. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-359, "Housing Finance Agency Loan Forgiveness Amendment Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1245. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-360, "Fiscal Year 1997 Budget Support Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1246. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-363, "Modification Reduction-in-Force Temporary Amendment Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1247. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-361, "Adjustment Process for Nonviolent Juvenile Offenders and Parent Participation in Court-Ordered Proceedings Act of 1996" received January 13, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1248. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-415, "Real Property Tax Rates for Tax year 1997 Temporary Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1249. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-413, "Oyster Elementary School Modernization and Development Project Temporary Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1250. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-434, "District of Columbia Moratorium on the 1997 Real Property Assessments for Real Property Tax Year 1998 Temporary Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1251. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-433, "BNA Washington Inc., Real Property Tax Deferral Temporary Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1252. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-432, "New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1253. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-431, "Zero Tolerance for Guns Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1254. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-392, "Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Temporary Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1255. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-391, "Drug Paraphernalia Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1256. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-389, "Health and Hospitals Public Benefit Corporation Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1257. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-387, "Closing of a Public Alley in Square 375, S.O. 95-54, Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1258. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-386, "Cable Television Franchise Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1259. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-364, "Boating While Intoxicated Temporary Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1260. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-370, "Closing of Public Alleys and Abandonment and Establishment of Easements in Square 878, S.O. 95-38, Act of 1996" received January 16, 1997, pursuant to D.C. Code, section- 1-233(c)(1); to the Committee on Government Reform and Oversight.

1261. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-384, "Preservation of Residential Neighborhoods Against Nuisances Temporary Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1262. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-380, "Real Property Tax Reassessment Temporary Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1263. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-378, "Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Temporary Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1264. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-374, "Public Assistance Fair Hearing Procedures Temporary Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1265. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-372, "Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Temporary Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1266. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-371, "Lottery Games Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

1267. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11-367, "Medicare Supplement Insurance Minimum Standards Amendment Act of 1996" received

January 16, 1997, pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

1268. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11–343, "Council Contract Approval Modification Temporary Amendment Act of 1995 Temporary Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

1269. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11–341, "District of Columbia Employee Viatical Settlement Temporary Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

1270. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting a copy of D.C. Act 11–340, "Alcoholic Beverage Underage Penalties Amendment Act of 1996" received January 16, 1997, pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

1271. A letter from the Chairman Pro Tempore, Council of the District of Columbia, transmitting the Council of the District of Columbia's statement on District of Columbia Financial Responsibility and Management Assistance Authority "Resolution, Recommendations and Order Concerning the Lottery Board," dated September 21, 1996, received December 20, 1996, pursuant to section 207(b) of Public Law 104–8; to the Committee on Government Reform and Oversight.

1272. A letter from the Chairman and CEO, Farm Credit Administration, transmitting the annual report of the Farm Credit Administration for calendar year 1996, pursuant to 12 U.S.C. 2252(a)(3); to the Committee on Government Reform and Oversight.

1273. A letter from the Chairman, Merit Systems Protection Board, transmitting the Board's report for fiscal year 1995 listing the number of appeals submitted, the number processed to completion, and the number not completed by the originally announced date, pursuant to 5 U.S.C. 7701(i)(2); to the Committee on Government Reform and Oversight.

1274. A letter from the Chairman, National Mediation Board, transmitting the fiscal year 1996 annual report under the Federal Managers' Financial Integrity Act [FMFIA] of 1982, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform and Oversight.

1275. A letter from the Independent Counsel, Office of Independent Counsel, transmitting the semiannual report on the activities of the Office of Inspector General for the period April 1, 1996, through September 30, 1996, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

1276. A letter from the Director, Office of Personnel Management, transmitting the agency's annual report on drug and alcohol abuse prevention, treatment, and rehabilitation programs and services for Federal civilian employees covering fiscal year 1995, pursuant to 5 U.S.C. 7363; to the Committee on Government Reform and Oversight.

1277. A letter from the Secretary of the Treasury, transmitting the semiannual report on activities of the inspector general for the period April 1, 1996, through September 30, 1996, and the Secretary's semiannual report for the same period, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

1278. A letter from the Secretary of Commerce, transmitting the fiscal year 1996 annual report under the Federal Managers' Financial Integrity Act [FMFIA] of 1982, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform and Oversight.

1279. A letter from the Chairman, U.S. Merit Systems Protection Board, transmitting a copy of the annual report in compliance with the Government in the Sunshine Act during the calendar year 1996, pursuant to 5 U.S.C. 552b(j); to the Committee on Government Reform and Oversight.

1280. A letter from the Chairman of the Board of Governors, U.S. Postal Service, transmitting a copy of the annual report in compliance with the Government in the Sunshine Act during the calendar year 1996, pursuant to 5 U.S.C. 552b(j); to the Committee on Government Reform and Oversight.

1281. A letter from the Chairman, Federal Election Commission, transmitting proposed regulations governing electronic filing of reports by political committees, pursuant to 2 U.S.C. 438(d); to the Committee on House Oversight.

1282. A letter from the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, transmitting notification that due to the discontinued funding for the emergency striped bass research study, the annual report on that study will no longer be transmitted to Congress, pursuant to 16 U.S.C. 757g(b); to the Committee on Resources.

1283. A letter from the Secretary of Commerce, transmitting the Secretary's certification that Italy has terminated large-scale driftnet fishing by its nationals and vessels, pursuant to Public Law 100–220, section 4004(b) (101 Stat. 1478); to the Committee on Resources.

1284. A letter from the Commissioner, Bureau of Reclamation, Department of the Interior, transmitting a report on an increase in the projected cost for the safety of dams modifications at Bumping Lake Dam, Yakima project, Washington, pursuant to 43 U.S.C. 509; to the Committee on Resources.

1285. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule—Visitor Service Authorizations on Alaska National Wildlife Refuges (RIN: 1018–AC02) received January 10, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

1286. A letter from the Director, Fish and Wildlife Service, transmitting the Service's final rule—Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Laguna Mountain Skipper and Quino Checkerspot Butterfly (RIN: 1018–AC84) received January 13, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

1287. A letter from the Director, Administrative Office of the U.S. Courts, transmitting the Judicial Conference of the United States biennial report to the Congress on the continuing need for all authorized bankruptcy judgeships, pursuant to 28 U.S.C. 152(b)(2); to the Committee on the Judiciary.

1288. A letter from the Secretary, Judicial Conference of the United States, transmitting a draft of proposed legislation to provide for the conversion of existing temporary U.S. district judgeships to permanent status, and for other purposes; to the Committee on the Judiciary.

1289. A letter from the Acting Administrator, Federal Aviation Administration, transmitting a report on the aircraft cabin air quality research program, pursuant to Public Law 103–305, section 304(e)(2) (108 Stat. 1592); to the Committee on Transportation and Infrastructure.

1290. A letter from the Director, National Legislative Commission, the American Legion, transmitting the proceedings of the 78th National Convention of the American Legion, held in Salt Lake City, UT on September 3, 4, and 5, 1996, as well as a report on the organization's activities from the year preceding the convention, pursuant to 36 U.S.C. 49 (H. Doc. No. 105–27); to the Committee on Veterans' Affairs and ordered to be printed.

1291. A communication from the President of the United States, transmitting an updated report concerning the emigration laws and policies of Mongolia, pursuant to 19 U.S.C. 2432(b) (H. Doc. No. 105–24); to the Committee on Ways and Means and ordered to be printed.

1292. A letter from the Secretary of Defense, transmitting the Advisory Committee on Judicial Review of Military Administrative Personnel Actions findings and recommendations, pursuant to section 551 of the National Defense Authorization Act for fiscal year 1996; jointly, to the Committees on National Security and the Judiciary.

1293. A letter from the Secretary of Health and Human Services, transmitting notification that the Department of Health and Human Services is allotting emergency funds made available under section 2602(e) of the Low-Income Home Energy Assistance Act of 1981 to North Dakota and South Dakota and the tribes located in those States, pursuant to 42 U.S.C. 8623(g); jointly, to the Committees on Commerce and Education and the Workforce.

1294. A letter from the Secretary of Transportation, transmitting notification of the actions the Secretary has taken regarding security measures at Eldorado International Airport, Bogota, Colombia, pursuant to 49 U.S.C. 44907(d)(3); jointly, to the Committees on International Relations and Transportation and Infrastructure.

1295. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Secretary's certification to the Congress regarding the incidental capture of Sea Turtles in commercial shrimping operations (China), pursuant to Public Law 101–162, section 609(b)(2) (103 Stat. 1038); jointly, to the Committees on Resources and Appropriations.

1296. A letter from the Chairman, National Transportation Safety Board, transmitting a copy of the Board's request for supplemental funding for fiscal year 1997, pursuant to 49 U.S.C. app. 1903(b)(7); jointly, to the Committees on Transportation and Infrastructure and Appropriations.

1297. A letter from the Secretaries of Veterans Affairs and Defense, transmitting a report on the implementation of the health resources sharing portion of the Department of Veterans Affairs and Department of Defense Health Resources Sharing and Emergency Operations Act for fiscal year 1996, pursuant to 38 U.S.C. 8111(f); jointly, to the Committees on Veterans' Affairs and National Security.

1298. A letter from the Assistant Attorney General of the United States, transmitting a draft of proposed legislation entitled "Environmental Crimes and Enforcement Act of 1997"; jointly, to the Committees on the Judiciary, Agriculture, Commerce, Resources, and Transportation and Infrastructure.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII public bills and resolutions were introduced and severally referred as follows:

By Mr. TORRES (for himself and Mr. PASTOR):

H.R. 452. A bill to amend the Indian Gaming Regulatory Act to provide adequate and certain remedies for sovereign tribal governments, and for other purposes; to the Committee on Resources, and in addition to the Committees on the Judiciary, and 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. ACKERMAN (for himself, Mr. ABERCROMBIE, Mr. ANDREWS, Mr. DELLUMS, Mr. FARR of California, Mr. FRANKS of New Jersey, Mr. KLECZKA, Mr. LANTOS, Mr. MORAN of Virginia, Ms. NORTON, Mr. OWENS, Mr. SCHUMER, Mr. SHAYS, and Mr. WAXMAN):

H.R. 453. A bill to amend the Packers and Stockyards Act, 1921, to make it unlawful for any stockyard owner, market agency, or dealer to transfer or market nonambulatory cattle, sheep, swine, horses, mules, or goats, and for other purposes; to the Committee on Agriculture.

By Mr. ACKERMAN:

H.R. 454. 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; to the Committee on the Judiciary.

By Mr. ACKERMAN (for himself, Mr. FORBES, Mr. KING, Mr. LAZIO of New York, Mr. MANTON, Mrs. MCCARTHY of New York, Mr. SCHUMER, Mr. SHAYS, Mr. TOWNS, and Ms. NORTON):

H.R. 455. A bill to authorize the Administrator of the Environmental Protection Agency to make grants to the States of New York and Connecticut for the purpose of demonstrating methods of improving water quality in Long Island Sound; to the Committee on Transportation and Infrastructure.

By Mr. ACKERMAN (for himself, Mr. DELLUMS, Mr. EVANS, and Ms. NORTON):

H.R. 456. A bill to amend chapter 211 of title 49, United States Code, with respect to hours of service of railroad employees, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. CASTLE:

H.R. 457. A bill to amend the Congressional Budget Act of 1974 to provide for budgeting for emergencies through the establishment of a budget reserve account, and for other purposes; to the Committee on the Budget, 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. CLEMENT:

H.R. 458. A bill to amend the Federal Election Campaign Act of 1971 to ban soft money in elections for Federal office, and for other purposes; to the Committee on House Oversight.

By Mr. COBURN (for himself, Mr. CANADY of Florida, Mr. CARDIN, Mr. DAVIS of Virginia, Mr. DEAL of Georgia, Mr. DEFAZIO, Mr. EHLERS, Mr. FOLEY, Mr. HOSTETTLER, Mr. LARGENT, Mr. LEWIS of Georgia, Mr. LOBIONDO, Mrs. LOWEY, Mr. MCHUGH, Mr. NORWOOD, Mr. PALLONE, Ms. PELOSI, Mr. REGULA, Mr. SANDERS, Mr. STARK, Mr. STUMP, and Mr. WELDON of Florida):

H.R. 459. A bill to amend title XVIII of the Social Security Act to require health maintenance organizations participating in the Medicare Program to assure access to out-of-network services to Medicare beneficiaries enrolled with such organizations; 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. CONDIT:

H.R. 460. A bill to amend the Housing Act of 1949 to provide for private servicing of rural housing loans made under section 502 of such act; to the Committee on Banking and Financial Services.

H.R. 461. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase and installation of agricultural water conservation systems; to the Committee on Ways and Means.

By Mr. COSTELLO:

H.R. 462. A bill to amend the Federal Election Campaign Act of 1971 to control House of Representatives campaign spending, and for other purposes; to the Committee on House Oversight.

By Ms. DELAURO:

H.R. 463. A bill to prohibit, in connection with the termination of Army activities at the Stratford Army Engine Plant, Stratford, CT, the expenditure of Federal funds to cover the costs of relocating a Government contractor currently located at that installation; to the Committee on National Security.

By Mr. ENGLISH of Pennsylvania (for himself, Mr. UPTON, Mr. HORN, and Mr. LAZIO of New York):

H.R. 464. A bill to amend title II of the Social Security Act to establish, for purposes of disability determinations under such title, a uniform minimum level of earnings, for demonstrating ability to engage in substantial gainful activity, at the level currently applicable solely to blind individuals; to the Committee on Ways and Means.

By Mr. ENGLISH of Pennsylvania (for himself, Mr. SAXTON, Mr. RAHALL, Mr. GRAHAM, Mr. FROST, Mr. SERRANO, Mr. HINOJOSA, and Ms. WOOLSEY):

H.R. 465. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for investment necessary to revitalize communities within the United States, and for other purposes; to the Committee on Ways and Means.

By Mr. EVANS (for himself, Ms. BROWN of Florida, Mr. DEFAZIO, Mrs. MEEK of Florida, Mr. HOLDEN, Mr. GUTIERREZ, Mr. DELLUMS, Mr. MCDERMOTT, Mr. FILNER, Mr. UNDERWOOD, Mr. MARTINEZ, Mr. TALENT, Mr. FROST, Mr. FALEOMAVAEGA, Mr. BARCIA, and Mr. BRYANT):

H.R. 466. A bill to amend title 38, United States Code, to extend the period of time for the manifestation of chronic disabilities due to undiagnosed symptoms in veterans who served in the Persian Gulf war in order for those disabilities to be compensable by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. EWING:

H.R. 467. A bill to amend the Commodity Exchange Act to provide a conditional exemption for certain transactions involving professional markets, to clarify the effect of the designation of a board of trade as a contract market, to simplify the process for implementing contract market rules, to regulate audit trail requirements, to establish cost-benefits analysis requirements, to combat fraud in transactions in or involving foreign currency, and for other purposes; to the Committee on Agriculture.

By Mr. FILNER:

H.R. 468. A bill to amend section 8 of the United States Housing Act of 1937 to provide for rental assistance payments to assist certain owners of manufactured homes who rent the lots on which their homes are located; to the Committee on Banking and Financial Services.

H.R. 469. A bill to amend the Veterans' Benefits Improvement Act of 1996 to eliminate the requirements that members of the Commission on Servicemembers and Veterans Transition Assistance be allocated to separate programs; to the Committee on Veterans' Affairs.

H.R. 470. A bill to curtail illegal immigration through increased enforcement of the employer sanctions provisions in the Immigration and Nationality Act and related laws; to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, 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. GALLEGLY:

H.R. 471. A bill to amend the Immigration and Nationality Act to not count work experience as an unauthorized alien for purposes of admission as an employment-based immigrant or an H–1B nonimmigrant; to the Committee on the Judiciary.

By Mr. GILCHREST:

H.R. 472. A bill to amend the Federal Election Campaign Act of 1971 to prohibit nonparty multicandidate political committee contributions in elections for Federal office; to the Committee on House Oversight.

H.R. 473. A bill to amend the Federal Election Campaign Act of 1971 to prohibit nonparty multicandidate political committee contributions in elections for Federal office, and for other purposes; to the Committee on House Oversight.

By Mr. GOODLATTE (for himself, Mr. MCCOLLUM, Mr. BARTLETT of Maryland, Mr. SAXTON, Mr. WELDON of Pennsylvania, Mr. CANADY of Florida, Mr. SMITH of Texas, Mr. COBLE, Mr. SCHIFF, Mr. BOUCHER, Mrs. CUBIN, Mr. COMBEST, Mr. GEKAS, Mr. BURR of North Carolina, Mr. EHLERS, Mr. SMITH of Oregon, Mr. CALVERT, Mr. MCKEON, Mr. WICKER, Mr. BARR of Georgia, Mr. JONES, Mr. MCHUGH, Mr. FOX of Pennsylvania, Mr. WELLER, Mr. BONO, Mr. DAVIS of Virginia, Mrs. MORELLA, Mr. GALLEGLY, Mr. CHABOT, Mr. MCINTOSH, Mr. PAXON, Mr. WAMP, Mr. LINDER, Mr. QUINN, Mr. RIGGS, Mr. STEARNS, and Mr. BUYER):

H.R. 474. A bill to improve the criminal law relating to fraud against consumers; to the Committee on the Judiciary.

By Mr. GREENWOOD (for himself and Mr. STENHOLM):

H.R. 475. A bill to amend title XVIII of the Social Security Act to provide for offering

the option of Medicare coverage through qualified provider-sponsored organizations [PSO's], and for other purposes; to the Committee on Commerce, and in addition to the Committees on Ways and Means, and the Judiciary, 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. GUTIERREZ (for himself, Mr. BERMAN, Mr. MCDERMOTT, Mr. FILNER, Mr. WYNN, Mr. MILLER of California, Mr. STARK, Mr. SABO, Mr. NADLER, Mr. YATES, Ms. WOOLSEY, Mr. FLAKE, Mr. ABERCROMBIE, Mr. DELLUMS, Ms. MCKINNEY, Mr. SERRANO, Ms. NORTON, Ms. PELOSI, and Mr. ENGEL):

H.R. 476. A bill to prohibit the possession or transfer of nonsporting handguns; to the Committee on the Judiciary.

By Mr. HEFLEY:

H.R. 477. A bill to amend titles 23 and 49, United States Code, relating to metropolitan planning; to the Committee on Transportation and Infrastructure.

By Mr. HERGER (for himself and Mr. POMBO):

H.R. 478. A bill to amend the Endangered Species Act of 1973 to improve the ability of individuals and local, State, and Federal agencies to comply with that act in building, operating, maintaining, or repairing flood control projects, facilities, or structures; to the Committee on Resources.

By Mr. HERGER:

H.R. 479. A bill to amend the Internal Revenue Code of 1986 to clarify the treatment of funeral trusts; to the Committee on Ways and Means.

H.R. 480. A bill to amend the Internal Revenue Code of 1986 to ensure that members of tax-exempt organizations are notified of the portion of their dues used for political and lobbying activities, and for other purposes; to the Committee on Ways and Means.

By Ms. KAPTUR:

H.R. 481. A bill to provide for the establishment of a professional trade service corps, and for other purposes; to the Committee on Government Reform and Oversight, and in addition to the Committee on the Judiciary, 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. LAZIO of New York:

H.R. 482. A bill to amend the Public Health Service Act to provide a one-stop information service for individuals with serious life-threatening diseases; to the Committee on Commerce.

By Mr. LEACH:

H.R. 483. A bill to authorize appropriations for the payment of U.S. arrearages to the United Nations; to the Committee on International Relations.

By Mrs. MYRICK (for herself and Mr. PORTER):

H.R. 484. A bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer or community organization or purpose without requiring the employer to pay them compensation; to the Committee on Education and the Workforce.

By Mr. RICHARDSON:

H.R. 485. A bill to appropriate funds for the purpose of implementing the compromise between the Forest Service and timber contractors operating in the Vallecitos sustained-yield unit, New Mexico, in order to preserve large diameter old growth pine trees located in the unit; to the Committee on Appropriations.

H.R. 486. A bill to amend the Communications Act of 1934 to promote greater telecommunications and information services to Native Americans, and for other purposes; to the Committee on Commerce.

H.R. 487. A bill to amend the Public Health Service Act with respect to the health of individuals who are members of minority groups, and for other purposes; to the Committee on Commerce.

H.R. 488. A bill to authorize the Secretary of the Interior to enter into an agreement with the Arch Hurley Conservancy District in New Mexico, authorizing the district to prepay any amounts outstanding under water reclamation repayment contracts; to the Committee on Resources.

H.R. 489. A bill to amend the Land and Water Conservation Fund Act of 1965 as regards the National Park Service, and for other purposes; to the Committee on Resources.

By Mr. ROMERO-BARCELÓ:

H.R. 490. A bill to relieve the Puerto Rico Housing Bank and Finance Agency and its assignees of liability for certain loans subject to the Truth-in-Lending Act; to the Committee on Banking and Financial Services.

By Mr. SAXTON (for himself and Mr. QUINN):

H.R. 491. A bill to prohibit the Department of State from imposing a charge or fee for providing passport information to the general public; to the Committee on International Relations.

By Mr. SCHUMER (for himself, Mr. STARK, Mrs. LOWEY, and Mr. BROWN of California):

H.R. 492. A bill to apply the same quality and safety standards to domestically manufactured handguns that are currently applied to imported handguns; to the Committee on the Judiciary.

By Mr. SHAYS (for himself, Mr. MEEHAN, Mrs. ROUKEMA, Mr. BARRETT of Wisconsin, Mrs. LINDA SMITH of Washington, Mr. KIND, and Mr. DUNCAN):

H.R. 493. A bill to amend the Federal Election Campaign Act of 1971 to reform the financing of Federal elections, and for other purposes; to the Committee on House Oversight, and in addition to the Committees on Commerce and Government Reform and Oversight, 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. THOMAS:

H.R. 494. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of crops destroyed by casualty; to the Committee on Ways and Means.

H.R. 495. A bill to amend the Internal Revenue Code of 1986 to double the maximum benefit under the special estate tax valuation rules for certain farm, and so forth, real property; to the Committee on Ways and Means.

By Ms. WOOLSEY (for herself and Ms. PRYCE of Ohio):

H.R. 496. A bill to amend title 5, United States Code, to include medical foods as a specific item for which coverage may be provided under the Federal Employees Health Benefits Program; to the Committee on Government Reform and Oversight.

By Mr. ABERCROMBIE (for himself and Mr. FALEOMAVAEGA):

H.J. Res. 32. Joint resolution to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920; to the Committee on Resources.

By Mrs. FOWLER:

H.J. Res. 33. Joint resolution proposing an amendment to the Constitution of the United States to limit the terms of office for Representatives and Senators in Congress; to the Committee on the Judiciary.

By Ms. FURSE:

H.J. Res. 34. Joint resolution proposing an amendment to the Constitution of the United States to limit terms of Representatives and Senators; to the Committee on the Judiciary.

By Mr. SOLOMON:

H.J. Res. 35. Joint resolution proposing an amendment to the Constitution to require that congressional resolutions setting forth levels of total budget outlays and Federal revenues must be agreed to by two-thirds vote of both Houses of the Congress if the level of outlays exceeds the level of revenues; to the Committee on the Judiciary.

By Mr. BOEHNER:

H. Con. Res. 9. Concurrent resolution providing for a joint session of Congress to receive a message from the President on the State of the Union; considered and agreed to.

By Mr. SOLOMON:

H. Con. Res. 10. Concurrent resolution recommending the integration of Estonia, Latvia, and Lithuania into the North Atlantic Treaty Organization; to the Committee on International Relations.

By Mr. YATES:

H. Con. Res. 11. Concurrent resolution permitting the use of the rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust; to the Committee on House Oversight.

By Mrs. JOHNSON of Connecticut:

H. Res. 31. Resolution in the matter of Representative NEWT GINGRICH; considered and agreed to.

By Mr. BOEHNER:

H. Res. 32. Resolution designating majority membership on certain standing committees of the House; considered and agreed to.

By Mr. FAZIO of California:

H. Res. 33. Resolution designating minority membership on certain standing committees of the House; considered and agreed to.

By Ms. WATERS:

H. Res. 34. Resolution to establish a select committee to investigate CIA involvement in crack cocaine sales to fund Contras; to the Committee on Rules.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

10. By the SPEAKER: Memorial of the Senate of the State of Michigan, relative to Senate Concurrent Resolution No. 284: To memorialize the Congress of the United States to investigate the financial plight of the self-employed Reservists who were activated for missions such as Operation Desert Storm and Operation Joint Endeavor and to pass legislation to provide relief; to the Committee on Banking and Financial Services.

11. Also, memorial of the General Assembly of the State of New Jersey, relative to Assembly Resolution No. 126: Calling on the President and the Congress of the United States to undertake all appropriate actions to encourage the Swiss Government to take certain actions concerning unclaimed bank accounts of Holocaust victims; to the Committee on International Relations.

12. Also, memorial of the Senate of the State of Michigan, relative to Senate Concurrent Resolution No. 278: To memorialize the Congress of the United States to pass and submit to the States for ratification an amendment to the Constitution of the United States to protect taxpayer rights from judicial taxation by prohibiting courts from ordering any State or political subdivision to levy or increase any tax and to urge other States to direct a similar memorial to Congress; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 5: Mr. SAM JOHNSON.

H.R. 26: Mr. TRAFICANT and Mr. SCHIFF.

H.R. 27: Mr. CRAPO, Mr. STEARNS, Mr. DAN SCHAEFER of Colorado, Mr. NORWOOD, Mr. NEY, Mr. WELDON of Florida, and Mrs. MYRICK.

H.R. 41: Mr. SENSENBRENNER, Mrs. KELLY, Mr. CHRISTENSEN, Mr. HERGER, Mr. HORN, Mr. HYDE, Mr. BLILEY, and Mr. HILL.

H.R. 58: Mr. BILIRAKIS, Mr. MCDERMOTT, Mr. GONZALEZ, Mr. FRELINGHUYSEN, Mr. MENENDEZ, Ms. NORTON, Mr. KENNEDY of Massachusetts, Mr. LAZIO of New York, Mr. HASTINGS of Florida, Mr. QUINN, Mr. EHRLICH, Mr. FOLEY, Mr. MCCOLLUM, Ms. WOOLSEY, Mr. SKAGGS, and Mr. FATTAH.

H.R. 59: Mr. MCCRERY, Mr. DOOLITTLE, Mr. BARTLETT of Maryland, Mr. COBLE, Mr. HILLEARY, Mr. STEARNS, Mr. NORWOOD, Mr. FOLEY, Mr. MCCOLLUM, and Mr. JONES.

H.R. 66: Mr. DICKEY, Mr. FOLEY, Mr. COOKSEY, Mr. KILDEE, Ms. FURSE, Mr. WELDON of Florida, Mr. STARK, Mr. FROST, and Mr. RAHALL.

H.R. 75: Mr. DELLUMS, Ms. BROWN of Florida, and Ms. NORTON.

H.R. 78: Mr. WAMP and Mr. WALSH.

H.R. 80: Mr. MCHUGH, Mr. CONDIT, Mr. CAMP, Mr. DOYLE, Mr. COBLE, Mr. KNOLLENBERG, Mr. FRANK of Massachusetts, Mr. GOODE, Mr. BACHUS, Mr. HYDE, Mr. MEEHAN, Mr. MINGE, Mr. SHAYS, Mr. BALDACCI, Mr. BARRETT of Wisconsin, Mr. LEVIN, Mr. PORTMAN, Mr. NORWOOD, Mrs. CARSON, Mr. GREENWOOD, Mr. SENSENBRENNER, Mr. KLINK, and Mr. GOSS.

H.R. 81: Mr. HAMILTON.

H.R. 86: Ms. RIVERS, Mr. HASTINGS of Washington, Mr. BOB SCHAFFER, Mr. LEWIS of Kentucky, Mr. LUCAS of Oklahoma, and Mr. BACHUS.

H.R. 87: Mr. HASTINGS of Washington.

H.R. 100: Mr. FROST, Mr. HASTINGS of Florida, Mr. JEFFERSON, Mr. RAHALL, Mr. RANGEL, and Mr. TEJEDA.

H.R. 103: Mr. CANADY of Florida.

H.R. 123: Mr. PETRI, Mrs. CUBIN, Mr. OXLEY, Mr. UPTON, Mr. KOLBE, Mr. HILLEARY, Mr. NUSSLE, Mr. BARTLETT of Maryland, and Mr. CALLAHAN.

H.R. 127: Mrs. MEEK of Florida, Mr. CAMP, Mr. FILNER, Mr. MOAKLEY, Mr. MCDERMOTT, Mr. BEREUTER, Mr. MCGOVERN, Mr. BURR of North Carolina, Mr. OXLEY, Mr. CAMPBELL, Mr. UPTON, Mr. BILBRAY, Mr. DINGELL, Mr. FALEOMAVAEGA, Mr. WELDON of Florida, Mr. SENSENBRENNER, Mr. NORWOOD, Mr. DELLUMS, Mr. WATTS of Oklahoma, Mr. BROWN of California, Mr. BALLENGER, Mr. HYDE, Mr. CONDIT, Ms. WOOLSEY, Mrs. LOWEY, Mr. GEJDENSON, Mr. SHAYS, Mr. NADLER, Mr. WALSH, Ms. FURSE, Ms. BROWN of Florida, Mr. BACHUS, Mrs. MALONEY of New York, Ms. ESHOO, Mr. EVANS, and Mr. SOLOMON.

H.R. 131: Mr. PAPPAS, Mr. FOLEY, Mr. SENSENBRENNER, and Mrs. MYRICK.

H.R. 132: Mrs. MYRICK and Mr. HASTERT.

H.R. 135: Mr. ALLEN, Mrs. CARSON, Mr. DELAHUNT, Mr. FAZIO of California, Mr. FILNER, Ms. FURSE, Mr. HINOJOSA, Ms. JACKSON-LEE, Ms. KAPTUR, Ms. LOFGREN, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Mr. MCGOVERN, Mr. MCNULTY, Mr. MALONEY of Connecticut, Mr. MANTON, Mr. MARKEY, Mr. MEEHAN, Ms. MILLENDER-MCDONALD, Mr. MILLER of California, Mr. MOAKLEY, Mr. NEAL of Massachusetts, Mr. PASCRELL, Mr. PICKETT, Mr. RANGEL, Mr. STOKES, Mrs. TAUSCHER, Mrs. THURMAN, Ms. WOOLSEY, and Mr. YATES.

H.R. 156: Mr. SOLOMON.

H.R. 157: Mr. MCDADE.

H.R. 158: Mr. SMITH of New Jersey, Mr. CHRISTENSEN, Mr. KOLBE, Mr. SAXTON, Mr. HOLDEN, Mr. SENSENBRENNER, Mr. TEJEDA, Mr. ROHRABACHER, and Mr. MCINNIS.

H.R. 159: Mr. WALSH.

H.R. 161: Mr. SMITH of New Jersey, Mr. MCCRERY, Mr. MEEHAN, Mr. MILLER of Florida, Mr. HORN, Mr. LIVINGSTON, and Ms. MOLINARI.

H.R. 162: Mr. KNOLLENBERG and Mr. GRAHAM.

H.R. 163: Mr. BARCIA of Michigan and Mr. WATTS of Oklahoma.

H.R. 180: Mr. CANADY of Florida, Mr. DEUTSCH, Mr. FOLEY, Mrs. FOWLER, Mr. HASTINGS of Florida, Mr. MCCOLLUM, Mrs. MEEK of Florida, Mr. MILLER of Florida, Ms. ROS-LEHTINEN, Mr. SCARBOROUGH, Mr. SHAW, Mr. STEARNS, and Mr. WELDON of Florida.

H.R. 182: Mr. TORRES, Mr. BROWN of California, Mr. DELLUMS, Mr. NADLER, Mr. FRANK of Massachusetts, Ms. NORTON, Mr. SANDERS, Mr. JACKSON, Mr. MCDERMOTT, Mr. FATTAH, Mr. OWENS, Mr. RUSH, and Ms. VELÁZQUEZ.

H.R. 207: Mr. SHAYS.

H.R. 211: Mr. OBEY and Mr. BONIOR.

H.R. 216: Mr. ACKERMAN, Mr. WALSH, Mr. FRANK of Massachusetts, Mr. ENGLISH of Pennsylvania, Mr. BROWN of Ohio, Ms. PRYCE of Ohio, Mr. CONDIT, and Ms. JACKSON-LEE.

H.R. 218: Mr. BLILEY.

H.R. 231: Mr. MCGOVERN.

H.R. 290: Mr. FROST, Mr. STARK, and Ms. NORTON.

H.R. 291: Mr. UNDERWOOD, Mrs. CLAYTON, and Ms. NORTON.

H.R. 292: Mr. HAYWORTH, Mr. BOB SCHAFFER, Mr. SKEEN, Mr. BARTLETT of Maryland, Mr. CAMPBELL, Mr. HOSTETTLER, Mr. BUNNING of Kentucky, Mr. HERGER, Mr. ROYCE, Mr. DOOLITTLE, Mr. RADANOVICH, Mr. CHABOT, Mr. RIGGS, Mr. FOLEY, Mr. NEY, Mr. MCINNIS, Mr. ENSIGN, Mr. METCALF, Mr. BACHUS, Mr. JONES, Mr. ENGLISH of Pennsylvania, Mr. BLILEY, Mr. STUMP, Mr. SESSIONS, Mrs. EMERSON, Mr. EHRLICH, Mr. WELDON of Florida, and Mrs. CUBIN.

H.R. 298: Mr. PARKER.

H.R. 305: Mr. MCGOVERN, Mr. BALDACCI, Mrs. CLAYTON, Mr. ROMERO-BARCELO, Mr. TALENT, and Ms. WOOLSEY.

H.R. 306: Ms. NORTON, Mr. MCGOVERN, Mr. MARKEY, Mr. OBERSTAR, Mrs. TAUSCHER, Mr. YATES, Ms. MCKINNEY, Mr. COYNE, and Mr. MORAN of Virginia.

H.R. 312: Mr. HASTINGS of Washington, Mr. HALL of Texas, Mr. STUMP, and Mr. WELDON of Florida.

H.R. 328: Mr. SMITH of New Jersey, Mr. ENGLISH of Pennsylvania, and Mrs. KELLY.

H.R. 331: Mr. HASTINGS of Washington.

H.R. 334: Mr. BACHUS.

H.R. 335: Mr. RAMSTAD.

H.R. 336: Mr. GALLEGLY, Mr. YOUNG of Alaska, Mr. STEARNS, Mr. BARTLETT of Maryland, Mr. ANDREWS, Mr. BILBRAY, Mr. WELDON of Pennsylvania, Mr. ENGLISH of Pennsylvania, and Mr. BACHUS.

H.R. 345: Mr. NORWOOD, Mr. CALVERT, Mr. SOLOMON, Mr. ROYCE, Mr. HAYWORTH, Mr. CALLAHAN, Mr. DOOLITTLE, Mr. CHRISTENSEN, Mr. CAMPBELL, Mr. BARTLETT of Maryland, Mr. SKEEN, Mr. LAHOOD, Mr. SCARBOROUGH, Mr. KIM, Mr. ROHRABACHER, Mr. PACKARD, Mr. HYDE, Mr. CRANE, Mr. BACHUS, Mr. BLILEY, Mr. SENSENBRENNER, and Mr. WELDON of Florida.

H.R. 346: Mr. NORWOOD.

H.R. 347: Mr. NORWOOD, Mr. BUNNING of Kentucky, Mr. DEAL of Georgia, Mr. BACHUS, and Mr. YOUNG of Alaska.

H.R. 366: Mr. ENGLISH of Pennsylvania.

H.R. 382: Mr. TRAFICANT, Mr. MARTINEZ, Mr. UNDERWOOD, Ms. CHRISTIAN-GREEN, Ms. BROWN of Florida, Mr. FROST, and Ms. NORTON.

H.R. 383: Mr. SOLOMON, Mr. GUTIERREZ, Mr. MCGOVERN, Mr. TOWNS, Mr. MCNULTY, Mrs. TAUSCHER, Mrs. KELLY, Mrs. LOWEY, Mr. FROST, Mr. GEJDENSON, AND MR. SANDERS.

H.R. 399: Mr. GREENWOOD, Mr. BOEHLERT, Ms. MOLINARI, Mr. SHAYS, Mr. QUINN, Mr. FATTAH, Mr. MORAN of Virginia, Mr. ENGLISH of Pennsylvania, Mr. SOLOMON, Mrs. KELLY, Mr. SENSENBRENNER, Mr. GOODLATTE, and Mr. SMITH of Michigan.

H.R. 406: Mr. QUINN and Mr. ANDREWS.

H.R. 408: Mr. BOEHLERT, Mr. SKAGGS, Mr. RIGGS, and Mr. ENGLISH of Pennsylvania.

H.R. 411: Mr. SHAYS, Mrs. LOWEY, Mr. CARDIN, Mr. KENNEDY of Rhode Island, Ms. NORTON, Mr. MCGOVERN, Mrs. TAUSCHER, Ms. MCKINNEY, Mr. TORRES, Mr. MEEHAN, Mr. MARTINEZ, Ms. ESHOO, and Mr. STARK.

H.R. 416: Mr. TRAFICANT and Mr. FRANK of Massachusetts.

H.R. 417: Mr. MATSUI, Mr. PAYNE, Mrs. MEEK of Florida, Mr. NEAL of Massachusetts, Mr. ROMERO-BARCELÓ, Mr. FORD, Mr. DELLUMS, Mrs. CARSON, Mr. FATTAH, Mr. WALSH, Mr. UNDERWOOD, Mr. FROST, Mr. KILDEE, Ms. CHRISTIAN-GREEN, Ms. BROWN of Florida, Mr. WOLF, Mr. LAFALCE, Mr. MILLER of California, Ms. NORTON, and Mr. MCHUGH.

H.R. 424: Mr. TALENT and Mr. FOLEY.

H.R. 446: Mr. UNDERWOOD, Mr. ROYCE, Mr. HASTERT, Mr. BARCIA of Michigan, Mr. JONES, Mr. ROGAN, Mr. WELDON of Florida, Mr. SMITH of Michigan, and Mr. HYDE.

H.J. Res. 2: Mr. MCCRERY, Mr. FRANKS of New Jersey, Mr. CAMPBELL, Mr. KIM, Mr. NUSSLE, and Mr. JONES.

H. Con. Res. 4: Mr. ROMERO-BARCELÓ, Mr. FATTAH, Mr. SCOTT, Mrs. CLAYTON, and Mr. KENNEDY of Rhode Island.

H. Con. Res. 6: Mr. DOYLE, Mr. ACKERMAN, Mr. HALL of Ohio, Ms. HARMAN, Mr. CUNNINGHAM, Mr. PALLONE, Mr. COYNE, Mr. DELLUMS, Mr. LOBIONDO, Mr. DAVIS of Virginia, Mr. MCNULTY, and Mr. MATSUI.

H. Res. 28: Mr. NORWOOD and Mr. GANSKE.

H. Res. 30: Mr. CHABOT, Mr. SHADEGG, and Mr. LARGENT.

PETITIONS, ETC.

Under clause 1 of rule XXII,

5. The SPEAKER presented a petition of the House of Representatives of the Republic of Cyprus, relative to the continuing plight of the few hundred Greek Cypriots still remaining in the area of Cyprus occupied by Turkish troops since 1974; which was referred to the Committee on International Relations.

SENATE—*Tuesday, January 21, 1997*

The Senate met at 12 noon 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 of new beginnings, who makes all things new, give us a viable hope and vibrant expectancy as we begin the work of the 105th Congress. On this day following the inauguration of President Clinton and Vice President GORE, as fellow Americans and patriots we ask for Your blessing on them. In the same breath, we renew our commitment to work together with them as we seek Your will for what is best for our Nation.

Endow our own Senate leaders, TRENT LOTT, TOM DASCHLE, DON NICKLES, and WENDELL FORD with a special measure of wisdom as they work cooperatively together to foster a spirit of oneness in the Senate. Help the Senators to delight in the diversity that sheds varied shades of light on the truth and debate that exposes maximum solutions. May this Senate be distinguished for its civility, creativity, and courage. Your spirit flourishes where men and women pray for each other, speak truth as they see it without rancor, and listen attentively to one another. When we all seek You and Your guidance, we find each other. The bond of our mutual love for You and for America will sustain us in the rough and tumble of political process. God, bless America and begin here in this Senate, through our Lord and Saviour. Amen.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. LOTT. Under the order today, the time between now and 12:30 will be equally divided between myself and the Democratic leader. At 12:30 today, following our remarks, the Senate will recess until 2:15 for the weekly policy conferences to meet. When the Senate reconvenes at 2:15, there will be a period of morning business to enable all Senators to make statements and introduce legislation.

I anticipate that many of our colleagues will be making statements during the morning business period. Therefore, there will be no rollcall votes during today's session. It is my hope that during tomorrow's session the Senate will be able to consider the Executive nomination of Madeleine Albright to be the Secretary of State, and I anticipate a rollcall vote on Wednesday on the confirmation of that nomination.

I also announce to my colleagues that all Members will be notified as soon as the schedule is finalized with regard to a memorial service on Thursday in Lowell, MA, for our former colleague, Senator Paul Tsongas.

Again, I note as we come out of our policy luncheons, Senator DASCHLE and I will be introducing bills. I will introduce the first 10 bills on behalf of the Senate Republican majority, and Senator DASCHLE will introduce the next 10 bills. We will be hearing during the remainder of the day from the leading sponsors of those bills and others who will be introducing bills and want to make statements. We will go, I am sure, a while into the afternoon. It is hoped we will not begin this session by going late into the night on a Tuesday. We would like to quit at a reasonable hour, for all concerned.

INAUGURATION CEREMONIES

Mr. LOTT. I ask unanimous consent that yesterday's proceedings of the inauguration of the President be printed in today's CONGRESSIONAL RECORD.

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

INAUGURATION OF THE PRESIDENT OF THE UNITED STATES AND THE VICE PRESIDENT, January 20, 1997

Members of the House of Representatives, Members of the Senate, Justices of the Supreme Court, members of the Cabinet, members of the diplomatic corps, the Governors of the States, and the Mayor of the District of Columbia, the Joint Chiefs of Staff, and other distinguished guests assembled on the west front.

MRS. GORE

Mr. Martin Paone, Senate Secretary for the Minority, escorted Mrs. Gore, accompanied by Mrs. Lott and Mrs. Gephardt, to the President's platform.

MRS. CLINTON

Ms. Elizabeth B. Greene, Senate Secretary for the Majority, and Ms. Amelia Fields, Joint Congressional Committee on Inaugural Ceremonies, escorted Mrs. Clinton, accompanied by Mrs. Ford and Mrs. Gingrich, to the President's platform.

THE VICE PRESIDENT

Mr. John Chambers, Joint Congressional Committee on Inaugural Ceremonies Deputy Director, Ms. Loretta Symms, Senate Deputy Sergeant at Arms, and Mr. Jim Varey, House Deputy Sergeant at Arms, escorted the Vice President, accompanied by Senator Lott, Representative Gephardt and Representative Armey, to the President's platform.

THE PRESIDENT

Ms. Susan Magill, JCCIC Executive Director, Mr. Greg Casey, Senate Sergeant at Arms, and Mr. Wilson Livingood, House Sergeant at Arms, escorted the President, accompanied by Senator Warner, Senator Ford, Representative Gingrich, Senator Lott, Representative Gephardt and Representative Armey, to the President's platform.

THE INAUGURAL CEREMONY

Mr. WARNER. Mr. President, Mr. Vice President, Mr. Speaker, Mr. Majority Leader, Mr. Chief Justice, Members of the U.S. Congress, their families and guests—all one-quarter million who have joined here today on the grounds of their Capitol.

[Applause.]

Welcome to the 53rd Inauguration of the President and the Vice President of the United States of America.

[Applause.]

Across our Nation, and around the world, Americans join William Jefferson Clinton as he reconfirms the oath of office as the 42nd President of the United States, and Albert Gore, Jr., as he reconfirms the oath of office as the 45th Vice President of the United States.

Our first President, George Washington, was inaugurated in 1789.

Thereafter, every 4 years, our citizens have witnessed this transition of authority as required by the Constitution of the United States.

It is the conferring of this trust and authority—which has occurred without any interruption for 208 years—that is the cornerstone of our representative democracy.

It is a tribute to the providential vision of our Founding Fathers.

It is a tribute to the strength of character of the American people and the endurance of their institutions.

It is a tribute to successive generations of Americans who have guarded our most valuable heritage—our freedom.

And, Mr. President, may I say, on behalf of the millions and millions of Americans, we express to you our gratitude for this past week, having invited to the White House a true man who fought for freedom, and you presented him with the Presidential Medal of Freedom, Senator Dole. Thank you, Mr. President.

[Applause.]

For two centuries, the American Presidential Inauguration ceremony has represented both national renewal and continuity of leadership.

So it is altogether fitting that as the world's oldest continuous constitutional democratic republic, we gather today to honor this historical triumph, and to recommit ourselves to keep our Nation strong for future generations.

Mr. President, prayer has been an essential part of all inaugural ceremonies.

As I was privileged to drive up with you from the White House, you held the Bible and read the passage that you will read today.

Therefore, we are honored today to have the Reverend Billy Graham to lead our Nation in prayer, as he has at seven previous inaugurals.

Please stand for the invocation and remain standing for the Pledge of Allegiance. Reverend Graham.

INVOCATION

Reverend GRAHAM. President Clinton, Mrs. Clinton, Vice President Gore, Mrs. Gore, I am going to ask that we all bow our heads in prayer.

Our Father and our God, we thank You today for the privilege of coming into Your presence on this historic and solemn occasion.

We thank You for Your gracious hand which has preserved us as a Nation. We praise You for the peaceful continuity of Government that this inauguration represents.

We recall that the Bible says, "Except the Lord build a house, they labor in vain that build it." You also said that to whom much has been given, much will be required.

We look gratefully to the past, and thank You that from the very foundations of America You granted our forefathers courage and wisdom, as they trusted in You. So we ask today that You would inspire us by their example. Where there has been failure, forgive us; where there has been progress, confirm; where there has been success, give us humility, and teach us to follow Your instructions more closely as we enter the next century.

Give to all those to whom You have entrusted leadership today a desire to seek Your will and to do it.

So today, we ask Your blessing on President Clinton and his wife, Hillary, and their daughter, Chelsea, and upon Vice President Gore and his wife, Tipper, and their children.

Give to all our leaders the vision of what You desire America to become and the wisdom to accomplish it and the strength to cross the bridges into the 21st century.

We pray also for the Members of the House and the Senate, for the Supreme Court, and for all who bear responsibility of leadership in this Nation which is blessed with such ethnic diversity.

We have not solved all the social problems of our times, such as drugs and racism. Technology and social engineering have not solved the basic problems of human greed, pride, intolerance, and selfishness. We need your insight, we need your compassion, we need your strength. As both President Clinton and Senator Dole urged us in the recent Presidential campaign, may this be a time of coming together to help us deal with the problems we face.

O Lord, help us to be reconciled first to You and secondly to each other. May Dr. Martin Luther King's dream finally come true for all of us. Help us to learn true courtesy to our fellow countrymen that comes from the One who taught us that "whatever you want me to do to you, do also to them."

Remind us today that You have shown us what is good and what You require of us—to do justly, to love mercy, and to walk humbly with our God.

We ask that as a people we may humble ourselves before You and seek Your will for our lives and for this great Nation. Help us in our Nation to work as never before to strengthen our families and to give our children hope and a moral foundation for the future.

So may our desire be to serve You and, in so doing, serve one another.

This we pray in the name of the Father, the Son, and the Holy Spirit. Amen.

Mr. WARNER. Thank you, Reverend Graham.

THE PLEDGE OF ALLEGIANCE

Mr. WARNER. The Pledge of Allegiance will be led by Eagle Scout David Morales, Boy Scout Troop 152, Vienna, VA.

(The Pledge of Allegiance was led by Eagle Scout David Morales.)

Mr. WARNER. Ladies and gentlemen, it is now my privilege to present the Children of the Gospel Mass Choir, under the auspices of the Washington Performing Arts Society.

More than 100 voices from the Washington metropolitan area make up this unique choir.

Accompanied by the United States Marine Band, the choir will perform an original composition by its director, Mr. Rickey Payton, entitled, "Let's Build a Bridge Across America."

(The Children of the Gospel Mass Choir sang "Let's Build a Bridge Across America.")

Mr. WARNER. Ladies and gentlemen, it is now my distinct privilege and honor to present the Associate Justice of the Supreme Court of the United States, the Honorable Ruth Bader Ginsburg, who will administer the oath of office to the Vice President of the United States, Albert Gore, Jr.

ADMINISTRATION OF OATH OF OFFICE TO THE VICE PRESIDENT

Associate Justice GINSBURG. If you are ready to take the oath, Mr. Vice President, please repeat after me.

Associate Justice of the United States Ruth Bader Ginsburg administered to the Vice President-elect the oath of office prescribed by the Constitution, which he repeated, as follows:

"I, Albert Gore, Jr., do solemnly swear 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 of which I am about to enter. So help me God."

Associate Justice GINSBURG. Every good wish, Mr. Vice President.

Vice President GORE. Thank you.

[Applause.]

Mr. WARNER. Ladies and gentlemen, participating in today's program is a person with talent described by music critics as a catalog of all that is virtuous in singing.

Accompanied by the U.S. Army Chorus and Chorale, please welcome the world renowned Jessye Norman, who will perform a medley of American music entitled "O Freedom."

Miss Norman.

[Applause.]

(Jessye Norman sang a medley of American music entitled "O Freedom.")

Mr. WARNER. Thank you very much. Ladies and gentlemen, as chairman of the Joint Inaugural Committee, it is now my privilege to introduce my cochairman, Senator Wendell Ford of Kentucky, who will introduce the Chief Justice of the United States.

Senator Ford.

Mr. FORD. Thank you, my friend, John Warner. President Clinton, Mrs. Clinton, Vice President Gore, Mrs. Gore, my fellow Americans, and my colleagues.

Hillary Rodham Clinton, wife of the President-elect, will hold the Clinton family Bible. They are joined by their daughter Chelsea.

It is now my great privilege and high honor to present the Chief Justice of the United States Supreme Court, the Honorable William Hobbs Rehnquist, who will administer the oath of office to the President and President-elect of the United States, William Jefferson Clinton.

[Applause.]

ADMINISTRATION OF OATH OF OFFICE TO THE PRESIDENT

Mr. Chief Justice REHNQUIST. Are you ready to take the oath, Mr. President?

President CLINTON. Yes, I am.

Mr. Chief Justice REHNQUIST. Please raise your right hand and repeat after me.

The Chief Justice of the United States, William Hobbs Rehnquist, administered to the President-elect the oath of office prescribed by the Constitution, which he repeated, as follows:

"I, William Jefferson Clinton, do solemnly swear that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States. So help me God."

[Applause.]

(Herald Trumpets play "Ruffles and Flourishes" and "Hail to the Chief", and 21-gun salute.)

Mr. FORD. Ladies and gentlemen, the President of the United States of America, William Jefferson Clinton.

INAUGURAL ADDRESS

President CLINTON. My fellow citizens:

At this last Presidential inauguration of the 20th century, let us lift our eyes toward the challenges that await us in the next century. It is our great good fortune that time and chance have put us not only at the edge of a new century in a new millennium, but on the edge of a bright new prospect in human affairs. A moment that will define our course and our character for decades to come. We must keep our old democracy forever young. Guided by the ancient vision of a promised land, let us set our sights upon a land of new promise.

The promise of America was born in the 18th century out of the bold conviction that we are all created equal. It was extended and preserved in the 19th century, when our Nation spread across the continent, saved the Union, and abolished the awful scourge of slavery.

Then, in turmoil and triumph, that promise exploded onto the world stage to make this the American century.

And what a century it has been. America became the world's mightiest industrial power, saved the world from tyranny in two world wars and a long cold war, and time and again reached out across the globe to millions who, like us, longed for the blessings of liberty.

Along the way, Americans produced the great middle class and security in old age; built unrivaled centers of learning and opened public schools to all; split the atom and explored the heavens; invented the computer and the microchip; and deepened the wellspring of justice by making a revolution in civil rights for African Americans and all minorities, and extending the circle of citizenship, opportunity, and dignity to women.

Now, for the third time, a new century is upon us, and another time to choose. We began the 19th century with a choice to spread our Nation from coast to coast. We began the 20th century, with a choice to harness the Industrial Revolution to our values of free enterprise, conservation, and human decency. Those choices made all the difference. At the dawn of the 21st century, a free people must now choose to shape the forces of the Information Age and the global society, to unleash the limitless potential of all our people, and, yes, to form a more perfect union.

When last we gathered, our march to this new future seemed less certain than it does today. We vowed then to set a clear course, to renew our Nation.

In these 4 years, we have been touched by tragedy, exhilarated by challenge, strengthened by achievement. America stands alone

as the world's indispensable nation. Once again, our economy is the strongest on Earth. Once again, we are building stronger families, thriving communities, better educational opportunities, a cleaner environment. Problems that once seemed destined to deepen, now bend to our efforts: our streets are safer and record numbers or our fellow citizens have moved from welfare to work.

And once again, we have resolved for our time a great debate over the role of Government. Today we can declare: Government is not the problem; and Government is not the solution. We, the American people, we are the solution.

[Applause.]

Our Founders understood that well, and gave us a democracy strong enough to endure for centuries, flexible enough to face our common challenges and advance our common dreams in each new day.

As times change, so Government must change. We need a new Government for a new century, a government humble enough not to try to solve all our problems for us, but strong enough to give us the tools to solve our problems for ourselves. A Government that is smaller, lives within its means, and does more with less. Yet where it can stand up for our values and interests around the world, and where it can give Americans the power to make a real difference in their everyday lives, Government should do more, not less. The preeminent mission of our new Government is to give all Americans an opportunity—not a guarantee—but a real opportunity to build better lives.

[Applause.]

Beyond that, my fellow citizens, the future is up to us. Our Founders taught us that the preservation of our liberty and our Union depends upon responsible citizenship.

And we need a new sense of responsibility for a new century. There is work to do, work that Government alone cannot do. Teaching children to read. Hiring people off welfare rolls. Coming out from behind locked doors and shuttered windows to help reclaim our streets from drugs and gangs and crime. Taking time out of our own lives to serve others.

Each and every one of us, in our own way, must assume personal responsibility—not only for ourselves and our families, but for our neighbors and our Nation.

[Applause.]

Our greatest responsibility is to embrace a new spirit of community for a new century. For any one of us to succeed, we must succeed as one America.

The challenge of our past remains the challenge of our future: Will we be one nation, one people, with one common destiny—or not? Will we all come together, or come apart?

The divide of race has been America's constant curse. And each new wave of immigrants gives new targets to old prejudices. Prejudice and contempt, cloaked in the pretense of religious or political convictions, are no different.

[Applause.]

These forces have nearly destroyed our Nation in the past. They plague us still. They fuel the fanaticism of terror, and they torment the lives of millions in fractured nations all around the world.

These obsessions cripple both those who hate and, of course, those who are hated, robbing both of what they might become. We cannot—we will not—succumb to the dark impulses that lurk in the far regions of the soul, everywhere. We shall overcome them.

[Applause.]

We shall replace them with the generous spirit of a people who feel at home with one another.

Our rich texture of racial, religious and political diversity will be a godsend in the 21st century. Great rewards will come to those who can live together, learn together, work together, forge new ties that bind together.

As this new era approaches, we can already see its broad outlines. Ten years ago, the Internet was the mystical province of physicists; today, it is a commonplace encyclopedia for millions of schoolchildren. Scientists now are decoding the blueprint of human life. Cures for our most feared illnesses seem close at hand.

The world is no longer divided into two hostile camps; instead, now we are building bonds with nations that once were our adversaries. Growing connections of commerce and culture give us a chance to lift the fortunes and spirits of people the world over. And for the very first time in all of history, more people on this planet live under democracy than dictatorship.

[Applause.]

My fellow Americans, as we look back at this remarkable century, we may ask, can we hope not just to follow, but even to surpass the achievements of the 20th century in America, and to avoid the awful bloodshed that stained its legacy? To that question, every American here and every American in our land today must answer a resounding "Yes."

[Applause.]

This is the heart of our task: With a new vision of Government, a new sense of responsibility, a new spirit of community, we will sustain America's journey. The promise we sought in a new land, we will find again in a land of new promise.

[Applause.]

In this new land, education will be every citizen's most prized possession. Our schools will have the highest standards in the world, igniting the spark of possibility in the eyes of every girl and every boy, and the doors of higher education will be open to all. The knowledge and power of the information age will be within reach, not just of the few but of every classroom, every library, every child. Parents and children will have time not only to work, but to read and to play together, and the plans they make at their kitchen table will be those of a better home, a better job, a certain chance to go to college.

Our streets will echo again with the laughter of our children, because no one will try to shoot them or sell them drugs anymore. Everyone who can work will work, with today's permanent underclass part of tomorrow's growing middle class. New miracles of medicine at last will reach not only those who can claim care now, but the children and hard-working families too long denied.

We will stand mighty for peace and for freedom and maintain a strong defense against terror and destruction. Our children will sleep free from the threat of nuclear, chemical, or biological weapons. Ports and airports, farms and factories will thrive with trade and innovation and ideas. And the world's greatest democracy will lead a whole world of democracies.

Our land of new promise will be a Nation that meets its obligations: A Nation that balances its budget, but never loses the balance of its values.

[Applause.]

A nation where our grandparents have secure retirement and health care, and their grandchildren know we have made the reforms necessary to sustain those benefits for their time.

[Applause.]

A Nation that fortifies the world's most productive economy, even as it protects the great natural bounty of our water, air, and majestic land.

And in this land of new promise, we will have reformed our politics so that the voice of the people will always speak louder than the din of narrow interests, regaining the participation and deserving the trust of all Americans.

[Applause.]

Fellow citizens, let us build that America, a nation ever moving forward toward realizing the full potential of all its citizens. Prosperity and power, yes, they are important, and we must maintain them, but let us never forget: The greatest progress we have made, and the greatest progress we have yet to make, is in the human heart. In the end, all the world's wealth and a thousand armies are no match for the strength and decency of the human spirit.

[Applause.]

Thirty-four years ago, the man whose life we celebrate today spoke to us down there, at the other end of this Mall, in words that moved the conscience of a Nation. Like a prophet of old, he told of his dream that one day America would rise up and treat all its citizens as equals before the law and in the heart. Martin Luther King's dream was the American dream. His quest is our quest: the ceaseless striving to live out our true creed. Our history has been built on such dreams and labors, and by our dreams and labors, we will redeem the promise of America in the 21st century.

To that effort, I pledge all my strength and every power of my office. I ask the Members of Congress here to join in that pledge. The American people returned to office a President of one party and a Congress of another. Surely, they did not do this to advance the politics of petty bickering and extreme partisanship they plainly deplore.

[Applause.]

No, they call on us all instead to be repairers of the breach and to move on with America's mission.

America demands and deserves big things from us—and nothing big ever came from being small.

[Applause.]

Let us remember the timeless wisdom of Cardinal Bernardin when facing the end of his own life. He said, "It is wrong to waste the precious gift of time . . . on acrimony and division."

Fellow citizens, we must not waste the precious gift of this time, for all of us are on that same journey of our lives, and our journey, too, will come to an end. But the journey of our America must go on.

And so, my fellow Americans, we must be strong, for there is much to dare. The demands of our time are great, and they are different. Let us meet them with faith and courage, with patience and a grateful, happy heart. Let us shape the hope of this day into the noblest chapter in our history. Yes, let us build our bridge—

[Applause.]

a bridge wide enough and strong enough for every American to cross over to a blessed land of new promise. May those generations whose faces we cannot yet see, whose names we may never know, say of us here that we led our beloved land into a new century with the American dream alive for all her children, with the American promise of a more

perfect Union a reality for all her people, with America's bright flame of freedom spreading throughout all the world.

From the height of this place and the summit of this century, let us go forth. May God "strengthen our hands for the good work ahead"—and always, always bless our America.

[Applause.]

Mr. WARNER. Mr. President, we thank you for that strong and inspiring message at this very important time in our history.

Now, ladies and gentlemen, it is my pleasure to introduce the Immanuel Baptist Church Sanctuary Choir and Orchestra of Little Rock.

The choir and orchestra, under the direction of Reverend Lynn Madden, will present "The Battle Hymn of the Republic."

(The Immanuel Baptist Church Sanctuary Choir and Orchestra sing "The Battle Hymn of the Republic.")

Mr. WARNER. Thank you for the singing of that most inspiring of American music.

As he did for his first inauguration in 1993, President Clinton has asked a distinguished American scholar to compose a poem for this historic day.

Please welcome writer, editor, poet, Mr. Miller Williams.

[Applause.]

OF HISTORY AND HOPE

We have memorized America,
how it was born and who we have been and where.
In ceremonies and silence we say the words,
telling the stories, singing the old songs.
We like the places they take us. Mostly we do.
The great and all the anonymous dead are there.
We know the sound of all the sounds we brought.
The rich taste of it is on our tongues.
But where are we going to be, and why, and who?
The disenfranchised dead want to know.
We mean to be the people we meant to be,
to keep on going where we meant to go.
But how do we fashion the future? Who can say how
except in the minds of those who will call it Now?
The children. The children. And how does our garden grow?
With waving hands—oh, rarely in a row—
and flowering faces. And brambles, that we can no longer allow.
Who were many people coming together.
cannot become one people falling apart.
Who dreamed for every child an even chance.
cannot let luck alone turn doorknobs or not.
Whose law was never so much of the hand as the head
cannot let chaos make its way to the heart.
Who have seen learning struggle from teacher to child
cannot let ignorance spread itself like rot.
We know what we have done and what we have said,
and how we have grown, degree by slow degree,
believing ourselves toward all we have tried to become—
just and compassionate, equal, able, and free.
All this in the hands of children, eyes already set.
on a land we never can visit—it isn't there yet—
but looking through their eyes, we can see.
what our long gift to them may come to be.
If we can truly remember, they will not forget.

[Applause.]

Mr. WARNER. Santita Jackson will lead the singing of our National Anthem. She will be accompanied by the Resurrection Choir, a group composed of singers from the choirs of American churches tragically destroyed by fire in recent months.

This choir's performance is a befitting commemoration of this day on which we honor also Rev. Martin Luther King, Jr.

Before we sing our National Anthem, the Reverend Gardner C. Taylor will deliver the benediction.

Ladies and gentlemen, please stand for the benediction and remain standing to sing our National Anthem.

Reverend Taylor.

BENEDICTION

Reverend TAYLOR. Let us lift up our spirits before our Creator, eternal God, brooding over the days of our years. In sovereign judgment, and yet with tender mercy, now close to the end of this solemn but joyous occasion, we lift our hearts and our hopes before Thee.

We pray for our President, William Jefferson Clinton, that Thou will give to him ever increasing vision and vigor and voice, that he might speak tellingly to the American promise in history.

We pray for the gracious and gallant lady at his side, Hillary Rodham Clinton, and for their daughter.

We ask Thy blessings upon the Vice President of the United States and upon his wife, Mrs. Tipper Gore. Grant, we pray, that he may ever be more a partisan of what is best in our American tradition.

And now, our God, we hold before Thee this Nation so richly endowed, so grandly blessed, and yet imperiled, apparently often, by the very richness of its diversity. Deliver us from pettiness of heart, from harshness of speech and from violence of action. Make us worthy of our history, of patriots' sacrifices and martyrs' blood, in the vanguard of which stand Lincoln and King, Thy servants Abraham and Martin. Give us ever a greater dedication and commitment to the grand defining words of our democracy—liberty, justice, equality, opportunity.

And now let the words of our mouths, all of our mouths, in the meditations of our hearts, all of our hearts, be acceptable in Thy sight, O Lord, our Strength and our Redeemer, and now unto the old, wise God, our Deliverer, be glory and majesty, dominion and power both now and evermore. Amen.

Mr. WARNER. Now, Miss Santita Jackson.

(The National Anthem was sung by Santita Jackson and the Resurrection Choir, audience standing.)

[Applause.]

The inaugural ceremonies were concluded at 12:48 p.m.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. LOTT. Mr. President, I know of no Senator having indicated that he or she desires to make a statement at this time. No request being given to the Cloakroom, I ask unanimous consent that the Senate now stand in recess under the previous order until 2:15.

There being no objection, the Senate, at 12:20 p.m. recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. COATS].

The PRESIDING OFFICER (Mr. COATS). The majority leader is recognized.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that the period for morning business be divided as follows: The first 30 minutes under the control of the majority leader, the second 30 minutes under the control of the Democratic leader, with the next hour under the control of the majority leader or his designee, to be followed by 1 hour under control of the Democratic leader or his nominee.

I do not believe there is a problem with this. We have cleared it with the other side of the aisle.

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

SENATE REPUBLICAN AGENDA

Mr. LOTT. Mr. President, I think we have the opportunity here today to get off to a good start, a fast start. It is one about which we have communicated with our colleagues on the other side of the aisle. We have increased the number of bills that we officially introduce at the start of the session from what has in the past been only 5 to 10, and therefore the Republicans will today introduce our first numbered 10 bills as well as Senate Joint Resolution 1, which will be the constitutional amendment for a balanced budget. And then the Democratic leader, on behalf of the Democrats, will introduce their first 10 bills, and then others can come in and offer bills as they see fit. The principal sponsors will come to the floor this afternoon in the hour we have designated to offer the bills and to make comments. Frankly, I see some overlap between our list of 10 bills and the Democrats' list of 10 bills. I think that is positive.

So we want to go ahead and get started with this. We are going to move forward aggressively wherever we can to handle the President's nominations to his Cabinet. We hope to confirm within the next 2 days his first two nominees, to be Secretary of State and Secretary of Defense. We hope in the 2 weeks after that to move right along with other nominees. So we are trying hard to work with the administration and set up an atmosphere that will allow us this year to pass some good legislation for the best interests of the American people, but the President, we think, deserves his Cabinet in place so that he can have people there to work with us.

One of the glories of the Senate is that it runs as much by tradition and custom as it does by written rules, and so one of those customs we are carrying out today is introducing these first few bills that will lay out our agenda for the rest of the year.

So it is my honor to present to the Senate and to the Nation 11 major pieces of legislation, 10 bills and 1 resolution, that we will offer today. Each of them can stand on its own as an important initiative dealing with matters that touch the lives of most Americans. Together, however, they form a blueprint for the visionary changes our country needs. I might even call them the user's manual for a better, safer and more prosperous America. These bills represent the consensus of the 55 Republican Members of the Senate.

We did have a unique opportunity to sit together for 12 hours the week before last to talk through what we want to do in this session of Congress and what specific bills we wanted to take up. It does not mean that every Republican Senator subscribes to every part of this package. To the contrary, it is likely that every Republican Senator, this one included, will disagree with some provision or another in one bill or another. But as befits the party of the open door, we have had quite a lot of give-and-take in putting this package together, and, as always, our individual Members make their own decisions about what they will endorse. But each of these bills commands overwhelming support on the Republican side of the aisle, and I want to commend not just the lead sponsors of these bills but all the Senators and staff who worked together over the past few weeks to reach the agreement and get these bills actually drafted and ready for presentation. I am going to leave it to the primary sponsors and others who have worked on the various pieces of legislation to give the details. So I am going to summarize in this time that I have today what is in this platform.

Pride of place goes to Senate Joint Resolution 1, as I already pointed out, a balanced budget amendment to the Constitution which will be introduced today by Senator HATCH, chairman of the Senate Judiciary Committee, and by Senator CRAIG of Idaho.

This one, obviously, needs no explaining. There may be still, somewhere in the hinterlands of America, a citizen who does not understand why a balanced budget amendment is desperately needed, but I doubt it. The American people keenly realize the problems caused by excessive Federal spending, and everywhere I have gone, every poll that I have seen indicates the American people support this initiative overwhelmingly.

I have tried to understand the arguments against a constitutional amendment for a balanced budget, but to no avail, quite frankly. We have not had a balanced budget in the Federal Government in 28 years, and it will probably be at least 4 more years before we get one, if then. I have watched good men and women, including Presidents, make commitments and actually have plans to get to a balanced budget, but it has not worked.

This year, I think we have an opportunity to work with the President to come to a balanced budget agreement. We will see his budget plan February 6. I hope he will show leadership and courage and will address some of the issues that need to be addressed that, frankly, he was not willing to deal with last year. But it was an election year, and, hopefully, he will approach it differently this time.

But even if we come together on a plan to get a balanced budget by 2002, I still have my doubts about whether it will actually happen if we do not have the leverage guarantee of a constitutional amendment. Remember, when we pass this constitutional amendment, it then does not go to the President for his signature, it goes to the State legislatures, to the people for their ratification.

Recent new accounts seem to indicate the administration will fight this amendment and will do it aggressively. I understand they may have some questions or objections. I expect them to make those, and we will listen to them. But this fight is not about politics, it is about the future of our children and grandchildren. It is about the burden of debt we are leaving them with, which is a cruel legacy. It is about right and wrong, and this time around, I am betting that right is going to prevail.

Because of the importance we attach to education, one of the first bills we will introduce today will deal with this area. Just like the constitutional amendment for a balanced budget is important to us because of what we think it means to our children's future in holding down inflation and holding down interest rates and stopping the continuous increase in the interest we pay on the national debt that will lead to making it more difficult for our children and grandchildren to have home mortgages and student loans and car loans, we think that education, also, is a very high priority and also an investment in the future of our country.

If we have a strong educational system, if we deal with the illiteracy problems, if we deal with the needs of children with special needs, it will contribute to a better America, better educated children, will lead to more production, better jobs, more jobs, more trade, more development in technology.

So Republicans are placing a high priority this year on education with S. 1. The first numbered bill will be the Safe and Affordable Schools Act. It will be introduced by Senator PAUL COVERDELL of Georgia, and it is a comprehensive agenda for dramatic change. It will help not only parents—and that is where it begins, in the home with the parents—but also the States and the local communities to give their children a better education.

It focuses, especially, on children attending unsafe schools, to give their families consumer rights and choice in education. In this regard, it builds on the good work that was done in the 104th Congress by the distinguished Senator from Indiana, Senator COATS, who is now presiding in the Chamber. He has done a lot of great work in behalf of youngsters, and that work is confirmed in this piece of legislation.

In higher education, S. 1 establishes what we call the Bob Dole Investment Accounts to help parents set aside the resources on their own needed for their children's tuition.

Toward the same goal, it makes the interest on student loans tax deductible, and it gives favorable tax treatment to State prepaid tuition plans, to education aid provided by an employer to encourage more employers to provide that assistance to their workers which would benefit their children, and to student work-study awards.

S. 1 will fully fund the Individuals with Disabilities Act, IDEA, as it is quite often referred to, by authorizing an additional $10 billion over the next 7 years. This is not something easily done, but it is something we promised children with these special needs and we promised the States we would do, and we have not done it.

In this legislation, we are making that commitment to fulfill that obligation. That will come as good news not only to the families with special-needs children, it will also mean a lot to the Governors and State legislatures which have been shouldering this Federal mandate without the funds to back it up.

I want to mention especially the good work that has been done by Senator GREGG of New Hampshire and Senator FRIST of Tennessee on this difficult but very important matter.

Finally, S. 1 sets up a block grant for States to promote adult education and combat illiteracy. This has been long a priority with Senator JEFFORDS, our chairman of the Labor and Human Resources Committee, and I am especially pleased it will be included in this package.

As I said earlier today at a press conference, we have been talking about trying to deal with adult education and illiteracy problems for 10 years, but we have done very little about it. This is the place where the Federal Government can be helpful in helping to fill a void that maybe the States cannot do on their own.

The next bill we will introduce today is S. 2, which will be introduced by Senator ROTH. It is the Family Tax Relief Act. It contains key provisions

from the tax relief legislation of the last Congress that was vetoed by President Clinton. Senator ROTH has long worked in this area. He is the chairman of the Finance Committee. He knows his subject backward and forward, and he knows we need a fairer Tax Code. He also knows we need to give some incentives for growth in the economy, to create more jobs, to have a stronger economy.

I still maintain that when the economy is only growing at 2 percent or 2.3 percent, that is a very weak growth, and we should have it more in the range of 3 to 3.5. We think this bill will help do that.

It will offset the President's 1993 tax increases by reducing taxes over the next 5 years. Most of it will go to working families, and those are the ones to whom we think the help really should go, and most of it will go to middle-income people.

In keeping with our Republican commitment to strengthen families, the bill does create a $500-per-child tax credit for children under the age of 18. The President would like to lower that age, I understand, maybe even to 13, but if you are really trying to help families with children where they have the greatest needs, I really think it is in that bracket—14, 15. So that is how we would start it off. It would apply to some 44 million youngsters.

The bill would expand IRA's by allowing a homemaker to contribute to an IRA regardless of a spouse's participation in a pension plan and regardless of income phaseouts, and it would allow for tax and penalty-free withdrawal from an IRA for the cost of higher education, for small business startups and for long-term unemployment.

What better way to encourage people to look after themselves and address the needs of education and startups of businesses and unemployment than to encourage them to have an IRA with the tax benefits that go with it?

S. 2 would also lower the antifamily inheritance tax—I call it the death tax—which is now at confiscatory levels. When you have an estate tax that is 44 percent, or even as high as 55 percent, obviously, that is unfair.

Once again, it is hurting small businesses and farmers, as well as individuals, who work all their lives to build up a little nest egg for their children, and now many of them are selling those businesses, because they know if they don't, when they do pass on, they will have over half of what they worked for all their lives taken from their children.

Finally, this bill aims to boost savings, investments and job creation by allowing a 50-percent deduction for capital gains on assets held more than 3 years and would let people who sell their homes at a loss deduct that as a capital loss.

The next bill is S. 3, the Omnibus Crime Control Act, again being introduced by Senator HATCH. He has done work on this for a long time, including this last year. It is a comprehensive package of tough-minded steps to fight illegal drugs, terrorism and child pornography.

It continues the Republican effort to reform our prison system, to end abuses therein, both by felons and by Federal judges. In so many instances now, felons in prisons are tying up the courts with petty, very trivial allegations that take up time and cost a lot of money. We want to try to reform that area and to save some of that lost time and effort.

We aim to restore public confidence in our courts by a series of reforms that will, at last, tilt the scales of justice in favor of innocent victims of crime. This bill reauthorizes major components of the Violence Against Women Act.

The next bill is S. 4, the Family Friendly Workplace Act, to be introduced by Senator ASHCROFT would extend to all workers the same options for flextime and comp time that employees of the Federal Government have enjoyed for decades. These opportunities would be 100 percent voluntary and a matter of choice for the men and women of today's work force.

Most of those workers have to juggle the demands of their jobs and the pressures of family life. Virtually all of them, especially those with small children, want more time with their families. S. 4 will help them arrange it while keeping a full paycheck.

A landmark of bipartisanship in the last Congress was built to reform the Nation's antiquated laws concerning liability. Unfortunately, despite the best efforts of Senator GORTON and Senator ROCKEFELLER and others in forging a compromise, that product liability reform legislation again fell victim to the President's veto pen.

We owe it to the American people to try again. We need legal reform. The American people want it. They expect it. They want broad legal reform. But at a very minimum, we should do it in this product liability area where so much good work has already been done.

This bill, S. 5, will also be introduced by Senator ASHCROFT, who is now chairman of the subcommittee with jurisdiction. It gives us another chance to overhaul an unfair and inefficient liability system for the benefit of American consumers and workers.

We will, in the bill S. 6, again reintroduce the Partial-Birth Abortion Ban Act. This, too, was vetoed by President Clinton last year. But the times have changed, and as the old song says, "If times are changing, then maybe the results can be different." After the election of 1996, the Senate has changed, too.

We are hopeful this time around we will do away with this practice that I think has shamed the conscience of the Nation. I commend Senator SANTORUM, the bill's lead sponsor, and Senator SMITH for their dedication to this cause.

We will schedule this bill on the floor of the Senate for an early vote. I am sure the House will follow suit. We will send it again to the President. Hopefully, this time he will sign it.

S. 7 is the National Missile Defense Act. I am pleased to be introducing this legislation. Building on the work that has been done by Senator Dole, Senator KYL, Senator THURMOND, and others in the last Congress, it represents our commitment to the American people to secure for them, for their homes, their neighborhoods and, in fact, the country, the maximum possible protection against missile attack.

In the aftermath of the high-tech gulf war of 1990, many, perhaps most, Americans think that the Nation is already sheltered by sophisticated weapons systems like the one that protected Israel against the Iraqi scud missiles.

Don't we wish. But sadly, and potentially tragically, the truth is that in an era of international terrorism, the United States remains vulnerable to missile blackmail. So S. 7 will put our Nation back on the path toward security and toward lasting peace through unquestioned strength.

We have concerns about the environment. One of the bills that we will bring up again this year that we worked on—and we got it through the Senate after a filibuster, but it wound up getting 63 votes—was a bill that would bring to a conclusion the decision about where to have a nuclear waste site in America. We will move on that quickly.

But S. 8 is the Superfund Cleanup Acceleration Act. It offers a more efficient, commonsense approach to solving some of the Nation's worst environmental problems involving toxic waste. We have sites all over the country, hundreds of them. And yet almost—well, I will not say almost none, but very few have actually been cleaned up, I think maybe as few as 37. Yet, we have spent millions, probably a billion or more dollars. We are not getting our money's worth. This legislation is directed at doing that.

Senator SMITH and Senator CHAFEE will introduce this legislation. It would end the costly litigation that has paralyzed the cleanup effort. That is what has happened. There has been nothing but a lot of litigation and no real cleaning up where we needed it. And that has diverted basically all the resources of the program.

S. 8 returns to the original vision of the Superfund program—the protection of human health and the environment through realistic cleanup standards; economic redevelopment of affected sites; and fair treatment of individuals, small business and municipalities.

S. 9 is the Paycheck Protection Act, introduced by the assistant majority leader, Senator NICKLES, who is here. He will introduce this legislation later on. It forbids corporations and labor unions to take money from their stockholders and employees or members for political purposes without that person's expressed consent. You will note it is applicable to the corporations, to management and to the workers, so that there is protection against this type of intimidation and, in fact, the practice of taking money from duespaying members and using it for purely political purposes.

I think it is a matter of simple justice. No one should be compelled by any organization to pay for someone else's campaigning or lobbying. Right here this is where true campaign reform starts.

Finally, S. 10, the Violent Juvenile Offenders Act is a companion bill to Senator HATCH's S. 3 and is the result of not only his efforts but those of Senator DOMENICI, Senator ASHCROFT, and Senator THOMPSON. It rests on the principle that violent juveniles must be held personally accountable for their actions.

There has been a rising increase in juvenile crime in America. We all know the stories of very young people with automatic weapons going down the street, shooting innocent people sitting on their porches. We know that many of them wind up not being tried as criminals because of their age. It is a delicate balance. But we cannot ignore the problem, and we must be, I think, stronger in how we deal with these juvenile offenders.

This bill would assure that violence and repeat juvenile offenders are treated as adults. It targets violent youth gangs, toughens penalties for violent and drug crimes, and fosters the kind of crime prevention and juvenile rehabilitation that have proven records of success.

I heard on the radio this very morning, when I was getting ready to come to the Senate, that local officials of the District of Columbia are calling out for help in dealing with gangs in this city, because just last week a young man, young boy, on his way home from school, maybe 16 years old, was accosted by a couple gang members. They wound up dragging him into the woods where they shot him, killed him. He was not involved in the dispute, but he wound up losing his life. This person on the radio was saying, do whatever is necessary. Bring in the National Guard if you have to, but we have to break up these gangs in our Nation's Capital.

Mr. President, these 10 bills, along with the balanced budget constitutional amendment, form a very ambitious agenda. It will take time to accomplish. I do not think we should put a time limit on them and say we must do them by the end of February or the end of March in each instance. We should do them as soon as we can, but we should make sure everybody has a chance to review them, make their case for or against them. Let us have full debate, but let us get it done and let us do it right. There will be adjustments and accommodations along the way, but we are trying to get started in a very positive way and offer bills we think are important for the quality of life and the future of our country.

The goal of the Senate Republicans is very clear, I think, and unchanging in this effort. It is to free the energy and genius of the American people so that they can achieve a better quality of life. The legislation we are introducing today we believe will allow them to do that—for themselves, their families and their communities—in a society that will be more secure, more prosperous and more caring.

Mr. President, I yield the floor to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, how much time remains of the majority leader's time?

The PRESIDING OFFICER. Seven minutes 35 seconds is remaining under the majority leader's time.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I would be glad to yield the remainder of that time to Senator NICKLES if he would like to go ahead and begin his comments.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to congratulate and compliment the majority leader of the Senate for his statement today, but also for his work with all of the 55 Republican Senators to put together this list.

This is a list which we have spent some time on. When I say "we," I am talking about all 55 Republican Senators, who had some input on this list. That is a little unusual. We have not done that before. We came up with 10 bills. In the past, our tradition has been to introduce five. We came up with 10.

I might mention later today, or in the next few days or weeks, we had several other bills people wanted to have in this list. But this list represents a consensus of an overwhelming number of Republicans, that these are positive things we can do, should do, and that we should pass this year.

Mr. President, let me just comment and take a second to compliment President Clinton on his inaugural address yesterday. President Clinton made two or three comments that I would like to refer to.

He said Government is not the problem, it is not the solution; the American people are the solution. I think you will find that we Republicans really do believe the American people are the solution. We have a lot of ideas for saving Medicare, saving Social Security, a lot of different things where we really want to involve the American people. I compliment the President on that. He said that Government should live within its means.

The first item that Majority Leader LOTT mentioned was a constitutional amendment to balance the budget. We have overwhelming support among our colleagues for passage of a constitutional amendment to balance the budget. We are equally serious about passing legislation to implement a balanced budget. We want that to happen. Unfortunately, President Clinton vetoed that in the last Congress. We want to work with the President. He said in the inaugural address that we should live within our means. We are going to try and make that happen. We look forward to working with this administration to make that happen.

The President also said we should put petty politics and extreme partisanship aside. He is right. This Congress, this political year, maybe in the last year or two, has become too partisan and maybe too extreme in working with the administration. It has been too partisan. It has been too extreme. We need to put that aside.

So I welcome the President's comments. I look forward to working with President Clinton in this administration to implement many of the things he talked about. A lot of things we have in this agenda are targeted toward doing exactly that.

The constitutional amendment to balance the budget has overwhelming support among the membership, and rightfully so. We should live within our means. Almost all the States have provisions in their constitution saying they will not spend more than they take in. We should follow that guidance.

President Clinton, during the campaign, said he was in favor of tax relief. S. 2, the second bill we have in our list, does provide for family tax relief. Even during the campaign, President Clinton talked of a $500-per-child tax credit. That is the foundation of our tax bill. Senator LOTT mentioned 80 percent of the tax bill we have introduced as the leadership package. We passed that last year, but again President Clinton vetoed it. He said in the campaign that he was in favor of it. We want to pass it this year and we want it to become law. We are not interested in passing legislation for legislation's sake or for political points' sake. President Clinton is not running again. We want these bills to become law because they will have a positive, real impact on American lives.

We define the child tax credit as children up to age 18. President Clinton's

proposal limited it to kids under 12. We think it should include at least kids up to 18. I told some people that my kids range up to age 26. We might have an amendment to make it age 26. The bill we introduced takes it to age 18.

We provide estate tax relief. There is a small business advisory council that advises the President and those of us in Congress and they always have an estate tax relief on their list. Why? Because if you have a taxable estate right now above $600,000, Uncle Sam starts taking big bites. If your estate goes up to a million above that, Uncle Sam wants 35 percent of it. If you have an estate of 3 million, say your business is as a farmer or a rancher or a businessman, if it is 3 million above the $600,000 deduction, Uncle Sam says, "We want 55 percent of anything above that amount." Instead of protecting property, it is confiscating property. We want to reduce that, especially for small business and especially for family-owned operations. That is in our package, as well.

We have capital gains relief because we think we tax transactions too much. We actually tax transactions more than almost any of our other industrial competitors. We need to reduce the taxes on transactions. If we do so, we will have more transactions and the Government will make more money, not less money. That is in our package. We can do better with the economy.

I think we put together a good package, one that is family friendly. We have a provision that Senator LOTT alluded to called the Family Friendly Workplace Act—Senator ASHCROFT has worked hard on it—giving families the option that if they work a few extra hours one week, we think they can take off for their kids the next week. Why have good Government come in saying, "We mandate you have time off for PTA." Why not let the families and employees make that decision? So we do that. We provide much greater flexibility for families, employers and employees in this bill. It is all on a voluntary basis, where they can work a few more hours one week and take time off for whatever they desire the following week. You do not need Government's blessing to do it. They allow for compensatory time. Instead of taking time-and-a-half if they have to work an hour or two above 40 hours, if they want they can bank some time and take time-and-a-half off. If they worked 44 hours, under present law they would be entitled to 6 hours of overtime pay. If they want to keep it that way, they have the right to do so. If they would like to have 6 hours off and maybe have a day off or maybe work some other kind of combination or schedule that meets their family's needs and desires, maybe for a vacation day, maybe for more time off, maybe for time to visit their kids' athletic events, they have the right to do so without having the Federal Government enumerate that this is what you have to offer by law, and not be paid for that time. We give them, through flextime and through the comp time, the ability to have the flexibility in their schedules to meet their family's needs, all of which are different. All of our families are different. All of our families have more time demands that are at variance. This gives them that flexibility, and probably would be the most family friendly thing we can do.

We provide for a balanced budget package which will say the Government will live within its means. We are not going to spend more than we take in. Interest rates will come down. Homes will be more affordable. When we talk of family tax credits, if you have three kids under the age of 18, that is $1,500 more you get to spend as you desire. Maybe it is for education, maybe it is for food on the table, maybe it is for a home. You make that decision, because we decided it is your money, not Government's money.

Then the flextime proposal, where we are basically saying that families can make the decisions. You have the flexibility in your schedules to work out what is mutually beneficial with you and your employer.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NICKLES. I see the minority leader is not here, and I ask unanimous consent for an additional 2 minutes.

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

Mr. NICKLES. We also have an additional provision called the Paycheck Protection Act. It is fundamentally prodemocracy. It says no person should be compelled to contribute to a political organization without their consent. That person may be a stockholder. No one should be compelled, as a condition of employment, to contribute to a political group or organization, whether that be a PAC, whether it be a union organization or what. No one should be compelled. That is what this bill says. No one will be compelled to contribute to a political organization or entity or candidate against their will. They would have to sign a written authorization form before they would have contributions taken out.

Mr. President, I compliment Senator LOTT and all my colleagues for their work in putting this list together. I look forward to working with the minority leader and others on the other side of the aisle. I know they have their agenda list. I look forward to hearing what that is, and I look forward to working with them to see if we can have several items beneficial not for Congress but for the American people.

The PRESIDING OFFICER. Under the previous order, the time is reserved for the minority leader for up to 30 minutes.

Mr. DASCHLE. Let me begin by thanking the Senator from Oklahoma for the tone of his comments. I did not have the opportunity to hear them all, but in keeping with the expressions of the majority leader and others who have indicated a desire to find ways with which to create greater harmony and greater opportunity for the country through increased bipartisanship, I appreciate very much his comments today.

PRESIDENT CLINTON'S INAUGURATION

Mr. DASCHLE. Mr. President, before I begin talking about the bills, let me make an initial comment about yesterday. We all witnessed a stirring ceremony as President Clinton and Vice President GORE were sworn in to a second term in office. President Clinton is the first Democratic President to earn a second term since Franklin Roosevelt. This is truly a historic event.

Anyone who witnessed the inaugural ceremony knows that, despite the cold weather, this quadrennial rite of American democracy was warmed by great pageantry, bipartisan good will, and a strong sense of national purpose and unity.

Yesterday's inaugural ceremony lasted a few minutes, but many weeks of hard work preceded the event. Everything from construction of the inaugural platform to ticket dispersal, security, and the traditional lunch in Statuary Hall, plus thousands of other tasks, required a great deal of preparation and attention to detail.

On behalf of Senate Democrats, I join with Senator LOTT and express my gratitude to the Joint Congressional Committee on Inaugural Ceremonies; in particular, the distinguished Senator from Virginia, Mr. WARNER, and the distinguished Senator from Kentucky, Mr. FORD, for all of their efforts toward making this such a successful inaugural event. Senators FORD and WARNER and the other members of the committee put in long hours under very tight deadlines. Time that they might have preferred to spend with family or in their home States attending to constituent matters was sacrificed for the benefit of all Americans who enjoyed this inauguration.

Senator WARNER was chairman of the Joint Inaugural Committee this year. He brought to this duty the same diligence, resolve, and reverence for the congressional rules and traditions that he brings to his job as chairman of the Senate Rules Committee. This was his first inaugural ceremony as chairman, and he should be commended for a job well done.

This is the fifth time Senator FORD has served as chairman or vice chairman of the Inaugural Committee. Like everything he does as Senate Democratic whip, ranking member of the

Rules Committee, and senior Senator from Kentucky, Senator FORD once again approached the responsibility with great humor and tenacity and a deep respect for our best American tradition. Senator FORD is as dependable and dedicated a public servant as anyone who has ever served in this great institution, and all Americans owe a debt of gratitude to the citizens of Kentucky, who have asked him to serve in the U.S. Senate.

I also express my thanks to the other members of the committee for their hard work. A special thanks goes to the leader, as well as to others in the House who made this whole event the success that it was yesterday. Many officers and employees of the House and Senate, along with representatives from the executive branch, assisted these congressional leaders in this enormous but ultimately successful task.

All who contributed to this historic event should be proud of their efforts and know that their country on this day after the inaugural is very grateful.

SENATE DEMOCRATS' AGENDA

Mr. DASCHLE. Mr. President, as we begin the first session of the 105th Congress, American families are asking some difficult questions, most of which seek answers affecting their lives directly. How am I going to put my kids through college? How do we pay the doctor bills if the kids get sick? Will I have enough money when I choose to retire?

Our challenges this year ought to be to provide the answers to those questions. As we do, we all recognize the limits of Government, and we should all recognize the unlimited potential of achievement through bipartisanship. Everything important which we accomplished in the last Congress—health care reform, the minimum wage increase, mental health equity—was accomplished only when we realized that only by reaching across the aisle in an effective way, passing legislation with overwhelming bipartisan support, could we ultimately send the right message to the American people—that we hear them and we want to respond to the problems affecting their daily lives. If we remember that lesson and pick up in this Congress where we left off in the last one, then we can make this not only a productive Congress, but a historic one.

We can, in this Congress, pass a budget for the remainder of this century, a plan that eliminates the deficit and invests in our people and their potential, so that the 21st century will be another American century. If we work together, we can answer those questions that worry Americans most, but we must find a way to do what the President said yesterday and what I heard the leader talk about just now—work together.

Cooperation is in the best interest of the American people, and, frankly, it is in our own self-interest. Good Government is still good politics. Since the election, there has been a good deal of rhetoric from both sides of the aisle, from both Houses of Congress, from the White House, expressing an interest in dealing with the 105th Congress in ways that are dissimilar to those dealt with in the 104th. We have heard the rhetoric. Now we have to demonstrate with our deeds whether or not that rhetoric will be true, whether or not the sincerity of our rhetoric will actually match the sincerity of our work.

We can use the issues that we will lay out and describe today as wedge issues, issues that divide us; or we can use those same issues as issues that unite us. That will be our choice. Again, today, there will be rhetoric. Again, today, we will hear from both sides about the importance of trying to find common ground. The question is, will we find it? And if we do, how will we?

Today, I offer the Senate Democrats' priority legislation for the 105th Congress. This is our agenda. The Families First agenda is neither radical nor revolutionary. Instead, it is moderate. In our view, it is achievable. Our agenda starts with the fundamental premise that our political system can't work if people believe the system is rigged against them. Yet, more and more Americans believe that. More and more Americans have chosen not to go to the polls. At the very time we need more involvement, their response to what they see is to stay away—and not without reason. So we are proposing as our first bill comprehensive campaign finance reform.

The problem with the current system isn't limited to soft money or hard money, corporate money or PAC money, your money or my money; the problem is that there is too much money, period. And it is getting worse with every election. The truth is, there are no limits anymore, given the Supreme Court decisions.

I have enormous respect for Senators FEINGOLD and MCCAIN. There is much in their proposal that I admire and I think we should adopt. In my opinion, their bill should provide a way with which we come together to find common ground. But it does not go as far as I would like it to. We need to limit spending, special interest influence, and level the playing field for all candidates.

S. 11 establishes voluntary spending limits, and it gives candidates incentives to live within those limits. It reduces television and postal rates. It also restrains soft money and PAC contributions. It toughens restrictions on foreign contributions and extends election laws to cover so-called independent expenditures.

I know that any talk of spending limits raises constitutional questions. So, in addition, Senator HOLLINGS and I will offer a constitutional amendment that will allow Congress to set reasonable limits on how much people can give and spend in Federal elections. I hope, Mr. President, that we will even consider proposing the issue to the Supreme Court again.

There was an article recently in the op-ed pages of the Washington Post, stating that a case could be made that what we need to do is revisit this in this Supreme Court, to test the constitutional limits they have proposed in Buckley versus Valeo. Whether we accept the decisions made in Buckley versus Valeo, and other subsequent decisions, however we decide to do this, the question is this: Can we get campaign spending under control? I believe the answer is yes. I believe we must do that in this, the 105th Congress.

In the last 10 years of debate on campaign finance reform, Congress has produced 6,742 pages of hearings; 3,361 floor speeches, not including this one; 2,748 pages of CRS reports; 1,063 pages of committee reports; 113 Senate votes dealing with campaign finance reform, and 1 bipartisan Federal commission. We have had 522 witnesses; 49 days of testimony; 29 sets of hearings by 8 different congressional committees; 17 filibusters; 8 cloture votes on 1 bill; 1 Senator carried to the floor by the Sergeant at Arms and forced to vote on campaign finance reform, and 15 reports by 6 different congressional committees. That is just in the last decade.

There is only one thing left to do: Enact campaign finance reform now. Now. We should do it in the first 100 days of this Congress so that the new rules are in place by the next election.

Mr. President, that is S. 11, our very first bill, and it is first because I speak with virtual unanimity within our caucus about the need to address this issue. I know there are concerns expressed and felt deeply by Members of the other side. This ought not be the wedge issue I described a moment ago. This ought to be a bridge issue.

Let us build that bridge to allow us success in dealing with it soon.

Our second bill is aimed at increasing the income of American families and the competitiveness of American business by investing in education. According to the Bureau of Labor Statistics, 60 percent of all jobs created between now and the year 2005 will require education beyond high school. Yet, every year fewer families can afford the tuition. In the last 10 years, the cost of public college education has increased 23 percent. It is even worse in private colleges: 36 percent.

For the average family, the cost of sending one child to college is now 14 percent of total family income. The average debt load for a South Dakota college student is up by one-third just

since 1991. Eighty-five percent of South Dakota's college students today are on financial aid. That is right; 85 percent rely on college aid in order to go to school in my home State of South Dakota.

Our bill, the Education for the 21st Century Act, includes the President's proposal to create a $1,500 Hope scholarship for the first 2 years of college. The Hope scholarship is a refundable tax credit. It will pay for more than the full college cost of tuition at most community colleges, or it can be used as a substantial downpayment at a more expensive 4-year school.

Our bill also includes the President's proposed $10,000 per year higher education tax deduction for families with incomes up to $100,000. In addition, we propose a new partnership to help communities repair and replace schools that are overcrowded, obsolete, and even dangerous. According to the General Accounting Office, one-third of all schools today in this country need extensive repair or replacement. Over 30 percent of the schools in this country are unsafe today for children to inhabit and obtain the education they deserve. Sixty percent of schools have at least one major problem, like a leaky roof or crumbling walls.

Schools have always been and should remain a local and State responsibility—and I emphasize that. But the enormity of the problem, an estimated $112 billion nationwide, demands a partnership that includes a role by the people of the United States at the Federal level. Our bill reduces the interest rates for new school construction and repair by up to 50 percent. The interest rate reduction is equal to subsidizing $1 out of every $4 in construction and renovation spending.

We support the President's proposal to make sure that every child can read—and read well—once those schools are built and repaired, by the time he or she finishes third grade. One of the best predictors of whether a child will eventually graduate from high school is whether he or she can read by the end of the third grade. Yet 40 percent of fourth graders—40 percent—fail to attain even the basic level of reading on the National Assessment of Educational Progress test. Isn't that amazing? Four out of every 10 children today when they reach fourth grade cannot read at the level that will largely determine their ability to learn for the rest of the years they are in elementary school.

Let us resolve in this Congress to increase those numbers dramatically. Let us accept the President's America Reads challenge. Let us also make sure that our young people master the new literacy by connecting every school in America to the information superhighway by the year 2002.

This is our education bill. We applaud our Republican colleagues for joining us in the last weeks of the last Congress to support education, and we look forward to working with them to pass these proposals as well.

Our third bill builds on an important, bipartisan victory from the last Congress, the Kennedy-Kassebaum health bill. Kennedy-Kassebaum was a huge step in the right direction. Yet, a record number of Americans, over 40 million, are still without health insurance, and that includes 10 million American children. In my State of South Dakota alone, more than 17,000 children have no public or private health insurance. In fact, children are one of the fastest growing groups of uninsured. Each year more and more children lose private health coverage. And this trend is almost certain to continue as employers continue to reduce their health insurance costs by dropping dependent coverage for their workers.

These are not children of America's poorest families. Fortunately, they have Medicaid. A majority of uninsured children are from two-parent families where one or both parents work full time. It is unconscionable that a parent could work 40 hours a week 52 weeks a year and still not be able to buy basic health coverage for his or her children.

So today we are introducing a bill to make private coverage for children available to working families. The Children's Health Coverage Act of 1997 will provide tax credits to help working families purchase private coverage for their uninsured children. Our bill includes coverage for pregnant women because we know that the quality of prenatal care can have lifelong effects. The tax credit would cover most of a private health insurance premium for the lowest-income families and decrease on a sliding scale for families with higher incomes.

To stimulate competition for children's health insurance, we require that insurance companies that do business with the Federal Government—through Medicare or Medicaid or the Federal Employees Health Benefits Plan—to develop children's-only policies. We seek to build upon, not replace, the current employer-based health insurance system. Our bill, therefore, includes provisions to deter employers from dropping coverage for children of workers who qualify for this new credit.

Insuring children is good social policy, but it is also good economic policy. It costs about $20 for a doctor's visit to treat a child with strep throat but thousands of dollars to hospitalize a child whose untreated strep throat eventually develops into rheumatic fever. Studies show that having a regular source of care cuts child health care costs significantly. So the modest cost of this program will pay for itself many times over and reduce health care costs down the line.

Some of my colleagues favor a slightly different approach. Senators KENNEDY and KERRY favor providing families with vouchers rather than tax credits to pay for their children's health care. These are differences in strategy only, Mr. President. I could support that approach, as I could the approach I just described. Democrats are united in their determination to take this next modest step in health care reform.

The United States is the only major industrialized country in the world that does not guarantee health coverage for children. Let us work together in this Congress to erase that ignoble distinction.

Our fourth bill seeks to increase Americans' retirement security. More than 51 million Americans today—half the private work force—do not have a pension. Only one-fifth of South Dakota's small business employees currently have pension plans. Last year, in the bill that contained the minimum wage increase, we passed laws that help expand pension coverage to an additional 10 million workers.

But so much more remains to be done. Because of a loophole, more than 32,000 large pension plans covering 23 million Americans—and containing more than $1 trillion in assets—are still not effectively audited. The Retirement Security Act we are introducing today strengthens the accounting requirements for those funds.

Our bill also requires employers to diversify the savings of employee investments in 401(k) plans just as they must for more traditional kinds of plans so the bankruptcy of one company cannot devastate a pension plan. For multiemployer plans, which typically cover union members, our bill increases the Federal guarantee available should a plan become insolvent. The benefit level has remained flat since the creation of the program in 1980. Five million workers with pensions change jobs every year. Our bill provides those workers with new protections so they don't lose the money they have invested in a pension when they change jobs or leave behind an investment whose value will erode over time. It will do that by reducing by 2 years the time it takes for a worker to become vested.

In addition, we will build on some of the pension reforms we passed last year. Last year, by eliminating a lot of the red tape, we made it easier for small businesses to offer pension plans. This year, let's make it easier still by providing them with start-up costs.

Last year, Congress removed the restriction that kept spouses who don't work outside the home from taking full advantage of IRA savings opportunities if the other spouse was covered by an employer's pension plan. This year, we want to remove that restriction for spouses who do work outside the home.

Last year, we made it easier for women to collect pension benefits they are legally owed through a spouse or former spouse. Yet, 60 percent of women working in the private sector still lack pension plans. And, women's pensions benefits, on average, are only about half of men's benefits. Let's get rid of those inequities.

We are committed to keeping Social Security and Medicare solvent—and we will. But Social Security and Medicare were never intended to serve as retirement plans, only supplements to such plans. Let's agree in this Congress to give Americans the tools they need to retire with dignity. We can do it, if we work together.

Our fifth bill is aimed at two of the deadliest epidemics affecting young people. Those are the twin epidemics of drug abuse and violence.

Crime and drug use among adults are down. But juvenile crime and drug abuse is accelerating. Over the last decade, drug-related juvenile crime in this country more than doubled. And youth violence—particularly homicide committed with guns—skyrocketed.

We must reverse these deadly trends. Income security and retirement security don't really matter if we don't have personal security—if we're constantly afraid for ourselves and our families.

Our Youth Violence, Crime and Drug Abuse Prevention bill includes three main parts. First, we will build on the successes of the 1994 Crime Act by continuing the COPS program for two additional years and putting 25,000 more cops on the beat.

Second, our bill invests in crime and drug abuse prevention. It extends the Safe and Drug Free Schools Program. It expands existing drug courts, and creates new juvenile drug courts for first-time, non-violent drug offenders. Anyone convicted in drug court has a choice: mandatory treatment, or mandatory jail.

Our bill also offers incentives for private industry to invest in research and development in medicines to treat heroin and cocaine addiction. And, it reauthorizes the Office of National Drug Control Policy; if we're going to fight a war, we need a "war room."

Prevention and treatment are essential. But for youthful offenders who are repeat, hardened criminals—for those who commit the most heinous acts—it's time to make the punishment fit the crime. That's the third part of our bill.

Our bill changes federal law so that violent juvenile offenders no longer are automatically released when they turn 21.

We require all juvenile offenders to pay restitution to the victims of their crimes, and ensure victims' rights to speak at sentencing.

We give States the resources to hire more prosecutors for juvenile courts. And create special juvenile gun courts where juvenile gun offenders can be tried and sentenced on an expedited basis.

Our bill toughens penalties for possession of a firearm in connection with a violent or drug-trafficking crime. It extends to 10 years the statute of limitations for all crimes of violence and drug trafficking. And it eliminates the statute of limitations for all murders.

Finally, we propose tougher penalties for gang-related crimes.

The sixth bill we are introducing today is the Cattle Industry Improvement Act.

Cattle prices are lower than they've been in years. If prices don't rebound in the immediate future, farm foreclosures, job layoffs by agriculture-related businesses and bank failures could occur across rural America.

A special committee appointed last year by the Department of Agriculture to look into the causes of the low cattle prices confirmed what many ranchers had long suspected: Low cattle prices appear to be tied in some cases to unfair competition posed by the largest beef processors.

Our bill enables USDA to make changes in the cattle market to give all producers—large and small—a chance to make an honest living and compete fairly in the marketplace.

It requires the Secretary to define and prohibit noncompetitive practices. It mandates price reporting for all sales transactions to ensure a fair and honest price discovery system.

Our bill also calls for a review of Federal lending practices to determine if the Government is contributing to meatpacker concentration.

In addition, it directs the President and the Secretaries of Agriculture and Health and Human Services to formulate a plan for consolidating and streamlining the entire food inspection system.

And it requires the USDA to develop a system for labeling United States meat and meat products. Companies will be encouraged to voluntarily label their products as originating from United States livestock producers.

The ultimate result of stifled competition in any market is always higher prices for consumers. Let's act together to make sure competition in the cattle industry remains fair and open.

These are the top six priorities for Senate Democrats as we begin this new session of Congress: Campaign finance reform, education, children's health care, pension security, juvenile crime and drug abuse, and a strong rural America. We are also introducing a number of other bills today.

Our Working Americans Opportunity Act streamlines and improves Federal worker training programs to keep pace with our changing economy. We consolidate more than 150 Federal job training programs over 14 agencies. And we put training dollars directly into workers' hands through a voucher system to give people more choices, and more control over their own futures.

We're also proposing a Targeted Investment Incentive and Economic Growth Act. This country does not need and cannot afford another across-the-board tax cut that provides a windfall for the wealthy. Instead, we propose targeted tax changes to both raise the rate of economic growth and spread its benefits to increasing numbers of Americans.

We will encourage investment in small businesses and innovation by allowing gains on the sale of small business stock to be deferred if they are fully reinvested in other qualifying small business equities. And by expanding the 50 percent exclusion on gains from the sale of small business stock held for at least five years that we enacted in 1993.

In addition, our bill will stimulate investment in other activities that propel job creation and family incomes, such as worker training by companies, employee ownership, and infrastructure. It will also free up capital for investment and promote retirement security by giving people more flexibility in the way they manage the gains on their homes and family farms and businesses.

Our Brownfields and Environmental Clean-Up Act will help clean up and develop thousands of abandoned and contaminated industrial sites, or "brownfields," across America.

Our bill helps States and communities evaluate these sites. It limits potential liability for buyers who buy these brownfields in good faith, so they don't end up paying for someone else's mistakes. And it provides grants to State and local governments to create low-interest loans for current owners and prospective developers. It is not a substitute for Superfund reform, but a companion to it.

There are an estimated 100,000 brownfields in the U.S. Most already have well-developed infrastructure of utilities and transportation. By restoring these lands, we can conserve precious farmland and open space, and create new jobs and opportunities where they're needed most.

Our Working Families Child Care Act increases the availability of good, affordable child care. For too many families today, child care is simply not available in their community. Or, the child care that is available is not what they need—be that infant care or before and after school care. For other families, child care may be available but completely unaffordable. The cost of child care is often the most expensive—or second most expensive—monthly bill a family incurs, following rent or mortgage payments. And for those families who are lucky enough to

find affordable child care, the type of care that is available may be of extremely poor quality.

I hope we can work together in a bipartisan manner to address the child care needs of today's working families.

Also in our package is a bill to make America's agricultural safety net whole again by correcting some of the problems with the Farm Act we passed last year. Our bill expands crop revenue insurance. It removes caps on commodity marketing loans, and establishes loan rates as a percentage of the average market price. And it encourages farmer-owned, value-added processing facilities.

Finally, we are offering the Paycheck Fairness Act to address the continuing wage disparities between men and women. With more and more families relying partly or entirely on women's earnings, America simply can no longer afford this often glaring inequity.

If there was a mandate in the last elections, it was a mandate for bipartisan cooperation. The American people want us to work together, as we did in the closing days of the last Congress, to find answers to their questions.

We can break the grip of special-interest money on the political process.

Family incomes have been stagnant too long. We can get them moving in the right direction again.

We make 2 years of college the new standard for education in this country.

We can guarantee that every child in America is able to see a doctor—and save on health care costs in the long run.

We can significantly increase the number of Americans who are able to retire with dignity and security.

We can make our communities safer and preserve rural America. We can help small businesses to create the jobs of the 21st century and help workers acquire the skills that will be demanded by those jobs.

We can do all of this, and more, if we work together. Democrats are ready to start today. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Under the previous order, the next 60 minutes will be under the control of the majority leader or his designee.

Who yields time?

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

UNANIMOUS-CONSENT AGREEMENT—BILLS PLACED ON CALENDAR PURSUANT TO RULE XIV

Mr. HELMS. Mr. President, pursuant to rule XIV, I shall shortly send to the desk eight bills to be considered en bloc and considered to have been read for the first time and be objected to following their second reading en bloc. I ask unanimous consent that be in order.

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

Mr. HELMS. Mr. President, I send the bills to the desk. I ask unanimous consent that the statements with each be printed in the RECORD.

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

Mr. HELMS. Mr. President, today I will introduce a series of eight bills to: First, restore the right of our children to pray; second, restore the rights of the unborn; third, strengthen the penalties for drug dealers and violent acts of crime; fourth, restore the supremacy of the individual over Government-imposed quotas; and fifth, protect the constitutional right to hold and express moral beliefs.

Mr. President, our traditions, our children, and our institutions which made this country great, are all under assault. They are not threatened in the military sense—instead they are threatened by moral decay. This Nation simply must regain its moral footing.

We are less than 4 years away from a new century full of promise for this great country. New technologies abound and unprecedented discoveries in medicine are within our grasp. Yet, if America is to continue to prosper in the next century, Americans must retain the values and traditions established by our Founding Fathers.

Since the beginning, America has been protected by the moral foundations on which she was established. Values like personal responsibility, liberty, respect for human life, and an abiding faith.

These values have made America a shinning beacon on a hill and the envy of the world.

Sadly though, we have seen a steady erosion of these values and beliefs. This raises a significant question: Where are we headed? Quo vadis America?

Mr. President, I believe we are in a battle—in the sense that we are engaged in a struggle for the soul of America. The moral decay has also chewed away at the institution of the family and led to soaring rates of illegitimacy and drug abuse.

The liberal establishment has turned a blind eye to what has been going on in America. Their supporters from the Hollywood crowd to Planned Parenthood set forth an agenda that eroded the values of this country.

We live in an era when it is fashionable to pretend that our Founding Fathers did not build this country upon biblical principles.

Mr. President, on September 7, 1864, Abraham Lincoln thanked a group of citizens for a Bible he was given saying, "In regard to this Great Book, I have but to say, it is the best gift God has given to man. All the good the Savior gave to this world was communicated through this book. But for it we could not know right from wrong."

It is imperative, that as we look to the next century, we not forget what brought us to this point in history—the faith and ideals of our forefathers. Alexis de Tocqueville, after traveling throughout this country, found the source of America's strength. He stated that America's greatness lies in its churches and synagogues.

Mr. President, the legislation that I will introduce today will go a long way to ensuring that America's foundations remain secure.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Under the previous order, the bills will now be placed on the calendar pursuant to rule XIV.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. I thank the Chair.

(The remarks of Mr. ROTH pertaining to the introduction of S. 2 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. ROTH. I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. I thank the Chair.

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

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

(The remarks of Mr. COVERDELL pertaining to the introduction of S. 1 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Utah is recognized.

(The remarks of Mr. HATCH and Mr. CRAIG pertaining to the introduction of Senate Joint Resolution 1 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

(The remarks of Mr. HATCH pertaining to the introduction of S. 3 are located in today's RECORD under "Statements and Introduced Bills and Joint Resolutions.")

(The remarks of Mr. HATCH pertaining to the introduction of S. 10 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. HATCH. Mr. President, I also want to note that I have filed three other bills today; in particular, the Curt Flood Act of 1997, which is the baseball antitrust bill that I believe now is coming to fruition, which is something that we have tried to do for

a long time. We have named it after Curt Flood, who died a day or so ago, and who really deserves the recognition because of the fights that he led on this act in organized baseball. That is S. 53.

We have also filed S. 54, which is the Federal Gang Violence Act of 1997, a bill by Senator FEINSTEIN and myself. She has worked very hard with me and others on the Judiciary Committee, and we certainly want to mention her sterling work on that bill.

Finally, the Civil Justice Fairness Act of 1997, which is already introduced.

(The remarks of Mr. HATCH pertaining to the introduction of S. 53 and S. 54 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

(The remarks of Mr. ASHCROFT pertaining to the introduction of S. 4 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

(The remarks of Mr. ASHCROFT pertaining to the introduction of S. 5 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

(The remarks of Mr. MACK pertaining to the submission of Senate Resolution 15 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

The PRESIDING OFFICER. Under the previous order, the minority has 1 hour under their control. The Senator from Massachusetts is recognized.

Mr. KENNEDY. I thank the Chair.

COMMITMENT TO YOUNG PEOPLE

Mr. KENNEDY. Mr. President, first of all, I rise to express appreciation to our leader, Senator DASCHLE, who has over the period of these recent weeks and months been working with many in our caucus and I know will be working closely, as well, with those on the other side of the aisle who are really interested in this Nation's commitment to the young people of this country in the field of education.

I think all of us who have had the opportunity to travel through the country, certainly in my travels around Massachusetts over this last year—no matter where we traveled—heard the concerns that parents had about access and availability in areas of education as one of the paramount issues.

The President has addressed those concerns by recommending a tax credit, also a $1,500 tax deduction, and some $10,000 that will be helpful to working families. Also included in the Daschle proposal are recommendations that we consider the interest on the debt for education in the same way that we would consider interest on the debt for machinery or the manufacturing industry assets, in being able to provide some deduction for those expenses as well.

That effectively, Mr. President, is to respond to the President's commitment to the American people to make the next two grades beyond the 12th grade—13th and 14th, the first 2 years of college—accessible and available to the young people in this country, so that future generations will be able to say that we, as a nation, during this Congress, have committed this Nation to the next two grades in the area of education.

I think this is a bold commitment. I think it is a dramatic enterprise. I think it will take the best judgment of all of us to achieve and accomplish this. But, nonetheless, as we understand it, the President's budget that will be submitted in the next 2-week period will demonstrate the funds that will be necessary to achieve it, and we will be able to say, in effect, when we actually legislate these proposals, that they are effectively paid and paid in full. That will be very, very important and a significant commitment to the young people of this country.

Included in the education proposal, Mr. President, are a number of other items which I think all of us should be able to embrace and endorse, and these have been outlined by Senator DASCHLE, I have been informed, earlier during the course of the day.

There will be commitments in terms of additional new technologies for our young people in schools across this country, to make sure they are going to be able to take advantage of the latest in technology and also resources to make sure we are going to be able to train teachers so that they will be able to be well-trained and able to impart to the younger people of this country the skills that young people will need to be able to use these technologies.

It will be a modest program, but an important program, that follows the leadership of CAROL MOSELEY-BRAUN, to try and give focus and attention to many of the schools in local communities across the country that are in very dilapidated conditions. That is true for most of the older cities of this country. It is true in my own city of Boston. It is true in many of the older communities of my State—Lowell, Lawrence, New Bedford, Fall River, Springfield, Worcester, and many others. It is equally true in many of the large urban areas.

This is a very modest program, but a very innovative and creative program about leveraging limited financial resources to address those particular needs in a modest way. Hopefully, we will be able to bring additional support for continuation of that program into the future.

A very important continuing commitment to literacy and expanding the opportunity for children to read in our society so that we can achieve the goal that children who have reached the third grade will be able to read in a rather creative way is using the funding that will be allocated in the various competitive grants in ways that the young people of this country are going to be able to read and to really challenge the young people in our Nation, many who are going to schools and colleges, to help and assist with that undertaking, and to challenge American people, in general, to help and assist young children in this country.

These are some of the elements of it. There are a number of others which are important, but I have summarized it, Mr. President. I hope that we will be able to move ahead in the area of education. It is extremely important.

At the end of the last session, we did move forward in terms of funding various programs. We are going to have to find the funding for these programs and also for the increased number of children who will be going to high school. We are seeing an increase in total student enrollment, and we want to make sure that their particular needs are going to be attended to, as well. I think that is very important. That is something I know Senator DASCHLE has addressed, and I know that the President's program will address it.

Hopefully, we will have broad, broad bipartisan support. For so many years in this body, the support for education was broad-based and bipartisan. It is bipartisan and broad-based in the country, and we should try and find ways to maintain that in the Congress and Senate.

Second, Mr. President, is an area that I consider of enormous importance and that is to address the needs of 10½ million children who are uninsured today. Ten and a half million will be uninsured over the course of a particular year. The leader has outlined approaches to addressing this issue.

There is a rather dramatic definition of who those children are, Mr. President. Children are the fastest growing segment of the uninsured population. It is a rather dramatic phenomenon. They are the ones who are being dropped from coverage in the current insurance system. Nine out of ten of the 10.5 million children who are uninsured have parents who are working.

We have the Medicaid Program which addresses the poorest children in this country. I welcome the fact that the administration is going to try and be more creative and imaginative in terms of reaching many of those children who are eligible for Medicaid. These children are desperately in need

of a healthy start and are not receiving it today. But we are talking about the next level; that is, the sons and daughters of working families. These are men and women who go to work every day, they play by the rules, 40 hours a week, 52 weeks of the year making America work. They are the backbone of so much of what is right in our society, but their children are being left out and being left behind.

The figures and statistics are a fierce indictment of what is happening in our society. As one of the major industrial nations in the world, we still have one of the highest infant mortality rates. We are 17th among the industrial nations of the world.

More than half of all uninsured children with asthma never see a doctor, with all the implications that has, in terms of a child's future development and growth. As the father of a son who now happens to be a Congressman who had chronic asthma when he was a child, it is unbelievable to me the difficulties that he had in terms of coping with the problems of asthma. I do not know how he would have coped unless he had been able to get important medical attention.

We know one out of three uninsured children who have recurring ear infections never see a doctor. There are significant increases in the number of ear infections and the number of children who are going deaf in our society from preventable diseases. And the list goes on.

The final point that I want to make in this area, Mr. President, is that expanding coverage for children is wise economic policy.

We are always going to have to come back to justify this from economic means. We all know for every dollar that is invested in immunization, the savings are $5 to $6. That is true in terms of the investment in children's health. It is true certainly in terms of providing the kind of prenatal care that would be included in this program for expectant mothers. That is an exceedingly wise investment.

There are different ways of funding this proposal, Mr. President. My principal interest and I believe all of ours is to get the job done. I will introduce legislation that will ensure that all working families can afford to purchase private health insurance for their children. I support an increase in the tobacco tax to cover this cost because of the relationship between tobacco and children's health. A number of our States are moving forward in terms of addressing the issues of children's smoking and all of the implications that has as a gateway drug. The States know that curbing smoking among young people is a sound and wise way to proceed.

But there are alternative ways to fund this program. I have every intention of working with our leader and those on the other side of the aisle to try and find alternatives.

Our principal interest is getting the coverage for these children. If we achieve very little else in this Congress we should cover our children. We should move in those areas, and also move in the areas of coverage of pensions for working families. We need to make steps in the area of pensions when we realize that close to 60 percent of all working families do not have any pensions at all and that there is an increasing number of working families that do not have pensions.

We are all thankful about Social Security. We know we have challenges that have to be addressed in the areas of ensuring its financial integrity over the period of the years but that is basically a program to prevent people from living in dire poverty. What we are talking about are those working families that have a standard of living who have been participants in our society, in so many instances served in the Armed Forces, want to be part of a pension system, and are not part of it because of various complications that have existed out there. We ought to make it easier for them to participate, encouraging employers as well as employees.

I would say in this area, Mr. President, no one has a greater interest in this area of pension coverage than women in our society. They are the ones that often are the part-time workers. They enter and leave the work force to meet various family needs and family requirements. And they are the ones, if you identify any group, are the ones that are left out and left behind in terms of a national pension system.

We have to be more responsive to their particular needs. And I commend the work that has been done on this by Senator BOXER and CAROL MOSELEY-BRAUN and DIANNE FEINSTEIN, PATTY MURRAY, BARBARA MIKULSKI, and many in our caucus that have provided important leadership in this very important area.

Finally, Mr. President, I want to mention one area that working families are very much concerned about. These themes are all related to security for working families. What is more important for working families than they are going to be able to make sure that their children are going to get covered? What is more important for working families than making sure that their children are going to be able to continue in the areas of education? What is more important for working families than if they are going to be able to look to the future with some degree of hope and opportunities and some degree of security with the pension reforms?

I just mention, finally, unfinished business as part of our immigration law last year. We are working to ensure protection for American workers, for American jobs that are being replaced by foreign workers who are displacing those American workers, not being paid the adequate kind of salary, given the decency in terms of benefits. They are replacing an American worker in the first place and then because they are doing that at much less of a wage, much less benefits, being able to be competitive to the disadvantage of other Americans with whom they might be competing in producing widgets, for example, and therefore seeing other Americans that are going to lose their jobs.

There are two basic and fundamental concepts that underlie our basic problems with the issues of immigration—one is addressing the needs at the border in terms of halting illegal immigrants that are coming here and, second, addressing the magnet of jobs—the magnet of jobs.

If you look at the Jordan study, if you look at the Hesburgh study on what is the key issue in terms of attracting immigrants, illegal immigrants, immigrants that are going to abuse the immigration system, you will find out it is jobs. Unless we are going to make sure that Americans are not going to have important jobs, and we are talking about hundreds of thousands of jobs a year in many instances—we have really failed on the other extremely important effort in terms of immigration reform. We had important provisions in the immigration bill last year that Senator SIMPSON supported, many of us supported. Those were dropped in the conference. We will come back to that particular issue in this year.

HEALTH CARE IN THE 105TH CONGRESS

Mr. KENNEDY. Mr. President, if we act on health care in a spirit of bipartisanship this year and build on the accomplishments of last year, the new Congress can be the Health Care Congress.

There are several significant health care goals that this Congress can and should accomplish:

We should expand health insurance coverage for children and the unemployed.

We should deal with the serious problem of abuses by HMO's by adopting needed patient protections and standards for care.

We should put Medicare on a sound fiscal footing for the next decade, without dismantling the program or adding to the already high health care costs that burden senior citizens.

We should protect Medicaid, as we did last year, against any attempts to undermine protections for children, senior citizens, and the disabled.

The final months of the last Congress were a period of considerable accomplishment. We finally broke the long

stalemate over health care reform. We passed a health insurance reform act. We made a start toward long-overdue parity for mental health coverage. We put an end to the insidious practice of drive-through deliveries, by guaranteeing newborn infants and their mothers a 48-hour stay in the hospital if they need it.

The Health Insurance Portability and Accountability Act of 1996 ends some of the worst abuses in the current insurance system. It guarantees that, as long as you faithfully pay your premiums, your insurance cannot be taken away—even if you become seriously ill, or change your job, or lose your job. In addition, insurance companies can no longer impose new exclusions for pre-existing conditions, as long as you do not let your insurance lapse.

The legislation on mental health parity was a first step toward the day when those who suffer from mental illness will receive the care they need and deserve. The ban on drive-through deliveries is a wake-up call to unscrupulous health plans that exalt profits over patients' needs.

Now, we have a new Congress and a new opportunity to build on these achievements. The crisis that put health care on the front-burner of public policy has not gone away. In fact, it has become worse. Between 1990 and 1994, the number of uninsured Americans rose from 34 to 40 million, and it continues to climb.

A quarter of the uninsured—over 10 million—are children. One in every seven children in America today have no health insurance. Almost all of these children have parents who work. Cutbacks in employer coverage are worsening this problem, as more and more employers decide to cut costs.

Many firms are shifting from full-time to part-time employees. Others are contracting out work to firms that typically don't provide benefits. Large employers with generous benefits are reducing the number of employees eligible for the benefits. Other employers are dropping coverage for early retirees, or even all retirees. Cost-sharing is going up, and coverage of spouses and children is going down. Every 35 seconds another child loses private insurance. Parents should not have to live in fear that their employer's failure to provide coverage will deny their children good health care.

Every Member of Congress knows that those who are uninsured or underinsured can see the savings of a lifetime swept away by a single serious illness. Every Member of Congress knows that those who are uninsured are vulnerable to financial catastrophe, and are too often denied the timely, quality care they need to avoid disability or death. Children in particular often suffer premature death or a lifetime of unnecessary suffering because they lack the access to quality care that insurance provides.

All children deserve the health care they need for a healthy start in life. Every family deserves the security of knowing their children will get the health care they need. Unfortunately, too many American children lack that care, and too many families lack that security.

Uninsured children are less likely to see a doctor regularly. As they grow, they tend to receive little or no treatment, even when they need it for injury or illness. If the case is serious enough, they go to the hospital. The only family doctor they know is the hospital emergency room.

More than half of uninsured children with asthma never see a doctor. A third of uninsured children with recurring ear infections never see a doctor, and many suffer permanent hearing loss.

Providing health care for children is sound public policy and also sound economics. It's an investment in the future. Dollars spent immunizing a child or providing prenatal care can save hundreds or even thousands of dollars in future medical costs.

At the end of the last Congress, Senator JOHN KERRY and I introduced a program to make private health insurance coverage accessible and affordable for all children through age 18. Working families will have the financial assistance they need to purchase such coverage, including care for pregnant women, so that every baby has a healthy start in life. We intend to reintroduce this legislation with other Members of the Senate early this year. A similar plan is being introduced today by Senator DASCHLE, and I am hopeful action in this area will be high on the agenda of both parties.

The legislation that Senator KERRY and I intend to offer will make Federal assistance available to the States on a sliding scale to help families purchase health insurance for their children at group rates, if they do not already have coverage under an employment-based plan or an existing public program. The covered benefits will include in-patient, out-patient, and preventive care—all comparable to the coverage available under good group health plans.

The plan does not guarantee that every child will have insurance coverage. But it will give every family the opportunity to cover their children at a cost the family can afford.

I hope this program will receive broad bipartisan support. The Health Insurance Reform Act passed by the last Congress was based on the common elements of proposals that had previously been introduced by Republicans and Democrats alike. Our current plan for coverage of children also meets that test. Every Republican proposal and every Democratic proposal introduced in the first 2 years of the Clinton administration expanded coverage by providing financial assistance to low and moderate income families to purchase private insurance. Almost all of these proposals included extra assistance to purchase children's coverage. Members of Congress on both sides of the aisle recognize the importance and priority of covering children.

Our legislation establishes no Government mandates. It relies on the private sector to provide insurance and deliver care. It imposes no price controls. It builds on the efforts of 14 States that already have similar programs in place.

Our plan will be financed by an increase in the tobacco tax, because that tax is an especially appropriate means of funding children's health coverage. Society pays dearly for the health costs of smoking. We know that the tobacco industry is targeting children. If children start smoking, the industry will live. If children stop smoking, the industry will ultimately die. It's as simple as that.

According to the Centers for Disease Control and Prevention, if nothing more is done, 5 million of today's children will die prematurely as the result of smoking. An increase in the tobacco tax is the most important single step we can take to reduce childhood smoking, save lives, and lower the health costs of smoking over the long run.

In addition, we must do more to provide health care for the unemployed. For too many workers between jobs, coverage is difficult or impossible to afford. Too often, they are forced to let their insurance lapse in order to meet other needs. Modest financial assistance can make all the difference in making coverage available and affordable. Massachusetts has already shown that such coverage can be provided at reasonable cost.

Another key area to address is managed care. In many ways, its current growth is a positive development. Managed care offers the opportunity to extend the best medical practice to all medical practice. Good managed care plans provide more coordinated care and more cost-effective care for people with multiple medical needs.

It compares favorably with fee-for-service medicine in a variety of ways, especially preventive care and early diagnosis of illness. But the same financial incentives that make HMO's and other managed care organizations so cost-effective can also lead to undertreatment or excessive restrictions. Some managed care plans put their bottom line ahead of their patients' well-being—and pressure physicians in their networks to do the same.

Some of the worst abuses include failure to inform patients of treatment options; excessive barriers against referrals to specialists; irresponsible attempts to slash hospital care; unwillingness to order appropriate diagnostic

tests; inadequate support for clinical trials and academic health centers; refusal to pay for potentially lifesaving treatment; and lack of fair ways to resolve disputes or redress grievances. Some of these problems affect conventional insurance as well. In many cases, these failures have tragic consequences.

The ban adopted in the last Congress on drive through deliveries was a first step in dealing with these problems. We also attempted to deal with another flagrant HMO abuse—the so-called gag rules that prohibit doctors from mentioning certain treatment options with patients. Time ran out before we could complete action, but the issue is high on our agenda for 1997. Managed care plans themselves have recently taken a strong position against this abuse. But there continues to be strong bipartisan support for additional steps to guarantee consumer protections and adequate care—and this Congress should be the Congress that enacts needed legislation in this area.

As we try to pass measures to improve the health of the American people, we must not undermine effective programs already in place. In the last Congress, a destructive proposal to slash Medicaid and convert it to block grants to the States threatened to strip children and parents, senior citizens, and disabled of needed coverage. Senior citizens in nursing homes could have lost their protection of quality of care, and their families would have been increasingly burdened by the high cost of long term care. Fortunately, that assault on Medicaid failed. In this new Congress, I hope that a bipartisan approach will keep such extreme measures from serious consideration.

Finally, we need to act responsibly on Medicare. President Clinton has proposed responsible steps to protect patients while extending the life of the trust fund for a decade. Senior citizens deserve fair action by this Congress on Medicare. But we should continue to reject proposals to slash Medicare to pay for tax cuts for the wealthy, or to force senior citizens to give up their own doctor and join private insurance plans under the guise of expanding patient choice, or to pile additional out-of-pocket costs on hard-pressed senior citizens.

This Congress can be the Congress that puts Medicare and Medicaid on a stable basis for the next decade. This can be the Congress that guarantees quality and consumer protection in managed care. This can be the Congress that gives every family health security for their children and every child the opportunity for a healthy start in life. This can be the Congress that grants the unemployed needed protection for health insurance. If we work hard together, this Congress can achieve these goals, and both Republicans and Democrats will deserve a real vote of thanks from the American people.

SENATE DEMOCRATS' LEADERSHIP BILLS

Mr. KERRY. Mr. President, I want to commend the Democratic leader for the package of initiatives he has developed on behalf of Senate Democrats. Most of these proposals came out of the 1996 Families First agenda. I was proud to be involved in that attempt to meet the real needs of everyday Americans and I am proud to be a cosponsor of these bills today.

The Education for the 21st Century Act, S. 12, continues Democrats' historic commitment to education. Federal support for education is one of the best investments our Nation can make to ensure a prosperous future. The bill would provide tuition assistance, restore the student loan interest deduction, subsidize State and local bond issues used to finance school construction and repair, fund the Parents as Teachers Program to assist parents who want to help their children become successful readers, and create a technology literacy challenge fund to catalyze and leverage State, local, and private efforts to increase technology literacy among our Nation's schoolchildren.

The Children's Health Coverage Act, S. 13, would help working families purchase private health insurance for their children. Although Senator KENNEDY and I have a bill which uses a subsidy approach rather than a tax credit approach, our bills are fundamentally similar. Both would provide assistance to children 18 and under and pregnant women to purchase private health insurance, both would provide a comprehensive benefits package, and both would provide assistance on a sliding scale to the working parents of uninsured children. I look forward to working with Senator DASCHLE, my fellow Democrats, and my Republican colleagues to pass a bill this year to provide children the health insurance they need and working parents the peace of mind they deserve.

The Retirement Security Act, S. 14, includes a wide range of proposals designed to help Americans prepare for a secure retirement. These would address the fact that too many Americans lack pension coverage by covering more workers under existing plans, creating new retirement savings options for millions of Americans, and encouraging more businesses to establish plans and more employees to participate in them. The bill would improve pension access and coverage, strengthen pension security, promote pension portability, and increase equity for women.

The Youth Violence, Crime and Drug Abuse Control Act, S. 15, would build on the success of the 1994 Crime Act and other crime fighting initiatives enacted during President Clinton's first term. I am proud to have been a leader in securing funding in the 1994 Crime Act for placing 100,000 new cops on the streets of America's communities. Thanks to the presence of the newly funded police officers, a fully funded Violence Against Women Act, and the Brady law—which has prevented more than 60,000 felons, fugitives, and stalkers from purchasing handguns, violent crime is lower than at any time since 1990. This bill balances the need to target and punish violent, young criminals with proven drug prevention programs. We would put 25,000 more police officers on the streets by extending the COPS Program for 2 years, and we would extend the Violence Against Women Act to provide shelter for 400,000 more battered women and their children, increase Federal penalties for juveniles by raising the mandatory release age from 21 to 26, increase penalties for gang violence, and reauthorize the Safe and Drug Free Schools Program.

Senator DASCHLE deserves our thanks for his leadership in spotlighting these issues of education, children's health care, retirement security, and youth violence that are so critical to the future of our Nation and to the well-being of the American people. He and his staff are to be commended for drafting these bills to address the issues. I look forward to working with Senator DASCHLE and other Senators on both sides of the aisle to pass legislation to meet these compelling needs.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

SERIES OF INITIATIVES

Mr. DORGAN. Mr. President, I intend to discuss at a later time a series of initiatives that Senator DASCHLE discussed in brief form dealing with health care, education, pensions, and a number of other issues, including discussing another issue that is important to me, a piece of legislation that Senator DASCHLE and I and others are introducing dealing with some changes with respect to agricultural programs and family farmers in our country.

I see others are seeking the floor. I yield the floor at this time.

I would like to reserve the remainder of the Democratic time today.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

Mr. DOMENICI. Madam President, what is the parliamentary situation?

The PRESIDING OFFICER. The minority has reserved its time. The Senator from new Mexico may seek time.

Mr. DOMENICI. I ask that I be permitted to speak for 10 minutes.

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

THE REPUBLICAN LEGISLATIVE AGENDA

Mr. DOMENICI. Madam President, fellow Senators, I rise to compliment the Republican leader on the announcement today of the first Republican legislative agenda for the 105th Congress. I believe that most Americans would support the principles and the ideas contained in these 10 pieces of legislation. I also believe that within the Senate itself there is a compelling majority that will support these 10 proposals. From my standpoint, I support them all, but I do reserve the right in two or three instances to change some of the things that are in the bills. But in no way does it minimize my admiration of and respect for the leadership for putting these bills forth, and the Republican conference and the hard work they put into coming up with these ideas and these basic premises.

I would like to just run through each one quickly with a few thoughts of my own, and then yield the floor to my friend, the new Senator from Wyoming.

The balanced budget constitutional amendment: I do not think there is any question that that piece of legislation speaks to the wishes of a huge percentage of Americans. I would not be surprised if as many as 70 percent or 75 percent of Americans believe that we ought to build into our institutions a mandate—unless we have a war where we cannot abide by a balanced budget—that we ought to produce a balanced budget every year.

Frankly, I have been working on budgets long enough to on the one hand be pulled by those who say, "Why don't we do it ourselves? Why do we need the force in effect of a constitutional amendment?" I guess the fact that we have all been working on it so long and can't get it done—and that when we look across the industrial nations, all we find is that with the passage of time instead of spending less, all governments spend more; instead of getting their deficits and debts under control there is growing concern, even in Europe, among most of our industrial friends there, that such things as pension plans and deferred obligations are going to bankrupt their countries. We are doing fairly well. But I do not think anybody ought to misconstrue the trend lines in terms of our current deficits to think that it is going to be easy to keep the deficit under control.

In the next couple of weeks the Budget Committee will have a series of hearings to show what the next century is going to look like and what the major problems are, as the President speaks of a "bridge," what we ought to be carrying across that bridge so we don't have bigger problems rather than a better life in the next century.

The balanced budget amendment's time has come. There are some who will say, "What happens when you need to spend more money and there is not enough room in this budget," such as unemployment compensation during a recession. Let me say that this amendment is very, very simple in that respect. If that is a serious problem, as serious as some would say, then all you need to do is get 60 votes. You don't have to pass any resolutions declaring emergencies. You just need 60 votes instead of 51 to let those expenditures take place. I believe that is good enough. I think history will reveal that we have had caps that are similar to this, to this constitutional amendment, on parts of our budget and that when we have been confronted by the need to increase something like unemployment compensation there has been far more than 60 votes to go ahead and break the caps because there is somewhat of a countercyclical economic necessity that is forthcoming.

So, from this Senator's standpoint, I hope that the early count of Senators who back home during the campaign said they were for a constitutional amendment, plus those who voted heretofore, continues to add up—and that the number clearly when you do that is there are plenty of votes to pass it—that they will not change their minds based upon Washington, DC talk—because most heard from their people, and I hope that we will all live up to that and get this job done.

Safe and affordable schools is our second one. All I can say about that is I am not sure that any of us know the extent to which we ought to be for change in our education system. But I can tell you one anomaly that is rather frightening. All you have to do is go home and talk to people in the business sector that want to employ people from your State of Maine, or my State of New Mexico, and who continue to tell us, "Well, the people we need don't have the skills required. They don't have the right training." I guess in the broadest sense they are saying they are not educated for the workplace.

Frankly, I hope that we could sooner rather than later go beyond these few principles in this bill and come up with some concepts that would push our current institutions that educate our young people—and even our adults—to force them to be more responsive to the needs of our people who are looking for jobs.

I ask for another 5 minutes.

The PRESIDING OFFICER. The Senator still has 4 minutes remaining.

Mr. DOMENICI. I thought you were reporting that I didn't have any time left. Excuse me. I still ask for 5 additional minutes.

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

Mr. DOMENICI. Madam President, let me suggest that while the United States for college, community colleges, public education, and kindergarten through 12 continues to spend more and more, everywhere we look there are huge numbers of Americans who are not well enough educated for the jobs of today. Frankly, we continue to pour money into vocational institutions and vocational education; we put the strings on that so we can put money into our public education, albeit very small amounts. But somehow or another it seems that the time has come to ask the institutions which we currently spend our money on to see if they can't change their way of doing business a little bit so they may be more the engine of training and skills improvement rather than us having to fund new institutions and new ways of doing them.

Family tax relief: This Senator's only comment is that every single item in there are very exciting items. And they are all probably good for either American families, or the American economy, or are motivated by fairness. In that context, I support them. In the context of how much we will be able to afford, I reserve the right to decide. We may not be able to afford all the enumerated items in the bill. But obviously, we will have to look at that, and I want to make that comment in the RECORD.

The workplace act I think is an exciting piece of legislation. I support it. I hope we can get the message out as to what is in the bill and what is not, for some who are already talking about what they believe the bill does, but they are really talking about things that are not part of this legislation.

Product liability reform has come under some great leadership in the Senate. We have already done a lot of work on that bill, but we cannot get it passed through for the President's signature. I hope we get there.

For the partial-birth abortion ban, I believe there is a compelling majority of support for the bill. The question is whether we have enough to override a Presidential veto. I have heard words from the White House, but more importantly from Senators like Senator DASCHLE saying maybe we ought to work something out here, which leads me to believe that there are even more Senators who deplore the partial-birth abortion technique than those who voted for it. I, too, hope we can get something done there.

Let me just quickly go through the Missile Defense Act. Obviously, there are some who would not put this in the top 10, but there are many who are concerned enough about it, and I support

it wholeheartedly, in an effort to solve the problems that are stated by that legislation.

The Superfund cleanup is long overdue. It is now good to know that Senator CHAFEE and Senator SMITH of New Hampshire support a measure that will reform Superfund. And reform means that we will put more of the billions that will be spent during the next 10 years into actual cleanup instead of into court cases and litigation. I think that is the motivation and that is what we are trying to do. I think that is very positive.

The Paycheck Protection Act speaks for itself. And then I will go to the last one, the Violent Juvenile Offenders Act. I am very pleased that many of the provisions of the legislation I introduced last year, after numerous hearings in New Mexico and a great deal of input from our judges and from probation officials, are in this bill. I think it is obvious that if any part of our criminal justice system has fallen apart, it is the juvenile justice system. For the most part, in most of our States, the juvenile justice system has not kept up with the times. It does not meet today's challenges, and I believe we are going to sensitize our States to this by offering to give them more financial support if they will modernize their systems. I believe this bill will lead them to hold more teenagers accountable for their actions and make more public the activities of the courts, rather than to hide their activities. They also should make juveniles more accountable, even for smaller offenses, so they do not wait until they have committed the equivalent of 10 or 15 felonies before something is done to try to help the teenager.

Many of these things are encapsulated in the bill. There are some things that I am not sure ultimately, after detailed hearings, are going to be as good as they sound. We are trying to reform the existing law. The existing law is rigid and in many cases harms juvenile justice at home in our States.

I am not sure that people are aware of it, but we have mandates in the Federal juvenile justice law, and one of them is called sight and sound separation. It has gotten way out of hand. I am not sure we should do away with the mandates entirely, but we have had a situation in New Mexico where because one correctional facility would have had the same kitchen for both adults and teenagers, the State was told that it could not house teenagers there. I guess they expanded the mandate to sight, sound, and smell, or maybe the flavor that will come from using the same kitchen. But I do not know how that had much to do with whether you ought to keep the teenagers in that facility.

Perhaps we are underfunding the OJJP provisions, we are cutting those a little bit, and we ought to look at that. There are a couple of other things we ought to include, but for the most part we are moving in the right direction, and I am very pleased to be a cosponsor and essentially had a lot to do with what we put in that bill.

I believe I am close to the time the Senate has granted me to speak, and I thank the Senate for the time and yield the floor.

Mr. LAUTENBERG addressed the Chair.

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

Mr. LAUTENBERG. Madam President, just so our new colleague from Wyoming understands, this was the order that was agreed to under unanimous consent, and therefore, since he is waiting, I want to explain that this was not just being discourteous; it had been set that way. The junior Senator from Wyoming will get used to some of those things off in the corner. He may not like it, but it works out.

(The remarks of Mr. LAUTENBERG pertaining to the introduction of S. 18 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

DISAPPOINTMENT WITH INTRODUCTION OF SUPERFUND BILL

Mr. LAUTENBERG. Madam President, while I am on the floor, I want to express some disappointment at the introduction today by my friend and colleague, Senator CHAFEE, of a comprehensive bill amending our Federal hazardous waste cleanup law, better known as Superfund.

This bill was introduced without consultation with any of the Democrats or with the administration. My staff, and those of the ranking member on the Environment and Public Works Committee, did not see a copy of this bill until late this morning. If we are to make reforms to Superfund this year—and it was hoped we would do it last year and the year before—it is critical that we work together in a bipartisan manner.

Today's bill introduction is not a positive first step toward that bipartisanship. Enacting any Superfund legislation this year is going to require Members of both parties in the House of Representatives and in the Senate to work together. It will also require all of us to work with the President and EPA Administrator Carol Browner.

In addition, Madam President, it would require us to appreciate that times have changed since the debate over Superfund reauthorization began in the late 1980's. The administration has made wide-ranging administrative proposals that have made a real difference, and this is not the same Superfund program of years past.

We have learned a lot. We have improved its processing. We have reduced the possibility of heavy litigation costs. I want to be clear, I support changes to Superfund that would speed cleanups, reduce litigation, increase equity, save money, and protect the health and environment of those who live near Superfund sites. But, Madam President, it is important to do this right. We should not be shifting costs from polluters to taxpayers, and the President has made it very clear that he will not abide by that either.

So, Madam President, I hope that the Senate Environment and Public Works Committee will closely examine the administrative reforms already undertaken before moving forward on changes to the Superfund program. I hold this up as an example of what is in here, introduced this morning without consultation. This is not a way to get ourselves a bipartisan kickoff to this very important reauthorization program.

I look forward, as I have for many years, to working with our distinguished colleague, Senator CHAFEE, and Senator BOB SMITH from New Hampshire and others, to find common ground. I want to reauthorize Superfund, but I would like to do it in a way that is fair to taxpayers and in a way that is going to work.

I yield back the time on the Democrats' side reserved. How much time is left?

The PRESIDING OFFICER. Time is controlled by the minority. There is 5 minutes remaining.

Mr. LAUTENBERG. I yield back the time at this point that I have not used and reserve for our side the remaining minutes.

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

Mr. FORD. Madam President, the distinguished Senator from Wyoming wishes to speak, and I don't want to get in his way, but I will need more than 5 minutes, so I will wait until others are through so I can get my time on the floor in addition to the 5 minutes. So I alert the Chair to that. Thank you.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise in support of Senate Joint Resolution 1, the balanced budget amendment. I specifically chose the balanced budget bmendment as the focus of my first statement in this hallowed Chamber. I chose it because the need for a balanced budget is the most important issue facing all of America today. Without a balanced budget, our children will be saddled with a mountain of debt. Our children and grandchildren will be left with no hope of fulfilling their dreams and aspirations. Our Nation will be weakened and vulnerable.

I know how to balance a budget. I'm an accountant. I have balanced budgets as a family man, a shoe store owner, a mayor, and a legislator. You and I

know how easy it is to spend money. We know it's easier to say "yes" to programs than "no." There is a constituency for every single program. But I have had to say "no." We have a duty and a responsibility to our communities, our families and our children to live within our means. Right now we are spending more money than we are taking in. Overspending is a prescription for disaster. Almost any school child understands that if you spend more than your take in—you go broke.

Because of the Federal Government's ability to print money, we can easily feel there are no spending limits. How can we pay the bills of a nation when we reach the point where interest payments on our debt exceed all the revenue? That scenario is possible. We are now on that course. Without restraint, that could happen even at an impossible 100 percent tax rate on the citizens of this great Nation. Governments go broke when they cannot afford the interest.

The Federal Government must learn to live within its means. If we were not saddled with such enormous debt, we would have additional revenues to invest in the people and we could reduce the tax burden for every working man and woman in this country. Many States have a constitutional provision to balance the budget. Those States balance their budgets. It is time for us to require ourselves to balance the budget just as they now require the States to do.

History shows we cannot balance the budget with willpower alone. It is time to look at the hard, cold facts. We now have a $5.2 trillion dollar Federal debt. The deficit looms so large. Many Americans voted for candidates based on their stand on this single issue. A balanced budget amendment was the key to voter confidence. Failure to support this issue will diminish that confidence and could lead to the defeat of other candidates in 2 years.

The balance budget amendment would help end the frustrating impasse between Congress and the President by requiring that we agree on a budget that is balanced. A constitutional requirement will remove from debate the variable of how long it will take to balance the budget. The argument about whether we should balance it at all will be removed from the discussion. All Americans know that we have to work within the parameters of fiscal sanity. The balanced budget amendment will focus our effort and our attention.

We have not had a balanced Federal budget since 1969. This fact alone illustrates the difficulty of balancing a budget without an amendment. By failing to balance the budget, we are giving in to the whims of the moment. Without a balanced budget we abandon the ideals of self-control, discipline, and hard work. When we do not balance a budget, we lead by the example of selfishness, recklessness and folly. We condone living beyond our means.

Those opposed to a balanced budget amendment fear it would result in drastic cuts to programs they deem necessary. That is a very shortsighted view of the world. Only by balancing the Federal budget, however, can we guarantee long-term security to any Federal program, including Social Security. By balancing the budget, we do a great service for all Americans. We especially serve those living on fixed income retirement programs. When we pass and the States ratify this amendment, everyone will benefit. Interest rates will decrease. Inflation will be held in check. Business will have true growth. Jobs will increase.

We need to pass this amendment with no gimmickry, no smoke and no mirrors. Any proposal to exempt Social Security would rule out the possibility of a true balanced budget. Any exemption of Social Security plays games with the future. We need to deal with the facts. Making Social Security exempt from this process would simply allow unlimited spending. An exemption would give the false pretense that we have a balanced budget.

Getting our entitlement programs in good working order is essential. Finger pointing about who wants to cut entitlements are simply diversions. Sleights of hand over who wants to save entitlement programs are all political ploys. Don't let politics confuse the issue and stall the passage of this amendment.

The economic future of America's families depends on what we do now. My family is very important to me. I know your families are important to you as well. Every day that passes without a balanced budget hurts. The responsibility of the debt falls on the shoulders of our children and our grandchildren. Will we leave them a legacy of colossal debt totaling more than $5.2 trillion? That incredible debt will burden generations to come. Our kids and grandkids will have an enormous tax burden. They will inherit an economy so weak and a debt so large there will be no hope of them ever paying it off.

When I was going to grade school, we spent a lot of time on the enormousness of a million dollars. I've always been fascinated with Carl Sagan's emphasis of the difference between a million and a billion. Now we roll a trillion off our tongues with great ease; $5.2 trillion. This is the cruelest of all legacies.

That debt we are incurring for our kids amounts to taxation without representation. We mounted a revolution over that before. Our Founding Fathers would be embarrassed. We should imitate our forefathers in fulfilling our duty to our children and to our children's children. We must save them from the bondage of insurmountable taxes. If the balanced budget amendment fails, we lose. Future generations lose as well.

It is time to heed the words of Thomas Jefferson, "I place economy among the first and important virtues, and public debt as the greatest of dangers to be feared." President Jefferson knew the economic and moral importance of not owing anything to anyone. He also knew that a large public debt could make the United States a slave to other countries and foreign interests.

Defeat is the real national danger on our horizon. The national security of the United States is threatened by the immense debt. We, as a nation, will be unable to protect ourselves against our enemies, foreign and domestic. And, we will be unable to protect Americans—their jobs and their families. We cannot leave ourselves exposed to economic collapse. A world relies on us to get our economic house in order. If we—you and I—continue the practice of overspending, history will harshly judge us.

We will say, "We have met the enemy—and it is us." America has the best form of government on Earth. Now it requires responsibility from its leaders and citizens. The time for leadership is now. The time for the balanced budget amendment is now.

The American people demand an end to runaway spending. We need to show the American people that we are responsible. This bill will prove restraint by constitutionally limiting the ability to spend taxpayer dollars. Let us not fail them or ourselves.

We have the longest continuous government on the face of the Earth. This bill is a critical link to the future. We must preserve and protect our Nation and do it for our children and our grandchildren. This is the turning point. What will history say about each of us?

I urge my colleagues to support the balanced budget amendment.

CONGRATULATING SENATOR ENZI

Mr. NICKLES. Madam President, I must rise to congratulate our colleague, the new Senator from Wyoming, Senator ENZI, for his statement. I think it is an outstanding statement—his first speech, as I understand it, on the floor on our first legislative day. I just wish to compliment him. I hope every American could hear that speech, a very well-thought-out speech on the necessity and importance of a balanced budget amendment.

I think Senator ENZI's credentials are certainly meritorious of that statement, the fact he is an accountant by trade, a businessman, former State legislator as well as mayor. I compliment him and thank him for his well-thought-out speech. I hope everyone will pay attention to it and follow his advice and pass this amendment.

I thank him again for his speech.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Madam President, I ask unanimous consent to proceed as in morning business for a period of 5 minutes.

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

CONGRATULATING SENATOR ENZI

Mr. GREGG. I wish to thank the Senator from Kentucky for allowing me to proceed even though he had prior permission.

I also want to congratulate the Senator from Wyoming on his superb discussion of the balanced budget amendment. It was thoughtful, to the point, focused, and really highlighted the importance of that amendment, which happens to be the first item on the agenda for the Republican majority in the Senate. Of the 10 items listed by the majority leader today as being the priority items which the Senate shall pursue under the Republican agenda, No. 1 was the balanced budget amendment.

The Senator from Wyoming has done a superb job of pointing out why it is absolutely essential that we pass that amendment.

EDUCATION IN AMERICA

Mr. GREGG. Madam President, I want to speak briefly here to the second item on the agenda, which is education. Obviously, we all recognize the significance and importance of education. We also recognize, those of us who have been involved in the issue for a while, that the issue of education is, for the most part, settled at the local school level, at the local community level, especially as it involves elementary and secondary education, and that the Federal role is narrow and one which is focused on specific areas. It is not the Federal Government's obligation nor is it appropriate that the Federal Government step into the designing or the curriculum or the choosing of the proper activities for school systems.

Rather, it is the Federal Government's role to pick areas where it can assist the local school districts and can assist parents in helping their children to get a better education. The proposal that has been put forward by the Republican Senate today, Republican Members of the Senate, as the second item on our list of 10, is a very strong proposal on behalf of the parents of America and the students of America.

It is an effort to identify a number of areas where we think the Federal Government can assist parents in helping their children get a better education. We all recognize that education is the core activity that we must undertake if we are to have a competitive society.

We especially recognize this in New England where we depend so much on brainpower because we have no great natural resources. Our natural resource is the intelligence of our citizenry, which is extraordinarily high and depends on a strong education system.

In this area I want to highlight two activities that have been pointed to by our proposal. The first is that we understand that there is this huge baby-boom generation—of which Bill Clinton happens to be the most visible individual—which happens to also have children. And all those children of that baby-boom generation, people like Chelsea, people like my own children, are moving into the college-age years.

There are a lot of parents who are very concerned about how they are going to pay for the high cost of higher education. This proposal gives parents an option. It gives them an opportunity, sets up the Bob Dole grants, which are the specific vehicle that allows parents to invest for their children's education, to save for their children's education, and be able to plan ahead so that they can use the vehicle of, basically, a designated savings account which will receive significant tax benefits to assist them in getting ready for their children's college education.

In addition, it supports prepaid tuition plans that many of our States are now pursuing, where parents can actually choose a college or group of colleges within a State and pay the tuition early and thus avoid the cost of inflation and put themselves in a position where they can better afford the cost of education as their children get older and the costs go up.

In addition, it expands the deduction for student loan interest, a very important element in having the ability to go to college or go to graduate school and to be able to get a loan and still be able to pay it back. This expansion of the deduction will have a positive impact in that area.

It expands study awards and assists employers who are assisting their employees in higher education. It is a very significant effort to make higher education more affordable for the families of America.

In addition, the bill has another major element which is absolutely critical, especially in New Hampshire. That is, it says that the Federal Government is financially going to step up to its obligation to special ed children. A long time ago we passed something called 94142, which was an excellent bill, the purpose of which was to make special education more readily available to children who needed it.

The concept was that the Federal Government would pay 40 percent of the cost and the States would pay 60 percent of the costs. Today, unfortunately, the Federal Government is only paying about 6 percent of the costs that are borne in order to care for a child who has special requirements in education.

As a result, this has put a huge burden on the local communities and the local school systems. States like New Hampshire, which rely heavily on real estate taxes to support their schools, or even States that rely on State government income taxes or sales taxes, find that a large percentage of the tax dollars they are raising for education are going to support what should have been the Federal obligation to help out with the special education child.

As we all know, the special education child can, in instances, cost $100,000 or more as compared with a child going through the system in an average school system which may cost $4,000. So it can skew dramatically the ability to apply resources to benefit other children in the system because of the fact that the Federal Government has shirked its obligation to come forward with its 40 percent, as it said it would when it initially passed this bill a long time ago.

So what we have proposed as Republicans is that the Federal Government will finally step forward and fund special education at near the 40-percent level. We are talking about a $10 billion increase in funding for special education, which increase will be met by ramping up, over a series of years, 7 years, and thus allowing the States and the communities to free up those education dollars which they are now using in order to support the Federal obligation to care for the special ed child, to educate the special ed child, to free up those dollars to use them to expand education activity for other children in the school system.

If you want to look at it in its cleanest sense, it is actually going to be the largest block grants to local education the Federal Government has ever pursued. It should have occurred earlier, but it is going to occur now as a result of the commitment that has been made by the Republican majority here in the Senate.

The sign that it is going to occur is the fact that we already made the downpayment. In the last session—and this did not get much attention unfortunately; it should have gotten a lot more attention; I do not know why it did not get a lot more attention; maybe it was because of a national election and people wanted jinglese on their positions— but in the last budget process last September we, as Republican Members of the Senate, put $730 million more into special education than the present funding was. We increased it by that amount of money.

It was a downpayment on this effort to try to fully fund the 40 percent that the Federal Government originally said it was going to fund. As a result, a State like New Hampshire will receive an increase of approximately $3

million. That is a lot of money to help out with the special education issues.

So we are not talking in rosy scenarios here. We are not using words. We are not trying to create perceptions. We are talking in terms of deeds. We have already made the downpayment on this effort to expand our commitment to special education. And now with the putting forward of the Republican list of initiatives for this Congress, we are making it very clear that we are going to follow through on that commitment.

This will be positive for the children across this country and for the educational systems across this country. I think Republicans can take great pride that we at least have been willing to step up to this very critical issue of first educating our children in college and relieving the pressure on parents who are trying to send their children to college; and, second, helping out with the special ed needs which the States have for so long borne but which the Federal Government has for so long said it would bear.

Madam President, I yield back my time.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Madam President, I want to use the 5 minutes that has been assigned to the minority, and I ask unanimous consent I have such time as I need beyond that.

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

Mr. FORD. I thank the Chair very much.

CAMPAIGN FINANCE REFORM IN THE 105TH CONGRESS

Mr. FORD. Madam President, as we begin a new Congress, we begin with the hope that the bipartisanship that existed at the end of the 104th Congress will carry through the 105th Congress.

Together, Democrats and Republicans were able to put aside partisan differences and pass meaningful and important legislation, from raising the minimum wage to the Kennedy-Kassebaum health care bill, to the reauthorization of the Federal Aviation Administration and the airport improvement program, and adding additional funds to education.

Madam President, I think in not only the minds of some in this body but the general public, one glaring example where we fail to come together is campaign finance reform. While the American people saw that we can work together to pass legislative solutions to everyday problems, the American people also saw our failure to restore integrity to our political system with the passage of campaign finance reform.

Unfortunately, this last election cycle once again demonstrates that we need fundamental campaign finance reform. This last election cycle demonstrated that the money chase continues. Only this time, the pace was more intense.

Preliminary figures from the Federal Election Commission for the 1996 cycle are astounding. Fundraising by the Republican and Democrat Parties—"parties" I underscore—in the period from January 1, 1995, through November 25, 1996, totaled $882 million. That represents a 73-percent increase over the same period for the 1992 Presidential election cycle.

The largest increase in funding and spending by the parties was soft money. The Republican National Committee raised $141.2 million, a 183-percent increase over 1992's $49.8 million. Republicans spent $149.6 million compared to their spending in the 1992 election cycle, an increase of 224 percent. Democrats raised $122 million, a 237-percent increase over 1992's $36.5 million, and spent $117.3 million, a 250-percent increase over 1992 when Democrats spent $32.9 million.

Madam President, the money chase does not stop there. Based on reports by the Federal Election Commission, congressional candidates—that includes the House and the Senate—spending may be at an all-time high. Totals for both the House and the Senate general election candidates show they raised $659.6 million, an 8-percent increase over 1994. That is in addition to the other money that I am talking about. So we are nearing the $2 billion figure as it relates to spending in campaign finance in campaigning.

One thing we will become in the House and the Senate will be bit players in the political aspects of this country—bit players because money will put us on television and money will do the work for us. So the big player will become the consultant, will become television, become advertising, and so we will become bit players in this stage called the American political system.

An average winning Senate candidate in all 34 races this past election spent $4.4 million. Compared to 1994, this represents, by the way, an 8-percent decrease. However, the States in which Senate races were held in 1996 included most of the smaller and less populated States. Nevertheless, when you break down the $4.4 million per race, that means the average a candidate would have to raise is approximately $13,969 each week for 6 years. Someone dismissed that figure by saying that most candidates raise approximately 80 percent of their funds in the 2 years prior to the election. If you accept that statistic, then the amount you have to raise each week occurring in that 2-year period is almost $34,000. With those statistics, one would be hard pressed to argue that there is no money chase.

Some have suggested that we simply do not spend enough in our elections. They have even been so bold as to suggest that we should spend more. They say we spend more on bubble gum than we spend on elections. Well, this is not about bubble gum. This is about running this great country of ours and keeping it on the right track and a leader of the world.

How much more can we spend, Madam President, when you have to raise $13,000 a week for every week of your Senate term? How can we say that we are truly doing the people's business? The more time that we have to devote to raising money, the less time we have to commit to our constituents. That is certainly the perception of the average citizen. I argue that this is one area where the perception is the reality.

Furthermore, Madam President, I suggest that the more money raised and spent in our elections does not necessarily mean that we have better campaigns. Al Hunt recently wrote in the Wall Street Journal that there is enough anecdotal evidence to suggest that the more candidates spend, the more negative the campaign. No, Madam President, I do not believe the answer is more money in our election. Rather, I believe, that the solution for real and effective campaign finance reform must include spending limits. The terms of those limits should be open to negotiation and discussion. In the end, there cannot be any real and meaningful reform without spending limits.

Changing the current system is difficult. You can understand why someone opposes changing the status quo because it is a system that got them in office, and by and large keeps them in office. I recognize that spending limits pose constitutional difficulties. I believe that we can craft a system of voluntary spending limits that will sustain constitutional scrutiny by the Supreme Court. I also believe that in order to restore the integrity of our political system, imposing spending limits is the right course of action. If we must—and I underscore if we must—then it might be worth the task to amend the Constitution.

The fact is, Madam President, when it comes to putting an overall cap on candidate spending, the Congress is way behind the curve. Just this past November, I believe the voters in the great State of Maine passed a ballot initiative that would impose spending limits on their State races.

I direct the attention of my colleagues to my own home State of Kentucky. In 1995, we had our first gubernatorial election with spending limits, $1.8 million. The previous election was $12 million. Overall, these reforms in my State worked well for the candidates and for the voters. The Kentucky system has a general election spending cap of $1.8 million. Everyone agrees the Kentucky system still has some problems and some loopholes that

need to be addressed. But on the whole, I think the candidates and the electorate approved of the spending limit plan. In fact, spending limits in the Kentucky race changed the overall course of the election. With a limit on the amount they could spend, both the Republican and the Democrat candidates had to revise the campaign play book.

Spending limits put a premium on debates. A premium on debates—think about that. You try not to debate your opponent in this day and age, you try to stay away from him because he is unknown, the people are not knowledgeable. So you do not want to give him any publicity, so you do not want to have debates, maybe one or two on educational television that maybe nobody would watch while there is a basketball game, football game, or baseball game going on at that time. I have seen it. I played that game. I am no spring chicken at this game. I am still spry, but no spring chicken.

In fact, the spending limits put a premium on debates and joint appearances across our Commonwealth. The candidates didn't fly; they drove because it saved money. They were looking for every Rotary Club, Lion's Club, every J.C. Club, whatever groups were together. They were wanting to express their desires and hopes for the future of our great State. Overall, I think most Kentuckians were pleased with the results, because the candidates came and talked about issues rather than being on television. The net result was a better informed electorate and therefore a better campaign.

So, Madam President, I believe that the terms of spending limits should be open to negotiation. All items should be on the table for discussion. But I believe that we simply cannot have effective and meaningful reform without the restriction of limits that one might spend in a campaign.

In addition to spending limits for congressional campaigns, meaningful reform also requires us to close the soft money loophole. As I mentioned earlier, we saw a dramatic increase by the national parties in the raising and spending of soft money.

We also need to address issues like independent expenditures and issue advocacy. Recent decisions by the Supreme Court require the Congress, I think, to reexamine the current law. We cannot prevent an individual or group of individuals from engaging in political activity independent of a candidate or political party. But we can make sure that such activities are truly independent and that those expenditures are adequately and fully disclosed to the Federal Election Commission. We will hear a little more about the hand-off funding as we proceed into the debate on campaign finance reform. If you don't understand hand-off funding, see me or listen to one of my speeches. I will try to tell you what that is.

Finally, Madam President, I believe that we need to examine the structure and authority of the Federal Election Commission. If we are going to have an agency charged with a mission to enforce our campaign finance laws, then I believe it is incumbent upon us to make sure that the FEC has the authority and the means by which to execute that authority.

As the former chairman of the Rules Committee and now ranking member, I have sat through countless hearings on the issue of campaign finance reform. I can go back to the archives of the Rules Committee and produce volumes and volumes and volumes of testimony and printed records of hearings where the committee received testimony from Members, from professors, from campaign consultants, and all the election experts you could ever think up. We can easily identify the problems. The question is, Are we ready to try to work on solutions? The problems are there and we understand them, but are we ready to work on solutions?

Madam President, with all due respect, we do not need more hearings on these issues. We know all too well what the problems are. We need to sit down together—and I underscore together—to craft the solutions. In the past, campaign finance reform has been an issue that has received too much lip service. We can no longer afford to let the opportunity to enact meaningful reform pass us by. The time to act is now. I hope that we can move forward and make campaign finance reform one of the first and lasting accomplishments of the 105th Congress. I know that many of my colleagues share a similar commitment to reforming our campaign finance laws. I look forward to working with my colleagues. Hopefully, through this campaign finance reform, we can restore trust and we can restore integrity to our electoral system by enacting meaningful campaign finance reform legislation.

I thank the Chair and yield the floor.

Mr. NICKLES. Madam President, I know my colleagues have been waiting patiently. Would they mind if I went ahead for a few minutes?

Mr. GRAMS. That is fine.

(The remarks of Mr. NICKLES pertaining to the introduction of S. 9 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

(The remarks of Mr. NICKLES, Mr. GRAMS, and Mr. HUTCHINSON pertaining to the introduction of S. 9 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

1996 YEAR END REPORT

The mailing and filing date of the 1996 Year End Report required by the Federal Election Campaign Act, as amended, is Friday, January 31, 1997. Principal campaign committees supporting Senate candidates file their reports with the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510–7116.

The Public Records office will be open from 8 a.m. to 7 p.m. on the filing date to accept these filings. In general, reports will be available the day after receipt. For further information, please contact the Public Records office on (202) 224–0322.

REGISTRATION OF MASS MAILINGS

The filing date for 1996 fourth quarter mass mailings is January 27, 1997. If a Senator's office did no mass mailings during this period, a form should be submitted that states "none."

Mass mailing registrations, or negative reports, should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510–7116.

The Public Records Office will be open from 8 a.m. to 6 p.m. on the filing date to accept these filings. For further information, please contact the Public Records office on (202) 224–0322.

TRIBUTE TO FORMER SENATOR PAUL TSONGAS

Mr. KENNEDY. Mr. President, it is with great sadness that we learned last weekend of the death of our former colleague from Massachusetts, Paul Tsongas. Paul served in the House of Representatives for 4 years, from 1975 to 1979, and in the Senate for 6 years, from 1979 to 1985. All of us who knew him respected him and admired him.

Paul was a great friend, a great Congressman for the people of Lowell, a great Senator for the State of Massachusetts. He had a special dedication to public service that began as a Peace Corps volunteer in Ethiopia in the 1960's and endured throughout his brilliant career, including his 1992 Presidential campaign.

As a Lowell city councilor, a county commissioner, Congressman, Senator, and Presidential candidate he had a special vision of America as it ought to be. Above all, he had an extraordinary personal and political courage. It was a courage demonstrated during his long illness and in all aspects of his years in public service. He often took stands that were unpopular. He had strongly held beliefs and he fought hard for them regardless of the passing political cause. He cared more for the truth than public opinion. And the people of Massachusetts loved him all the more because of it.

President Kennedy would have called him a "profile in courage."

One of his enduring legacies is the Lowell National Historic Park, which

symbolized a great deal about his commitment to Lowell and to that entire region of our State. He had the vision to conceive the park and the skill to achieve it. In a larger sense, it also typified his unique ability to find new ways to see old problems. Where others saw a fading mill town, Paul saw the opportunity for rebirth, growth, and a thriving new economy.

He applied that same dedication to new ways of thinking in everything he did in our State, our country, and our common planet, yet he had both a realistic and idealistic vision of a better future and a powerful commitment to reach it so no one would be left out or left behind.

He reminded me of Robert Kennedy. As my brother often said, "Some people see things as they are and say, why. I dream things that never were and say, why not?" That was true of Paul Tsongas as well. We will miss him very much. Our hearts go out to his wife Niki, his sisters, Thaleia and Vicki, all the members of his wonderful family, his three daughters, Ashley, Katina, and Molly.

Mr. President, I ask unanimous consent that editorials from the Lowell Sun and the Boston Globe be printed in the RECORD.

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

[From the Lowell Sun, January 20, 1997]

COMING HOME

When he stood in the raindrops at Boarding House Park, Paul Tsongas spoke of embarking upon his "journey of purpose" to become the President of the United States.

We in Lowell knew better.

We in Lowell knew Paul Tsongas' purposeful journey began long before he tossed his hat into the presidential ring, and endured long after his candidacy came to an end.

For Citizen Paul Tsongas, his journey to make his city and his world a better place began as soon as he was old enough to make a difference, and continued—with as much passion and purpose as ever—until it ended all too soon Saturday night.

Let others talk about Sen. Tsongas' extraordinary contributions to the national landscape—as they should and will.

Let us in Lowell talk about contributions far more significant and enduring.

Let us talk about a man who brought a remarkable wife to Lowell, and a father who raised three wonderful children in the city of his birth.

Because before all else—before all the politics and the presidential campaigns—Paul Tsongas devoted his life to his beloved and cherished wife and daughters. And even if his journey consisted "only" of Nicola, Katina, Ashley and Molly, he would have succeeded—grandly—in making this city and this world a better place in which to live.

If a man's legacy is first and foremost his family, Paul Tsongas' journey has left us all with a living legacy to cherish and honor as we do his own life.

For years, we in Lowell have needed Paul Tsongas. Now it is time for all of us to begin to repay our debt to him by reaching out to Nicola, Katina, Ashley and Molly with our arms, our hearts and our prayers.

They surely don't need us to tell them, but we should let them know just how proud we are of her husband and their father, and how much we, too, will miss him.

For those who knew Paul Tsongas—and so many in this city were privileged by his friendship—we knew him first as a husband and a father. In these parts, he was not Sen. Tsongas. He was "just" Paul Tsongas, a guy who clearly was happiest not on the firing lines of City Hall or Capitol Hill, but rather in his back yard on Mansur Street.

'Our' Paul Tsongas was not a politician or a presidential candidate. He was something much more special than that.

He was Tsongy—our neighbor and our friend. A guy who may have been better at driving his kids to school than he was at driving legislation through the U.S. Senate. A hard-working environmentalist whose most beloved contribution to the greening of America was surely cleaning up and landscaping Kittredge Park, on his hands and knees, as content as a man could be.

Let others applaud and exalt the contributions Rep. and Sen. Tsongas made to the Commonwealth of Massachusetts—as they should and will. Let the national pundits and politicians ponder what contributions a President Tsongas would have made to the country—as surely he would have.

We in Lowell need only walk through our city to celebrate—every day—what Paul Tsongas did for his hometown.

A national park here, a Boarding House Park there. The Wang Towers over there, and an arena going up just over here. And here's one of our new middle schools, not too far from our downtown hotel. And just over there, where the river bends, we're going to have a brand new ball park for Lowell's own minor league ball club. You know, the Spinners, the team Paul Tsongas brought to town.

Let those on the national stage talk about the bumpy, bizarre and truly incredible road which Paul Tsongas nearly traveled to the White House.

Here, in Lowell, we'll walk and talk about the most important roads in Paul Tsongas' life—Highland Street, where he lived as a child. Gorham Street, where young Paul toiled in his father's dry cleaning store. And Mansur Street, where Paul Tsongas of Lowell lived and raised his family.

Let other congressmen and senators and presidents talk about the unique contribution Paul Tsongas made to deficit reduction and our grandkids at the Concord Coalition.

Here, in Lowell, we'll reminisce about the first and most important budget Paul Tsongas ever balanced in his life—the one in that dry cleaning shop on Gorham.

We knew The Road from Here would always lead back to Lowell.

And even though his journey of purpose often took Paul Tsongas to bigger cities and faraway lands, we all knew that his journey began here, drew its strength from here, and will end, too soon, when he is buried here.

Paul Tsongas' journey of purpose may have been all to brief, but like a meteor blazing across the civic skyline he so loved, it was brilliant, intense and unforgettable.

"Lowell is my home. It is where I drew my first breath. It is where I will always derive a sense of place and a sense of belonging.

"It is what I am."

Amen.

Think of Paul Tsongas whenever you take your kids to a Spinners game. We think he'd like that.

[From the Boston Globe Jan. 19, 1997]

PAUL TSONGAS OF LOWELL

Paul Tsongas, 55, relished the uphill fight but was unable to beat back his most formidable opponent and succumbed last night to complications from the lymphoma that dogged him since 1988.

His seemingly inexhaustible ability to rally from a battery of grueling medical procedures, including two bone marrow transplants, was testimony to his grit and a spur to anyone tempted to complain about life's lesser challenges.

Tsongas was a tough taskmaster in his political life too, always willing to challenge conventional wisdom and unafraid to give people bad news if he felt it would fix an ailing system. In 1980 he faced a hall full of doctrinaire liberals at a convention of the Americans for Democratic Action and told them it was time to "escape the '60's time capsule."

Probusiness, open-minded about nuclear power, a relentless deficit hawk but at the same time unstinting in his support of civil rights, gay and women's issues and the environment, Tsongas was a "New Democrat" long before it became trendy.

Since voting for the controversial Lowell connector highway as a city councilor in his hometown in 1972, Tsongas built a reputation on following his political conscience despite the odds.

He was a long shot in his successful 1978 U.S. Senate race against Ed Brooke and was the first Democrat to challenge President George Bush. Asked about the near-empty Democratic field for the 1992 presidential race, he replied: "Its a medical problem: gonads, not lymph nodes."

Independent, thoughtful, passionate, he was as devoted to his family as he was to fighting the good fight. He quit the Senate in 1984 so he could spend time with his wife Niki and three daughters. "They're going to lay me in the ground someday," Tsongas said in a 1992 interview with the Globe. "I want to do the things I would have wanted to have done when that happens so my grandchildren will feel good about me."

Paul Tsongas has left all of us much to feel good about even as we mourn his passing.

OECD SHIPBUILDING AGREEMENT

Mr. LOTT. The 104th Congress was unable to reach a consensus on legislation to implement an OECD Shipbuilding Agreement. Opponents of the agreement, as negotiated, insisted that the amendments passed by the House of Representatives be incorporated into any implementing legislation. Supporters of the agreement found these amendments unacceptable. As a result, no legislation was passed to put the OECD Shipbuilding Agreement into effect.

If the outcome is to be any different in the 105th Congress, I would urge the Administration and the Office of the U.S. Trade Representative to fully consider the amendments to H.R. 2754 passed by the House last year. Those amendments, which were sponsored by the House National Security Committee, were in response to major concerns regarding this agreement's damaging impact on our national security interests, and on the Navy's core shipbuilding industrial base. While preserving the underlying intent of the OECD agreement, the amendments adopted by the House provide some

modest safeguards with respect to these national security concerns.

Ms. SNOWE. Those amendments were approved by an overwhelming majority in the House who felt that, without the changes, the OECD Agreement failed to provide an effective mechanism for disciplining foreign shipbuilding subsidy practices. I should add that a number of Members in this body who have examined the agreement also share this view. The base agreement, coupled with the many loopholes and special concessions granted to foreign governments, would continue to place U.S. shipbuilders at a tremendous competitive disadvantage. For this reason, the largest U.S. shipbuilders, representing over 90 percent of all workers in the Nation's major shipbuilding base, opposed implementation of the agreement even though they were the primary advocates of an effective discipline on foreign government subsidy and dumping practices in the first place.

Mr. LOTT. In order to put into perspective the concerns of the U.S. shipbuilding industry, it may be helpful to review some of the background leading up to this agreement. In 1981, the U.S. Government terminated its subsidy program to the U.S. shipbuilding industry. Thus, in 1989, the United States went to the negotiating table as the only nonsubsidizing shipbuilding country. The U.S. shipbuilding industry had already lost all of its commercial shipbuilding market share and was bracing itself for a dramatic decrease in Navy shipbuilding orders.

Ms. SNOWE. In 1993, 4 years after international negotiations had failed to produce an agreement to end foreign subsidies, Congress and President Clinton revived and amended a modest ship loan guarantee program called Title XI. The purpose of this program was to help U.S. shipbuilders recapture commercial market share in the face of dramatic cuts in the Navy's shipbuilding plan and continued foreign government subsidies in the commercial market.

Mr. LOTT. This modest loan guarantee program has begun the revival of commercial shipbuilding in the United States. For the first time in almost 40 years, our major U.S. shipbuilders are building commercial ships for export. Environmentally safe oceangoing double-hulled oil tankers are being constructed for our domestic trades. Over a 2-year period, $1.7 billion in commercial shipbuilding orders has been generated in the United States. These commercial orders are helping to sustain our major builders of Navy ships.

Ms. SNOWE. In 1996, when the administration sought congressional approval of the OECD Shipbuilding Agreement, the Department of Defense submitted a Navy shipbuilding budget request for the fewest numbers of ships in more than 60 years. While the Navy's Fiscal Year 1997 Future Years Defense Plan called for an average of only 5 ships per year, the Navy anticipates that it will need to procure 10 to 12 ships per year beginning in the year 2002, if it is to maintain a 346-ship fleet. The challenge for our Nation and the Navy is to sustain the critical core shipbuilding industrial base during this alltime low in Navy shipbuilding and still have the capability to meet future Navy building needs.

Facing these circumstances, in 1989 the U.S. shipbuilding industry sought an international agreement to end foreign government shipbuilding subsidies. The industry believed then, as it does now, that it was essential to end foreign government participation in the commercial shipbuilding market if it was to have a fighting chance to make the transition to building both commercial and Navy ships, and thus survive this historic low in Navy shipbuilding.

Mr. LOTT. As negotiations dragged on for over 5 years, the marketplace was changing dramatically and rapidly, while the objective of the negotiators seemed to remain static. There was a failure on the part of our negotiators to recognize these changes and the activities of the various participating parties during the negotiations.

China, which had no commercial shipbuilding market in 1990, began to target shipbuilding to industrialize its economy. China now ranks third in the world for commercial shipbuilding, and it is not a signatory to this agreement. Other countries, such as the Ukraine and Poland, are also not covered by this agreement and have displayed a renewed interest in their shipbuilding sectors.

Ms. SNOWE. During the negotiations, Germany granted $4 billion in shipyard modernization subsidies to the former East German shipyards. South Korea approved close to a $1 billion bailout of its largest shipbuilder Daewoo. Other European countries continued to grant billions in subsidies to their shipbuilding industries to fill their order books.

Mr. LOTT. When an agreement was finally reached in 1994, major U.S. shipbuilders expressed their objections with the terms of the OECD Shipbuilding Agreement before it was signed by the U.S. and other parties. These builders articulated to the Administration their concerns with the very generous transition concessions granted to the foreign signatories, the changing market conditions with the growing prominence of China, and the ineffective "injurious pricing" or antidumping provision—especially in light of South Korea's massive expansion of its shipbuilding capacity throughout the negotiations.

Ms. SNOWE. These concerns and the agreement's negative implications for the U.S. Navy shipbuilding industrial base were ignored by the negotiators of this agreement. U.S. shipbuilders were also dismayed that they were granted no transition period in contrast to what was granted to the foreign governments. The successful, but modest, Title XI loan guarantee program would be rendered ineffective immediately upon the agreement's entry into force and the domestic trade of the United States, as governed by the Jones Act, was placed in severe jeopardy by our negotiators. In an effort to correct these weaknesses and flaws, the House of Representatives amended the implementing legislation (H.R. 2754) to address the major national security concerns of the agreement.

Mr. LOTT. The Office of the U.S. Trade Representative has maintained throughout the debate on this agreement that the Jones Act, which requires ships transporting cargo between two U.S. ports to be U.S.-built, -owned, and -operated, is exempt from the agreement. This is only partially true. Although the agreement does not repeal the law, it establishes a framework and procedure for foreign governments to take retaliatory actions against U.S. shipbuilders and U.S. exporters for ships constructed for the domestic trades of the United States. These countermeasures include bid restrictions and bid tariffs against U.S. builders seeking international orders if they also benefit from Jones Act orders. The agreement also provides that GATT-related tariff concessions may be withdrawn against other U.S. products to offset the benefit of Jones Act ship construction contracts to U.S. builders. Moreover, the agreement states that the Jones Act is a derogation of the agreement—and I quote—"could undermine the balance of rights and obligations of the Parties under the Agreement and is unacceptable to the other Parties."

Ms. SNOWE. U.S. ownership, manning, and construction of vessels serving the Jones Act trade has provided the Department of Defense with a pool of trained mariners, vessels, and the industrial capability to respond in time to national defense emergencies. For example, the very shipyards that build and repair Jones Act vessels were called upon to activate military reserve ships during Operation Desert Storm/Desert Shield, and it was the trained mariners who operate Jones Act vessels in peacetime who were called upon to crew these military ships once activated. The Jones Act contributes to the maintenance of this skilled work force and defense industrial capability.

Because of the importance of the Jones Act to our national security, the House adopted an amendment specifically prohibiting the imposition of trade countermeasures against U.S. shipbuilders and other exporters for Jones Act ship construction. This

amendment is essential to our Nation's defense readiness.

Mr. LOTT. The House also adopted an amendment defining and exempting "military reserve vessels" from coverage under the agreement. This provision is essential to ensure that military ships—such as Army, Navy, and Marine Corps surge and prepositioned sealift ships—cannot be deemed commercial ships under the agreement because of their dual-use characteristics and capability. Without this exemption, DOD may be precluded from procuring military reserve and auxiliary ships with defense features from U.S. shipbuilders without the threat of retaliatory trade countermeasures.

Ms. SNOWE. Many of DOD's reserve and auxiliary ships are commercially built, owned, and operated, and they are chartered to DOD under long-term lease agreements. The U.S. Navy intends to continue this approach to acquiring these needed assets in the future. Furthermore, it is extremely difficult, if not impossible, to completely separate a ship's defense features from its commercial features. Therefore, the implementing legislation needs to contain the definition and exemption for these types of ships or the United States will be subjected to an international trade panel's interpretation of what is, or is not, a military vessel or a defense feature.

Mr. LOTT. As I mentioned earlier, the only government support program for U.S. shipbuilders is the Title XI Ship Loan Guarantee Program. The program was revived and amended in FY 1994 as part of the National Shipbuilding Initiative contained in the National Defense Authorization Act. The purpose of the program was to help U.S. shipbuilders attract commercial shipbuilding orders in the face of a dramatic turndown in Navy orders and foreign government commercial shipbuilding subsidies.

Ms. SNOWE. Title XI provides for a government guarantee of commercial loans for the construction of ships in the United States for U.S. and export customers. Up to 87.5 percent of the 25-year loan is guaranteed under the program. Upon entry into force of the OECD Shipbuilding Agreement, however, the terms of title XI would be immediately changed to guarantee only up to 80 percent of a commercial loan over a 12-year period. According to U.S. shipbuilders, the current orders for construction of large oceangoing commercial ships would not have been consummated under these terms and conditions.

Mr. LOTT. Almost every signatory to this agreement—except the United States—was granted special transition subsidy authority for a period of 3 years. Many members of the House of Representatives and Senate do not understand why the title XI program should not continue under its current terms and conditions for a 3-year period given the agreements's special deals, exemptions, and transition programs in the billions of dollars for Belgium, Portugal, Spain, Germany, France and South Korea. This inequity in the transition rules is extremely detrimental to U.S. builders were disadvantaged for 15 years while they received no government subsidies in the face of billions by foreign governments. Moreover, without a 3-year continuance of title XI, U.S. shipbuilders would be three years further behind their foreign competition. This is unacceptable to the majority in Congress.

Ms. SNOWE. The House bill would place the U.S. on an equal par with foreign signatories time-wise. It would allow title XI to continue at its present terms and conditions during the 3-year transition period in which foreign signatories were granted very generous subsidy concessions. Furthermore, major U.S. shipbuilders desperately need this extension to the program if they are to complete their transition back to building commercial ships. If this transition is unsuccessful, the Navy's core shipbuilding base will not be sustained to meet its future requirements.

Mr. LOTT. In closing, it is incumbent upon each Congress to ensure that our international trade agreements are in our best national interest. Rubber stamping every international agreement, regardless of its content or impact, is not in anyone's best interest. I understand that the office of the U.S. Trade Representative has invested years of hard work in reaching the OECD Agreement. Unfortunately, it falls abysmally short of the objectives established by the very industry which sought an international agreement. After all, who better understands the shipbuilding industry than the shipbuilding industry itself? And for that matter, who in Congress better understand our national security interests than the committees with jurisdiction over national security policy?

There are major disagreements in Congress on whether this agreement is good or bad for this country. Indications from the Office of the USTR are that it is unwilling to reopen the negotiations to achieve an agreement that addresses the concerns of the majority in Congress of both political parties. If this is the position of the U.S. Trade Representative, then I can only say that pursuing implementing legislation in the 105th Congress will result in the same outcome as that of the 104th Congress. I would hope that the USTR would have learned something from last year's experience and not waste its time or our with a repeat performance.

IN MEMORY OF PAUL E. TSONGAS

Mr. LEVIN. Mr. President, I was saddened Saturday to learn of the loss of one of the great men that I have had the honor of serving with in the U.S. Senate, Paul E. Tsongas of Massachusetts.

Paul Tsongas and I arrived in this body at the same time almost exactly 18 years ago in 1979. By that time Paul had already distinguished himself in 4 years of service in the House of Representatives, including legislation creating the first urban national historical park in his beloved hometown of Lowell. This became the catalyst for a remarkable renaissance in that historical New England mill town.

He arrived as the first Peace Corps veteran ever elected to the Senate. He valued highly his opportunity to serve in Ethiopia and spoke frequently of those 2 years as the formative years of his desire for public service. As a member of the Senate Foreign Relations Committee he was a voice for human rights around the world, but particularly on the African continent. In his 1981 book, "The Road From Here," Paul wrote, "[Human rights] are rooted in our culture and history, and we should champion them. Third World people need to have us honor this principle because if we don't, no one effectively will. And ultimately it is the moral and economic strength of America that will count, not just our military might."

Paul accomplished a great deal in a short time in the Senate, including the passage of the Alaska Lands Act of 1980 which more than doubled the size of the National Park System and which President Carter called the most important conservation legislation of the century.

However, he will be remembered best for his years after the Senate. He retired from the Senate in 1984 after learning that he had cancer, pledging to devote more time to his family. In the book, "Heading Home", about his decision to leave the Senate, he wrote: "On their deathbed, no one ever said, 'I wish I had spent more time with my business.'."

He overcame cancer undergoing a then-experimental medical procedure, and went on to become a Presidential candidate in 1992, and a founder of the Concord Coalition, a bipartisan organization which has become a credible and widely respected grassroots voice for fiscal responsibility in government.

As the family and friends of Paul Tsongas mourn his death and celebrate his life, Barbara and I will have Niki and Paul's three daughters Ashley, Katina, and Molly in our thoughts and prayers.

Mr. President, a member of my staff, Rich Arenberg, who served Paul Tsongas for more than 10 years as a staff member and friend wrote a few personal words which are most apt:

Paul Tsongas was an uncommon man. He honored America with the purity of his honesty and candor. There was no private Paul

Tsongas, no public Paul Tsongas. He gave totally and completely of himself. He said exactly what he believed. In an age of partisan vitriol, he spoke softly and without animus. Although his voice was cool, his beliefs were passionately and tenaciously held. He believed that rational people of good will could solve any problem, bridge any difference, and lead by the force of reason. Paul Tsongas loved his family more than anything on earth and he loved his country deeply. He saw little distinction between the two because he believed the greatest gift we can give to our children is a strong future for America.

THE INAUGURATION OF PRESIDENT CLINTON

Mr. NICKLES. Mr. President, yesterday, in a moving ceremony, we witnessed the swearing in of President Bill Clinton and Vice President AL GORE for their second term. The inaugural ceremony is significant not only to the history of our Nation, but for the message it sends to the rest of the world about our democracy.

The ceremony required a tremendous amount of planning by many, many people. The extensive preparations included construction of the platform, ticket distribution, coordination of security measures, organization of the ceremony, planning the luncheon in Statuary Hall and countless other tasks.

Leading this team of dedicated people was the distinguished Senator from Virginia, Senator JOHN WARNER. As chairman of the Joint Congressional Committee on Inaugural Ceremonies, he had the monumental task of making the arrangements for this historic occasion. He performed his responsibilities with great efficiency and with outstanding attention to every detail. As master of ceremonies, he skillfully orchestrated the entire program. I, along with my colleagues, would like to thank Senator WARNER and congratulate him on a job well done.

In addition, I would like to applaud the distinguished Senator from Kentucky, Senator WENDELL FORD. His contribution of hard work and past experience as chairman of the committee was evident in the success of this endeavor. I wish to express my gratitude to Senator FORD for his hard work.

I would also like to thank and congratulate the other members of the Joint Inaugural Committee for such a successful ceremony. Those members were Majority Leader LOTT, Speaker GINGRICH, Representative ARMEY, and Minority Leader GEPHARDT. In addition, the members of the committee were ably assisted by the officers and employees of the Senate and House of Representatives, as well as by personnel from the executive branch. The success of the ceremony demonstrated tremendous cooperation between both parties, as well as both Houses of Congress and the executive branch.

I offer my appreciation to everyone who contributed countless hours to the 1997 inauguration ceremony, particularly to the chairman, Senator WARNER, and the ranking member, Senator FORD. Thanks to the efforts of all involved, the ceremony will be a memorable event for our Nation.

KENTUCKY DOMINICAN SISTERS 175TH ANNIVERSARY

Mr. FORD. Mr. President, I am proud to stand before you and my colleagues today to recognize the 175th anniversary of the founding of the Kentucky Dominican Sisters. They are the oldest group of Dominican Sisters in the United States and I am pleased they chose to put down roots in Kentucky.

It was a time in our Commonwealth's history when the rural communities were sometimes forgotten. But nine pioneers took it upon themselves to help meet the needs of those in rural Kentucky. They made a commitment to the community to serve through service, prayer, and study—a commitment which has lasted 175 years. It was this group of women who laid the foundation for the Kentucky Dominican Sisters of today.

The Sisters responded to the needs of their time. They nursed soldiers in Kentucky during the Civil War and established hospitals for residents who previously traveled miles for emergency care. As the times have changed so have the needs of citizens of Kentucky. But the Sisters are still answering those in distress. My regret today is that I can only highlight some of their recent work including working with persons living with AIDS, assisting refugees to resettle and advocating for food, shelters and health care for not only the people of Kentucky, but for those throughout our great United States.

On April 4, 1997, Sisters from around the United States will gather at their Motherhouse in Springfield, KY, for a weekend of celebration. Mr. President, I ask you and my distinguished colleagues to join me in honoring the Kentucky Dominican Sisters for 175 years of service.

HONORING BILL WEBER, ST. CHARLES CHAMBER OF COMMERCE 1996 CITIZEN OF THE YEAR

Mr. ASHCROFT. Mr. President, I rise today to honor the St. Charles Chamber of Commerce 1996 Citizen of the Year, William H. Weber. On January 24, 1996, Bill Weber will gather with friends, family, and colleagues to celebrate his distinguished contributions to his community.

Bill is a lifelong resident of Missouri and St. Charles. His volunteer career has touched innumerable oragnizations with his leadership, commitment, and unselfish hard work. Bill has been the driving force behind such significant projects as fund raising to build both the St. Peters Rec-Plex and the YMCA of St. Charles County. After a volcano destroyed the city of Armero, Colombia, South America, he worked tirelessly to build a YMCA facility to provide basic needs and housing for the children of that disaster.

Closer to home, he has served on the boards of directors for Boys and Girls Town of Missouri, the Regional Commerce and Growth Association, St. Louis Sports Commission, St. Charles Public Schools, St. Charles Police and Fire Board, Crimestoppers, Mid America Theater, St. Charles County Horse Racing Commission, Daniel Boone District Chairman, Boy Scouts of America and the Eagle Board of Review, YMCA and United Services Blue Ribbon Committee.

He received the Boy Scouts' highest honor, the Silver Beaver Award in 1989, Channel 5's [KSDK] Volunteer Board of Governors Jefferson Award in 1993, the YMCA's highest leadership award and Youth in Need honored him as its first recipient of their Youth Leadership Award. For this lifetime of service, I rise today to recognize and salute William H. Weber, St. Charles Chamber of Commerce 1996 Citizen of the Year. His volunteer work has been a shining example to me as well as all Missourians.

HONORING THE POTTERS ON THEIR 50TH WEDDING ANNIVERSARY

Mr. ASHCROFT. Mr. President, families are the cornerstone of America. The data is undeniable: Individuals from strong families contribute to the society. In an era when nearly half of all couples married today will see their union dissolve into divorce, I believe it is both instructive and important to honor those who have taken the commitment of "till death us do part" seriously, demonstrating successfully the timeless principles of love, honor, and fidelity. These characteristics make our country strong.

For these important reasons, I rise today to honor Donna and Ralph Potter of Kansas City, MO, who on Sunday, January 5, 1997, celebrated their 50th wedding anniversary. My wife, Janet, and I look forward to the day we can celebrate a similar milestone. Donna and Ralph's commitment to the principles and values of their marriage deserves to be saluted and recognized.

LOUIS J. AMABILI

Mr. ROTH. Mr. President, today I would like to say something about a hero. The distinguished historian Stephen E. Ambrose says that we need to teach our children about heroes. It is by understanding the contributions of great men and women that our youth

set standards of achievement for themselves. Common heroes provide a sense of unity and inspire us to aim a little higher than we did the day before.

This week in Delaware, an outstanding man is being recognized for his more than 50 years of service to community, State, and Nation. His name is Louis J. Amabili. He's a loving husband, a devoted father, an attentive grandfather, and fearless firefighter. He's a man who, for half a century, has risked his life to protect the lives and property of others.

Louis is my friend, and I am honored to count him among my friends. He is a member of the Hockessin Fire Company and the founding Director of the Delaware State Fire School. For 32 years, he served as director of that school, leading it to its current preeminent position as one of the leading fire training facilities in the United States.

During his tenure, the Delaware State Fire School not only built its facility in Dover, but established training centers in Sussex and New Castle Counties, providing fire training centers within 30 minutes of every fire company in Delaware.

In additions to these many successes, Louis Amabili also served as president of the New Castle Volunteers Firemen's Association, the Delaware Volunteer Firemen's Association, and the International Association of Fire Service Instructors. Richard Nixon appointed him to the Fire Prevention and Control Commission, and Delaware Governor Pete DuPont recognized him with the "Order of the First State."

Mr. President, Louis Amabili is one of the most well-recognized fire service leaders in America. He served on the Board of Directors of the National Fire Protection Association, and chaired the Fire Officers Professional Qualifications Standards Committee for more than a decade.

Louis was a member of the International Fire Service Training Association and received their highest honor for his role in fire service training. He chaired the Joint Council of National Fire Service Organizations and helped establish the National Fire Service Professional Qualifications System.

He serves as a member of the board of directors of the Congressional Fire Services Institute—which I have the honor of co-chairing—and he has received that institute's highest honor, the CFSI Fire Service Person of the Year Award.

On this occasion, as Louis Amabili retires from a distinguished career, it is my privilege to recognize his years of selfless service, the lives he has touched, the lives he has taught, and the lives he has saved. I want to express my gratitude to his wonderful wife, Carmen, to his son Louis Jr., and to his daughter, Janice, and I want the record to show without question that we do, indeed, still live in a time of heroes. Quite often these valiant men and women live right next door.

CHILDREN'S HEALTH CARE

Mr. WELLSTONE. Mr. President, children's health care coverage needs to be a priority in this Congress. We need to be committed to providing access to affordable coverage and care to all working families in America. We also need to provide coverage for uninsured pregnant women, in order to ensure that children get a healthy start in life. All children should have access to services that provide for their basic health care needs such as immunization, preventive services, acute care, and dental care services, regardless of whether they live in rural or urban areas.

Employers are rapidly cutting health care coverage for children of their employees. When a family earning $16,000 each year is required to pay over 10 percent and sometimes as much as one-third of their income to purchase health insurance for their children, they are forced to make very difficult choices. They must choose between providing their children with basic needs such as food and shelter, and paying for health insurance.

Health care coverage for children is an investment in the future. Children with undiagnosed or untreated health problems may have difficulty learning in school. A child with poor vision that has not been diagnosed or treated may be unable to see the blackboard. A child who is in pain from preventable tooth decay may not be able to eat an adequate diet, and the pain may make it difficult for the child to concentrate. A child with asthma who has poor access to care may spend many hours in an emergency department and many days in the hospital for treatment of problems that could have been prevented. This occurs at a significant cost not only in terms of dollars, but also in terms of lost opportunities to attend school, and loss of work time and income for the child's parents. These situations can be prevented with adequate health care coverage and access for children.

Children in rural areas are especially vulnerable, as there are fewer services available in these areas, and some needed services are located at significant distances from their homes. In addition, these children often live in homes where their parents work for small employers, who are unable to offer dependent coverage at a low cost.

Several States have demonstrated the cost savings available by providing assistance to working families. My home State, Minnesota, operates its own program that helps families buy private health insurance. Ninety-thousand people are covered, including 50,000 children. Over the years, more than 41,000 families have used MinnesotaCare to leave or stay off welfare, saving the taxpayers $26 million per year.

It is essential that we address this issue and provide low- and middle-income families with the option to purchase affordable private insurance coverage for their children. These families must be provided with the means to purchase this coverage in a timely manner, so that they do not have to delay the purchase of coverage for their children.

We need to build on successful private, State, and Federal efforts to help working families afford to provide health coverage for their children. Providing coverage for children through age 18 and pregnant women is the next logical step in incremental health care reform. It is sound policy and makes economic sense. It will ensure that all children in America have a healthy start in life.

S. 10, THE VIOLENT AND REPEAT OFFENDER ACT OF 1997

Mr. ASHCROFT. Mr. President, earlier today Senator HATCH introduced S. 10, the Violent and Repeat Offender Act of 1997. Senators LOTT, DOMENICI, SESSIONS, and I worked with him in developing the bill. While not perfect, the bill does take the initial steps in dealing with the epidemic of violent juvenile crime sweeping the Nation.

Mr. President, the face of crime in America is indeed changing. Throughout our history, one thing has been clear: government's first responsibility is to keep the citizenry safe. John Jay wrote in The Federalist, No. 3, "Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their safety seems to be first."

The murderers, robbers, rapists, and drug dealers of yesteryear were typically adults. Now they are typically juveniles. As the age of these criminal predators becomes younger and younger with each passing year, so does the age of their victims.

Last Wednesday afternoon, 12-year-old Darryl Dayan Hall was abducted at gunpoint from the Southeast Washington area by three teenagers of a gang known as the Simple City Crew. This is the same gang that opened gunfire at a crowded community swimming pool in June 1993, wounding six children. This past Saturday, police found Darryl's frozen body. He had been shot once in the back of the head and at least once in the body.

The three teenagers who are now charged with Darryl's murder have had numerous prior brushes with the law. One of Darryl's assailants was charged as a juvenile with possession of PCP in 1995 and then was released—as is too often the case—promising not to run

afoul of the law again. Another of Darryl's assailants was, and is, on probation following his juvenile conviction last spring for possession of PCP with intent to distribute. Darryl's third assailant was charged as a juvenile just last month with carrying a deadly weapon.

Mr. President, from 1984 to 1994, the number of juveniles murdered in this country increased 82 percent. In 1994, one of every five juveniles murdered was killed by another juvenile. The rate at which juveniles 14 to 17 years old were arrested for murder grew by 22 percent from 1990 to 1994 and the problem is going to get worse, much worse.

Congress over the last three decades has established 131 separate Federal programs—administered by 16 different departments and agencies—to serve delinquent and at-risk youth, according to a report issued by GAO last March. Conservative estimates of Federal appropriations used for these at-risk and delinquent youth programs was more than $4 billion in fiscal year 1995.

Despite this ongoing massive expenditure, the Federal Government has failed to meet its responsibility of providing public safety in this arena because it has not focused on holding juveniles accountable for their violent crimes. We now have a new category of offenders that requires a different, tougher approach. In short, we have criminals in our midst—young criminals—not juvenile pranksters and truants.

The juvenile offenders of today will become the career criminals of tomorrow, if government continues to fail to recognize that America has an acute social illness that cannot be cured solely with money spent on social programs. This legislation introduced today takes a common sense approach in dealing with the current epidemic of juvenile violence. It would help States make urban, suburban, and rural communities safe once again.

The bill would provide $2.5 billion over 5 years in new incentive grants for States to enact accountability-based reforms in their juvenile justice systems. This legislation would authorize funding for various programs, including efforts aimed at trying our most violent juveniles as adults; establishing the ability of States to collect juvenile criminal records, fingerprints, and photographs, and to share such criminal histories and information within a State, with other States, and with the Federal Government; and establishing Serious Habitual Offender Comprehensive Action Program [SHOCAP]. Religious organizations would also be permitted to participate in the rehabilitative programs included in the bill.

Mr. President, serious, violent, and repeat juvenile offenders must be held responsible for their crimes. Today we are living with a juvenile justice system that was created around the time of the silent film. We are living with a juvenile justice system that reprimands the crime victim for being at the wrong place at the wrong time, and then turns around and hugs the juvenile terrorist, whispering ever so softly into his ear, "Don't worry, the State will cure you."

The juvenile justice system's primary goal today is to treat and rehabilitate the juvenile offender. Such a system can handle runaways, truants, and other status offenders; but it is ill-equipped to deal with those who commit serious and violent juvenile crimes repeatedly.

The criminal justice system can emphasize to adult criminals that acts have real consequences. The purpose of the criminal justice system is to punish, that is, to hold defendants accountable.

This legislation would provide financial assistance to States to help them reform their juvenile justice system to get the message to juveniles that their acts have real consequences to them as well. States will be eligible to receive Federal funds to help provide for the adult prosecution—as a matter of law or prosecutorial discretion—of juveniles 14 or older who commit violent crimes such as murder, forcible rape, armed robbery, and assault with a deadly weapon or offenses involving controlled substances or involving the possession of a firearm or a destructive device.

Mr. President, punishing dangerous juveniles as adults is an effective tool in fighting violent juvenile crime. For example, in Jacksonville, FL, State Attorney Harry Shorstein instituted a program to prosecute and incarcerate such offenders in 1992. Two years later, the number of juveniles arrested in the city dropped from 7,184 to 5,475. While juvenile arrests increased for most of the Nation, Jacksonville's arrest rate actually decreased by 30 percent.

Mr. President, States also need to create and maintain juvenile criminal records. Typically, State statutes seal juvenile criminal records and expunge those records when the juvenile reaches age 18. The time has come to discard the anachronistic idea that crimes committed by juveniles, no matter how heinous, must be kept confidential from the rest of society.

Our laws continue to view juveniles through the benevolent prism of basically good kids gone astray. The law should really view the juvenile predators of today as the criminals that they are. These young criminals know that they can commit crime after crime because their juvenile records are kept hidden under a "veil of secrecy." They also know that when they reach their 18th birthday, they can begin a second career as adult criminals as if they had never committed a crime in their young lives. The argument is that we are protecting juveniles from the stigma of a record, but in reality we are coddling hardened criminals. We must separate rhetoric from reality by lifting the "veil of secrecy."

The law enforcement community needs to know if an individual has a prior juvenile criminal record in order to conduct criminal investigations and apprehend those responsible for crimes in their towns, cities, and counties.

According to Police Chief David G. Walchak, who is also president of the International Association of Chiefs of Police, law enforcement is in desperate need of access to juvenile criminal records. The police chief says, "Current juvenile records (both arrest and adjudication) are inconsistent across the States, and are usually unavailable to the various programs' staff who work with youthful offenders." Chief Walchak also notes that "there are only 26 States that even allow law enforcement access to juvenile records * * * if we [law enforcement] don't know who the youthful offenders are, we can't appropriately intervene."

Mr. President, it is that simple. As juvenile gangs spread from urban to suburban to rural areas, as they travel from State to State, the "veil of secrecy" draped over their criminal histories and records undermines the ability of law enforcement to protect the rest of society.

In order to empower local law enforcement, the proposed bill would provide money to States to create and maintain juvenile criminal records, and to share those records with other Federal, State, and local law enforcement agencies.

Mr. President, school officials also need access to juvenile criminal records to assist them in protecting the best interests and safety of all students. The decline in school safety across the country can be attributed to a significant degree to laws that put the protection of dangerous students ahead of protecting innocent, law-abiding students. While visiting with school officials in Sikeston, MO, a teacher told me how one of her students came to school wearing an electronic monitoring ankle bracelet. The student told the teacher, "You don't know if I'm a murderer or a rapist and I ain't gonna tell you." That student was not only brutally honest, he was right. No one had any knowledge of what crime he had committed and, more importantly, they had no way of finding out.

If schools knew the histories of violent juveniles, they could respond to any misbehavior by imposing stricter sanctions, assigning particular teachers, or having the student's locker near a teacher's doorway entrance so that the teacher can monitor his conduct during the changing of class periods. In

short, this bill would allow school officials to take measures that could prevent violence against other children at school.

Mr. President, for purposes of adult sentencing, adult courts need to know that convicted felons have a history of criminal behavior. According to the 1991 Survey of Inmates in State Correctional Facilities, nearly 40 percent of prison inmates also had prior criminal records as juveniles. That is approximately 4 in 10 prison inmates. The proposed legislation would allow adult courts to have access to juvenile records so that criminals could no longer masquerade as neophytes before the adult criminal justice system.

The bill also allows State and local governments to use Federal funds to implement the Serious Habitual Offenders Comprehensive Action Program [SHOCAP].

SHOCAP is a multi-agency crime analysis and case management process for identifying and prosecuting violent and hard-core juvenile offenders in a community. SHOCAP targets such serious habitual offenders for intensive social supervisory interventions, intensive accountability in school attendance and discipline, and strenuous investigation and prosecution when they commit a new crime.

The Office of Juvenile Justice and Delinquency Prevention [OJJDP] conducted five test pilots of SHOCAP. Oxnard, CA, was one of the sites selected. When SHOCAP was implemented in Oxnard in 1983, officials found that less than 2 percent of all juveniles arrested in that community were responsible for over 35 percent of the felonies committed by juveniles. Four years later, Oxnard's juvenile violent crime dropped 38 percent. Illinois and Florida have also recently established statewide SHOCAP programs in an effort to reduce their juvenile crime rates. S. 10 would allow all jurisdictions to use Federal funds to help implement SHOCAP.

Mr. President, reforms are also necessary at the Federal level as well. S. 10 would make it easier for Federal prosecutors to try juveniles as adults. Under the bill, U.S. attorneys would have discretion to decide whether to try as adults juveniles 14 years or older without having to go through the Attorney General's office in Washington.

Federal juvenile court proceedings would be opened to the general public. When imposing a sentence, the district court would also be allowed to consider a juvenile's entire criminal record under the bill. In any case in which a juvenile is tried as an adult, access to the record of that offense would be made available to law enforcement authorities and others in the same manner that adult criminal records are publicly available.

Mr. President, the Government should also be able to mount a counterattack on gang violence. This legislation targets violent youth gangs, like the notorious Simple City Crew in the District. There would be new Federal penalties for offenses committed by criminal street gangs. Gangs are no longer concentrated in the big cities, they are now in rural towns. The bill would also provide $100 million to hire assistant U.S. attorneys to prosecute juvenile criminal street gangs.

We as a nation and a government must challenge this culture of violence and restore the culture of personal responsibility and accountability. It is high time to consider hard-headed and sensible juvenile justice policies. Where possible we must give second chances. Where necessary we must punish severely. This is a first step to restore justice to a nation that has grown weary of injustice.

In sum, this legislation would send a clear, cogent, and convincing message to violent juveniles: "Serious acts have serious consequences."

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, it was not quite 12 months ago—on Friday, February 23, 1996—that the Federal debt broke the $5 trillion sound barrier for the first time in history. The records show that on that day, at the close of business, the debt stood at $5,017,056,630,040.53.

Just 20 years earlier, in 1976, the Federal debt stood at $629 billion—and that was after the first 200 years of America's history had elapsed, including two world wars. Then the big spenders really went to work and the interest on the Federal debt really began to take off—and, presto, during the past two decades the Federal debt has soared into the stratosphere, increasing by more than $4 trillion in two decades from 1976 to 1996.

So, Mr. President, as of the close of business Friday, January 17, 1997, the Federal debt stood—down-to-the-penny—at $5,309,774,506,681.99. On a per capita basis, every man, woman, and child in America owes $19,917.66 as his or her share of that debt.

This enormous debt is a festering, escalating burden on all citizens and especially it is jeopardizing the liberty of our children and grandchildren. As Jefferson once warned, "to preserve [our] independence, we must not let our leaders load us with perpetual debt. We must make our election between economy and liberty, or profusion and servitude."

Was Mr. Jefferson right, or what?

WINTER IN NORTH DAKOTA

Mr. DORGAN. Mr. President, I rise to introduce a piece of legislation and also to discuss an issue that is very important to residents of my home State of North Dakota and residents of a good many States, particularly in the northern Great Plains. Let me begin by talking about some of the hardships and some of the challenges faced by Dakotans and by others in our part of the country as a result of an extraordinarily severe winter.

North Dakota has had six blizzards, which others might already know about, having heard the reports of these blizzards on television, news reports, and elsewhere, six blizzards from November 17 to January 15. The blizzards have been about as tough as any I have seen in North Dakota in my years in that wonderful State. It has been a tough, hard winter—lots of snow, lots of wind, conditions that are dangerous to people and to livestock.

I want to talk just a little about the challenges that these winters blizzards portray for our citizens and what the response has been. I want to tell you first about a young boy named Wyett Magike who lived about 20 miles from the nearest medical center near Mandan, ND, or Bismarck, ND. Steve Conmy, who is the coordinator of emergency services for Morton County, during the middle of a blizzard about a week and a half ago told me about some of his plow and truck operators and what they were facing. I went out in a big plow with Mr. Conmy and we drove on the north edge of Mandan, ND, where snow covered the trailer houses altogether. In other words, the snow was to the roof of a trailer house so you could not see the trailer house. Getting there, you could not see anything in front of you because it was almost total white-out conditions—high wind, snow, a lot of snow pack, with blowing snow. Those are the kind of conditions that road crews all across North Dakota have faced for some long while.

November 17, a very large blizzard and storm in North Dakota in the northeastern part of the State; December 16, 17, and 18, a winter blizzard through most all of North Dakota; December 20, 21, and 22, again, a big winter blizzard in the northeastern part of the State; January 4 and 5, a very severe winter blizzard throughout the State; January 15, another severe winter blizzard throughout the State. That is what our citizens have faced.

Now Wyett Magike was 2 years old, and on a recent morning, at 10 o'clock in the morning a call was received by the Morton County emergency management group regarding a medical emergency down near Flasher, ND. This young child was very, very ill and he needed to be transported to the Bismarck hospital immediately. He was dehydrated, severely vomiting blood. Everyone was very concerned about him and knew that he had to get medical attention immediately or he might die. Due to the road conditions and the weather reports, travel was impossible. The roads were completely blocked and

the conditions were near white-out conditions. For people who do not know because they are not from our part of the country, a white out is when snow and blowing snow make it impossible to see anything in front of you. All the roads, including the main highways, were blocked with snowdrifts and there was zero visibility that morning.

What the emergency group did was coordinate two snowplows dispatched from Flasher, ND, to escort an ambulance crew from Flasher, ND. And then two snowplows were dispatched from Mandan, ND, also with an ambulance. They met at a major snow block on the highway east of Flasher, ND, and it took 45 minutes just for all that equipment to punch a hole through the snow that was blocking that road. This journey took some 6 hours by these road crews, again at zero visibility, with snowblock virtually everywhere.

James Gerhardt and Gerald Friesy ran the plow and the truck from Flasher; Leland Gross and Robert Jochinm ran the snowplow and the truck from Mandan. And Steve Conmy said when he asked the folks to go out and do this, they did not wring their hands and say. "Gee, there is a risk out here." They said, "What equipment shall we take." They hit the road, and 6 hours later the young boy was in the hospital at Bismarck. The doctor said he would have died except for the heroic efforts by these folks.

Now, James, Gerald, Leland, and Robert are not well known by their deeds. They are just a road crew. When I say "just a road crew," they are heroes. There are road crews all over North Dakota working 8-hour after 8-hour shifts and risking their lives doing things that save other people's lives.

I mentioned this story only because a lot people do not understand the severity of the winter storms we have had. Lives have been lost in the Dakotas. We are now doing an assessment to find out how much livestock has been lost. Undoubtedly, a substantial amount of livestock loss has occurred. People have not been able to get through roads to feed the livestock. If they did, feed was not available. The result has been a very, very serious problem for people and for livestock in our State.

In the November 16 and 17 storm, we had 13 inches of snow fall in North Dakota; November 20, 6 inches; the 16th, 8 inches; December 20, 8 inches; 10 inches; 7 inches; on it goes. In each case, we had winds of 30, 40 and 50 miles an hour. In December and January there have been 10 days where the wind chill has been recorded at or below 50 below zero—10 days at or below 50 below zero. The other evening the wind chill was 80 below zero.

I am not trying to diminish our tourism efforts in North Dakota, although I expect there was precious little tourism in early January with forecasts of blizzards in our State, but it has been a very difficult circumstance. January 9, 83 below zero wind chill in Minot, ND. For 11 days in November to January it did not get above zero.

What to make of all of this and the challenge that it poses for North Dakotans. Clearly, North Dakotans who were isolated and stuck out in the country with roads impassable, often in need of medical help or in need of food or in need of feeding the cattle who also were at risk, needed some assistance.

I mentioned the emergency crews that were available, and all over the State in unknown ways by unknown people, they have committed heroic acts. But North Dakotans needed more help than that. They needed low-income energy assistance, especially for some areas on Indian reservations and elsewhere. They needed emergency feed assistance. Cities and counties and townships and others who have not been able to clear the roads, have not had enough equipment, needed assistance.

I am pleased to say that the Federal Emergency Management Agency and others are now in North Dakota at the President's direction. The State of North Dakota, the counties, the townships and the Federal Government are working together to respond to an extraordinarily difficult circumstance. We are not nearly through this. Winter is only about a third over. We do not know what the next couple of months will be for our State. But we know that North Dakotans have endured a very difficult winter so far. We hope for better conditions. Whatever happens, North Dakota will be prepared to deal with it and respond to it.

I do want the President to know and my colleagues to know that just as when a tornado comes along and wreaks havoc in an area, or where a raging flood gathers homes and runs the homes down a river, just as those emergencies such as an earthquake, for example, that causes chaos, just as they need to be responded to and always are responded to by the Federal Government, so, too, must this snow emergency and the storms and the deadly blizzards that have crossed our States in the northern Great Plains in recent weeks, so, too, must they be responded to in an appropriate way.

We are continuing to work on snow clearing, on low-income energy assistance issues, on feed assistance for livestock, and on many other approaches to try to help people and respond to the needs that exist as a result of this very severe winter.

Today, I wanted to at least tell my colleagues of the circumstances that we face and thank the President, thank the administration and others who have joined to help. I also wanted to describe the people who assisted the 2-year-old boy. That has gone on across our State every day and in every way. To those who work in public service, those who man those graders and trucks and keep the roads open, punch through snowdrifts with zero visibility to protect life in North Dakota, I say: You are the real heroes, and North Dakotans and all of America owe you a debt of gratitude.

Mr. GRASSLEY. Mr. President, today is the first day in which the Senate will entertain legislation for the 105th Congress. I rise today to compliment various tax bills introduced by my colleagues for myself. Some of this legislation is in the leadership package. Other legislation has been introduced separately by other Senators. All of this legislation will reduce taxes on Americans trying to live the American Dream. I applaud these efforts. In fact, I have had a hand in writing or cosponsoring much of it in the 104th Congress. With this new Congress, we must break down the barriers that stand in the way of the next generation's shot at the American Dream. Our future depends on it.

The initiatives I support include, reinstating the income tax deduction for interest on student loans, reducing the capital gains tax, expanding individual retirement accounts, extending the employer provided education assistance programs, and finally, reducing the estate taxes. Collectively, these tax bills will provide necessary relief for all taxpayers. Hard working families and individuals deserve nothing less from their Federal Government.

STUDENT LOAN INTEREST DEDUCTION

The leadership package includes legislation that includes my provisions from the 104th Congress to reinstate the tax deduction for interest on student loans. It would allow an "above the line" deduction for up to $2,500 in qualified interest. This means that students or their families will not have to itemize their income tax deductions to benefit from the deduction.

In 1986, the income tax deduction for interest on student loans was repealed. I believed then, as I believe now, that the repeal was a major mistake. Education is an investment both for students and the Nation. In exchange for hard work the student gets a tax deduction to make education affordable. In exchange for the student's commitment, the Nation gets a new taxpayer and sometimes a better citizen.

I commend the leader for selecting this initiative, and I welcome the opportunity to work with him to expand it.

CAPITAL GAINS TAX REDUCTION

Senator HATCH introduced legislation to reduce the income tax on capital gains. It is substantially similar to legislation passed by the last Congress but vetoed by the President. Since the President has since committed himself to capital gains relief, I am encouraged

about the prospects for enactment of our provision authored by Senator HATCH. The President has suggested much more narrow relief targeted at residential real estate. However, our broad-based cut is better for the small businesses, family farms, and individual taxpayers.

This morning, in testimony to the Senate Budget Committee, Federal Reserve Board Chairman Alan Greenspan said that the ideal capital gains tax rate is zero percent. Our bill would cut it in half. The President must consider our provision. Reducing the capital gains tax rate by 50 percent for taxpayers across the board, is essential to help grow the economy.

SUPER IRA'S

Senate Finance Committee Chairman ROTH, has, once again introduced his legislation to expand the number of people who can invest in individual retirement accounts. This legislation is vital given the dismal rate of savings by Americans. Americans want to save money. The problem is that our current system of taxes does not allow it. The Super IRA provision will give taxpayers a better vehicle to save more for retirement. Since the miracle of compound interest means that saving sooner saves more, we must take up this bill as soon as possible.

EMPLOYER PROVIDED EDUCATION ASSISTANCE

Finance Chairman ROTH was joined by Finance Ranking Minority Member MOYNIHAN in legislation to make permanent the income tax exclusion for employer provided education assistance. I am a proud cosponsor of this bill. This provision is set to expire. Congress must step up to the plate and, finally, permanently extend it. Last time, over my objections, we failed to extend the provision for graduate assistance. All students must be eligible for this assistance program.

ESTATE TAX REDUCTION

The leadership package includes legislation to reduce the estate tax burden of all Americans. It is included as part of S. 2. Reducing, the estate tax is something that we almost accomplished in the last Congress. We need to take it up right away in this Congress. Historically, the estate tax was initiated as a temporary tax on the super wealthy during times of war. Later, it became a permanent part of the tax system, but still applied only to the rich. Over time, the effects of inflation have taken their toll. Now, we have middle income taxpayers hit with an estate tax burden intended for the wealthy. In my State of Iowa, we have a problem unique to us and other farm States. Some taxpayers have a double tax identity. They are cash poor because they have just enough cash-flow off of the farm to make ends meet. However, they are land rich because their family farm has appreciated during the period that they were family farmers. The estate tax ignores the fact that the farm is as much their family home as it is a business. The estate tax also ignores that they are middle income people at best, and were not intended to even pay the estate tax when it first came into being.

The leadership package is a good start. It cuts the estate tax for all taxpayers, including small businesses and farmers. Congress must find a way to improve the estate tax crisis in my State of Iowa, and other States. I look forward to continuing my work with the leader to accomplish an estate tax reduction.

ALTERATIVE MINIMUM TAX ON FARMER DEFERRED CONTRACTS

Finally, I want to make quick reference to tax repeal legislation that will be introducing tomorrow for myself and over 50 other original sponsors. Senators DORGAN, GORTON, BAUCUS, and I have campaigned to eliminate an IRS imposed tax on farmers and ranchers who sell crops or livestock on deferred contracts. Congress did not intend this tax. Only the IRS intends this tax. The broad bipartisan support that we have gathered tells me that Congress is going to repeal it. We will have more on this initiative tomorrow.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT CONCERNING BIOLOGICAL AND CHEMICAL WEAPONS—MESSAGE FROM THE PRESIDENT—PM 5

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Armed Services.

To the Congress of the United States:

As required by section 1416 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201), I transmit herewith a report describing the respective policy functions and operational roles of Federal agencies in countering the threat posed by the use of potential use of biological and chemical weapons of mass destruction (WMD) within the United States.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *January 21, 1997.*

REPORT ON THE CONTINUATION OF THE EMERGENCY REGARDING TERRORISTS—MESSAGE FROM THE PRESIDENT—PM 6

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication, stating that the emergency declared with respect to grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process, is to continue in effect beyond January 23, 1997. The first notice continuing this emergency was published in the *Federal Register* last year on January 22, 1996.

The crisis with respect to the grave acts of violence committed by foreign terrorists that threaten to disrupt the Middle East peace process that led to the declaration of a national emergency, on January 23, 1995, has not been resolved. Terrorist groups continue to engage in activities with the purpose or effect of threatening the Middle East peace process, and which are hostile to U.S. interests in the region. Such actions threaten vital interests of the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to maintain in force the broad authorities necessary to deny any financial support from the United States for foreign terrorists that threaten to disrupt the Middle East peace process.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *January 21, 1997.*

MESSAGES FROM THE HOUSE

At 12:02 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker appoints the following Member to the Joint Economic Committee: Mr. SAXTON of New Jersey.

At 3:40 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 9. Concurrent resolution providing for a joint session of Congress to received a message from the President on the State of the Union.

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–578. A communication from the Acting Director, Office of Substainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule relative to the Exclusive Economic Zone Off Alaska, received on January 8, 1997; to the Committee on Commerce, Science, and Transportation.

EC–579. A communication from the Acting Director, Office of Substainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule relative to the Exclusive Economic Zone Off Florida, received on January 9, 1997; to the Committee on Commerce, Science, and Transportation.

EC–580. A communication from the Acting Director, Office of Substainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule relative to the Exclusive Economic Zone Off Florida, received on January 6, 1997; to the Committee on Commerce, Science, and Transportation.

EC–581. A communication from the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of rule relative to the Fishery Management Plan, (RIN0648–AI97) received on January 8, 1997; to the Committee on Commerce, Science, and Transportation.

EC–582. A communication from the Secretary of Commerce, transmitting, pursuant to law, a letter of certification relative to the Driftnet Act; to the Committee on Commerce, Science, and Transportation.

EC–583. A communication from the Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of rule relative to Puerto Rican shrub, (RIN1018–AD48) received on January 7, 1997; to the Committee on Environment and Public Works.

EC–584. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a certification relative to commercial shrimping operations; to the Committee on Commerce, Science, and Transportation.

EC–585. A communication from the Secretary of the Consumer Product Safety Commission, transmitting, pursuant to law, the report of rule relative to fireworks, received January 2, 1997; to the Committee on Commerce, Science, and Transportation.

EC–586. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, the report of rule relative to Class A and Tier 1 Telephone Companies, received on January 7, 1997; to the Committee on Commerce, Science, and Transportation.

EC–587. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report on the Airport Improvement Program for fiscal year 1995; to the Committee on Commerce, Science, and Transportation.

EC–588. A communication from the Secretary of Transportation, transmitting, pursuant to law, the biennial report on the effectiveness of occupant protection systems and their use; to the Committee on Commerce, Science, and Transportation.

EC–589. A communication from the Acting Administrator of the Federal Aviation Administration, transmitting, pursuant to law, the report on the Aircraft Cabin Air Quality Research Program; to the Committee on Commerce, Science, and Transportation.

EC–590. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule relative to tank vessels, (RIN2115–AF27) received on January 9, 1997; to the Committee on Commerce, Science, and Transportation.

EC–591. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule relative to management and monitoring systems, (RIN2125–AC97) received on December 27, 1996; to the Committee on Commerce, Science, and Transportation.

EC–592. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule relative to Class E Airspace, (RIN2120–AA66) received on January 9, 1997; to the Committee on Commerce, Science, and Transportation.

EC–593. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule relative to the Air Carrier Access Act, (RIN2105–AB62) received on January 9, 1997; to the Committee on Commerce, Science, and Transportation.

EC–594. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report of a rule relative to the Fur Products Labeling Act, received on December 24, 1996; to the Committee on Commerce, Science, and Transportation.

EC–595. A communication from the Acting Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report of a rule relative to the Food Retailing and Gasoline Industries, received on December 27, 1996; to the Committee on Commerce, Science, and Transportation.

EC–596. A communication from the Acting Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report under the Comprehensive Smokeless Tobacco Health Act; to the Committee on Commerce, Science, and Transportation.

EC–597. A communication from the Acting Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report under the Comprehensive Smokeless Tobacco Health Act; to the Committee on Commerce, Science, and Transportation.

EC–598. A communication from the Chairman of the National Safety Board, transmitting, pursuant to law, the request for supplemental funding for fiscal year 1997; to the Committee on Commerce, Science, and Transportation.

EC–599. A communication from the Chairman of the Surface Transportation Board, transmitting, pursuant to law, the report of a rule relative to Ex Parte No. 542, received on January 9, 1997; to the Committee on Commerce, Science, and Transportation.

EC–600. A communication from the Chairman of the Surface Transportation Board, transmitting, pursuant to law, the report of a rule relative to Ex Parte No. 537, received on January 9, 1997; to the Committee on Commerce, Science, and Transportation.

EC–601. A communication from the Chairman of the Surface Transportation Board, transmitting, pursuant to law, the report of a rule relative to Ex Parte No. 347, received on January 9, 1997; to the Committee on Commerce, Science, and Transportation.

EC–602. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on Voluntary Commitments for the Replacement Fuel Supply and Demand Program; to the Committee on Energy and Natural Resources.

EC–603. A communication from the General Counsel of the Department of Energy, transmitting, pursuant to law, the report of a rule relative to the National Environmental Policy Act, (RIN1901–AA67) received on January 9, 1997; to the Committee on Energy and Natural Resources.

EC–604. A communication from the Administrator of the Energy Information Administration, Department of Energy, transmitting, pursuant to law, the Annual Energy Outlook 1997; to the Committee on Energy and Natural Resources.

EC–605. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, pursuant to law, the report of a rule relative to the Alaska National Wildlife Refuges, (RIN1018–AC02) received on January 9, 1997; to the Energy and Natural Resources.

EC–606. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule relative to the Ohio Regulatory Program, received on January 8, 1997; to the Committee on Energy and Natural Resources.

EC–607. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–608. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–609. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–610. A communication from the Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, pursuant to law, the report of a rule relative to the Native American Graves Protection and Reparation Act, (RIN1024–AC48) received on January 9, 1997; to the Committee on Environment and Public Works.

EC–611. A communication from the Acting Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule relative to endangered and threatened wildlife and plants, (RIN1018–AC64) received on January

7, 1997; to the Committee on Environment and Public Works.

EC–612. A communication from the Acting Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule relative to endangered and threatened wildlife and plants, (RIN1018–AC84) received on January 13, 1997; to the Committee on Environment and Public Works.

EC–613. A communication from the Acting Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule relative to endangered and threatened wildlife and plants, (RIN1018–AD47) received on January 8, 1997; to the Committee on Environment and Public Works.

EC–614. A communication from the Acting Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule relative to endangered and threatened wildlife and plants, (RIN1018–Ad11) received on January 3, 1997; to the Committee on Environment and Public Works.

EC–615. A communication from the Director of the State and Site Identification Center, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule relative to uncontrolled hazardous waste sites, received on January 10, 1997; to the Committee on Environment and Public Works.

EC–616. A communication from the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of five rules including one rule relative to approval and promulgation of plans, (FRL5676–4, 5662–7, 5664–9, 5663–1, 5662–1) received on January 9, 1997; to the Committee on Environment and Public Works.

EC–617. A communication from the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of five rules including one rule relative to approval and promulgation of plans, (FRL5669–1, 5673–6, 5662–3, 5669–5, 5660–9) received on January 10, 1997; to the Committee on Environment and Public Works.

EC–618. A communication from the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of two rules including one rule relative to the Clean Air Act, (FRL5674–1, 5673–8) received on January 3, 1997; to the Committee on Environment and Public Works.

EC–619. A communication from the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of four rules including one rule relative to approval and promulgation of plans, (FRL5646–2, 5661–6, 5579–7, 5581–9) received on January 9, 1997; to the Committee on Environment and Public Works.

EC–620. A communication from the Chief Financial Officer, National Aeronautics and Space Administration, transmitting, pursuant to law, the report on Federal Facilities Compliance Act Mixed Waste Activities for 1996; to the Committee on Environment and Public Works.

EC–621. A communication from the Dean and the Director of the Center for Nations in Transition, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, transmitting jointly, pursuant to law, the annual report on the Environmental Training Project (ETP); to the Committee on Environment and Public Works.

EC–622. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–6, received on January 7, 1997; to the Committee on Finance.

EC–623. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–5, received on January 7, 1997; to the Committee on Finance.

EC–624. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–4, received on January 7, 1997; to the Committee on Finance.

EC–625. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–8, received on January 7, 1997; to the Committee on Finance.

EC–626. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to foreign taxes, received on January 7, 1997; to the Committee on Finance.

EC–627. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–1, received on January 7, 1997; to the Committee on Finance.

EC–628. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–2, received on January 7, 1997; to the Committee on Finance.

EC–629. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–7, received on January 7, 1997; to the Committee on Finance.

EC–630. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to temporary regulations, received on January 7, 1997; to the Committee on Finance.

EC–631. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–14, received on January 10, 1997; to the Committee on Finance.

EC–632. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to private activity bonds, (RIN1545–AU62) received on January 7, 1997; to the Committee on Finance.

EC–633. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–13, received on January 10, 1997; to the Committee on Finance.

EC–634. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–5, received on January 10, 1997; to the Committee on Finance.

EC–635. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–12, received on January 9, 1997; to the Committee on Finance.

EC–636. A communication from the Chief of the Regulations Unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Procedure 97–12, received on January 10, 1997; to the Committee on Finance.

EC–637. A communication from the Chief Counsel, Bureau of Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of rule relative to marketable book-entry treasury bills, received on January 8, 1997; to the Committee on Finance.

EC–638. A communication from the Chief Counsel, Bureau of Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of rule relative to book-entry security, received on January 7, 1997; to the Committee on Finance.

EC–639. A communication from the Chief Counsel, Bureau of Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of rule relative to Redwood Valley, (RIN1512–AA07) received on January 7, 1997; to the Committee on Finance.

EC–640. A communication from the President of the United States, transmitting, pursuant to law, the report relative to the Russian Federation; to the Committee on Finance.

EC–641. A communication from the President of the United States, transmitting, pursuant to law, the report relative to Mongolia; to the Committee on Finance.

EC–642. A communication from the Acting Assistant Secretary for Children and Families, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule relative to child support regulations, (RIN0970–AB57) received on December 24, 1997; to the Committee on Finance.

EC–643. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a rule relative to managed care plans, (RIN0938–AF74) received on January 8, 1997; to the Committee on Finance.

EC–644. A communication from the Secretary of Health and Human Services and the Commissioner of Social Security Administration, transmitting jointly, pursuant to law, the report of the 1994–1996 Advisory Council on Social Security; to the Committee on Finance.

EC–645. A communication from the Chief of Staff, Office of the Commissioner, Social Security Administration, transmitting, pursuant to law, the report of a rule relative to dedicated accounts and installment payments, (RIN0960–AE59) received on January 8, 1997; to the Committee on Finance.

EC–646. A communication from the Chairman of the International Trade Commission, transmitting a draft of proposed legislation to provide authorization of appropriations for fiscal year 1998; to the Committee on Finance.

EC–647. A communication from the Director of the U.S. Trade and Development Agency, transmitting, pursuant to law, the 1996 annual report; to the Committee on Finance.

EC–648. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–316 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–649. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–317 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–650. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–318 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–651. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–320 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–652. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–321 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–653. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–322 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–654. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–323 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–655. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–325 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–656. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–326 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–657. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–327 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–658. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–328 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–659. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–329 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–660. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–331 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–661. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–332 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–662. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–333 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–663. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–334 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–664. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–337 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–665. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–338 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–666. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–339 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–667. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–340 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–668. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–341 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–669. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–342 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–670. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–343 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–671. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–347 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–672. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–349 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–673. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–354 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–674. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–355 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–675. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–358 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–676. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–359 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–677. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–360 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–678. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–361 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–679. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–363 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–680. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–364 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–681. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–367 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–682. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–370 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–683. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–371 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–684. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–372 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–685. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–374 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–686. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–378 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–687. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–380 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–688. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–384 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–689. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–386 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–690. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–387 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–691. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–389 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–692. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–391 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–693. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–392 adopted by the Council on July 17, 1996; to the Committee on Governmental Affairs.

EC–694. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–413 adopted by the Council on October 1, 1996; to the Committee on Governmental Affairs.

EC–695. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–415 adopted by the Council on October 1, 1996; to the Committee on Governmental Affairs.

EC–696. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–431 adopted by the Council on October 1, 1996; to the Committee on Governmental Affairs.

EC–697. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–432 adopted by the Council on October 1, 1996; to the Committee on Governmental Affairs.

EC–698. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–433 adopted by the Council on October 1, 1996; to the Committee on Governmental Affairs.

EC–699. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–434 adopted by the Council on October 1, 1996; to the Committee on Governmental Affairs.

EC–700. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–458 adopted by the Council; to the Committee on Governmental Affairs.

EC–701. A communication from the Secretary of Energy, transmitting pursuant to law, the report on Nuclear Reactor Safety in Ukraine and Russia; to the Committee on Foreign Relations.

EC–702. A communication from the President and Chief Executive Officer of the Overseas Private Investment Corporation, transmitting pursuant to law, the 1996 annual report; to the Committee on Foreign Relations.

EC–703. A communication from the Assistant Secretary of State (for Legislative Affairs), transmitting pursuant to law, Presidential Determination 97–13; to the Committee on Foreign Relations.

EC–704. A communication from the Assistant Secretary of State (for Legislative Affairs), transmitting pursuant to law, Presidential Determination 97–11A; to the Committee on Foreign Relations.

EC–705. A communication from the Assistant Secretary of State (for Legislative Affairs), transmitting pursuant to law, notice of two determinations relative to Haiti and Pakistan; to the Committee on Foreign Relations.

EC–706. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–707. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–708. A communication from the Secretary of Transportation, transmitting, a notice relative to effective security measures; to the Committee on Commerce, Science, and Transportation.

EC–709. A communication from the Secretary of Transportation and the Secretary of Commerce, transmitting jointly, pursuant to law, the report on Regulating Vessel Traffic in the Monterey Bay National Marine Sanctuary; to the Committee on Commerce, Science, and Transportation.

EC–710. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of twelve rules including one rule relative to Airworthiness Directives, (RIN2120–A64) received on January 13, 1997; to the Committee on Commerce, Science, and Transportation.

EC–711. A communication from the Department of Transportation, transmitting, pursuant to law, the report of two rules including one rule relative to motor vehicle theft, (RIN2127–AG34) received on January 14, 1997; to the Committee on Commerce, Science, and Transportation.

EC–712. A communication from the Acting Administrator of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report on Civil Aviation Security for 1995; to the Committee on Commerce, Science, and Transportation.

EC–713. A communication from the Director of the Bureau of Economic Analysis, Economics and Statistics Administration, Department of Commerce, transmitting, pursuant to law, the report of rule relative to international services surveys, (RIN0691–AA27) received on January 15, 1997; to the Committee on Commerce, Science, and Transportation.

EC–714. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, the report of a rule relative to non-accounting safeguards; to the Committee on Commerce, Science, and Transportation.

EC–715. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, the report of a rule relative to advanced television systems, received on January 14, 1997; to the Committee on Commerce, Science, and Transportation.

EC–716. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, the report of a rule relative to accounting safeguards, received on January 14, 1997; to the Committee on Commerce, Science, and Transportation.

EC–717. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, the report of a rule relative to access charge reform, received on January 15, 1997; to the Committee on Commerce, Science, and Transportation.

EC–718. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–310 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–719. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–311 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–720. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–312 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–721. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–314 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–722. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11–315 adopted by the Council on July 3, 1996; to the Committee on Governmental Affairs.

EC–723. A communication from the Executive Director of the Japan-United States Friendship Commission, transmitting, pursuant to law, the annual report for fiscal year 1996; to the Committee on Foreign Relations.

EC–724. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 97–02; to the Committee on Appropriations.

EC–725. A communication from the Chairman and General Counsel of the National Labor Relations Board, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–726. A communication from the Director of the U.S. Trade and Development Agency, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–727. A communication from the Chairman of the Farm Credit System Insurance Corporation, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–728. A communication from the Chairman of the U.S. Consumer Product Safety Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–729. A communication from the Director of the U.S. Office of Personnel Management, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–730. A communication from the Archivist of the United States, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–731. A communication from the Chairman and Chief Executive Officer of the Farm Credit Administration, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–732. A communication from the Chairman of the U.S. Merit Systems Protection Board, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–733. A communication from the Chairman of the Postal Rate Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–734. A communication from the Chairman of the Equal Employment Opportunity Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–735. A communication from the Chairperson of the U.S. Commodity Futures Trading Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–736. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–737. A communication from the Chairman of the Federal Housing Finance Board, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–738. A communication from the Chair of the Federal Labor Relations Authority, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–739. A communication from the Chairman of the U.S. International Trade Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–740. A communication from the Director of the U.S. Information Agency, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–741. A communication from the Chairman of the National Endowment For the Arts, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–742. A communication from the Office of the Special Counsel, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–743. A communication from the Chairman of the National Credit Union Administration, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–744. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–745. A communication from the Chairman of the National Mediation Board, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–746. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–747. A communication from the Administrator of the U.S. Agency For International Development, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–748. A communication from the Administrator of the U.S. Environmental Protection Agency, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–749. A communication from the Secretary of Labor, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–750. A communication from the Attorney General, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–751. A communication from the Administrator of the U.S. Environmental Protection Agency, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–752. A communication from the Acting Chairman of the Thrift Depositor Protection Oversight Board, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–753. A communication from the Administrator of the U.S. Small Business Administration, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–754. A communication from the President of the Barry M. Goldwater Scholarship and Excellence In Education Foundation, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–755. A communication from the Executive Vice President of the U.S. Institute of Peace, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–756. A communication from the Secretary of Defense, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–757. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–758. A communication from the Acting Administrator of the General Services Administration, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–759. A communication from the Inspector General of the U.S. General Services Administration, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–760. A communication from the Chairman of the National Endowment For the Humanities, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–761. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–762. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–763. A communication from the Chief Executive Office of the Corporation For National Service, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–764. A communication from the Director of the U.S. Office of Personnel Management, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–765. A communication from the Chairman of the U.S. Merit Systems Protection Board, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1996; to the Committee on Governmental Affairs.

EC–766. A communication from the Secretary of the Postal Rate Commission, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1996; to the Committee on Governmental Affairs.

EC–767. A communication from the Chairman of the U.S. Securities and Exchange Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996 and the report of the Office of Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–768. A communication from the Acting Executive Director of the Advisory Council On Historic Preservation, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996 and the report of the Office of Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–769. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996 and the report of the Office of Inspector General for the period April 1

through September 30, 1996; to the Committee on Governmental Affairs.

EC–770. A communication from the Secretary of the American Battle Monuments Commission, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996 and the report of the Office of Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–771. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996 and the report of the Office of Inspector General for the period April 1 through September 30, 1996; to the Committee on Governmental Affairs.

EC–772. A communication from the Chairman of the U.S. Merit Systems Protection Board, transmitting, pursuant to law, a report relative to appeals; to the Committee on Governmental Affairs.

EC–773. A communication from the Office of Personnel Management, President's Pay Agent, transmitting, pursuant to law, a report relative to locality-based comparability payments; to the Committee on Governmental Affairs.

EC–774. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on reinvention activities to the Committee on Governmental Affairs.

EC–775. A communication from the Director of the U.S. Office of Personnel Management, transmitting, pursuant to law, the report on drug and alcohol abuse prevention, treatment and rehabilitation programs and services for Federal civilian employees for fiscal year 1995; to the Committee on Governmental Affairs.

EC–776. A communication from the Secretary of Education, transmitting, pursuant to law, a report concerning surplus Federal real property; to the Committee on Governmental Affairs.

EC–777. A communication from the Director of the U.S. Office of Personnel Management, transmitting, pursuant to law, the report on health promotion and disease prevention activities for Federal civilian employees; to the Committee on Governmental Affairs.

EC–778. A communication from the Director of Communications and Legislative Affairs, Equal Employment Opportunity Commission, transmitting, pursuant to law, a report entitled "Federal Sector Report on EEO Complaints and Appeals" for fiscal year 1995; to the Committee on Governmental Affairs.

EC–779. A communication from the Executive Director of the District of Columbia Financial Responsibility and Management Assistance Authority, transmitting, pursuant to law, the report on a resolution and order adopted on December 27, 1996; to the Committee on Governmental Affairs.

EC–780. A communication from the Assistant Secretary of Labor for Employment Standards, transmitting, pursuant to law, a rule entitled "Labor Standards for Federal Service Contracts" (RIN1225–AA78) received on January 8, 1997; to the Committee on Governmental Affairs.

EC–781. A communication from the Assistant Secretary of the Interior for Policy, Management, and Budget, transmitting, pursuant to law, a rule entitled "Administrative and Audit Requirements and Cost Principles for Assistance Programs" (RIN1090–AA59) received on December 24, 1996; to the Committee on Governmental Affairs.

EC–782. A communication from the Office of the Assistant Secretary of Health and Human Services, Administration For Children and Families, transmitting, pursuant to law, a rule on the Head Start Fellows Program (RIN0970–AB56) received on January 14, 1997; to the Committee on Finance.

EC–783. A communication from the Administrator of the Health Care Financing Administration, Department of Health and Human Services, transmitting, pursuant to law, the report on a rule relative to electronic cost reporting, (RIN0938–AH12) received on January 13, 1997; to the Committee on Finance.

EC–784. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to Announcement 97–4, received on January 2, 1997; to the Committee on Finance.

EC–785. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to Notice 96–9, received on January 2, 1997; to the Committee on Finance.

EC–786. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to Notice 97–12, received on January 2, 1997; to the Committee on Finance.

EC–787. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to Revenue Procedure 97–15, received on January 16, 1997; to the Committee on Finance.

EC–788. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to Revenue Ruling 97–6, received on January 13, 1997; to the Committee on Finance.

EC–789. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to Revenue Ruling 97–2, received on January 13, 1997; to the Committee on Finance.

EC–790. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to income of a controlled foreign corporation, (RIN1545–AR31) received on January 2, 1997; to the Committee on Finance.

EC–791. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule relative to electronic filing of form W–4, (RIN1545–AR67), received on January 2, 1997; to the Committee on Finance.

EC–792. A communication from the Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule relative to single-employer plans, received on January 13, 1997; to the Committee on Finance.

EC–793. A communication from the Chairman of the Federal Mine Safety and Health Review Commission, transmitting, pursuant to law, the report under the Freedom of Information Act for 1996; to the Committee on the Judiciary.

EC–794. A communication from the Assistant Attorney General, Office of Justice Programs, Department of Justice, transmitting, pursuant to law, the report of rule relative to formula grants, (RIN1121–AA43) received on January 9, 1997; to the Committee on the Judiciary.

EC–795. A communication from the Assistant Attorney General, Office of Justice Programs, Department of Justice, transmitting, pursuant to law, the report of rule relative to grants, (RIN1121–AA35) received on January 9, 1997; to the Committee on the Judiciary.

EC–796. A communication from the Assistant Attorney General, Office of Justice Programs, Department of Justice, transmitting, pursuant to law, the report of rule relative to motor vehicle theft prevention, (RIN1121–AA38) received on January 9, 1997; to the Committee on the Judiciary.

EC–797. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, a draft of proposed legislation entitled "Environmental Crimes and Enforcement Act of 1997"; to the Committee on the Judiciary.

EC–798. A communication from the Secretary of the Judicial Conference of the United States, transmitting, a draft of proposed legislation to convert five judgeships to permanent positions; to the Committee on the Judiciary.

EC–799. A communication from the Chief Administrative Office of the Postal Rate Commission, transmitting, pursuant to law, the report under the Freedom of Information Act for 1996; to the Committee on the Judiciary.

EC–800. A communication from the Clerk of the United States Court of Federal Claims, transmitting, pursuant to law, the court's report for fiscal year 1997; to the Committee on the Judiciary.

EC–801. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the report of the rule relative to electronic filing reports of political committee, received on January 9, 1997; to the Committee on Rules and Administration.

EC–802. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the report of the rule relative to electronic filing reports of political committee, received on January 9, 1997; to the Committee on Rules and Administration.

EC–803. A communication from the Director of the Office of Regulations Management, Office of General Counsel, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule relative to appeals regulations, (RIN2900–AI59) received on January 8, 1997; to the Committee on Veterans' Affairs.

EC–804. A communication from the Director of the Office of Regulations Management, Office of General Counsel, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule relative to miscellaneous regulations, (RIN2900–AI39) received on January 9, 1997; to the Committee on Veterans' Affairs.

EC–805. A communication from the Director of the Office of Regulations Management, Office of General Counsel, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule relative to subpoena authority, (RIN2900–AH00) received on January 9, 1997; to the Committee on Veterans' Affairs.

EC–806. A communication from the Director of the Office of Regulations Management, Office of General Counsel, Department of

Veterans' Affairs, transmitting, pursuant to law, the report of a rule relative to adjudication regulations, (RIN2900-AI43) received on January 9, 1997; to the Committee on Veterans' Affairs.

EC-807. A communication from the Secretary of Veterans Affairs and the Secretary of Defense, transmitting jointly, pursuant to law, the report on implementation of the health resources sharing for fiscal year 1996; to the Committee on Veterans' Affairs.

EC-808. A communication from the President of the United States, transmitting, pursuant to law, the report on implementation of the Loan Guarantees to Israel Program for 1996; to the Committee on Foreign Relations.

EC-809. A communication from the Deputy Associate Administrator for Acquisition Policy, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of revisions to the Federal Acquisition Regulation received on January 3, 1997; to the Committee on Governmental Affairs.

EC-810. A communication from the Deputy Associate Administrator for Acquisition Policy, Office of Governmentwide Policy, General Services Administration, transmitting, pursuant to law, three rules including a rule entitled "Small Purchase Authority" (RIN 3090-AG00, 3090-AF95, 9000-AH31); to the Committee on Governmental Affairs.

EC-811. A communication from the President Pro Tempore of the U.S. Senate, transmitting, pursuant to law, the report of the Board of Directors of the Office of Compliance; referred jointly, pursuant to 2 U.S.C. sec. 1302(b), to the Committee on Rules and Administration and to the Committee on Governmental Affairs.

EC-812. A communication from the Chairman and Chief Executive Officer of the Farm Credit Administration, transmitting, pursuant to law, the annual report for fiscal year 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC-813. A communication from the Administration of the Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, a rule entitled "Cotton Research and Promotion Program" received on January 13, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC-814. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, two rules including a rule entitled "Hazardous Materials Regulations" (RIN2137-AC96, AB97) received on January 16, 1997; to the Committee on Commerce, Science, and Transportation.

EC-815. A communication from the Commissioner of the Bureau of Reclamation, Department of the Interior, transmitting, pursuant to law, a report relative to the Bumping Lake Dam, Yakima Project, Washington; to the Committee on Energy and Natural Resources.

EC-816. A communication from the Assistant Secretary of the Interior for Land Minerals Management, transmitting, pursuant to law, a rule entitled "Hydrogen Sulfide Requirements for Operations on the Outer Continental Shelf" (RIN1010-AB50) received on January 16, 1997; to the Committee on Energy and Natural Resources.

EC-817. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, notice relative to emergency funds concerning the Low-Income Home Energy Assistance Act; to the Committee on Appropriations.

EC-818. A communication from the Director of the Congressional Budget Office, transmitting, pursuant to law, a report entitled "Unauthorized Appropriations and Expiring Authorizations"; to the Committee on Appropriations.

EC-819. A communication from the Director of the Office of Congressional Affairs, U.S. Nuclear Regulatory Commission, transmitting, pursuant to law, a rule entitled "Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State" (RIN3150-AF49) received on January 15, 1997; to the Committee on Environment and Public Works.

EC-820. A communication from the Office of Regulatory Management and Information, Office of Policy, Planning, and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, six rules including a rule entitled "National Emission Standards for Hazardous Air Pollutants Emissions" (FRL5570-1, 5657-6, 5653-9, 5675-2, 5570-2, 5675-1); to the Committee on Environment and Public Works.

EC-821. A communication from the Secretary of the Board of the National Credit Union Administration, transmitting, pursuant to law, a rule entitled "Loans to Officials and Truth in Savings" received on January 13, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC-822. A communication from the Chief Counsel of the Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, a rule entitled "Blocked Persons, Specially Designated Nationals" received on January 15, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC-823. A communication from the Legislative and Regulatory Activities Division, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, a rule entitled "Rules of Practice and Procedure" (RIN1557-AB57) received on January 16, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC-824. A communication from the Secretary of Housing and Urban Development, transmitting, the customer satisfaction report; to the Committee on Banking, Housing, and Urban Affairs.

EC-825. A communication from the Secretary of Defense, transmitting, notice of three retirements; to the Committee on Armed Services.

EC-826. A communication from the Assistant Secretary of the Navy (Installations and Environment), transmitting, pursuant to law, a notice relative to private contractors; to the Committee on Armed Services.

EC-827. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on the payment of restructuring costs under defense contracts; to the Committee on Armed Services.

EC-828. A communication from the Secretary of Defense, transmitting, pursuant to law, a report relative to administrative military personnel actions; to the Committee on Armed Services.

EC-829. A communication from the Secretary of Defense, transmitting, pursuant to law, a report relative the Cooperative Threat Reduction Program; to the Committee on Armed Services.

EC-830. A communication from the Director of Administration and Management, Office of the Secretary of Defense, transmitting, pursuant to law, a rule entitled "Courts of Criminal Appeals Rules of Practice and Procedure" received on January 15, 1997; to the Committee on Armed Services.

EC-831. A communication from the Director of Defense Procurement, Acquisition and Technology, Office of the Under Secretary of Defense, transmitting, pursuant to law, reports on six rules amending the Defense Federal Acquistion Supplement (96-D321, 96-D017, 96-D306, 96-D310, 96-D328, 96-D021); to the Committee on Armed Services.

EC-832. A communication from the Assistant General Counsel for Regulations, Department of Education, transmitting, pursuant to law, a rule received on January 16, 1997; to the Committee on Labor and Human Resources.

EC-833. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Drug Abuse and Drug Abuse Research"; to the Committee on Labor and Human Resources.

EC-834. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a rule entitled "Notification Procedures for States" (RIN0938) received on January 15, 1997; to the Committee on Labor and Human Resources.

EC-835. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "A National Strategy to Prevent Teen Pregnancy"; to the Committee on Labor and Human Resources.

EC-836. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Performance Improvement 1996: Evaluation Activities"; to the Committee on Labor and Human Resources.

EC-837. A communication from the Director of Regulations Policy, Management Staff, Office of Policy, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, five rules including a rule entitled "Drug Labeling" (RIN0910-AA63, AA05); to the Committee on Labor and Human Resources.

EC-838. A communication from the Assistant Secretary of Labor for Employment Standards, transmitting, pursuant to law, two rules including a rule entitled "Labor Standards for Federal Service Contracts" (RIN1225-AA78, 1215-AA94); to the Committee on Labor and Human Resources.

EC-839. A communication from the Assistant Secretary of Labor for Occupational Safety and Health, transmitting, pursuant to law, a rule entitled "Occupational Exposure to Methylene Chloride" (RIN1218-AA98) received on January 9, 1997; to the Committee on Labor and Human Resources.

EC-840. A communication from the Secretary of Education, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations: Madeleine Korbel Albright, of the District of Columbia, to be Secretary of State, vice Warren Christopher.

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. COVERDELL (for himself, Mr. COATS, Mr. GREGG, Mr. LOTT, Mr. BOND, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mrs. HUTCHISON, Mr. HUTCHINSON, Mr. KYL, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. SMITH of New Hampshire, Mr. THURMOND, and Mr. WARNER):

S. 1. A bill to provide for safe and affordable schools; to the Committee on Finance.

By Mr. ROTH (for himself, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. BROWNBACK, Mr. CRAIG, Mr. D'AMATO, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mrs. HUTCHISON, Mr. KYL, Mr. MURKOWSKI, Mr. NICKLES, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Mr. THOMAS, Mr. THURMOND, Mr. WARNER, Mr. COVERDELL, Mr. COATS, and Mr. KEMPTHORNE):

S. 2. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for American families, and for other purposes; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. CRAIG, Mr. D'AMATO, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. GRASSLEY, Mr. HAGEL, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. NICKLES, Mr. ROBERTS, Mr. SMITH of New Hampshire, Mr. THOMAS, Mr. THURMOND, Mr. WARNER, and Mr. COVERDELL):

S. 3. A bill to provide for fair and accurate criminal trials, reduce violent juvenile crime, promote accountability by juvenile criminals, punish and deter violent gang crime, reduce the fiscal burden imposed by criminal alien prisoners, promote safe citizen self-defense, combat the importation, production, sale, and use of illegal drugs, and for other purposes; to the Committee on the Judiciary.

By Mr. ASHCROFT (for himself, Mrs. HUTCHISON, Mr. LOTT, Mr. NICKLES, Mr. CRAIG, Ms. COLLINS, Mr. DEWINE, Mr. ALLARD, Mr. BROWNBACK, Mr. CHAFEE, Mr. COATS, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. THURMOND, Mr. WARNER, Mr. COVERDELL, and Mr. JEFFORDS):

S. 4. A bill to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ASHCROFT (for himself, Mr. MCCAIN, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. BROWNBACK, Mr. CHAFEE, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. NICKLES, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SMITH of New Hampshire, Mr. THOMAS, Mr. THURMOND, Mr. WARNER, Mr. COATS, Mr. LUGAR, Mr. GRAMM, Mr. KEMPTHORNE, and Mrs. HUTCHISON):

S. 5. A bill to establish legal standards and procedures for product liability litigation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SANTORUM (for himself, Mr. SMITH of New Hampshire, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. BOND, Mr. BROWNBACK, Mr. COATS, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMM, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. LUGAR, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. ROBERTS, Mr. SESSIONS, Mr. SMITH of Oregon, Mr. THOMAS, Mr. THURMOND, Mr. WARNER, and Mr. KEMPTHORNE):

S. 6. A bill to amend title 18, United States Code, to ban partial-birth abortions; to the Committee on the Judiciary.

By Mr. LOTT (for himself, Mr. THURMOND, Mr. SMITH of New Hampshire, Mr. WARNER, Mr. KYL, Mr. COCHRAN, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mrs. HUTCHISON, Mr. HUTCHINSON, Mr. INHOFE, Mr. MURKOWSKI, Mr. NICKLES, Mr. SESSIONS, and Mr. KEMPTHORNE):

S. 7. A bill to establish a United States policy for the deployment of a national missile defense system, and for other purposes; to the Committee on Armed Services.

By Mr. SMITH of New Hampshire, (for himself, Mr. CHAFEE, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. LUGAR, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. THURMOND, and Mr. WARNER):

S. 8. A bill to reauthorize and amend the Comprehensive Environmental Response, Liability, and Compensation Act of 1980, and for other purposes; to the Committee on Environment and Public Works.

By Mr. NICKLES (for himself, Mr. GREGG, Mr. WARNER, Mr. LOTT, Mr. ALLARD, Mr. ASHCROFT, Mr. COVERDELL, Mr. CRAIG, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mrs. HUTCHISON, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. SMITH of New Hampshire, Mr. THOMAS, Mr. THURMOND, Mr. COATS, and Mr. KEMPTHORNE):

S. 9. A bill to protect individuals from having their money involuntarily collected and used for politics by a corporation or labor organization; to the Committee on Rules and Administration.

By Mr. HATCH (for himself, Mr. SESSIONS, Mr. ASHCROFT, Mr. DOMENICI, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. BOND, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. ENZI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. GRASSLEY, Mr. HAGEL, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SMITH of New Hampshire, Mr. THOMAS, Mr. THURMOND, and Mr. WARNER):

S. 10. A bill to reduce violent juvenile crime, promote accountability by juvenile criminals, punish and deter violent gang crime, and for other purposes; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. FORD, Mr. GLENN, Mr. LEVIN, Ms. MIKULSKI, Mr. REID, Ms. MOSELEY-BRAUN, Mr. DURBIN, Mr. WELLSTONE, Mr. KERRY, and Mr. LAUTENBERG):

S. 11. A bill to reform the Federal election campaign laws applicable to Congress; to the Committee on Rules and Administration.

By Mr. DASCHLE (for himself, Mr. KENNEDY, Ms. MOSELEY-BRAUN, Ms. MIKULSKI, Mr. DODD, Mr. REID, Mr. DORGAN, Mrs. MURRAY, Mr. FORD, Mr. ROCKEFELLER, Mr. INOUYE, Mr. KERRY, Mr. LEVIN, Mr. CLELAND, Mr. JOHNSON, Mr. BREAUX, Mr. TORRICELLI, Mr. DURBIN, Mr. GLENN, Mrs. BOXER, Mr. WELLSTONE, Mr. BRYAN, and Mr. LAUTENBERG):

S. 12. A bill to improve education for the 21st Century; to the Committee on Finance.

By Mr. DASCHLE (for himself, Ms. MIKULSKI, Mr. KENNEDY, Mr. BREAUX, Mr. DODD, Mrs. MURRAY, Mr. INOUYE, Mr. JOHNSON, Ms. MOSELEY-BRAUN, Mr. ROCKEFELLER, Mr. DURBIN, Mr. KERRY, Mr. GLENN, and Mr. LAUTENBERG):

S. 13. A bill to provide access to health insurance coverage for uninsured children and pregnant women; to the Committee on Finance.

By Mr. DASCHLE (for himself, Mrs. BOXER, Mr. KENNEDY, Mr. BINGAMAN, Ms. MOSELEY-BRAUN, Mr. ROCKEFELLER, Mr. GRAHAM, Ms. MIKULSKI, Mr. KERRY, Mr. REID, Mr. DURBIN, Mr. INOUYE, Mr. TORRICELLI, and Mr. BREAUX):

S. 14. A bill to provide for retirement savings and security, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE (for himself, Mr. BIDEN, Mr. LEAHY, Mr. KOHL, Mr. BREAUX, Mr. FORD, Ms. MIKULSKI, Mr. DODD, Mr. DURBIN, Mr. KERRY, Mr. LEVIN, Ms. LANDRIEU, Mr. TORRICELLI, Ms. MOSELEY-BRAUN, Mr. GLENN, and Mr. ROCKEFELLER):

S. 15. A bill to control youth violence, crime, and drug abuse, and for other purposes; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. HARKIN, Mr. JOHNSON, Mr. DORGAN, Mr. CONRAD, Mr. KERREY, Mr. BAUCUS, Mr. BINGAMAN, Mr. KOHL, Mr. FEINGOLD, Mr. LEAHY, and Mr. WELLSTONE):

S. 16. A bill to ensure the continued viability of livestock producers and the livestock industry in the United States, to assure foreign countries do not deny market access to United States meat and meat products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DASCHLE (for himself, Mr. BREAUX, Mr. KENNEDY, Mr. DODD, Ms. MIKULSKI, Mr. DORGAN, Mr. JOHNSON, Mr. ROCKEFELLER, Mr. KERRY, Ms. MOSELEY-BRAUN, Mr. REID, and Mr. LAUTENBERG):

S. 17. A bill to consolidate certain Federal job training programs by developing a system of vouchers to provide to dislocated workers and economically disadvantaged adults the opportunity to choose the type of job training that most closely meets the needs of such workers and adults, by establishing a one-stop career center system to provide high quality job training and employment-related services, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. LAUTENBERG (for himself, Mr. BAUCUS, Mr. REID, Mr. MOYNIHAN, Mr. GRAHAM, Mrs. BOXER, Mr. WYDEN, Mr. LEVIN, Mr. TORRICELLI, Mr. BREAUX, and Mr. KENNEDY):

S. 18. A bill to assist the States and local governments in assessing and remediating brownfield sites and encouraging environmental cleanup programs, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DODD (for himself, Mr. DASCHLE, Mr. KENNEDY, Ms. MIKULSKI, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. TORRICELLI, and Mrs. BOXER):

S. 19. A bill to provide funds for child care for low-income working families, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DASCHLE (for himself, Mr. REID, Mr. LIEBERMAN, Mr. DORGAN, Mr. BREAUX, Mr. KOHL, Mr. WYDEN, and Mr. BINGAMAN):

S. 20. A bill to amend the Internal Revenue Code of 1986 to increase the rate and spread the benefits of economic growth, and for other purposes; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 21. A bill to establish a medical education trust fund, and for other purposes; to the Committee on Finance.

S. 22. A bill to establish a bipartisan national commission to address the year 2000 computer problem; to the Committee on Governmental Affairs.

By Mr. SPECTER (for himself and Ms. MOSELEY-BRAUN):

S. 23. A bill to promote a new urban agenda, and for other purposes; to the Committee on Finance.

By Mr. SPECTER:

S. 24. A bill to provide improved access to health care, enhance informed individual choice regarding health care services, lower health care costs through the use of appropriate providers, improve the quality of health care, improve access to long-term care, and for other purposes; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. THOMPSON, Mr. WELLSTONE, Mr. GRAHAM, Mr. KERREY, Mr. DODD, Mr. KERRY, Mr. BINGAMAN, Mr. GLENN, Mrs. MURRAY, Mr. KOHL, Mr. WYDEN, Ms. MOSELEY-BRAUN, Mr. REID, Mr. FORD, Mr. LEAHY, Mr. CLELAND, Mr. JOHNSON, and Mr. DURBIN):

S. 25. A bill to reform the financing of Federal elections; to the Committee on Rules and Administration.

By Mr. DASCHLE (for himself, Mr. JOHNSON, Mr. DORGAN, Mr. CONRAD, Mr. KERREY, and Mr. BINGAMAN):

S. 26. A bill to provide a safety net for farmers and consumers and to promote the development of farmer-owned value added processing facilities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. THURMOND:

S. 27. A bill to amend title 1 of the United States Code to clarify the effect and application of legislation; to the Committee on the Judiciary.

By Mr. THURMOND (for himself and Mr. HELMS):

S. 28. A bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes; to the Committee on the Judiciary.

By Mr. LUGAR:

S. 29. A bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers; to the Committee on Finance.

S. 30. A bill to increase the unified estate and gift tax credit to exempt small businesses and farmers from inheritance taxes; to the Committee on Finance.

S. 31. A bill to phase-out and repeal the Federal estate and gift taxes and the tax on generation-skipping transfers; to the Committee on Finance.

By Mr. THURMOND:

S. 32. A bill to amend title 28 of the United States Code to clarify the remedial jurisdiction of inferior Federal courts; to the Committee on the Judiciary.

S. 33. A bill to provide that a Federal justice or judge convicted of a felony shall be suspended from office without pay, to amend the retirement age and service requirements for Federal justices and judges convicted of a felony, and for other purposes; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 34. A bill to phase out Federal funding of the Tennessee Valley Authority; to the Committee on Environment and Public Works.

S. 35. A bill to amend the Reclamation Reform Act of 1982 to clarify the acreage limitations and incorporate a means test for certain farm operations, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. THURMOND:

S. 36. A bill for the relief of Ibrahim Al-Assaad; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 37. A bill to terminate the Uniformed Services University of the Health Sciences; to the Committee on Armed Services.

By Mr. FEINGOLD (for himself and Mr. MCCAIN):

S. 38. A bill to reduce the number of executive branch political appointees; to the Committee on Governmental Affairs.

By Mr. STEVENS (for himself, Mr. BREAUX, Mr. THURMOND, and Mr. MURKOWSKI):

S. 39. A bill to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. FAIRCLOTH (for himself, Mr. INHOFE, and Mr. HELMS):

S. 40. A bill to provide Federal sanctions for practitioners who administer, dispense, or recommend the use of marijuana, and for other purposes; to the Committee on the Judiciary.

By Mr. HELMS:

S. 41. A bill to prohibit the provision of Federal funds to any State or local educational agency that denies or prevents participation in constitutional prayer in schools; read twice and placed on the calendar.

S. 42. A bill to protect the lives of unborn human beings; read twice and placed on the calendar.

By Mr. HELMS (for himself, Mr. DEWINE, Mr. HATCH, Mr. NICKLES, Mr. ABRAHAM, and Mr. FAIRCLOTH):

S. 43. A bill to throttle criminal use of guns; read twice and placed on the calendar.

By Mr. HELMS:

S. 44. A bill to make it a violation of a right secured by the Constitution and laws of the United States to perform an abortion with the knowledge that the abortion is being performed solely because of the gender of the fetus; read twice and placed on the calendar.

S. 45. A bill to amend title X of the Public Health Service Act to permit family planning projects to offer adoption services; read twice and placed on the calendar.

S. 46. A bill to amend the Civil Rights Act of 1964 to make preferential treatment an unlawful employment practice, and for other purposes; read twice and placed on the calendar.

S. 47. A bill to prohibit the executive branch of the Federal Government from establishing an additional class of individuals that is protected against discrimination in Federal employment, and for other purposes; read twice and placed on the calendar.

S. 48. A bill to abolish the National Endowment for the Arts and the National Council on the Arts; read twice and placed on the calendar.

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S. 49. A bill to amend the wetlands regulatory program under the Federal Water Pollution Control Act to provide credit for the low wetlands loss rate in Alaska and recognize the significant extent of wetlands conservation in Alaska, to protect Alaskan property owners, and to ease the burden on overly regulated Alaskan cities, boroughs, municipalities, and villages; to the Committee on Environment and Public Works.

By Mr. FAIRCLOTH (for himself and Mr. CRAIG):

S. 50. A bill to amend the Internal Revenue Code of 1986 to provide a nonrefundable tax credit for the expenses of an education at a 2-year college; to the Committee on Finance.

By Mr. FEINGOLD:

S. 51. A bill to amend the Internal Revenue Code of 1986 to eliminate the percentage depletion allowance for certain minerals; to the Committee on Finance.

S. 52. A bill to amend the Agricultural Adjustment Act to prohibit the Secretary of Agriculture from basing minimum prices for Class I milk on the distance or transportation costs from any location that is not within a marketing area, except under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. THURMOND, and Mr. MOYNIHAN):

S. 53. A bill to require the general application of the antitrust laws to major league baseball, and for other purposes; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. D'AMATO, Mr. HARKIN, and Mr. REID):

S. 54. A bill to reduce interstate street gang and organized crime activity, and for other purposes; to the Committee on the Judiciary.

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 55. A bill to amend the Dairy Production Stabilization Act of 1983 to prohibit bloc voting by cooperative associations of milk producers in connection with the program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 56. A bill to amend the Dairy Production Stabilization Act of 1983 to ensure that all persons who benefit from the dairy promotion and research program contribute to the cost of the program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD (for himself and Mr. REID):

S. 57. A bill 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, to limit soft money of political party committees, and for other purposes; to the Committee on Rules and Administration.

By Mr. FEINGOLD:

S. 58. A bill to modify the estate recovery provisions of the medicaid program to give States the option to recover the costs of home and community-based services for individuals over age 55; to the Committee on Finance.

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 59. A bill to terminate the Extremely Low Frequency Communication System of the Navy; to the Committee on Armed Services.

By Mr. CRAIG:

S. 60. A bill for the relief of Benjamin M. Banfro; to the Committee on the Judiciary.

By Mr. LOTT:

S. 61. A bill to amend title 46, United States Code, to extend eligibility for vertans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II; to the Committee on Veterans Affairs.

By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 62. A bill to prohibit further extension or establishment of any national monument in Idaho without full public participation and an express Act of Congress, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. FEINGOLD:

S. 63. A bill to amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful employment discrimination based on race, color, religion, sex, national origin, age, or disability, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. LUGAR:

S. 64. A bill to state the national missile defense policy of the United States; to the Committee on Armed Services.

By Mr. HATCH:

S. 65. A bill to amend the Internal Revenue Code of 1986 to ensure that members of tax-exempt organizations are notified of the portion of their dues used for political and lobbying activities, and for other purposes; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. LIEBERMAN, Mr. GRASSLEY, and Mr. BREAUX):

S. 66. A bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes; to the Committee on Finance.

By Ms. SNOWE:

S. 67. A bill to amend the Public Health Service Act to extend the program of research on breast cancer; to the Committee on Labor and Human Resources.

By Mr. KYL:

S. 68. A bill to establish a commission to study the impact on voter turnout of making the deadline for filing federal income tax returns conform to the date of federal elections; to the Committee on Rules and Administration.

S. 69. A bill to amend the Internal Revenue Code of 1986 to allow a one-time election of the interest rate to be used to determine present value for purposes of pension cash-out restrictions, and for other purposes; to the Committee on Finance.

By Mrs. BOXER (for herself, Mr. CHAFEE, Mr. REED, and Mr. DURBIN):

S. 70. A bill to apply the same quality and safety standards to domestically manufactured handguns that are currently applied to imported handguns; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. KERRY, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REID, Mr. WYDEN, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. HARKIN, and Mr. LAUTENBERG):

S. 71. A bill to amend the Fair Labor Standards Act of 1938 and the Civil Rights Act of 1964 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KYL:

S. 72. A bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gain rates for all taxpayers, and for other purposes; to the Committee on Finance.

S. 73. A bill to amend the Internal Revenue Code of 1986 to repeal the corporate alternative minimum tax; to the Committee on Finance.

S. 74. A bill to amend the Internal Revenue Code of 1986 to limit the tax rate for certain small businesses, and for other purposes; to the Committee on Finance.

By Mr. KYL (for himself, Mr. ABRAHAM, Mr. COATS, Mr. FAIRCLOTH, Mr. GRAMM, Mr. GRAMS, Mr. HELMS, Mr. HAGEL, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. SHELBY, Mr. SMITH of New Hampshire, and Mr. THURMOND):

S. 75. A bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers; to the Committee on Finance.

By Mr. KYL:

S. 76. A bill to amend the Internal Revenue Code of 1986 to increase the expensing limitation to $250,000; to the Committee on Finance.

By Mr. BREAUX:

S. 77. A bill to provide for one additional Federal judge for the middle district of Louisiana by transferring one Federal judge from the eastern district of Louisiana; to the Committee on the Judiciary.

By Mr. HATCH (for himself and Mr. THOMAS):

S. 78. A bill to provide a fair and balanced resolution to the problem of multiple imposition of punitive damages, and for other purposes; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. KYL, and Mr. THOMAS):

S. 79. A bill to provide a fair and balanced resolution to the problem of multiple imposition of punitive damages, and for the reform of the civil justice system; to the Committee on the Judiciary.

By Mr. KOHL:

S. 80. A bill to amend the Internal Revenue Code of 1986 to provide for the rollover of gain from the sale of farm assets into an individual retirement account; to the Committee on Finance.

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 81. A bill to amend the Dairy Production Stabilization Act of 1983 to require that members of the National Dairy Promotion and Research Board be elected by milk producers and to prohibit bloc voting by cooperative associations of milk producers in the election of the producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KOHL:

S. 82. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers to who provide child care assistance for dependents of their employees, and for other purposes; to the Committee on Finance.

By Mr. AKAKA:

S. 83. A bill to consolidate and revise the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GRAMM:

S. 84. A bill to authorize negotiation of free trade agreements with the countries of the Americas, and for other purposes; to the Committee on Finance.

S. 85. A bill to authorize negotiation for the accession of Chile to the North American Free Trade Agreement, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself and Mr. LEAHY):

S. 86. A bill to amend the Public Health Service Act to provide, with respect to research on breast cancer, for the increased involvement of advocates in decisionmaking at the National Cancer Institute; to the Committee on Labor and Human Resources.

By Ms. SNOWE (for herself and Mrs. FEINSTEIN):

S. 87. A bill to amend the Public Health Service Act to provide a one-stop shopping information service for individuals with serious or life-threatening diseases; to the Committee on Labor and Human Resources.

By Ms. SNOWE:

S. 88. A bill to permit individuals to continue health plan coverage of services while participating in approved clinical studies; to the Committee on Labor and Human Resources.

S. 89. A bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services; to the Committee on Labor and Human Resources.

S. 90. A bill to require studies and guidelines for breast cancer screening for women ages 40-49, and for other purposes; to the Committee on Labor and Human Resources.

S. 91. A bill to establish an Office on Women's Health within the Department of Health and Human Services; to the Committee on Labor and Human Resources.

By Mr. KERRY:

S. 92. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on Labor and Human Resources.

S. 93. A bill to increase funding for child care under the temporary assistance for

needy families program; to the Committee on Finance.

By Mr. BRYAN (for himself and Mr. REID):

S. 94. A bill to provide for the orderly disposal of Federal lands in Nevada, and for the acquisition of certain environmentally sensitive lands in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DORGAN:

S. 95. A bill to provide for the Federal campaign finance reform, and for other purposes; to the Committee on Rules and Administration.

By Mr. INOUYE:

S. 96. A bill to require the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Armed Services.

By Mr. KERRY:

S. 97. A bill to amend the Internal Revenue Code of 1986 and the Social Security Act to require the Internal Revenue Service to collect child support through wage withholding and to eliminate State enforcement of child support obligations other than medical support obligations; to the Committee on Finance.

By Mr. GRAMS (for himself, Mr. HUTCHINSON, Mr. NICKLES, Mr. KYL, and Mr. COATS):

S. 98. A bill to amend the Internal Revenue Code of 1986 to provide a family tax credit; to the Committee on Finance.

By Mrs. BOXER:

S. 99. A bill to amend the Internal Revenue Code of 1986 to allow companies to donate scientific equipment to elementary and secondary schools for use in their educational programs, and for other purposes; to the Committee on Finance.

By Mr. KERRY:

S. 100. A bill to amend title 49, United States Code, to provide protection for airline employees who provide certain air safety information, and for other purposes; to the Committee on Labor and Human Resources.

By Mrs. BOXER:

S. 101. A bill to amend the Public Health Service Act to provide for the training of health professions students with respect to the identification and referral of victims of domestic violence; to the Committee on Labor and Human Resources.

By Mr. BREAUX (for himself, Mr. AKAKA, Mr. BINGAMAN, Mr. CHAFEE, Mr. COCHRAN, Mr. CRAIG, Mr. GLENN, Mr. JEFFORDS, Mr. LEAHY, Mr. INOUYE, Ms. MIKULSKI, and Mr. REID):

S. 102. A bill to amend title XVIII of the Social Security Act to improve Medicare treatment and education for beneficiaries with diabetes by providing coverage of diabetes outpatient self-management training services and uniform coverage of blood-testing strips for individuals with diabetes; to the Committee on Finance.

By Mr. KENNEDY:

S. 103. A bill to amend the Immigration and Nationality Act to provide additional measures for the control of illegal immigration; to the Committee on the Judiciary.

By Mr. MURKOWSKI (for himself, Mr. CRAIG, Mr. GRAMS, Mr. KEMPTHORNE, Mr. ABRAHAM, Mr. HELMS, Mr. THURMOND, Mr. KYL, Mr. HOLLINGS, Mr. MACK, Mr. FAIRCLOTH, Mr. HATCH, Mr. WARNER, Mr. BOND, Mr. SMITH of New Hampshire, Mr. ROBERTS, Mr. SANTORUM, Mr. LOTT, and Mr. JEFFORDS):

S. 104. A bill to amend the Nuclear Waste Policy Act of 1982; to the Committee on Energy and Natural Resources.

By Mr. MOYNIHAN:

S. 105. A bill to repeal the habeas corpus requirement that a Federal court defer to State court judgments and uphold a conviction regardless of whether the Federal court believes that the State court erroneously interpreted Constitutional law, except in cases where the Federal court believes the State court acted in an unreasonable manner; to the Committee on the Judiciary.

By Mrs. BOXER:

S. 106. A bill to require that employees who participate in cash or deferred arrangements are free to determine whether to be invested in employer real property and employer securities, and if not, to protect such employees by applying the same prohibited transaction rules that apply to traditional defined benefit pension plans, and for other purposes; to the Committee on Finance.

S. 107. A bill to require the offer in every defined benefit plan of a joint and 2/3 survivor annuity option and to require comparative disclosure of all benefit options to both spouses; to the Committee on Finance.

S. 108. A bill to require annual, detailed investment reports by plans with qualified cash or deferred arrangements, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 109. A bill to provide Federal housing assistance to Native Hawaiians; to the Committee on Indian Affairs.

S. 110. A bill to amend the Native American Graves Protection and Repatriation Act to provide for improved notification and consent, and for other purposes; to the Committee on Indian Affairs.

By Mr. INOUYE:

S. 111. A bill to amend the Immigration and Nationality Act to facilitate the immigration to the United States of certain aliens born in the Philippines or Japan who were fathered by United States citizens; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S. 112. A bill to amend title 18, United States Code, to regulate the manufacture, importation, and sale of ammunition capable of piercing police body armor; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 113. A bill to amend title VII of the Public Health Service Act to establish a psychology post-doctoral fellowship program, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. INOUYE (for himself, Mr. THOMAS, Mr. COCHRAN, and Mr. STEVENS):

S. 114. A bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment; to the Committee on Finance.

By Mr. INOUYE:

S. 115. A bill to increase the role of the Secretary of Transportation in administering section 901 of the Merchant Marine Act, 1936, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 116. A bill to restore the traditional day of observance of Memorial Day; to the Committee on the Judiciary.

S. 117. A bill to amend the Internal Revenue Code of 1986 to provide for the tax treatment of residential ground rents, and for other purposes; to the Committee on Finance.

S. 118. A bill to provide for the completion of the naturalization process for certain nationals of the Philippines; to the Committee on the Judiciary.

S. 119. A bill to amend title VII of the Public Health Service Act to ensure that social work students or social work schools are eligible for support under the Health Careers Opportunity Program, the Minority Centers of Excellence Program, and programs of grants for training projects in geriatrics, and to establish a social work training program; to the Committee on Labor and Human Resources.

S. 120. A bill to amend title VII of the Public Health Service Act to make certain graduate programs in clinical psychology eligible to participate in various health professions loan programs; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself, Mr. CHAFEE, Mr. KENNEDY, and Ms. MOSELEY-BRAUN):

S. 121. A bill to amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 122. A bill to amend the Internal Revenue Code of 1986 to correct the treatment of tax-exempt financing of professional sports facilities; to the Committee on Finance.

By Mr. INOUYE:

S. 123. A bill to amend title 10, United States Code, to increase the grade provided for the heads of the nurse corps of the Armed Forces; to the Committee on Armed Services.

By Mr. GRAMM (for himself, Mr. MACK, and Mrs. HUTCHISON):

S. 124. A bill to invest in the future of the United States by doubling the amount authorized for basic science and medical research; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 125. A bill to provide that the Federal medical assistance percentage for any State or territory shall not be less than 60 percent; to the Committee on Finance.

By Mr. INOUYE:

S. 126. A bill to amend title VII of the Public Health Service Act to revise and extend certain programs relating to the education of individuals as health professionals, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself, Mr. ROTH, Mr. CHAFEE, Mr. BAUCUS, Mr. BINGAMAN, Mrs. BOXER, Mr. BRYAN, Mr. CRAIG, Mr. D'AMATO, Mr. FORD, Mr. GLENN, Mr. GRASSLEY, Mr. HATCH, Mr. KENNEDY, Mr. KERRY, Mr. KYL, Mr. LEAHY, Mr. LIEBERMAN, Mr. MCCONNELL, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. ROBB, Mr. ROCKEFELLER, Mr. SHELBY, Mr. TORRICELLI, and Mr. WYDEN):

S. 127. A bill to amend the Internal Revenue Code of 1986 to make permanent the exclusion for employer-provided educational assistance programs, and for other purposes; to the Committee on Finance.

By Mr. INOUYE:

S. 128. A bill to amend the Public Health Service Act to provide health care practitioners in rural areas with training in preventive health care, including both physical and mental care, and for other purposes; to the Committee on Labor and Human Resources.

S. 129. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores; to the Committee on Armed Services.

S. 130. A bill to amend the Internal Revenue Code of 1986 to provide a credit for the purchase of child restraint systems used in motor vehicles; to the Committee on Finance.

By Mr. MOYNIHAN (for himself, Mr. LIEBERMAN, and Mr. JEFFORDS):

S. 131. A bill to amend chapter 5 of title 13, United States Code, to require that any data relating to the incidence of poverty produced or published by the Secretary of Commerce for subnational areas is corrected for differences in the cost of living in those areas; to the Committee on Governmental Affairs.

By Mr. MOYNIHAN:

S. 132. A bill to prohibit the use of certain ammunition, and for other purposes; to the Committee on the Judiciary.

S. 133. A bill to amend the Internal Revenue Code of 1986 to increase the tax on handgun ammunition, to impose the special occupational tax and registration requirements on importers and manufacturers of handgun ammunition, and for other purposes; to the Committee on Finance.

S. 134. A bill to amend title 18, United States Code, with respect to the licensing of ammunition manufacturers, and for other purposes; to the Committee on the Judiciary.

S. 135. A bill to provide for the collection and dissemination of information on injuries, death, and family dissolution due to bullet-related violence, to require the keeping of records with respect to dispositions of ammunition, and to increase taxes on certain bullets; to the Committee on Finance.

S. 136. A bill to amend chapter 44 of title 18, United States Code, to prohibit the manufacture, transfer, or importation of .25 caliber and .32 caliber and 9 millimeter ammunition; to the Committee on the Judiciary.

S. 137. A bill to tax 9 millimeter, .25 caliber, and .32 caliber bullets; to the Committee on Finance.

By Mr. FAIRCLOTH:

S. 138. A bill to eliminate certain benefits for Members of Congress, and for other purposes; to the Committee on Governmental Affairs.

By Mr. FAIRCLOTH (for himself, Mr. LOTT, Mr. HELMS, Mr. BENNETT, Mr. KYL, Mr. SMITH of New Hampshire, Mr. THURMOND, Mr. BOND, and Mr. SHELBY):

S. 139. A bill to amend titles II and XVIII of the Social Security Act to prohibit the use of Social Security and Medicare trust funds for certain expenditures relating to union representatives at the Social Security Administration and the Department of Health and Human Services; to the Committee on Finance.

By Mr. FAIRCLOTH:

S. 140. A bill to improve the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; to the Committee on Finance.

S. 141. A bill to reorder United States budget priorities with respect to United States assistance to foreign countries and international organizations; to the Committee on Foreign Relations.

S. 142. A bill to amend the Fair Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DASCHLE (for himself, Mr. HOLLINGS, Mr. KENNEDY, Ms. MIKULSKI, Mr. LEVIN, Ms. MOSELEY-BRAUN, Mrs. BOXER, Mrs. FEINSTEIN, Mr. INOUYE, Mrs. MURRAY, Mr. JOHNSON, Mr. BRYAN, Mr. SARBANES, Mr. FORD, and Mr. LAUTENBERG):

S. 143. A bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for a minimum hospital stay for mastectomies and lymph node disssections performed for the treatment of breast cancer; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself and Mr. KERREY):

S. 144. A bill to establish the Commission to Study the Federal Statistical System, and for other purposes; to the Committee on Governmental Affairs.

S. 145. A bill to repeal the prohibition against government restrictions on communications between government agencies and the INS; to the Committee on the Judiciary.

By Mr. FRIST (for Mr. ROCKEFELLER (for himself and Mr. FRIST)):

S. 146. A bill to permit Medicare beneficiaries to enroll with qualified provider-sponsored organizations under title XVIII of the Social Security Act, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE (for himself, Mr. CHAFEE, Mr. KENNEDY, Mr. JOHNSON, and Mr. REID):

S. 147. A bill to amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the Medicaid program, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE (for himself, Mr. CHAFEE, Mr. BINGAMAN, Mr. INOUYE, Mrs. MURRAY, Mr. JOHNSON, Mr. CAMPBELL, and Mr. REID):

S. 148. A bill to amend the Public Health Service Act to provide a comprehensive program for the prevention of Fetal Alcohol Syndrome; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself and Mr. GRASSLEY):

S. 149. A bill to amend the National Narcotics Leadership Act of 1988 to establish qualification standards for individuals nominated to be the Deputy Director of Demand Reduction in the Office of National Drug Control Policy; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself, Mr. D'AMATO, and Mr. DODD):

S. 150. A bill to amend section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), to provide for disclosure of information relating to individuals who committed Nazi war crimes, and for other purposes; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S. 151. A bill for the relief of Dr. Yuri F. Orlov of Ithaca, New York; to the Committee on Governmental Affairs.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 152. A bill to provide for the relief and payment of an equitable claim to the estate of Dr. Beatrice Braude of New York, New York; to the Committee on the Judiciary.

By Mr. MOYNIHAN (for himself and Mr. ASHCROFT):

S. 153. A bill to amend the Age Discrimination in Employment Act of 1967 to allow institutions of higher education to offer faculty members who are serving under an arrangement providing for unlimited tenure, benefits on voluntary retirement that are reduced or eliminated on the basis of age, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 154. A bill to improve Orchard Beach, New York; to the Committee on Environment and Public Works.

S. 155. A bill to redesignate General Grant National Memorial as Grant's Tomb National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 156. A bill to provide certain benefits of the Pick-Sloan Missouri River Basin program for the Lower Brule Sioux Tribe, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S. 157. A bill to amend title XIX of the Social Security Act to provide for coverage of services provided by nursing school clinics under State Medicaid programs; to the Committee on Finance.

S. 158. A bill to amend title XVIII of the Social Security Act to provide improved reimbursement for clinical social worker services under the Medicare program, and for other purposes; to the Committee on Finance.

S. 159. A bill to amend title XVIII of the Social Security Act to remove the restriction that a clinical psychologist or clinical social worker provide services in a comprehensive outpatient rehabilitation facility to a patient only under the care of a physician, and for other purposes; to the Committee on Finance.

S. 160. A bill to amend title 5, United States Code, to require the issuance of a prisoner-of-war medal to civilian employees of the Federal Government who are forcibly detained or interned by an enemy government or a hostile force under wartime conditions; to the Committee on Governmental Affairs.

S. 161. A bill to amend title 38, United States Code, to revise certain provisions relating to the appointment of clinical and counseling psychologists in the Veterans Health Administration, and for other purposes; to the Committee on Veterans' Affairs.

S. 162. A bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

S. 163. A bill to recognize the organization known as the National Academies of Practices; to the Committee on the Judiciary.

S. 164. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect, to be conducted by a clinical social worker; to the Committee on the Judiciary.

S. 165. A bill for the relief of Donald C. Pence; to the Committee on the Judiciary.

S. 166. A bill to amend section 1086 of title 10, United States Code, to provide for payment under CHAMPUS of certain health care expenses incurred by certain members and former members of the uniformed services and their dependents to the extent that such expenses are not payable under medicare, and for other purposes; to the Committee on Armed Services.

S. 167. A bill for the relief of Alfredo Tolentino of Honolulu, Hawaii; to the Committee on Government Affairs.

By Mr. DEWINE:

S. 168. A bill to reform criminal procedure, and for other purposes; to the Committee on the Judiciary.

By Mr. CRAIG:

S. 169. A bill to amend the Immigration and Nationality Act with respect to the admission of temporary H–2A workers; to the Committee on the Judiciary.

By Mr. DEWINE:

S. 170. A bill to provide for a process to authorize the use of clone pagers, and for other purposes; to the Committee on the Judiciary.

S. 171. A bill to amend title 18, United States Code, to insert a general provision for criminal attempt; to the Committee on the Judiciary.

S. 172. A bill to amend title 18, United States Code, to set forth the civil jurisdiction of the United States for crimes committed by persons accompanying the Armed Forces outside of the United States, and for other purposes; to the Committee on the Judiciary.

S. 173. A bill to expedite State reviews of criminal records of applicants for private security officer employment, and for other purposes; to the Committee on the Judiciary.

S. 174. A bill to establish the Fallen Timbers Battlefield, Fort Meigs, and Fort Miamis National Historical Site in the State of Ohio; to the Committee on Energy and Natural Resources.

By Mr. INOUYE:

S. 175. A bill to amend chapter 81 of title 5, United States Code, to authorize the use of clinical social workers to conduct evaluations to determine work-related emotional and mental illnesses; to the Committee on Governmental Affairs.

S. 176. A bill for the relief of Susan Rebola Cardenas; to the Committee on the Judiciary.

S. 177. A bill to provide for a special application of section 1034 of the Internal Revenue Code of 1986; to the Committee on Finance.

By Mr. DEWINE:

S. 178. A bill to amend the Social Security Act to clarify that the reasonable efforts requirement includes consideration of the health and safety of the child; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. LOTT, Mr. THURMOND, Mr. CRAIG, Mr. NICKLES, Mr. DOMENICI, Mr. STEVENS, Mr. ROTH, Mr. BRYAN, Mr. KOHL, Mr. GRASSLEY, Mr. GRAHAM, Mr. SPECTER, Mr. BAUCUS, Mr. THOMPSON, Mr. BREAUX, Mr. KYL, Ms. MOSELEY-BRAUN, Mr. DEWINE, Mr. ROBB, Mr. ABRAHAM, Mr. ASHCROFT, Mr. SESSIONS, Mr. D'AMATO, Mr. HELMS, Mr. LUGAR, Mr. CHAFEE, Mr. MCCAIN, Mr. JEFFORDS, Mr. WARNER, Mr. COVERDELL, Mr. COCHRAN, Mrs. HUTCHISON, Mr. MACK, Mr. GRAMM, Ms. SNOWE, Mr. ALLARD, Mr. BROWNBACK, Ms. COLLINS, Mr. ENZI, Mr. HAGEL, Mr. HUTCHINSON, Mr. ROBERTS, Mr. SMITH of Oregon, Mr. BENNETT, Mr. BOND, Mr. BURNS, Mr. CAMPBELL, Mr. COATS, Mr. FAIRCLOTH, Mr. FRIST, Mr. GORTON, Mr. GRAMS, Mr. GREGG, Mr. INHOFE, Mr. KEMPTHORNE, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH of New Hampshire, and Mr. THOMAS):

S.J. Res. 1. A joint resolution proposing an amendment to the Constitution of the United States to require a balanced budget; to the Committee on the Judiciary.

By Mr. HOLLINGS (for himself, Mr. SPECTER, Mr. DASCHLE, Mr. DORGAN, Mr. SHELBY, Mr. REID, Mr. FORD, and Mr. REED):

S.J. Res. 2. A joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections; to the Committee on the Judiciary.

By Mr. THURMOND:

S.J. Res. 3. A joint resolution proposing an amendment to the Constitution of the United States relating to voluntary school prayer; to the Committee on the Judiciary.

S.J. Res. 4. A joint resolution proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S.J. Res. 5. A joint resolution waiving certain provisions of the Trade Act of 1974 relating to the appointment of the United States Trade Representative; to the Committee on Finance.

By Mr. KYL (for himself and Mrs. FEINSTEIN):

S.J. Res. 6. A joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims; to the Committee on the Judiciary.

By Mr. GRAMM:

S.J. Res. 7. A joint resolution proposing an amendment to the Constitution of the United States to require a balanced budget; to the Committee on the Judiciary.

By Mr. KYL:

S.J. Res. 8. A joint resolution proposing an amendment to the Constitution of the United States to provide that expenditures for a fiscal year shall exceed neither revenues for such fiscal year nor 19 per centum of the Nation's gross domestic product for the last calendar year ending before the beginning of such fiscal year; to the Committee on the Judiciary.

By Mr. KYL (for himself, Mr. ABRAHAM, Mr. BROWNBACK, Mr. COVERDELL, Mr. CRAIG, Mr. FAIRCLOTH, Mr. GRAMS, Mr. HAGEL, Mr. HELMS, Mrs. HUTCHISON, Mr. HUTCHINSON, Mr. INHOFE, Mr. MCCAIN, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire and Mr. THOMPSON):

S.J. Res. 9. A joint resolution proposing an amendment to the Constitution of the United States to require two-thirds majorities for increasing taxes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MACK (for himself, Mr. GRAMM, Mr. FRIST, Mr. D'AMATO, and Mr. SPECTER):

S. Res. 15. A resolution expressing the sense of the Senate that the Federal commitment to biomedical research should be increased substantially over the next 5 years; to the Committee on Appropriations.

By Mr. LUGAR:

S. Res. 16. A resolution expressing the sense of the Senate that the income tax should be eliminated and replaced with a national sales tax; to the Committee on Finance.

S. Res. 17. A resolution on the ratification of the Chemical Weapons Convention; to the Committee on Foreign Relations.

By Mr. FAIRCLOTH:

S. Res. 18. A resolution to express the sense of the Senate regarding reduction of the national debt; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977 with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. MOYNIHAN (for himself, Mr. HELMS, Mr. LEAHY, Mr. JEFFORDS, Mr. DODD, Mr. FEINGOLD, and Mr. WELLSTONE):

S. Res. 19. A resolution expressing the sense of the Senate regarding United States opposition to the prison sentence of Tibetan ethnomusicologist Ngawang Choephel by the Government of the People's Republic of China; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COVERDELL (for himself, Mr. COATS, Mr. GREGG, Mr. LOTT, Mr. BOND, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mrs. HUTCHISON, Mr. HUTCHINSON, Mr. KYL, Mr. MCCAIN, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. SMITH of New Hampshire, Mr. THURMOND, and Mr. WARNER):

S. 1. A bill to provide for safe and affordable schools; to the Committee on Finance.

THE SAFE AND AFFORDABLE SCHOOLS ACT OF 1997

Mr. COVERDELL. Mr. President, for people to remain free, they must be educated. It is at the foundation of our liberty. This bill that has just been referred owes a great debt to Senator COATS of Indiana, Senator GREGG of New Hampshire, Senator ROTH of Delaware, Senator JEFFORDS of Vermont, Senator BOND of Missouri, Senator SHELBY of Alabama, and Senator GRASSLEY of Iowa.

Mr. President, there is a grave condition in our elementary and high schools across the land. Forty-six percent of our students have made at least one change in daily routine because of concerns about personal safety. Twenty-nine percent said it was easy to get illegal drugs. Seventy-nine percent have friends who are regular drinkers. Sixty-eight percent can buy marijuana within a day. Sixty-two percent have friends who use marijuana.

During the last 15 years, Mr. President, tuition at 4-year public colleges

and universities rose 234 percent. In contrast, median household income rose only 82 percent, putting an ever tighter squeeze on those families that choose to and desire to send their children to college.

Since 1990, American college students have borrowed over $100 billion, and borrowing among students and families to seek their higher education has skyrocketed.

Mr. President, since 1965, the United States has spent half a trillion dollars—$500 billion—on Federal education programs, yet 66 percent of 17-year-olds do not read at a proficient level, and reading scores have been declining for three decades. Moreover, 75 percent of fourth graders nationally scored below the proficient level of reading.

Mr. President, the Safe and Affordable Schools Act believes that no family—no family—in America should be forced to send their student to an unsafe, violent, and drug-infested school. I repeat, no family should be forced—forced—to put their child in a school that is certifiably unsafe, certifiably drug ridden.

This act will provide choice for children attending unsafe schools and provide an escape route from those kinds of schools. This act will ensure safe and drug-free schools and offers a grant program to those schools who are building better safety in the school place.

It is hard to believe, Mr. President, that 40 percent of our students today do not feel safe in school. One in five are taking a weapon to school. There are 2,000 acts of violence every hour in American classrooms.

Every student who chooses to go to college ought to have an affordable plan to do it. At the center point of this legislation is the Bob Dole Educational Investment Account. This will allow a family to put $1,000 a year, after tax, into an investment account of their choice, and when they are ready to send their child to school, the funds withdrawn from that account will occur with no tax liability. In other words, a plan setting forth, under the name of our former colleague, an opportunity for families to plan for their child's future education.

It will provide for the deduction of student loan interest. It will protect State prepaid tuition plans. It will provide and extend employer-provided educational assistance, and it will make nontaxable work-study awards, all geared toward making it possible for that family, that student, to provide for their higher education.

The Presiding Officer is very familiar with the Federal Government's propensity to force unfunded mandates on State and local governments. Such is the case with the individuals in the Disabilities Education Act, which was mandated by the Federal Government but never really paid for by the Federal Government. We are only making about a 7 percent to 8 percent contribution.

This act will authorize spending up to $10 billion over the next 7 years so that the Federal Government will be a true partner in that mandate and fund upwards to 40 percent of this act that was imposed on State . government, freeing those State governments of funds thatthey can use to better improve their educational system.

Mr. President, when students arrive at college they ought to be proficient in the basic skills. I just cited figures that said they are not. This act will promote adult education and family literacy. The legislation provides $400 million in the form of block grants to States to establish programs to combat illiteracy. The bill creates a separate $100 million fund to provide incentive grants to encourage local innovation in addressing the problem of illiteracy.

Mr. President, I began my remarks by saying that one of the fundamental extensions of freedom is education. This has always been the case in America. We have come to a time when the schoolroom is not safe. Therefore, the education that must emanate there is severely impaired. This education is a function of the States. The Federal Government has a role in leadership and innovation and assistance. That is at the core of this legislation we are offering today.

Mr. President, I appreciate the opportunity to describe the act today.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1

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 "Safe and Affordable Schools Act of 1997".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) in too many of our Nation's elementary and secondary schools the test confronting our Nation's children is survival, not learning;

(2) our Nation's schools will not be restored to excellence unless parents, States, and local communities take the lead; and

(3) the Federal Government's role in education is quite properly to encourage, not to mandate.

(b) PURPOSE.—The purpose of this Act is—

(1) to ensure that parents, local communities and States have the primary role in educating our Nation's children;

(2) to restore excellence to our Nation's schools;

(3) to give local communities and States maximum flexibility in administering Federal education programs;

(4) to allow education reforms to be tailored to the unique needs of local communities and States;

(5) to place the highest priority on providing our Nation's students with safe, drug-free learning environments;

(6) to ensure that the choice of whether to attend college is to the greatest extent possible the result of individual student desire and initiative, not the result of economic circumstances that leave young parents wondering how they can best provide such an education in the face of staggering college tuition costs;

(7) to focus resources on adult education, realizing that education often is a lifelong process; and

(8) to promote literacy by attacking our Nation's unacceptably high level of illiteracy.

TITLE I—SAFE AND DRUG-FREE SCHOOLS INITIATIVE

Subtitle A—Student Opportunity and Safety

SEC. 111. SHORT TITLE.

This subtitle may be cited as the "Student Opportunity and Safety Act".

SEC. 112. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds as follows:

(1) Violence, crime, and illegal drug activity have increased significantly in our Nation's public schools.

(2) It is estimated that 3,000,000 violent acts or thefts occur in or near schools, and that one in five public high school students carries a weapon.

(3) The incidence of violence, and criminal and illegal drug activity within public elementary and secondary schools threatens the school environment and interferes with the learning process.

(4) 2,000,000 more children are using drugs in 1997 than were doing so in 1993. For the first time in the 1990s, over half of our Nation's graduating high school seniors have experimented with drugs and approximately 1 out of every 4 of the students have used drugs in the past month.

(5) After 11 years of declining marijuana use among children aged 12 to 17, such use doubled between 1992 and 1995. The number of 8th graders who have used marijuana in the past month has more than tripled since 1991.

(6) More of our Nation's school children are becoming involved with hard core drugs at earlier ages, as use of heroin and cocaine by 8th graders has more than doubled since 1991.

(7) Students have a right to be safe and secure in their persons while attending school.

(8) Low-income families whose children attend high poverty public schools generally lack the financial ability to enroll their children in private schools or the opportunity to choose to enroll their children in public schools less impacted by poverty, illegal drugs, or violence, while such alternatives are typically available to more affluent families.

(9) Numerous research studies, including the 1993 National Assessment of the Chapter 1 Program, have concluded that students attending high poverty public schools have much lower levels of academic achievement than other students, regardless of the income level of the family of such students.

(10) Federally supported efforts to meet the educational needs of disadvantaged children attending high poverty schools have had little, if any, success in improving student achievement, especially in the highest poverty schools and school districts.

(11) Evidence obtained from systematic evaluations of school choice demonstration projects that involve public and private, including sectarian, schools will make an important contribution toward resolving debates over the most effective means of improving the academic achievement of disadvantaged children.

(12) It is increasingly important that children from families of all income levels meet high standards of academic achievement, in order to exercise the responsibilities of citizenship and to compete in globally competitive markets.

(b) PURPOSE.—It is the purpose of this subtitle—

(1) to provide children from low-income families who attend unsafe schools with the option of attending safer schools;

(2) to improve schools and academic programs by providing certain low-income parents with increased consumer power and dollars to choose safer and drug-free schools and programs that such parents determine best fit the needs of their children;

(3) to engage more fully certain low-income parents in their children's schooling;

(4) through families, to provide at the school site new dollars that teachers and principals may use to help certain children achieve high educational standards; and

(5) to demonstrate, through a discretionary demonstration grant program, the effects of projects that provide certain low-income families with more of the same choices regarding all schools, including public, private, or sectarian schools, that wealthier families have.

SEC. 113. DEFINITIONS.

As used in this subtitle—

(1) the term "choice school" means any public or private school, including a private sectarian school or a public charter school, that—

(A) is involved in a demonstration project assisted under this subtitle; and

(B) is not an unsafe school;

(2) the term "eligible child" means a child in any of the grades 1 through 12—

(A) whose family income does not exceed 185 percent of the poverty line; and

(B) who would normally be assigned to attend an unsafe school in the absence of—

(i) a demonstration project under this subtitle; or

(ii) participation, prior to the date of enactment of this Act, in a school choice program;

(3) the term "eligible entity" means a public agency, institution, or organization, such as a State, a State or local educational agency, a consortium of public agencies, or a consortium of public and private nonprofit organizations, that can demonstrate, to the satisfaction of the Secretary, its ability to—

(A) receive, disburse, and account for Federal funds; and

(B) carry out the activities described in its application under this subtitle;

(4) the term "evaluating agency" means any academic institution, consortium of professionals, or private or nonprofit organization, with demonstrated experience in conducting evaluations, that is not an agency or instrumentality of the Federal Government;

(5) the term "local educational agency" has the same meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801);

(6) the term "parent" includes a legal guardian or other individual acting in loco parentis;

(7) the term "poverty line" means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved;

(8) the term "school" means a school that provides elementary education or secondary education (through grade 12), as determined under State law;

(9) the term "Secretary" means the Secretary of Education;

(10) the term "State" means each of the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(11) the term "unsafe school" means a school that has serious crime, violence, illegal drug, and discipline problems, as indicated by conditions that may include high rates of—

(A) expulsions and suspensions of students from school;

(B) referrals of students to alternative schools for disciplinary reasons, to special programs or schools for delinquent youth, or to juvenile court;

(C) victimization of students or teachers by criminal acts, including robbery, assault and homicide;

(D) enrolled students who are under court supervision for past criminal behavior;

(E) possession, use, sale or distribution of illegal drugs;

(F) enrolled students who are attending school while under the influence of illegal drugs;

(G) possession or use of guns or other weapons;

(H) participation in youth gangs; or

(I) crimes against property, such as theft or vandalism.

SEC. 114. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $50,000,000 for the fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002, to carry out this subtitle.

SEC. 115. PROGRAM AUTHORIZED.

(a) RESERVATION.—From the amount appropriated pursuant to the authority of section 114 in any fiscal year, the Secretary shall reserve and make available to the Comptroller General of the United States 2 percent for evaluation of programs assisted under this subtitle in accordance with section 121.

(b) GRANTS.—

(1) IN GENERAL.—From the amount appropriated pursuant to the authority of section 114 and not reserved under subsection (a) for any fiscal year, the Secretary shall award grants to eligible entities to enable such entities to carry out at least 20, but not more than 30, demonstration projects under which low-income parents receive education certificates for the costs of enrolling their eligible children in a choice school.

(2) AMOUNT.—The Secretary shall award grants under paragraph (1) for fiscal year 1998 so that—

(A) not more than 2 grants are awarded in amounts of $5,000,000 or less; and

(B) grants not described in subparagraph (A) are awarded in amounts of $3,000,000 or less.

(3) CONTINUING ELIGIBILITY.—The Secretary shall continue a demonstration project under this subtitle by awarding a grant under paragraph (1) to an eligible entity that received such a grant for a fiscal year preceding the fiscal year for which the determination is made, if the Secretary determines that such eligible entity was in compliance with this subtitle for such preceding fiscal year.

(4) PRIORITY.—The Secretary shall give priority to awarding a grant under paragraph (1) to an eligible entity that—

(A) is conducting a school choice program, involving public or private schools, on the date of enactment of this Act; and

(B) operates a school choice program, involving public and private schools, that is authorized by Federal law.

(c) USE OF GRANTS.—Grants awarded under subsection (b) shall be used to pay the costs of—

(1) providing education certificates to low-income parents to enable such parents to pay the tuition, the fees, the allowable costs of transportation, if any, and the costs of complying with section 119(a)(1), if any, for their eligible children to attend a choice school; and

(2) administration of the demonstration project, which shall not exceed 15 percent of the amount received in the first fiscal year for which the eligible entity provides education certificates under this subtitle or 10 percent in any subsequent year, including—

(A) seeking the involvement of choice schools in the demonstration project;

(B) providing information about the demonstration project, and the schools involved in the demonstration project, to parents of eligible children;

(C) making determinations of eligibility for participation in the demonstration project for eligible children;

(D) selecting students to participate in the demonstration project;

(E) determining the amount of, and issuing, education certificates;

(F) compiling and maintaining such financial and programmatic records as the Secretary may prescribe; and

(G) collecting such information about the effects of the demonstration project as the evaluating agency may need to conduct the evaluation described in section 121.

(d) SPECIAL RULE.—Any school participating in the demonstration program under this subtitle shall comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and not discriminate on the basis of race, color, or national origin.

(e) SUPPLEMENT NOT SUPPLANT.—Each eligible entity receiving funds under this subtitle shall use such funds to supplement and not supplant the amount of funds that would, in the absence of such Federal funds, be made available from other sources to carry out the activities assisted under this subtitle.

(f) SUPPLEMENTATION OF FUNDING.—Each eligible entity receiving funds under this section is encouraged to supplement the funding received under this subtitle with funding received from State, local, or private sources.

(g) EDUCATION CERTIFICATES.—

(1) ASSISTANCE TO FAMILIES, NOT CHOICE SCHOOLS.—Education certificates provided under this subtitle shall be considered to be aid to families, not choice schools. A parent's use of an education certificate at a choice school under this subtitle shall not be construed to be Federal financial aid or assistance to that choice school.

(2) TAXES AND DETERMINATIONS OF ELIGIBILITY FOR OTHER FEDERAL PROGRAMS.—Education certificates provided under this subtitle shall not be considered as income to an eligible child or the parent of such eligible child for Federal, State, or local tax purposes or for determining eligibility for any other Federal program.

SEC. 116. AUTHORIZED PROJECTS; PRIORITY.

(a) AUTHORIZED PROJECTS.—The Secretary may award a grant under this subtitle only for a demonstration project that—

(1) involves at least one local educational agency that—

(A) receives funds under section 1124A of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6334); and

(B) is among the 20 percent of local educational agencies receiving funds under section 1124A of such Act (20 U.S.C. 6334) in the

State and having the highest number or greatest percentage of children described in section 1124(c) of such Act (20 U.S.C. 6333(c)); and

(2) includes the involvement of a sufficient number of public and private choice schools, including sectarian schools, to allow for a valid demonstration project.

(b) PRIORITY.—In awarding grants under this subtitle, the Secretary shall give priority to demonstration projects—

(1) in which choice schools offer an enrollment opportunity to the broadest range of eligible children;

(2) that involve diverse types of choice schools; and

(3) that will contribute to the geographic diversity of demonstration projects assisted under this subtitle, including awarding grants for demonstration projects in States that are primarily rural and awarding grants for demonstration projects in States that are primarily urban.

SEC. 117. APPLICATIONS.

(a) IN GENERAL.—Any eligible entity that wishes to receive a grant under this subtitle shall submit an application to the Secretary at such time and in such manner as the Secretary may prescribe.

(b) CONTENTS.—Each application described in subsection (a) shall contain—

(1) information demonstrating the eligibility for participation in the demonstration program of the eligible entity;

(2) a description of how the eligible entity will determine a school to be a unsafe school in accordance with section 113(11);

(3) with respect to choice schools—

(A) a description of the types of potential choice schools that will be involved in the demonstration project;

(B)(i) a description of the procedures used to encourage public and private schools to be involved in the demonstration project; and

(ii) a description of how the eligible entity will annually determine the number of spaces available for eligible children in each choice school;

(C) an assurance that each choice school will not impose higher standards for admission or participation in its programs and activities for eligible children provided education certificates under this subtitle than the choice school does for other children;

(D) an assurance that the eligible entity will terminate the involvement of any choice school that fails to comply with the conditions of its involvement in the demonstration project; and

(E) a description of the extent to which choice schools will accept education certificates under this subtitle as full or partial payment for tuition and fees;

(4) with respect to the participation in the demonstration project of eligible children—

(A) a description of the procedures to be used to make a determination of eligibility for participation in the demonstration project for an eligible child;

(B) a description of the procedures to be used to ensure that, in selecting eligible children to participate in the demonstration project, the eligible entity will—

(i) apply the same criteria to both public and private school eligible children; and

(ii) give priority to eligible children from the lowest income families;

(C) a description of the procedures to be used to ensure maximum choice of schools for participating eligible children; and

(D) a description of the procedures to be used to ensure compliance with section 119(a)(1), which may include—

(i) the direct provision of services by a local educational agency; and

(ii) arrangements made by a local educational agency with other service providers;

(5) with respect to the operation of the demonstration project—

(A) a description of the procedures to be used for the issuance and redemption of education certificates under this subtitle;

(B) a description of the procedures by which a choice school will make a pro rata refund of the education certificate under this subtitle for any participating eligible child who withdraws from the school for any reason, before completing 75 percent of the school attendance period for which the education certificate was issued;

(C) a description of the procedures to be used to provide the parental notification described in section 120;

(D) an assurance that the eligible entity will place all funds received under this subtitle into a separate account, and that no other funds will be placed in such account;

(E) an assurance that the eligible entity will cooperate with the Comptroller General of the United States and the evaluating agency in carrying out the evaluations described in section 121; and

(F) an assurance that the eligible entity will—

(i) maintain such records as the Secretary may require; and

(ii) comply with reasonable requests from the Secretary for information; and

(6) such other assurances and information as the Secretary may require.

SEC. 118. EDUCATION CERTIFICATES.

(a) EDUCATION CERTIFICATES.—

(1) AMOUNT.—The amount of an eligible child's education certificate under this subtitle shall be determined by the eligible entity, but shall be an amount that provides to the recipient of the education certificate the maximum degree of choice in selecting the choice school the eligible child will attend.

(2) CONSIDERATIONS.—

(A) IN GENERAL.—Subject to such regulations as the Secretary shall prescribe, in determining the amount of an education certificate under this subtitle an eligible entity shall consider—

(i) the additional reasonable costs of transportation directly attributable to the eligible child's participation in the demonstration project; and

(ii) the cost of complying with section 119(a)(1).

(B) SCHOOLS CHARGING TUITION.—If an eligible child participating in a demonstration project under this subtitle was attending a public or private school that charged tuition for the year preceding the first year of such participation, then in determining the amount of an education certificate for such eligible child under this subtitle the eligible entity shall consider—

(i) the tuition charged by such school for such eligible child in such preceding year; and

(ii) the amount of the education certificates under this subtitle that are provided to other eligible children.

(3) SPECIAL RULE.—An eligible entity may provide an education certificate under this subtitle to the parent of an eligible child who chooses to attend a school that does not charge tuition or fees, to pay the additional reasonable costs of transportation directly attributable to the eligible child's participation in the demonstration project or the cost of complying with section 119(a)(1).

(b) ADJUSTMENT.—The amount of the education certificate for a fiscal year may be adjusted in the second and third years of an eligible child's participation in a demonstration project under this subtitle to reflect any increase or decrease in the tuition, fees, or transportation costs directly attributable to that eligible child's continued attendance at a choice school, but shall not be increased for this purpose by more than 10 percent of the amount of the education certificate for the fiscal year preceding the fiscal year for which the determination is made. The amount of the education certificate may also be adjusted in any fiscal year to comply with section 119(a)(1).

(c) MAXIMUM AMOUNT.—Notwithstanding any other provision of this section, the amount of an eligible child's education certificate shall not exceed the per pupil expenditure for elementary or secondary education, as appropriate, by the local educational agency in which the public school to which the eligible child would normally be assigned is located for the fiscal year preceding the fiscal year for which the determination is made.

SEC. 119. EFFECT ON OTHER PROGRAMS.

(a) EFFECT ON OTHER PROGRAMS.—

(1) IN GENERAL.—An eligible child participating in a demonstration project under this subtitle, who, in the absence of such a demonstration project, would have received services under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) shall be provided such services.

(2) PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—Nothing in this subtitle shall be construed to affect the requirements of part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

(b) COUNTING OF ELIGIBLE CHILDREN.—Notwithstanding any other provision of law, any local educational agency participating in a demonstration project under this subtitle may count eligible children who, in the absence of such a demonstration project, would attend the schools of such agency, for purposes of receiving funds under any program administered by the Secretary.

(c) SECTARIAN INSTITUTIONS.—Nothing in this subtitle shall be construed to supersede or modify any provision of a State constitution that prohibits the expenditure of public funds in or by sectarian institutions.

SEC. 120. PARENTAL NOTIFICATION.

Each eligible entity receiving a grant under this subtitle shall provide timely notice of the demonstration project to parents of eligible children residing in the area to be served by the demonstration project. At a minimum, such notice shall—

(1) describe the demonstration project;

(2) describe the eligibility requirements for participation in the demonstration project;

(3) describe the information needed to make a determination of eligibility for participation in the demonstration project for an eligible child;

(4) describe the selection procedures to be used if the number of eligible children seeking to participate in the demonstration project exceeds the number that can be accommodated in the demonstration project;

(5) provide information about each choice school, including information about any admission requirements or criteria for each choice school participating in the demonstration project; and

(6) include the schedule for parents to apply for their eligible children to participate in the demonstration project.

SEC. 121. EVALUATION.

(a) ANNUAL EVALUATION.—

(1) CONTRACT.—The Comptroller General of the United States shall enter into a contract, with an evaluating agency that has

demonstrated experience in conducting evaluations, for the conduct of an ongoing rigorous evaluation of the demonstration program under this subtitle.

(2) ANNUAL EVALUATION REQUIREMENT.—The contract described in paragraph (1) shall require the evaluating agency entering into such contract to annually evaluate each demonstration project under this subtitle in accordance with the evaluation criteria described in subsection (b).

(3) TRANSMISSION.—The contract described in paragraph (1) shall require the evaluating agency entering into such contract to transmit to the Comptroller General of the United States—

(A) the findings of each annual evaluation under paragraph (1); and

(B) a copy of each report received pursuant to section 122(a) for the applicable year.

(b) EVALUATION CRITERIA.—The Comptroller General of the United States, in consultation with the Secretary, shall establish minimum criteria for evaluating the demonstration program under this subtitle. Such criteria shall provide for—

(1) a description of the implementation of each demonstration project under this subtitle and the demonstration project's effects on all participants, schools, and communities in the demonstration project area, with particular attention given to the effect of parent participation in the life of the school and the level of parental satisfaction with the demonstration program; and

(2) a comparison of the educational achievement of, and the incidences of violence and drug activity related to, all students in the demonstration project area, including a comparison of similar—

(A) students receiving education certificates under this subtitle; and

(B) students not receiving education certificates under this subtitle.

SEC. 122. REPORTS.

(a) REPORT BY GRANT RECIPIENT.—Each eligible entity receiving a grant under this subtitle shall submit to the evaluating agency entering into the contract under section 121(a)(1) an annual report regarding the demonstration project under this subtitle. Each such report shall be submitted at such time, in such manner, and accompanied by such information, as such evaluating agency may require.

(b) REPORTS BY COMPTROLLER GENERAL.—

(1) ANNUAL REPORTS.—The Comptroller General of the United States shall report annually to the Congress on the findings of the annual evaluation under section 121(a)(2) of each demonstration project under this subtitle. Each such report shall contain a copy of—

(A) the annual evaluation under section 121(a)(2) of each demonstration project under this subtitle; and

(B) each report received under subsection (a) for the applicable year.

(2) FINAL REPORT.—The Comptroller General shall submit a final report to the Congress within 6 months after the conclusion of the demonstration program under this subtitle that summarizes the findings of the annual evaluations conducted pursuant to section 121(a)(2).

Subtitle B—Common Sense School Safety

SEC. 141. SHORT TITLE.

This subtitle may be cited as the "Common Sense School Safety Act".

CHAPTER I—PUPIL SAFETY AND FAMILY CHOICE

SEC. 151. PUPIL SAFETY AND FAMILY SCHOOL CHOICE.

Subpart 1 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) is amended by inserting after section 1115A of such Act (20 U.S.C. 6316) the following:

"SEC. 1115B. PUPIL SAFETY AND FAMILY SCHOOL CHOICE.

"(a) IN GENERAL.—If a student is eligible to be served under section 1115(b), or attends a school eligible for a schoolwide program under section 1114, and becomes a victim of a violent criminal offense while in or on the grounds of a public elementary school or secondary school that the student attends and that receives assistance under this part, then the local educational agency may use funds provided under this part to pay the supplementary costs for such student to attend another school. The agency may use the funds to pay for the supplementary costs of such student to attend any other public or private elementary school or secondary school, including a sectarian school, in the same State as the school where the criminal offense occurred, that is selected by the student's parent. The State educational agency shall determine what actions constitute a violent criminal offense for purposes of this section.

"(b) SUPPLEMENTARY COSTS.—The supplementary costs referred to in subsection (a) shall not exceed—

"(1) in the case of a student for whom funds under this section are used to enable the student to attend a public elementary school or secondary school served by a local educational agency that also serves the school where the violent criminal offense occurred, the costs of supplementary educational services and activities described in section 1114(b) or 1115(c) that are provided to the student;

"(2) in the case of a student for whom funds under this section are used to enable the student to attend a public elementary school or secondary school served by a local educational agency that does not serve the school where the violent criminal offense occurred but is located in the same State—

"(A) the costs of supplementary educational services and activities described in section 1114(b) or 1115(c) that are provided to the student; and

"(B) the reasonable costs of transportation for the student to attend the school selected by the student's parent; and

"(3) in the case of a student for whom funds under this section are used to enable the student to attend a private elementary school or secondary school, including a sectarian school, the costs of tuition, required fees, and the reasonable costs of such transportation.

"(c) CONSTRUCTION.—Nothing in this Act or any other Federal law shall be construed to prevent a parent assisted under this section from selecting the public or private elementary school or secondary school that a child of the parent will attend within the State.

"(d) CONSIDERATION OF ASSISTANCE.—Assistance used under this section to pay the costs for a student to attend a private school shall not be considered to be Federal aid to the school, and the Federal Government shall have no authority to influence or regulate the operations of a private school as a result of assistance received under this section.

"(e) CONTINUING ELIGIBILITY.—A student assisted under this section shall remain eligible to continue receiving assistance under this section for at least 3 academic years without regard to whether the student is eligible for assistance under section 1114 or 1115(b).

"(f) STATE LAW.—All actions undertaken under this section shall be undertaken in accordance with State law and may be undertaken only to the extent such actions are permitted under State law.

"(g) TUITION CHARGES.—Assistance under this section may not be used to pay tuition or required fees at a private elementary school or secondary school in an amount that is greater than the tuition and required fees paid by students not assisted under this section at such school.

"(h) SPECIAL RULE.—Any school receiving assistance provided under this section shall comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and not discriminate on the basis of race, color, or national origin.

"(i) ASSISTANCE; TAXES AND OTHER FEDERAL PROGRAMS.—

"(1) ASSISTANCE TO FAMILIES, NOT SCHOOLS.—Assistance provided under this section shall be considered to be aid to families, not schools. Use of such assistance at a school shall not be construed to be Federal financial aid or assistance to that school.

"(2) TAXES AND DETERMINATIONS OF ELIGIBILITY FOR OTHER FEDERAL PROGRAMS.—Assistance provided under this section to a student shall not be considered to be income of the student or the parent of such student for Federal, State, or local tax purposes or for determining eligibility for any other Federal program.

"(j) PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—Nothing in this section shall be construed to affect the requirements of part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

"(k) SECTARIAN INSTITUTIONS.—Nothing in this section shall be construed to supersede or modify any provision of a State constitution that prohibits the expenditure of public funds in or by sectarian institutions.

"(l) MAXIMUM AMOUNT.—Notwithstanding any other provision of this section, the amount of assistance provided under this part for a student shall not exceed the per pupil expenditure for elementary or secondary education, as appropriate, by the local educational agency that serves the school where the criminal offense occurred for the fiscal year preceding the fiscal year for which the determination is made.".

SEC. 152. TRANSFER OF REVENUES.

(a) IN GENERAL.—Notwithstanding any other provision of Federal law, a State, a State educational agency, or a local educational agency may transfer any non-Federal public funds associated with the education of a student who is a victim of a violent criminal offense while in or on the grounds of a public elementary school or secondary school served by a local educational agency to another local educational agency or to a private elementary school or secondary school, including a sectarian school.

(b) DEFINITIONS.—For the purpose of subsection (a), the terms "elementary school", "secondary school", "local educational agency", and "State educational agency" have the meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

CHAPTER II—VICTIM ASSISTANCE PROGRAMS

SEC. 161. AMENDMENTS TO VICTIMS OF CRIME ACT OF 1984.

(a) VICTIM COMPENSATION.—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C.

10602) is amended by adding at the end the following:

"(f) VICTIMS OF SCHOOL VIOLENCE.—Notwithstanding any other provision of law, an eligible crime victim compensation program may expend funds granted under this section to offer compensation to elementary and secondary school students who are victims of elementary and secondary school violence (as school violence is defined under applicable State law).".

(b) VICTIM AND WITNESS ASSISTANCE.—Section 1404(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)) is amended by adding at the end the following:

"(4) ASSISTANCE FOR VICTIMS OF AND WITNESSES TO SCHOOL VIOLENCE.—Notwithstanding any other provision of law, the Director may make a grant under this section for a demonstration project or for training and technical assistance services to a program that assists local educational agencies (as local educational agency is defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)) in developing, establishing, and operating programs that are designed to protect victims of and witnesses to incidents of elementary and secondary school violence (as school violence is defined under applicable State law), including programs designed to protect witnesses testifying in school disciplinary proceedings.".

CHAPTER III—INNOVATIVE PROGRAMS TO IMPROVE UNSAFE SCHOOLS

SEC. 171. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the continued presence in schools of violent students who are a thereat to both teachers and other students is incompatible with a safe learning environment;

(2) unsafe school environments place students who are already at risk of school failure for other reasons in further jeopardy;

(3) recently, over one-forth of high school students surveyed reported being threatened at school;

(4) 2,000,000 more children are using drugs in 1997 than were doing so a few short years prior to 1997;

(5) nearly 1 out of every 20 students in 6th through 12th grade uses drugs on school grounds;

(6) more of our children are becoming involved with hard drugs at earlier ages, as use of heroin and cocaine by 8th graders has more than doubled since 1991; and

(7) greater cooperation between schools, parents, law enforcement, the courts, and the community is essential to making our schools safe from drugs and violence.

SEC. 172. PURPOSE.

It is the purpose of this chapter—

(1) to urge States, State educational agencies, and local educational agencies to provide comprehensive services to victims and witnesses of school violence;

(2) to urge States, State educational agencies, and local educational agencies to remove violent and drug selling student offenders from school premises;

(3) to urge States, State educational agencies, and local educational agencies to report violent crimes and drug dealing on school grounds to appropriate law enforcement authorities;

(4) to provide incentive grants for States, State educational agencies, and local educational agencies to involve parents, former armed forces personnel, and community volunteers in efforts to improve school safety; and

(5) to provide incentive grants to States, State educational agencies, and local educational agencies to develop innovative programs to improve the safety of our Nation's schools and to better serve at-risk students.

SEC. 173. DEFINITIONS.

In this chapter:

(1) ELEMENTARY SCHOOL, LOCAL EDUCATIONAL AGENCY, SECONDARY SCHOOL, AND STATE EDUCATIONAL AGENCY.—The terms "elementary school", "local educational agency", "secondary school", and State educational agency" have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(2) SECRETARY.—The term "Secretary" means the Secretary of Education.

SEC. 174. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this chapter.

SEC. 175. PROGRAM AUTHORIZED.

(a) IN GENERAL.—The Secretary is authorized to award grants to States, State educational agencies, and local educational agencies to develop, establish, or conduct innovative programs to improve unsafe elementary schools or secondary schools.

(b) PRIORITY.—The Secretary shall give priority to awarding grants under subsection (a) to programs that—

(1) provide parent and teacher notification of crimes or drug activity occurring at school;

(2) provide for the suspension, delay, or restriction of driving privileges of persons under the age of 18 who have a conviction, an adjudication in a juvenile proceeding, or a finding in a school disciplinary proceeding, involving illegal drugs;

(3) programs that link local educational agencies with community-based mentoring programs in order to link individual at-risk youth with responsible, individual adults who serve as mentors for the purpose of—

(A) discouraging at-risk youth from—

(i) using illegal drugs;

(ii) violence;

(iii) using dangerous weapons;

(iv) criminal activity; and

(v) involvement in gangs;

(B) increasing youth participation in, and enhancing the ability of such youth to benefit from, elementary and secondary education;

(C) promoting personal and social responsibility;

(D) encouraging at-risk youth participation in community service and community activities; and

(E) providing general guidance to at-risk youth;

(4) programs that include cooperative efforts between the Secretary and the Secretary of Defense to share the training and salary costs of former members of the Armed Forces who are hired as teachers and assigned to teach in public elementary schools and secondary schools, especially those programs located in communities that are adversely affected by the recent closing or substantial downsizing of a military base or facility; and

(5) programs to enhance school security measures that may include—

(A) equipping schools with metal detectors, fences, closed circuit cameras, and other physical security measures;

(B) providing increased police patrols in and around elementary schools and secondary schools, including canine patrols;

(C) mailings to parents at the beginning of the school year stating that the possession of a gun or other weapon, or the sale of drugs in school, will not be tolerated by school authorities; and

(D) gun hotlines.

SEC. 176. APPLICATION.

(a) IN GENERAL.—Each State, State educational agency, or local educational agency desiring a grant under this chapter shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(b) CONTENTS.—Each application submitted under subsection (a) shall contain an assurance that the State or agency has implemented or will implement policies that—

(1) provide protections for victims and witnesses to school crime, including protections for attendance at school disciplinary proceedings;

(2) expel students who, on school grounds, sell drugs, or who commit a violent offense that causes serious bodily injury of another student or teacher; and

(3) require referral to law enforcement authorities or juvenile authorities of any student who on school grounds—

(A) commits a violent offense resulting in serious bodily injury; or

(B) sells drugs.

(c) SPECIAL RULE.—For purposes of paragraphs (2) and (3) of subsection (b), State law shall determine what constitutes a violent offense or serious bodily injury.

CHAPTER IV—NOTIFICATION FOR JUVENILE JUSTICE AND LAW ENFORCEMENT PURPOSES

SEC. 181. NOTIFICATION FOR JUVENILE JUSTICE AND LAW ENFORCEMENT PURPOSES.

The Secretary of Education, not later than 90 days after the date of enactment of this Act, shall prepare and distribute to State educational agencies and local educational agencies a notice regarding the extent of permissible disclosure of educational records under subparagraphs (E) and (J) of section 444(b) of the General Education Provisions Act (20 U.S.C. 1232g), including under the regulations issued pursuant to such subparagraphs.

TITLE II—AMENDMENTS TO THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

SEC. 201. SHORT TITLE.

This title may be cited as the "State Education Flexibility Act".

SEC. 202. AMENDMENTS TO ESEA.

Subsection (b) of section 6301 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7351) is amended—

(1) in paragraph (7), by striking "and" after the semicolon;

(2) in paragraph (8), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

"(9) programs using scholarships or vouchers provided to a parent by a local educational agency that permit the parent to select the public or private, including sectarian, school that the parent's child will attend, which programs may be similar to the program assisted under title I of the Safe and Affordable Schools Act of 1997, except that the provisions of sections 6402 and 14507, and any generally applicable provision relating to a prohibition against the use of Federal funds for religious worship or instruction, shall not apply to any program operated pursuant to this paragraph;

"(10) education reform projects that provide same gender schools, as long as comparable educational opportunities are offered for students of both sexes; and

"(11) education reform projects that reward teachers, administrators, and schools

with cash bonuses and other incentives for significantly improving the academic performance of their students.".

TITLE III—TAX INCENTIVES FOR HIGHER EDUCATION

SEC. 300. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This title may be cited as the "Affordable College Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 301. BOB DOLE EDUCATION INVESTMENT ACCOUNTS.

(a) IN GENERAL.—Part VIII of subchapter F of chapter 1 (relating to qualified State tuition programs) is amended by adding at the end the following new section:

"SEC. 530. BOB DOLE EDUCATION INVESTMENT ACCOUNTS.

"(a) GENERAL RULE.—A Bob Dole education investment account (hereafter in this section referred to as an 'education investment account') shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, the education investment account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

"(b) LIMITATIONS ON ACCOUNTS.—

"(1) ACCOUNT MAY NOT BE ESTABLISHED FOR BENEFIT OF MORE THAN 1 INDIVIDUAL.—An education investment account may not be established for the benefit of more than 1 individual.

"(2) SPECIAL RULE WHERE MORE THAN 1 ACCOUNT.—If, at any time during a calendar year, 2 or more education investment accounts are maintained for the benefit of an individual, only the account first established shall be treated as a Bob Dole education investment account for purposes of this section. This paragraph shall not apply to the extent more than 1 account exists solely by reason of a rollover contribution.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BOB DOLE EDUCATION INVESTMENT ACCOUNT.—The term 'Bob Dole education investment account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

"(A) No contribution will be accepted—

"(i) unless it is in cash,

"(ii) except in the case of rollover contributions from another education investment account, in excess of $1,000 for any calendar year, and

"(iii) after the date on which the account holder attains age 18.

"(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section.

"(C) No part of the trust assets will be invested in life insurance contracts (other than contracts the beneficiary of which is the trust and the face amount of which does not exceed the amount by which the maximum amount which can be contributed to the education investment account exceeds the sum of the amounts contributed to the account for all taxable years).

"(D) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

"(E) Any balance in the education investment account on the day after the date on which the individual for whose benefit the trust is established attains age 30 (or, if earlier, the date on which such individual dies) shall be distributed within 30 days of such date to the account holder (or in the case of death, the beneficiary).

"(2) TIME WHEN CONTRIBUTIONS DEEMED MADE.—A taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

"(3) QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—The term 'qualified higher education expenses' has the same meaning given such term by section 529(e)(3), except that such expenses shall be reduced by any amount described in section 135(d)(1) (relating to certain scholarships and veterans benefits).

"(B) STATE TUITION PLANS.—Such term shall include amounts paid or incurred to purchase tuition credits or certificates, or to make contributions to an account, under a qualified State tuition program (as defined in section 529(b)).

"(4) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' has the meaning given such term by section 135(c)(3).

"(5) ACCOUNT HOLDER.—The term 'account holder' means the individual for whose benefit the education investment account is established.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of an education investment account shall be included in gross income of the payee or distributee for the taxable year in the manner prescribed by section 72. For purposes of the preceding sentence, rules similar to the rules of section 408(d)(2) shall apply.

"(2) DISTRIBUTION USED TO PAY EDUCATIONAL EXPENSES.—Paragraph (1) shall not apply to any payment or distribution out of an education investment account to the extent such payment or distribution is used exclusively to pay the qualified higher education expenses of the account holder.

"(3) SPECIAL RULE FOR APPLYING SECTION 2503.—If any payment or distribution from an education investment account is used exclusively for the payment to an eligible educational institution of the qualified higher education expenses of the account holder, such payment shall be treated as a qualified transfer for purposes of section 2503(e).

"(4) ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR EDUCATIONAL EXPENSES.—

"(A) IN GENERAL.—The tax imposed by this chapter for any taxable year on any taxpayer who receives a payment or distribution from an education investment account which is includible in gross income under paragraph (1) shall be increased by 10 percent of the amount which is so includible.

"(B) EXCEPTION FOR DISABILITY, DEATH, OR SCHOLARSHIP.—Subparagraph (A) shall not apply if the payment or distribution is—

"(i) made on account of the death or disability of the account holder, or

"(ii) made on account of a scholarship (or allowance or payment described in section 135(d)(1) (B) or (C)) received by the account holder to the extent the amount of the payment or distribution does exceed the amount of the scholarship, allowance, or payment.

"(C) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Subparagraph (A) shall not apply to the distribution to a contributor of any contribution paid during a taxable year to an education investment account to the extent that such contribution, when added to previous contributions to the account during the taxable year, exceeds $1,000 if—

"(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such contributor's return for such taxable year, and

"(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the contributor for the taxable year in which such excess contribution was made.

"(5) ROLLOVER CONTRIBUTIONS.—Paragraph (1) shall not apply to any amount paid or distributed from an education investment account to the extent that the amount received is paid into another education investment account for the benefit of the account holder not later than the 60th day after the day on which the holder receives the payment or distribution. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

"(6) SPECIAL RULES FOR DEATH AND DIVORCE.—Rules similar to the rules of section 220(f) (7) and (8) shall apply.

"(e) TAX TREATMENT OF ACCOUNTS.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to any education investment account, and any amount treated as distributed under such rules shall be treated as not used to pay qualified higher education expenses.

"(f) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(g) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an account described in subsection (b)(1). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(h) REPORTS.—The trustee of an education investment account shall make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations."

(b) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 (relating to prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

"(5) SPECIAL RULE FOR EDUCATION INVESTMENT ACCOUNTS.—An individual for whose

benefit an education investment account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an education investment account by reason of the application of section 530 to such account."; and

(2) in subsection (e)(1), by striking "or" at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

"(E) a education investment account described in section 530, or".

(c) FAILURE TO PROVIDE REPORTS ON EDUCATION INVESTMENT ACCOUNTS.—Section 6693 (relating to failure to provide reports on individual retirement accounts or annuities) is amended—

(1) by inserting "**OR ON EDUCATION INVESTMENT ACCOUNTS**" after "**ANNUITIES**" in the heading of such section, and

(2) in subsection (a)(2), by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) section 530(h) (relating to education investment accounts)."

(d) COORDINATION WITH SAVINGS BOND EXCLUSION.—Section 135(d)(1) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or" , and by inserting at the end the following new subparagraph:

"(E) a payment or distribution from an education investment account (as defined in section 530)."

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for part VIII of subchapter F of chapter 1 is amended by adding at the end the following new item:

"Sec. 530. Bob Dole education investment accounts."

(2)(A) The heading for part VIII of subchapter F of chapter 1 is amended to read as follows:

"PART VIII—HIGHER EDUCATION SAVINGS ENTITIES".

(B) The table of parts for subchapter F of chapter 1 is amended by striking the item relating to part VIII and inserting:

"Part VIII. Higher education savings entities."

(3) The table of sections for subchapter B of chapter 68 is amended by striking the item relating to section 6693 and inserting the following new item:

"Sec. 6693. Failure to provide reports on individual retirement accounts or annuities or on education investment accounts."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 302. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE PROGRAMS.

(a) PERMANENT EXTENSION.—Section 127 of the Internal Revenue Code of 1986 (relating to exclusion for educational assistance programs) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) REPEAL OF LIMITATION ON GRADUATE EDUCATION.—The last sentence of section 127(c)(1) of such Code is amended by striking ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree".

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1996.

(2) GRADUATE EDUCATION.—The amendment made by subsection (b) shall apply with respect to expenses relating to courses beginning after June 30, 1996.

SEC. 303. MODIFICATIONS OF TAX TREATMENT OF QUALIFIED STATE TUITION PROGRAMS.

(a) EXCLUSION OF DISTRIBUTIONS USED FOR EDUCATIONAL PURPOSES.—Subparagraph (B) of section 529(c)(3) is amended to read as follows:

"(B) DISTRIBUTIONS FOR QUALIFIED HIGHER EDUCATION EXPENSES.—Subparagraph (A) shall not apply to any distribution to the extent—

"(i) the distribution is used exclusively to pay qualified higher education expenses of the distributee, or

"(ii) the distribution consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute payment of a qualified higher education expense."

(b) QUALIFIED HIGHER EDUCATION EXPENSES TO INCLUDE ROOM AND BOARD.—Section 529(e)(3) is amended to read as follows:

"(3) QUALIFIED HIGHER EDUCATION EXPENSES.—The term 'qualified higher education expenses' means the cost of attendance (within the meaning of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll), as in effect on the date of the enactment of the Affordable College Act) of a designated beneficiary at an eligible educational institution (as defined in section 135(c)(3))."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 304. DEDUCTION FOR INTEREST ON EDUCATION LOANS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. INTEREST ON EDUCATION LOANS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

"(b) MAXIMUM DEDUCTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable year shall not exceed $2,500.

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $45,000 ($65,000 in the case of a joint return), the amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so allowable as such excess bears to $20,000.

"(B) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income determined—

"(i) without regard to this section and sections 135, 911, 931, and 933, and

"(ii) after application of sections 86, 219, and 469.

For purposes of sections 86, 135, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

"(C) INFLATION ADJUSTMENT.—In the case of any taxable year beginning after 1997, the $45,000 and $65,000 amounts referred to in subparagraph (A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section (1)(f)(3) for the calendar year in which the taxable year begins, by substituting '1996' for '1992'.

"(D) ROUNDING.—If any amount as adjusted under subparagraph (C) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

"(c) DEPENDENTS NOT ELIGIBLE FOR DEDUCTION.—No deduction shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

"(d) LIMIT ON PERIOD DEDUCTION ALLOWED.—A deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

"(e) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EDUCATION LOAN.—The term 'qualified education loan' means any indebtedness incurred to pay qualified higher education expenses—

"(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

"(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

"(C) which are attributable to education furnished during a period during which the recipient was at least a half-time student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term 'qualified education loan' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

"(2) QUALIFIED HIGHER EDUCATION EXPENSES.—The term 'qualified higher education expenses' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of this Act) of the taxpayer or the taxpayer's spouse at an eligible educational institution, reduced by the sum of—

"(A) the amount excluded from gross income under section 135 by reason of such expenses, and

"(B) the amount of the reduction described in section 135(d)(1).

For purposes of the preceding sentence, the term 'eligible educational institution' has the same meaning given such term by section 135(c)(3), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a

health care facility which offers post-graduate training.

"(3) HALF-TIME STUDENT.—The term 'half-time student' means any individual who would be a student as defined in section 151(c)(4) if 'half-time' were substituted for 'full-time' each place it appears in such section.

"(4) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152.

"(f) SPECIAL RULES.—

"(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

"(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

"(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.".

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (16) the following new paragraph:

"(17) INTEREST ON EDUCATION LOANS.—The deduction allowed by section 221."

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by inserting after section 6050R the following new section:

"SEC. 6050S. RETURNS RELATING TO EDUCATION LOAN INTEREST RECEIVED IN TRADE OR BUSINESS FROM INDIVIDUALS.

"(a) EDUCATION LOAN INTEREST OF $600 OR MORE.—Any person—

"(1) who is engaged in a trade or business, and

"(2) who, in the course of such trade or business, receives from any individual interest aggregating $600 or more for any calendar year on 1 or more qualified education loans, shall make the return described in subsection (b) with respect to each individual from whom such interest was received at such time as the Secretary may by regulations prescribe.

"(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name, address, and TIN of the individual from whom the interest described in subsection (a)(2) was received,

"(B) the amount of such interest received for the calendar year, and

"(C) such other information as the Secretary may prescribe.

"(c) APPLICATION TO GOVERNMENTAL UNITS.—For purposes of subsection (a)—

"(1) TREATED AS PERSONS.—The term 'person' includes any governmental unit (and any agency or instrumentality thereof).

"(2) SPECIAL RULES.—In the case of a governmental unit or any agency or instrumentality thereof—

"(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

"(B) any return required under subsection (a) shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of interest described in subsection (a)(2) received by the person required to make such return from the individual to whom the statement is required to be furnished.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

"(e) QUALIFIED EDUCATION LOAN DEFINED.—For purposes of this section, except as provided in regulations prescribed by the Secretary, the term 'qualified education loan' has the meaning given such term by section 221(e)(1).

"(f) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of interest received by any person on behalf of another person, only the person first receiving such interest shall be required to make the return under subsection (a).".

(2) ASSESSABLE PENALTIES.—Section 6724(d) (relating to definitions) is amended—

(A) in paragraph (1)(B), by redesignating clauses (x) through (xv) as clauses (xi) through (xvi), respectively, and by inserting after clause (ix) the following new clause:

"(x) section 6050S (relating to returns relating to education loan interest received in trade or business from individuals),", and

(B) in paragraph (2), by striking "or" at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting ", or", and by adding at the end the following new subparagraph:

"(Z) section 6050S(d) (relating to returns relating to education loan interest received in trade or business from individuals)."

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

"Sec. 221. Interest on education loans.
"Sec. 222. Cross reference.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act, but only with respect to any loan interest payment due after December 31, 1996.

SEC. 305. EXCLUSION OF FEDERAL WORK STUDY PAYMENTS.

(a) IN GENERAL.—Section 117 (relating to exclusion of qualified scholarships) is amended by adding at the end the following new subsection:

"(e) EXCLUSION FOR WORK STUDY PAYMENTS.—Notwithstanding any other provision of this section, gross income does not include any amount received for services performed under a Federal work study program operated under section 441 of the Higher Education Act of 1965 (42 U.S.C. 2751), as in effect on the date of the enactment of this subsection."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

TITLE IV—FUNDING FOR PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 401. FUNDING FOR PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Section 611(h) of the Individuals with Disabilities Education Act (20 U.S.C. 1411(h)) is amended by striking "such sums as may be necessary" and inserting "not less than $4,107,522 for fiscal year 1998, not less than $5,607,522 for fiscal year 1999, not less than $7,107,522 for fiscal year 2000, not less than $8,607,522 for fiscal year 2001, not less than $10,107,522 for fiscal year 2002, not less than $11,607,522 for fiscal year 2003, not less than $13,107,522 for fiscal year 2004, and such sums as may be necessary for each succeeding fiscal year.".

TITLE V—ADULT EDUCATION AND FAMILY LITERACY

Subtitle A—Adult Education Act

SEC. 511. AUTHORIZATION OF ADULT EDUCATION ACT.

The Adult Education Act (20 U.S.C. 1201 et seq.) is amended to read as follows:

"TITLE III—ADULT EDUCATION PROGRAMS

"SEC. 301. SHORT TITLE.

"This title may be cited as the "Adult Education Act".

"SEC. 302. STATEMENT OF PURPOSE.

"It is the purpose of this title to assist the States and the outlying areas to provide—

"(1) to adults, the basic educational skills necessary for employment and self-sufficiency; and

"(2) to adults who are parents, the educational skills necessary to be full partners in the educational development of their children.

"SEC. 303. DEFINITIONS.

"As used in this title:

"(1) ADULT EDUCATION.—The term 'adult education' means services or instruction below the postsecondary level for individuals—

"(A) who have attained 16 years of age;

"(B) who are not enrolled or required to be enrolled in secondary school;

"(C)(i) who lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society; or

"(ii) who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education; and

"(D) who lack a mastery of basic skills and are therefore unable to speak, read, or write the English language.

"(2) ADULT EDUCATION AND LITERACY ACTIVITIES.—The term 'adult education and literacy activities' means the activities authorized in section 315.

"(3) COMMUNITY-BASED ORGANIZATION.—The term 'community-based organization' means a private nonprofit organization of demonstrated effectiveness that is representative of a community or a significant segment of a community.

"(4) ELIGIBLE AGENCY.—The term 'eligible agency' means—

"(A) the individual, entity, or agency in a State or an outlying area responsible for administering or setting policies for adult education and literacy services in such State or outlying area pursuant to the law of the State or outlying area; or

"(B) if no individual, entity, or agency is responsible for administering or setting such policies pursuant to the law of the State or outlying area, the individual, entity, or

agency in a State or outlying area responsible for administering or setting policies for adult education and literacy services in such State or outlying area on the date of enactment of this Act.

"(5) ELIGIBLE PROVIDER.—The term 'eligible provider', used with respect to adult education and literacy activities described in section 315(b), means a provider determined to be eligible for assistance in accordance with section 314.

"(6) ENGLISH LITERACY PROGRAM.—The term 'English literacy program' means a program of instruction designed to help individuals of limited English proficiency achieve full competence in the English language.

"(7) FAMILY LITERACY SERVICES.—The term 'family literacy services' means services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family and that integrate all of the following activities:

"(A) Interactive literacy activities between parents and their children.

"(B) Training for parents on how to be the primary teacher for their children and full partners in the education of their children.

"(C) Parent literacy training.

"(D) An age-appropriate education program for children.

"(8) INDIVIDUAL OF LIMITED ENGLISH PROFICIENCY.—The term 'individual of limited English proficiency' means an individual—

"(A) who has limited ability in speaking, reading, or writing the English language; and

"(B)(i) whose native language is a language other than English; or

"(ii) who lives in a family or community environment where a language other than English is the dominant language.

"(9) INDIVIDUAL WITH A DISABILITY.—

"(A) IN GENERAL.—The term 'individual with a disability' means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

"(B) INDIVIDUALS WITH DISABILITIES.—The term 'individuals with disabilities' means more than 1 individual with a disability.

"(10) LITERACY.—The term 'literacy', used with respect to an individual, means the ability of the individual to speak, read, and write English, and compute and solve problems, at levels of proficiency necessary—

"(A) to function on the job, in the family of the individual, and in society;

"(B) to achieve the goals of the individual; and

"(C) to develop the knowledge potential of the individual.

"(11) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(12) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"(13) POSTSECONDARY EDUCATIONAL INSTITUTION.—The term 'postsecondary educational institution' means an institution of higher education (as such term is defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088)) that continues to meet the eligibility and certification requirements under title IV of such Act (20 U.S.C. 1070 et seq.).

"(14) SECRETARY.—The term 'Secretary' means the Secretary of Education.

"(15) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title (except section 321) $400,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2003.

"(b) RESERVATION OF FUNDS FOR NATIONAL LEADERSHIP ACTIVITIES.—For any fiscal year, the Secretary may reserve not more than $4,500,000 of the amount appropriated under subsection (a) to establish and carry out the program of national leadership and evaluation activities described in section 322.

"(c) PROGRAM YEAR.—Appropriations for any fiscal year for programs and activities carried out under part A shall be available for obligation only on the basis of a program year. The program year shall begin on July 1 in the fiscal year for which the appropriation is made.

"PART A—GRANTS TO ELIGIBLE AGENCIES

"SEC. 311. AUTHORITY TO MAKE GRANTS.

"(a) IN GENERAL.—In the case of each eligible agency that in accordance with section 313 submits to the Secretary a plan for a fiscal year, the Secretary shall make a grant for the year to the eligible agency for the purpose specified in subsection (b). The grant shall consist of the initial and additional allotments determined for the eligible agency under section 312.

"(b) PURPOSE OF GRANTS.—The Secretary may make a grant under subsection (a) only if the applicant involved agrees to expend the grant for adult education and literacy activities in accordance with the provisions of this part.

"SEC. 312. ALLOTMENTS.

"(a) INITIAL ALLOTMENTS.—From the sums available for the purpose of making grants under this part for any fiscal year, the Secretary shall allot to each eligible agency that in accordance with section 313 submits to the Secretary a plan for the year an initial amount as follows:

"(1) $100,000, in the case of an eligible agency of the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"(2) $250,000, in the case of any other eligible agency.

"(b) ADDITIONAL ALLOTMENTS.—

"(1) IN GENERAL.—From the remainder available for the purpose of making grants under this part for any fiscal year after the application of subsection (a), the Secretary shall allot to each eligible agency that receives an initial allotment under such subsection an additional amount that bears the same relationship to such remainder as the number of qualifying adults in the State or outlying area of the agency bears to the number of such adults in all States and outlying areas.

"(2) QUALIFYING ADULT.—For purposes of this subsection, the term 'qualifying adult' means an adult who—

"(A) is at least 16 years of age, but less than 61 years of age;

"(B) is beyond the age of compulsory school attendance under the law of the State or outlying area;

"(C) does not have a certificate of graduation from a school providing secondary education and has not achieved an equivalent level of education; and

"(D) is not currently enrolled in secondary school.

"(c) SPECIAL RULE.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section and using funds allotted for the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau under this section, the Secretary shall award grants to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau to carry out activities described in this part in accordance with the provisions of this part that the Secretary determines are not inconsistent with this subsection.

"(2) AWARD BASIS.—The Secretary shall award grants pursuant to paragraph (1) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.

"(3) TERMINATION OF ELIGIBILITY.—Notwithstanding any other provision of law, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall not receive any funds under this part for any fiscal year that begins after September 30, 2001.

"(4) ADMINISTRATIVE COSTS.—The Secretary may provide not more than 5 percent of the funds made available for grants under this subsection to pay the administrative costs of the Pacific Region Educational Laboratory regarding activities assisted under this subsection.

"SEC. 313. AGENCY PLAN.

"For an eligible agency to be eligible to receive a grant under this part for any fiscal year, the agency shall submit to the Secretary a plan for the year that includes the following:

"(1) A description of the adult education and literacy activities that will be carried out with funds received under the grant.

"(2) A description of how such activities will be integrated with other adult education and career development activities in the State or outlying area of the agency.

"(3) A description of how the eligible agency annually will evaluate the effectiveness of the adult education and literacy activities that are carried out with funds received under the grant.

"(4) A description of the benchmarks required under section 317 and how such benchmarks will ensure continuous improvement of adult education and literacy services in the State or outlying area of the agency.

"(5) An assurance that the funds received under the grant will not be expended for any purpose other than the activities described in sections 314 and 315.

"(6) An assurance that the eligible agency will expend the funds received under the grant only in a manner consistent with the fiscal requirements in section 316.

"SEC. 314. USE OF FUNDS.

"(a) IN GENERAL.—Of the sum that is made available under this part to an eligible agency for any program year—

"(1) not less than 85 percent shall be made available to award grants in accordance with this section to carry out adult education and literacy activities;

"(2) not more than 10 percent shall be made available to carry out activities described in section 315(a); and

"(3) subject to paragraph (1), not more than 5 percent, or $50,000, whichever is greater, shall be made available for administrative expenses at the State level (or the level of the outlying area).

"(b) GRANTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), from the amount made available to an eligible agency for adult education and literacy under subsection (a)(1) for a program year, such agency shall award grants, on a competitive basis, to local educational agencies, correctional education agencies, community-based organizations of demonstrated effectiveness, volunteer literacy organizations, libraries, public or private nonprofit agencies, postsecondary educational institutions, public housing authorities, and other nonprofit institutions, that have the ability to provide literacy services to adults and families, or consortia of agencies, organizations, or institutions described in this subsection, to enable such agencies, organizations, institutions, and consortia to carry out adult education and literacy activities.

"(2) CONSORTIA.—An eligible agency may award a grant under this section to a consortium that includes a provider described in paragraph (1) and a for-profit agency, organization, or institution, if such agency, organization, or institution—

"(A) can make a significant contribution to carrying out the objectives of this title; and

"(B) enters into a contract with such provider to carry out adult education and literacy activities.

"(c) GRANT REQUIREMENTS.—

"(1) REQUIRED LOCAL ACTIVITIES.—An eligible agency shall require that each provider receiving a grant under this section use the grant in accordance with section 315(b).

"(2) EQUITABLE ACCESS.—Each eligible agency awarding a grant under this section for adult education and literacy activities shall ensure that the providers described in subsection (b) will be provided direct and equitable access to all Federal funds provided under this section.

"(3) SPECIAL RULE.—Each eligible agency awarding a grant under this section shall not use any funds made available under this title for adult education and literacy activities for the purpose of supporting or providing programs, services, or activities for individuals who are not individuals described in subparagraphs (A) and (B) of section 303(1), except that such agency may use such funds for such purpose if such programs, services, or activities are related to family literacy services.

"(4) CONSIDERATIONS.—In awarding grants under this section, the eligible agency shall consider—

"(A) the past effectiveness of a provider described in subsection (b) in providing services (especially with respect to recruitment and retention of educationally disadvantaged adults and the learning gains demonstrated by such adults);

"(B) the degree to which the provider will coordinate services with other literacy and social services available in the community; and

"(C) the commitment of the provider to serve individuals in the community who are most in need of literacy services.

"(d) LOCAL ADMINISTRATIVE COST LIMITS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), of the funds provided under this section by an eligible agency to a provider described in subsection (b), not less than 95 percent shall be expended for provision of adult education and literacy activities. The remainder shall be used for planning, administration, personnel development, and interagency coordination.

"(2) SPECIAL RULE.—In cases where the cost limits described in paragraph (1) will be too restrictive to allow for adequate planning, administration, personnel development, and interagency coordination supported under this section, the eligible agency shall negotiate with the provider described in subsection (b) in order to determine an adequate level of funds to be used for noninstructional purposes.

"SEC. 315. ADULT EDUCATION AND LITERACY ACTIVITIES.

"(a) PERMISSIBLE AGENCY ACTIVITIES.—An eligible agency may use not more than 10 percent of the funds made available to the eligible agency under this part for activities that may include—

"(1) the establishment or operation of professional development programs to improve the quality of instruction provided pursuant to local activities required under subsection (b), including instruction provided by volunteers or by personnel of a State or outlying area;

"(2) the provision of technical assistance to eligible providers of activities authorized in this section;

"(3) the provision of technology assistance to eligible providers of activities authorized in this section to enable the providers to improve the quality of such activities;

"(4) the support of State or regional networks of literacy resource centers; and

"(5) the monitoring and evaluation of the quality of and the improvement in activities authorized in this section.

"(b) REQUIRED LOCAL ACTIVITIES.—The eligible agency shall require that each eligible provider receiving a grant under section 314 use the grant to establish or operate 1 or more programs that provide instruction or services in 1 or more of the following categories:

"(1) Adult education and literacy services.

"(2) Family literacy services.

"(3) English literacy programs.

"SEC. 316. FISCAL REQUIREMENTS AND RESTRICTIONS RELATED TO USE OF FUNDS.

"(a) SUPPLEMENT NOT SUPPLANT.—Funds made available under this part for adult education and literacy activities shall supplement, and may not supplant, other public funds expended to carry out activities described in section 315.

"(b) MAINTENANCE OF EFFORT.—

"(1) DETERMINATION.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), and paragraph (2), no payments shall be made under this part for any program year to an eligible agency for adult education and literacy activities unless the Secretary of Education determines that the fiscal effort per student or the aggregate expenditures of such eligible agency for activities described in section 315 for the program year preceding the program year for which the determination is made, equaled or exceeded such effort or expenditures for activities described in such section for the second program year preceding the fiscal year for which the determination is made.

"(B) COMPUTATION.—In computing the fiscal effort or aggregate expenditures pursuant to subparagraph (A), the Secretary of Education shall exclude capital expenditures, special one-time project costs, and similar windfalls.

"(C) DECREASE IN FEDERAL SUPPORT.—If the amount made available for adult education and literacy activities under this part for a fiscal year is less than the amount made available for adult education and literacy activities under this part for the preceding fiscal year, then the fiscal effort per student or the aggregate expenditures of an eligible agency required by subparagraph (A) for such preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available.

"(2) WAIVER.—The Secretary of Education may waive the requirements of paragraph (1) (with respect to not more than 5 percent of expenditures required for the preceding fiscal year by any eligible agency) for 1 program year only, after making a determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the eligible agency to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort or aggregate expenditures required under this subsection for years subsequent to the year covered by such waiver. The fiscal effort or aggregate expenditures for the subsequent years shall be computed on the basis of the level of funding that would, but for such waiver, have been required.

"(c) EXPENDITURES OF NON-FEDERAL FUNDS FOR ADULT EDUCATION AND LITERACY ACTIVITIES.—For any program year for which a grant is made to an eligible agency under this part, the eligible agency shall expend, on programs and activities relating to adult education and literacy activities, an amount, derived from sources other than the Federal Government, equal to 25 percent of the amount made available to the eligible agency under this part for adult education and literacy activities.

"SEC. 317. ACCOUNTABILITY AND CONTINUOUS IMPROVEMENT.

"(a) GOAL.—Each eligible agency that receives a grant under this part shall use such grant to meet the goal of enhancing and developing more fully the literacy skills of the adult population in the State or outlying area of the agency.

"(b) BENCHMARKS.—To be eligible to receive a grant under this part, an eligible agency shall develop and identify in the agency plan, submitted under section 313, proposed quantifiable benchmarks to measure the progress of the eligible agency toward meeting the goal described in subsection (a) throughout the State or outlying area of the agency, which shall include, at a minimum, measures for participants of—

"(1) demonstrated improvements in literacy skill levels;

"(2) attainment of secondary school diplomas or general equivalency diplomas;

"(3) placement in, retention in, or completion of, postsecondary education, training, or employment; and

"(4) attainment of the literacy skills and knowledge individuals need to be productive and responsible citizens and to become more actively involved in the education of their children.

"(c) POPULATIONS.—

"(1) PERFORMANCE MEASURES.—In developing and identifying measures of progress of the eligible agency toward meeting the goal described in subsection (a), an eligible agency shall develop and identify in the agency plan, in addition to the benchmarks described in subsection (b), proposed quantifiable benchmarks for populations that include, at a minimum—

"(A) low-income individuals;

"(B) at-risk youth and young adults;

"(C) individuals with disabilities; and

"(D) individuals of limited literacy, as determined by the eligible agency.

"(2) ADDITIONAL MEASURES.—In addition to the benchmarks described in paragraph (1),

an eligible agency may develop and identify in the agency plan proposed quantifiable benchmarks to measure the progress of the eligible agency toward meeting the goal described in subsection (a) for populations with multiple barriers to educational enhancement.

"PART B—NATIONAL PROGRAMS

"SEC. 321. NATIONAL INSTITUTE FOR LITERACY.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established the National Institute for Literacy (in this section referred to as the "Institute"). The Institute shall be administered under the terms of an interagency agreement entered into by the Secretary of Education with the Secretary of Labor and the Secretary of Health and Human Services (in this section referred to as the "Interagency Group"). The Interagency Group may include in the Institute any research and development center, institute, or clearinghouse established within the Department of Education, the Department of Labor, or the Department of Health and Human Services whose purpose is determined by the Interagency Group to be related to the purpose of the Institute.

"(2) OFFICES.—The Institute shall have offices separate from the offices of the Department of Education, the Department of Labor, and the Department of Health and Human Services.

"(3) BOARD RECOMMENDATIONS.—The Interagency Group shall consider the recommendations of the National Institute for Literacy Advisory Board (in this section referred to as the "Board") established under subsection (d) in planning the goals of the Institute and in the implementation of any programs to achieve such goals.

"(4) DAILY OPERATIONS.—The daily operations of the Institute shall be carried out by the Director of the Institute appointed under subsection (g).

"(b) DUTIES.—

"(1) IN GENERAL.—The Institute shall improve the quality and accountability of the adult basic skills and literacy delivery system by—

"(A) providing national leadership for the improvement and expansion of the system for delivery of literacy services;

"(B) coordinating the delivery of such services across Federal agencies;

"(C) identifying effective models of basic skills and literacy education for adults and families that are essential to success in job training, work, the family, and the community;

"(D) supporting the creation of new methods of offering improved literacy services;

"(E) funding a network of State or regional adult literacy resource centers to assist State and local public and private nonprofit efforts to improve literacy by—

"(i) encouraging the coordination of literacy services;

"(ii) carrying out evaluations of the effectiveness of adult education and literacy activities;

"(iii) enhancing the capacity of State and local organizations to provide literacy services; and

"(iv) serving as a reciprocal link between the Institute and providers of adult education and literacy activities for the purpose of sharing information, data, research, expertise, and literacy resources;

"(F) supporting the development of models at the State and local level of accountability systems that consist of goals, performance measures, benchmarks, and assessments that can be used to improve the quality of adult education and literacy activities;

"(G) providing technical assistance, information, and other program improvement activities to national, State, and local organizations, such as—

"(i) improving the capacity of national, State, and local public and private organizations that provide literacy and basic skills services, professional development, and technical assistance, such as the State or regional adult literacy resource centers referred to in subparagraph (E); and

"(ii) establishing a national literacy electronic database and communications network;

"(H) working with the Interagency Group, Federal agencies, and the Congress to ensure that such Group, agencies, and the Congress have the best information available on literacy and basic skills programs in formulating Federal policy with respect to the issues of literacy, basic skills, and workforce and career development; and

"(I) assisting with the development of policy with respect to literacy and basic skills.

"(2) GRANTS, CONTRACTS, AND AGREEMENTS.—The Institute may make grants to, or enter into contracts or cooperative agreements with, individuals, public or private institutions, agencies, organizations, or consortia of such institutions, agencies, or organizations to carry out the activities of the Institute. Such grants, contracts, or agreements shall be subject to the laws and regulations that generally apply to grants, contracts, or agreements entered into by Federal agencies.

"(c) LITERACY LEADERSHIP.—

"(1) FELLOWSHIPS.—The Institute, in consultation with the Board, may award fellowships, with such stipends and allowances as the Director considers necessary, to outstanding individuals pursuing careers in adult education or literacy in the areas of instruction, management, research, or innovation.

"(2) USE OF FELLOWSHIPS.—Fellowships awarded under this subsection shall be used, under the auspices of the Institute, to engage in research, education, training, technical assistance, or other activities to advance the field of adult education or literacy, including the training of volunteer literacy providers at the national, State, or local level.

"(3) INTERNS AND VOLUNTEERS.—The Institute, in consultation with the Board, may award paid and unpaid internships to individuals seeking to assist the Institute in carrying out its mission. Notwithstanding section 1342 of title 31, United States Code, the Institute may accept and use voluntary and uncompensated services as the Institute determines necessary.

"(d) NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—There is established a National Institute for Literacy Advisory Board. The Board shall consist of 10 individuals appointed by the President, with the advice and consent of the Senate, from individuals who—

"(i) are not otherwise officers or employees of the Federal Government; and

"(ii) are representative of entities or groups described in subparagraph (B).

"(B) ENTITIES OR GROUPS DESCRIBED.—The entities or groups referred to in subparagraph (A) are—

"(i) literacy organizations and providers of literacy services, including—

"(I) nonprofit providers of literacy services;

"(II) providers of programs and services involving English language instruction; and

"(III) providers of services receiving assistance under this title;

"(ii) businesses that have demonstrated interest in literacy programs;

"(iii) literacy students;

"(iv) experts in the area of literacy research;

"(v) State and local governments; and

"(vi) representatives of employees.

"(2) DUTIES.—The Board—

"(A) shall make recommendations concerning the appointment of the Director and staff of the Institute;

"(B) shall provide independent advice on the operation of the Institute; and

"(C) shall receive reports from the Interagency Group and the Director.

"(3) FEDERAL ADVISORY COMMITTEE ACT.—Except as otherwise provided, the Board established by this subsection shall be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

"(4) TERMS.—

"(A) IN GENERAL.—Each member of the Board shall be appointed for a term of 3 years, except that the initial terms for members may be 1, 2, or 3 years in order to establish a rotation in which⅓ of the members are selected each year. Any such member may be appointed for not more than 2 consecutive terms.

"(B) VACANCY APPOINTMENTS.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Board shall be filled in the manner in which the original appointment was made. A vacancy in the Board shall not affect the powers of the Board.

"(5) QUORUM.—A majority of the members of the Board shall constitute a quorum but a lesser number may hold hearings. Any recommendation of the Board may be passed only by a majority of the Board's members present.

"(6) ELECTION OF OFFICERS.—The Chairperson and Vice Chairperson of the Board shall be elected by the members of the Board. The term of office of the Chairperson and Vice Chairperson shall be 2 years.

"(7) MEETINGS.—The Board shall meet at the call of the Chairperson or a majority of the members of the Board.

"(e) GIFTS, BEQUESTS, AND DEVISES.—The Institute may accept, administer, and use gifts or donations of services, money, or property, both real and personal.

"(f) MAILS.—The Board and the Institute may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(g) DIRECTOR.—The Interagency Group, after considering recommendations made by the Board, shall appoint and fix the pay of a Director.

"(h) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Institute may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the maximum rate payable under section 5376 of title 5, United States Code.

"(i) EXPERTS AND CONSULTANTS.—The Board and the Institute may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(j) REPORT.—The Institute shall submit a report biennially to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate. Each report submitted under this subsection shall include—

"(1) a comprehensive and detailed description of the Institute's operations, activities, financial condition, and accomplishments in the field of literacy for the period covered by the report;

"(2) a description of how plans for the operation of the Institute for the succeeding two fiscal years will facilitate achievement of the goals of the Institute and the goals of the literacy programs within the Department of Education, the Department of Labor, and the Department of Health and Human Services; and

"(3) any additional minority, or dissenting views submitted by members of the Board.

"(k) FUNDING.—Any amounts appropriated to the Secretary of Education, the Secretary of Labor, or the Secretary of Health and Human Services for purposes that the Institute is authorized to perform under this section may be provided to the Institute for such purposes.

"(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1998 and such sums as may be necessary for each of the fiscal years 1999 through 2003 to carry out this section.

"SEC. 322. NATIONAL LEADERSHIP ACTIVITIES.

"The Secretary shall establish and carry out a program of national leadership activities to enhance the quality of adult education and family literacy programs nationwide. Such activities shall include the following:

"(1) Providing technical assistance to recipients of assistance under part A in developing and using benchmarks and performance measures for improvement of adult education and literacy activities, including family literacy services.

"(2) Awarding grants, on a competitive basis, to an institution of higher education, a public or private organization or agency, or a consortium of such institutions, organizations, or agencies to carry out research and technical assistance—

"(A) for the purpose of developing, improving, and identifying the most successful methods and techniques for addressing the education needs of adults; and

"(B) to increase the effectiveness of, and improve the quality of, adult education and literacy activities, including family literacy services.

"(3) Providing for the conduct of an independent evaluation and assessment of adult education and literacy activities, through studies and analyses conducted independently through grants and contracts awarded on a competitive basis. Such evaluation and assessment shall include descriptions of—

"(A) the effect of benchmarks, performance measures, and other measures of accountability on the delivery of adult education and literacy activities, including family literacy services;

"(B) the extent to which the adult education and literacy activities, including family literacy services, increase the literacy skills of adults (and of children, in the case of family literacy services), lead the participants in such activities to involvement in further education and training, enhance the employment and earnings of such participants, and, if applicable, lead to other positive outcomes, such as reductions in recidivism in the case of prison-based adult education and literacy services; and

"(C) the extent to which eligible agencies have distributed funds part A to meet the needs of adults through community-based organizations.

"(4) Carrying out demonstration programs, replicating model programs, disseminating best practices information, and providing technical assistance, for the purposes of developing, improving, and identifying the most successful methods and techniques for providing the activities assisted under part A.".

SEC. 512. EXTENSION OF FUNCTIONAL LITERACY AND LIFE SKILLS PROGRAM FOR STATE AND LOCAL PRISONERS.

Paragraph (3) of section 601(i) of the National Literacy Act of 1991 (20 U.S.C. 1211-2(i)) is amended—

(1) by striking "1994, and" and inserting "1994,"; and

(2) by inserting ", and such sums as may be necessary for each of the fiscal years 1998, 1999, 2000, 2001, 2002, and 2003" before the period.

SEC. 513. CONFORMING ADULT EDUCATION ACT AMENDMENTS.

(a) REFUGEE EDUCATION ASSISTANCE ACT.—Subsection (b) of section 402 of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) is repealed.

(b) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—

(1) SECTION 1206 OF ESEA.—Section 1206(a)(1)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6366(a)(1)(A)) is amended by striking "an adult basic education program" and inserting "adult education and literacy activities".

(2) SECTION 3113 OF ESEA.—Section 3113(1) of such Act (20 U.S.C. 6813(1)) is amended by striking "section 312" and inserting "section 303".

(3) SECTION 9161 OF ESEA.—Section 9161(2) of such Act (20 U.S.C. 7881(2)) is amended by striking "section 312(2)" and inserting "section 303".

Subtitle B—Demonstration Programs and Projects To Promote Literacy

SEC. 521. SHORT TITLE.

Title X of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8001 et seq.) is amended by adding at the end the following:

"PART N—DEMONSTRATION PROGRAMS AND PROJECTS TO PROMOTE LITERACY

"SEC. 10996. DEMONSTRATION PARTNERSHIPS TO PROMOTE LITERACY.

"(a) TRAINING DEMONSTRATION PROGRAMS AND PROJECTS.—The Secretary is authorized to make grants to, and enter into contracts and cooperative agreements with, State educational agencies, local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions to—

"(1) provide in-service training for teachers, and, where appropriate, other staff such as teacher's aides, in language acquisition skills and systematic phonics;

"(2) provide pre-service training for teachers, and, where appropriate, other staff, in language acquisition skills and systematic phonics; and

"(3) provide training opportunities for parents, community volunteers, and other persons interested in obtaining language acquisition and systematic phonics skills for the purpose of improving their literacy or the literacy skills of children or other adults.

"(b) OTHER DEMONSTRATION PROGRAMS AND PROJECTS.—The Secretary is authorized to make grants to, and enter into contracts with, State educational agencies, local educational agencies, and private nonprofit agencies or organizations that use practices determined by replicated experimental research to be effective in preventing and responding to illiteracy in children and adults. Such grants shall be awarded for time-limited, demonstration programs and projects as follows:

"(1) FAMILY LITERACY PROGRAMS.—The Secretary shall award grants for programs that encourage parental involvement with their children in family literacy services (as defined in section 303 of the Adult Education Act). Such programs may combine literacy activities with parent training, in order to emphasize the parent's role as their child's primary teacher.

"(2) SCHOOL AND COMMUNITY PARTNERSHIPS.—The Secretary shall award grants to local educational agencies and private nonprofit organizations for the development of partnerships among schools, parents, private, nonprofit community volunteer organizations, and other community associations. Such partnerships shall demonstrate in the application submitted under subsection (c) the partnership's commitment to, and participation in, programs involving voluntary tutoring sessions for—

"(A) children in kindergarten through 4th grade; and

"(B) the parents of such children, where requested by the parent.

"(c) APPLICATION.—Each entity desiring assistance under this section shall submit an application to the Secretary, at such time, in such manner, and accompanied by such information as the Secretary may require.

"(d) ANNUAL EVALUATION.—

"(1) IN GENERAL.—In making grants and entering into contracts and cooperative agreements for demonstration programs and projects under this section, the Secretary, in cooperation with the Comptroller General, shall require all such programs and projects to be evaluated for their effectiveness using nationally recognized standardized assessments which measure reading achievement.

"(2) FUNDING.—The Secretary may provide funding for the evaluations described in paragraph (1) through—

"(A) a stated percentage of funds awarded under a grant or contracted under this subsection; or

"(B) a separate grant made by the Secretary for evaluating an individual demonstration program or project, or group of demonstration programs or projects.

"(3) RESERVATION.—The Secretary is authorized to reserve not more than 2 percent of the amount appropriated under subsection (e) for each fiscal year to fund the evaluations under this subsection.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 for fiscal year 1998 and such sums as may be necessary for each of the 4 succeeding fiscal years.".

Subtitle C—National Commission on Literacy

SEC. 531. SHORT TITLE.

This subtitle may be cited as the "National Commission on Literacy".

SEC. 532. FINDINGS.

Congress finds as follows:

(1) Since 1965, the United States has spent over $500,000,000,000 on Federal education programs, yet 66 percent of 17-year olds do

not read at a proficient level and reading scores have been declining for 3 decades. More over 75 percent of 4th graders, nationally, scored below the proficient level of reading.

(2) 85 percent of juvenile delinquents cannot read.

(3) American businesses are spending more than $30,000,000,000 in retraining employees, primarily because the employees cannot read at an adult level.

(4) In most junior colleges, at least one-third of the students must take remedial English because the students are not able to read at college level.

SEC. 533. NATIONAL COMMISSION ON LITERACY.

(a) ESTABLISHMENT.—There is hereby established a commission to be known as the "National Commission on Literacy" (in this subtitle referred to as the "Commission").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall consist of—

(A) 5 members to be appointed by the President of the United States;

(B) 5 members to be appointed by the Speaker of the House of Representatives; and

(C) 5 members to be appointed by the Majority Leader of the Senate.

(2) APPOINTMENTS.—

(A) IN GENERAL.—The President, the Speaker of the House of Representatives, and the Majority Leader of the Senate shall each appoint as members of the Commission any United States citizen, including educators and other professionals involved in the research, study, and analysis of illiteracy.

(B) PROHIBITION.—An individual with a direct financial interest in the outcome of the Commission shall not be appointed to the Commission.

(3) CONSULTATION.—The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairpersons of the Committee on Education and the Workplace of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(c) DUTIES.—

(1) IN GENERAL.—The Commission shall—

(A) conduct a comprehensive review of the social and economic impact of illiteracy in the United States and any correlation between such impact and welfare costs, juvenile delinquency, special education, adult literacy programs, drug addiction, and underemployment;

(B) examine matters including—

(i) a review of—

(I) requirements set for prospective reading teachers studying at colleges of education; and

(II) whether such requirements include obtaining knowledge about direct, intensive, and systematic phonics with decodable text as an important step in reading instruction;

(ii) a review of the available testing instruments that determine whether, and to what extent, children can decode the English language;

(iii) an assessment of the extent to which the use of experimentally unverified methods and teaching materials contributes to illiteracy;

(iv) a review of medical and neurological evidence regarding how individuals acquire the skill of reading;

(v) a review of the cost of illiteracy to business and industry;

(vi) an assessment of the negative impact of illiteracy on the economy in general, and in particular the impact of illiteracy on economically depressed areas; and

(vii) other issues that a majority of the members of the Commission deem appropriate to investigate in accordance with this subtitle.

(2) PUBLIC HEARINGS.—The Commission (and any committees the Commission may form) shall conduct public hearings in different geographic areas of the United States, both urban and rural, in order to receive the views of a broad spectrum of the public on the issue of literacy and on ways to enhance the reading proficiency of children, adults, and families in the United States.

(3) TESTIMONY.—The Commission is authorized to receive testimony from individuals, including—

(A) representatives of public and private organizations and institutions with an interest in the literacy of children, adults, and families in the United States;

(B) educators;

(C) religious leaders;

(D) providers of social services;

(E) representatives of organizations with children as members;

(F) elected and appointed public officials; and

(G) other individuals speaking on their own behalf.

(d) INTERIM AND FINAL REPORTS TO PRESIDENT AND CONGRESS; RECOMMENDATIONS.—

(1) INTERIM REPORTS.—The Commission may submit to the President, the Committee on Labor and Human Resources of the Senate, the Committee on Education and the Workplace of the House of Representatives, and to the public, interim reports regarding the duties of the Commission undertaken pursuant to subsection (c).

(2) FINAL REPORT.—The Commission shall submit to the President, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and the Workplace of the House of Representatives a final report no later than September 30, 2000. The final report shall set forth recommendations regarding the findings of the Commission.

(3) AVAILABILITY.—Copies of interim reports and the final report of the Commission shall be made available in sufficient quantity for public review.

(e) TIME OF APPOINTMENT OF MEMBERS; VACANCIES; SELECTION OF CHAIRMAN; QUORUM; CALLING OF MEETINGS; NUMBER OF MEETINGS; VOTING; COMPENSATION AND EXPENSES.—

(1) IN GENERAL.—The President, the Speaker of the House of Representatives, and the Majority Leader of the Senate shall make their respective appointments to the Commission not later than 60 days after the date of enactment of this Act, for terms ending 60 days after the Commission issues its final report.

(2) VACANCY.—Any vacancy that occurs during the life of the Commission shall not affect the powers of the Commission, and shall be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

(3) CHAIRMAN.—The Majority Leader of the Senate, in consultation with the Speaker of the House of Representatives and with the President shall designate one member of the Commission as Chairman of the Commission no later than 60 days after the establishment of the Commission.

(4) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business, but the Commission may establish a lesser quorum for conducting hearings scheduled by the Commission.

(5) MEETINGS.—The Commission shall meet at the call of the Chairman of the Commission, or at the call of a majority of the members of the Commission. The initial meeting of the Commission shall be conducted no later than 30 days after the appointment of the last member of the Commission, or no later than 30 days after the date on which funds are made available for the Commission.

(6) VOTING.—Decisions of the Commission shall be according to the vote of a simple majority of the members of the Commission present and voting at a properly called meeting.

(7) RULES.—The Commission may establish by majority vote any other rules for the conduct of the Commission's business, if such rules are not inconsistent with this subtitle or other applicable law.

(8) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government, or whose compensation as a member of the Commission is not precluded by a Federal, State, or local law, shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to the compensation received for their services as officers or employees of the United States.

(9) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of service for the Commission.

(f) EXECUTIVE DIRECTOR AND ADDITIONAL PERSONNEL; APPOINTMENT AND COMPENSATION; CONSULTANTS.—

(1) EXECUTIVE DIRECTOR AND ADDITIONAL PERSONNEL.—The Commission may appoint an Executive Director of the Commission, and the Commission may appoint and fix the compensation of such personnel as the Commission deems advisable. The Executive Director shall be compensated at a rate not to exceed the rate payable for Level V of the Executive Schedule under section 5316 of title 5, United States Code. Compensation of other personnel may be set without regard to the provisions of such title 5 that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title 5 that relate to classifications and the General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for Level V of the Executive Schedule under section 5316 of such title.

(2) DETAILEES.—Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privilege.

(3) TEMPORARY OR INTERMITTENT SERVICES.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

(4) CONSTRUCTION.—Nothing in this section shall be construed to limit the ability of the

Commission to enter into contracts with public or private organizations, for research necessary to carry out the Commission's duties under subsection (c).

(g) TIME AND PLACE OF HEARINGS AND NATURE OF TESTIMONY AUTHORIZED.—

(1) IN GENERAL.—The Commission may hold such hearings, sit and act at such times and places, administer such oaths, take such testimony, and receive such evidence as the Commission considers advisable.

(2) WITNESSES.—Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

(3) SUBPOENAS.—If a person fails to supply information requested by the Commission, the Commission may by majority vote require by subpoena the production of any written or recorded information, document, report, answer, record, account, paper, computer file, or other data or documentary evidence necessary to carry out its duties under subsection (c).

(4) INFORMATION.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties under subsection (c). Upon the request of the Commission, the head of such department or agency may furnish such information to the Commission.

(5) DISCLOSURE OF CONFIDENTIAL INFORMATION.—The Commission shall be considered an agency of the Federal Government for purposes of section 1905 of title 18, United States Code, and any individual employed by an entity or organization under contract to the Commission shall be subject to such section. Information obtained by the Commission, other than information available to the public, shall not be disclosed to any person in any manner, except—

(A) to Commission employees or employees of any individual, entity, or organization under contract to the Commission under subsection (f) for the purpose of receiving, reviewing, or processing such information;

(B) upon court order; or

(C) when publicly released by the Commission in an aggregate or summary form that does not directly or indirectly disclose—

(i) the identity of any person or business entity; or

(ii) any information which could not be released under section 1905 of title 18, United States Code.

(h) SUPPORT SERVICES.—The Comptroller General shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(i) DEFINITIONS.—In this subtitle:

(1) ILLITERACY.—The term "illiteracy" means the lack of ability to read and write competently.

(2) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(3) SYSTEMATIC PHONICS.—The term "systematic phonics" means the direct teaching of a pre-planned sequence of relationships between speech sounds and all their letter equivalents.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 1998, 1999, and 2000, such sums as may be necessary to carry out this section.

By Mr. ROTH (for himself and Mr. LOTT):

S. 2. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for American families, and for other purposes; to the Committee on Finance.

THE AMERICAN FAMILY TAX RELIEF ACT

Mr. ROTH. Mr. President, the comedian Henny Youngman told a joke that highlights America's family friendly tax system.

"The people who make our taxes are very nice," he said. "They're letting me keep my mother."

Certainly, our tax laws were never quite this bad, but the humor hinted at the fact that the laws were not altogether family friendly. The family, in fact, has taken it right in the pocketbook. More and more, we are hearing that oft-quoted fact that today the average American family spends more on taxes than it spends on food, clothing and shelter combined. Today, many families need a second earner to make ends meet, because too much of their income is taken by Government.

At the end of World War II, the median income for a family of four was $3,468. At the time, the first $2,667 of income for such families were tax exempt, meaning that three-quarters of median family income was exempt from taxation.

Over the years, inflation ate away at the value of the standard deduction and personal exemptions. The result was that average families paid more and more of their income in taxes.

In 1983, the median family income for a family of four was $29,184, but only the first $8,783 of income was exempt from tax—less than one-third. As my good friend and distinguished colleague, DANIEL PATRICK MOYNIHAN, has pointed out with these statistics, Government tax policies have adversely affected family life.

In 1948, a family of four at the median income level paid 2 percent—2 percent—of its income in Federal taxes. Today, a family of four pays 24 percent.

The time has come to address this disturbing trend. Our tax policies must be changed in light of current realities and critical needs. The American family has been shackled with the excess burden of taxes, I believe, in part because family was such a constant and stable foundation for our society, an enduring unit that could be depended on to carry the burden. But the consequences of that burden and other economic and social factors have succeeded in ravaging the family. Indeed, in society today, the family is under assault, and too many of the policies that are coming out of Washington are increasing the problem rather than providing the solution.

As chairman of the Senate Finance Committee, I intend to work with my colleagues to address these policies and trends, and I laud the spirit of the tax bill introduced today and believe that we can build bipartisan support to advance its overall objectives. The American Family Tax Relief Act is a strong first step towards restoring a sense of economic equilibrium to our families and offers a $500-per-child tax credit, a capital gains tax cut, estate and gift tax relief, and expanded individual retirement accounts.

At one time or another, each of these proposals has found bipartisan support, and I believe Senators on both sides of the aisle will see this bill as a strong first step toward achieving a mutually shared objective. This legislation sets the spirit for debate. It has the welfare and future of the family at heart.

As introduced, this bill calls for a permanent $500-per-child tax credit for children under 18 years of age. The capital gains tax cut allows individuals to deduct 50 percent of their capital gains and allows families that sell their homes at a loss to treat it as a capital loss for purposes of a tax deduction. This bill allows an individual to pass up to $1 million tax free as a gift during life or at the time of death. It excludes from estate taxes the first $1.5 million in value of certain qualified family-owned businesses or farm interests and 50 percent of the value in excess of $1.5 million.

The American Family Tax Relief Act expands the power and availability of IRAs by permitting homemakers to have IRAs, regardless of their spouse's participation in a pension program, and by raising income limits to include more families. It also creates a backloaded IRA that permits after-tax contribution and tax-free withdrawals ofearnings after the taxpayer reaches age 59½. This is a provision I have sought for some time, along with allowing for penalty-free withdrawal for education expenses, which is also included in the package.

Again, Mr. President, this is a strong place to start. I appreciate the leadership—particularly our majority leader TRENT LOTT—for working with us to establish this foundation. Now we must go about the legislative process, building the consensus we need to see it implemented and achieving the real tax relief American families not only desire but need.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 2

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "American Family Tax Relief Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in

this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—CHILD TAX CREDIT

Sec. 101. Child tax credit.

TITLE II—CAPITAL GAINS REFORM

Subtitle A—Taxpayers Other Than Corporations

Sec. 201. Capital gains deduction.
Sec. 202. Indexing of certain assets acquired after December 31, 1996, for purposes of determining gain.
Sec. 203. Modifications to exclusion of gain on certain small business stock.

Subtitle B—Corporate Capital Gains

Sec. 211. Reduction of alternative capital gain tax for corporations.

Subtitle C—Capital Loss Deduction Allowed With Respect to Sale or Exchange of Principal Residence

Sec. 221. Capital loss deduction allowed with respect to sale or exchange of principal residence.

TITLE III—ESTATE AND GIFT PROVISIONS

Sec. 301. Increase in unified estate and gift tax credit.
Sec. 302. Family-owned business exclusion.
Sec. 303. 20-year installment payment where estate consists largely of interest in closely held business.
Sec. 304. No interest on certain portion of estate tax extended under 6166.

TITLE IV—SAVINGS INCENTIVES

Sec. 401. Restoration of IRA deduction.
Sec. 402. IRA allowed for spouses who are not active plan participants.
Sec. 403. Establishment of nondeductible tax-free individual retirement accounts.
Sec. 404. Tax-free withdrawals from individual retirement plans for business startups.
Sec. 405. Tax-free withdrawals from individual retirement plans for long-term unemployed.
Sec. 406. Distributions from certain plans may be used without penalty to pay higher education expenses.

TITLE I—CHILD TAX CREDIT

SEC. 101. CHILD TAX CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 23 the following new section:

"SEC. 24. CHILD TAX CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to $500 multiplied by the number of qualifying children of the taxpayer.

"(b) LIMITATION.—

"(1) IN GENERAL.—The amount of the credit which would (but for this subsection) be allowed by subsection (a) shall be reduced (but not below zero) by $25 for each $1,000 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds the threshold amount.

"(2) THRESHOLD AMOUNT.—For purposes of paragraph (1), the term 'threshold amount' means—

"(A) $110,000 in the case of a joint return,

"(B) $75,000 in the case of an individual who is not married, and

"(C) $55,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

"(c) QUALIFYING CHILD.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying child' means any individual if—

"(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for such taxable year,

"(B) such individual has not attained the age of 18 as of the close of the calendar year in which the taxable year of the taxpayer begins, and

"(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B) (determined without regard to clause (ii) thereof).

"(2) EXCEPTION FOR CERTAIN NONCITIZENS.—The term 'qualifying child' shall not include any individual who would not be a dependent if the first sentence of section 152(b)(3) were applied without regard to all that follows 'resident of the United States'.

"(d) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months."

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 23 the following new item:

"Sec. 24. Child tax credit."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

TITLE II—CAPITAL GAINS REFORM

Subtitle A—Taxpayers Other Than Corporations

SEC. 201. CAPITAL GAINS DEDUCTION.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by redesignating section 1202 as section 1203 and by inserting after section 1201 the following new section:

"SEC. 1202. CAPITAL GAINS DEDUCTION.

"(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a net capital gain, 50 percent of such gain shall be a deduction from gross income.

"(b) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

"(c) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

"(d) ADJUSTMENTS TO NET CAPITAL GAIN.—For purposes of subsection (a)—

"(1) COLLECTIBLES.—

"(A) IN GENERAL.—Net capital gain shall be computed without regard to collectibles gain.

"(B) COLLECTIBLES GAIN.—

"(i) IN GENERAL.—The term 'collectibles gain' means gain from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income.

"(ii) COORDINATION WITH SECTION 1022.—Gain from the disposition of a collectible which is an indexed asset to which section 1022(a) applies shall be disregarded for purposes of this section. A taxpayer may elect to treat any collectible specified in such election as not being an indexed asset for purposes of section 1022. Any such election (and specification) once made, shall be irrevocable.

"(iii) PARTNERSHIPS, ETC.—For purposes of clause (i), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

"(2) GAIN FROM SMALL BUSINESS STOCK.—Net capital gain shall be computed without regard to any gain from the sale or exchange of any qualified small business stock (within the meaning of section 1203(b)) held more than 5 years which is taken into account in computing gross income.

"(3) PRE-1997 GAIN.—

"(A) IN GENERAL.—In the case of a taxable year which includes January 1, 1997, net capital gain shall be computed without regard to pre-1997 gain.

"(B) PRE-1997 GAIN.—The term 'pre-1997 gain' means the amount which would be net capital gain under subsection (a) for a taxable year if such net capital gain were determined by taking into account only gain or loss properly taken into account for the portion of the taxable year before January 1, 1997.

"(C) SPECIAL RULES FOR PASS-THRU ENTITIES.—

"(i) IN GENERAL.—In applying subparagraph (A) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

"(ii) PASS-THRU ENTITY DEFINED.—For purposes of clause (i), the term 'pass-thru entity' means—

"(I) a regulated investment company,

"(II) a real estate investment trust,

"(III) an S corporation,

"(IV) a partnership,

"(V) an estate or trust, and

"(VI) a common trust fund.

"(e) MAXIMUM RATE ON NONDEDUCTIBLE CAPITAL GAIN.—

"(1) IN GENERAL.—If a taxpayer other than a corporation has a nondeductible net capital gain for any taxable year, then the tax imposed by section 1 for the taxable year shall not exceed the sum of—

"(A) a tax computed on the taxable income reduced by the amount of the nondeductible net capital gain, at the same rates and in the same manner as if this subsection had not been enacted, plus

"(B) a tax of 28 percent of the nondeductible net capital gain.

"(2) NONDEDUCTIBLE NET CAPITAL GAIN.—For purposes of paragraph (1), the term 'nondeductible net capital gain' means an amount equal to the amount of the reduction in net capital gain under subsection (a) by reason of subsection (d)."

(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 is amended by inserting after paragraph (16) the following new paragraph:

"(17) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202."

(c) TECHNICAL AND CONFORMING CHANGES.—

(1)(A) Section 1 is amended by striking subsection (h).

(B)(i) Section 641(d)(2)(A) is amended by striking "Except as provided in section 1(h), the" and inserting "The".

(ii) Section 641(d)(2)(C) is amended by inserting after clause (iii) the following new clause:

"(iv) The deduction under section 1202."

(2) Paragraph (1) of section 170(e) is amended by striking "the amount of gain" in the material following subparagraph (B)(ii) and inserting "50 percent (80 percent in the case of a corporation) of the amount of gain".

(3) Subparagraph (B) of section 172(d)(2) is amended to read as follows:

"(B) the deduction under section 1202 shall not be allowed."

(4) The last sentence of section 453A(c)(3) is amended by striking all that follows "long-term capital gain," and inserting "the maximum rate on net capital gain under section 1201 or the deduction under section 1202 (whichever is appropriate) shall be taken into account."

(5) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to capital gains deduction). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(6) The last sentence of section 643(a)(3) is amended to read as follows: "The deduction under section 1202 (relating to capital gains deduction) shall not be taken into account."

(7) Subparagraph (C) of section 643(a)(6) is amended by inserting "(i)" before "there shall" and by inserting before the period ", and (ii) the deduction under section 1202 (relating to capital gains deduction) shall not be taken into account".

(8)(A) Paragraph (2) of section 904(b) is amended by striking subparagraph (A), by redesignating subparagraph (B) as subparagraph (A), and by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

"(B) OTHER TAXPAYERS.—In the case of a taxpayer other than a corporation, taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income."

(B) Subparagraph (A) of section 904(b)(2), as so redesignated, is amended—

(i) by striking all that precedes clause (i) and inserting the following:

"(A) CORPORATIONS.—In the case of a corporation—", and

(ii) by striking in clause (i) "in lieu of applying subparagraph (A),".

(C) Paragraph (3) of section 904(b) is amended by striking subparagraphs (D) and (E) and inserting the following new subparagraph:

"(D) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b)."

(D) Clause (v) of section 593(b)(2)(D) is amended—

(i) by striking "if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year,", and

(ii) by striking "section 904(b)(3)(E)" and inserting "section 904(b)(3)(D)".

(9) The last sentence of section 1044(d) is amended by striking "1202" and inserting "1201(b) or 1203".

(10)(A) Paragraph (2) of section 1211(b) is amended to read as follows:

"(2) the sum of—

"(A) the excess of the net short-term capital loss over the net long-term capital gain, and

"(B) one-half of the excess of the net long-term capital loss over the net short-term capital gain."

(B) So much of paragraph (2) of section 1212(b) as precedes subparagraph (B) thereof is amended to read as follows:

"(2) SPECIAL RULES.—

"(A) ADJUSTMENTS.—

"(i) For purposes of determining the excess referred to in paragraph (1)(A), there shall be treated as short-term capital gain in the taxable year an amount equal to the lesser of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

"(II) the adjusted taxable income for such taxable year.

"(ii) For purposes of determining the excess referred to in paragraph (1)(B), there shall be treated as short-term capital gain in the taxable year an amount equal to the sum of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) or the adjusted taxable income for such taxable year, whichever is the least, plus

"(II) the excess of the amount described in subclause (I) over the net short-term capital loss (determined without regard to this subsection) for such year."

(C) Subsection (b) of section 1212 is amended by adding at the end the following new paragraph:

"(3) TRANSITIONAL RULE.—

"(A) IN GENERAL.—The amount determined under subclause (II) of paragraph (2)(A)(ii) for any taxable year shall be reduced (but not below zero) by the excess of—

"(i) the amount of the unused pre-1998 long-term capital loss for such year, over

"(ii) the sum of the long-term capital gain and the net short-term capital gain for such taxable year.

Section 1211(b)(2)(B) shall be applied without regard to 'one-half of' with respect to such excess for such taxable year.

"(B) UNUSED PRE-1998 LONG-TERM CAPITAL LOSS.—For purposes of this paragraph, the term 'unused pre-1998 long-term capital loss' means, with respect to a taxable year, the excess of—

"(i) the amount which under paragraph (1)(B) (as in effect for taxable years beginning before January 1, 1998) is treated as a long-term capital loss for the taxpayer's first taxable year beginning after December 31, 1997, over

"(ii) the sum of—

"(I) the aggregate amount determined under subparagraph (A)(ii) for all prior taxable years beginning after December 31, 1997, and

"(II) the aggregate reductions under subparagraph (A) for all such prior taxable years."

(11) Paragraph (1) of section 1402(i) is amended by inserting ", and the deduction provided by section 1202 shall not apply" before the period at the end thereof.

(12) Subsection (e) of section 1445 is amended—

(A) in paragraph (1) by striking "35 percent (or, to the extent provided in regulations, 28 percent)" and inserting "28 percent (or, to the extent provided in regulations, 19.8 percent)", and

(B) in paragraph (2) by striking "35 percent" and inserting "28 percent".

(13)(A) The second sentence of section 7518(g)(6)(A) is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) applies", and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (28 percent".

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) of such Code applies", and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (28 percent".

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by striking the item relating to section 1202 and by inserting after the item relating to section 1201 the following new items:

"Sec. 1202. Capital gains deduction.
"Sec. 1203. 50-percent exclusion for gain from certain small business stock."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 1996.

(2) CONTRIBUTIONS.—The amendment made by subsection (c)(2) shall apply to contributions after December 31, 1996.

(3) USE OF LONG-TERM LOSSES.—The amendments made by subsection (c)(10) shall apply to taxable years beginning after December 31, 1997.

(4) WITHHOLDING.—The amendments made by subsection (c)(12) shall apply only to amounts paid after the date of the enactment of this Act.

SEC. 202. INDEXING OF CERTAIN ASSETS ACQUIRED AFTER DECEMBER 31, 1996, FOR PURPOSES OF DETERMINING GAIN.

(a) IN GENERAL.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

"SEC. 1022. INDEXING OF CERTAIN ASSETS ACQUIRED AFTER DECEMBER 31, 1996, FOR PURPOSES OF DETERMINING GAIN.

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Solely for purposes of determining gain on the sale or other disposition by a taxpayer (other than a corporation) of an indexed asset which has been held for more than 3 years, the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) EXCEPTION FOR DEPRECIATION, ETC.—The deductions for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) common stock in a C corporation (other than a foreign corporation), and

"(B) tangible property,

which is a capital asset or property used in the trade or business (as defined in section 1231(b)).

"(2) STOCK IN CERTAIN FOREIGN CORPORATIONS INCLUDED.—For purposes of this section—

"(A) IN GENERAL.—The term 'indexed asset' includes common stock in a foreign corporation which is regularly traded on an established securities market.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to—

"(i) stock of a foreign investment company (within the meaning of section 1246(b)),

"(ii) stock in a passive foreign investment company (as defined in section 1296),

"(iii) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2), and

"(iv) stock in a foreign personal holding company (as defined in section 552).

"(C) TREATMENT OF AMERICAN DEPOSITORY RECEIPTS.—An American depository receipt for common stock in a foreign corporation shall be treated as common stock in such corporation.

"(c) INDEXED BASIS.—For purposes of this section—

"(1) GENERAL RULE.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, increased by

"(B) the applicable inflation adjustment.

"(2) APPLICABLE INFLATION ADJUSTMENT.—The applicable inflation adjustment for any asset is an amount equal to—

"(A) the adjusted basis of the asset, multiplied by

"(B) the percentage (if any) by which—

"(i) the gross domestic product deflator for the last calendar quarter ending before the asset is disposed of, exceeds

"(ii) the gross domestic product deflator for the last calendar quarter ending before the asset was acquired by the taxpayer.

The percentage under subparagraph (B) shall be rounded to the nearest 1/10 of 1 percentage point.

"(3) GROSS DOMESTIC PRODUCT DEFLATOR.—The gross domestic product deflator for any calendar quarter is the implicit price deflator for the gross domestic product for such quarter (as shown in the last revision thereof released by the Secretary of Commerce before the close of the following calendar quarter).

"(d) SUSPENSION OF HOLDING PERIOD WHERE DIMINISHED RISK OF LOSS; TREATMENT OF SHORT SALES.—

"(1) IN GENERAL.—If the taxpayer (or a related person) enters into any transaction which substantially reduces the risk of loss from holding any asset, such asset shall not be treated as an indexed asset for the period of such reduced risk.

"(2) SHORT SALES.—

"(A) IN GENERAL.—In the case of a short sale of an indexed asset with a short sale period in excess of 3 years, for purposes of this title, the amount realized shall be an amount equal to the amount realized (determined without regard to this paragraph) increased by the applicable inflation adjustment. In applying subsection (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date of acquisition and the closing date for the sale shall be treated as the date of disposition.

"(B) SHORT SALE PERIOD.—For purposes of subparagraph (A), the short sale period begins on the day that the property is sold and ends on the closing date for the sale.

"(e) TREATMENT OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

"(1) ADJUSTMENTS AT ENTITY LEVEL.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

"(B) EXCEPTION FOR CORPORATE SHAREHOLDERS.—Under regulations—

"(i) in the case of a distribution by a qualified investment entity (directly or indirectly) to a corporation—

"(I) the determination of whether such distribution is a dividend shall be made without regard to this section, and

"(II) the amount treated as gain by reason of the receipt of any capital gain dividend shall be increased by the percentage by which the entity's net capital gain for the taxable year (determined without regard to this section) exceeds the entity's net capital gain for such year determined with regard to this section, and

"(ii) there shall be other appropriate adjustments (including deemed distributions) so as to ensure that the benefits of this section are not allowed (directly or indirectly) to corporate shareholders of qualified investment entities.

For purposes of the preceding sentence, any amount includible in gross income under section 852(b)(3)(D) shall be treated as a capital gain dividend and an S corporation shall not be treated as a corporation.

"(C) EXCEPTION FOR QUALIFICATION PURPOSES.—This section shall not apply for purposes of sections 851(b) and 856(c).

"(D) EXCEPTION FOR CERTAIN TAXES IMPOSED AT ENTITY LEVEL.—

"(i) TAX ON FAILURE TO DISTRIBUTE ENTIRE GAIN.—If any amount is subject to tax under section 852(b)(3)(A) for any taxable year, the amount on which tax is imposed under such section shall be increased by the percentage determined under subparagraph (B)(i)(II). A similar rule shall apply in the case of any amount subject to tax under paragraph (2) or (3) of section 857(b) to the extent attributable to the excess of the net capital gain over the deduction for dividends paid determined with reference to capital gain dividends only. The first sentence of this clause shall not apply to so much of the amount subject to tax under section 852(b)(3)(A) as is designated by the company under section 852(b)(3)(D).

"(ii) OTHER TAXES.—This section shall not apply for purposes of determining the amount of any tax imposed by paragraph (4), (5), or (6) of section 857(b).

"(2) ADJUSTMENTS TO INTERESTS HELD IN ENTITY.—

"(A) REGULATED INVESTMENT COMPANIES.—Stock in a regulated investment company (within the meaning of section 851) shall be an indexed asset for any calendar quarter in the same ratio as—

"(i) the average of the fair market values of the indexed assets held by such company at the close of each month during such quarter, bears to

"(ii) the average of the fair market values of all assets held by such company at the close of each such month.

"(B) REAL ESTATE INVESTMENT TRUSTS.—Stock in a real estate investment trust (within the meaning of section 856) shall be an indexed asset for any calendar quarter in the same ratio as—

"(i) the fair market value of the indexed assets held by such trust at the close of such quarter, bears to

"(ii) the fair market value of all assets held by such trust at the close of such quarter.

"(C) RATIO OF 80 PERCENT OR MORE.—If the ratio for any calendar quarter determined under subparagraph (A) or (B) would (but for this subparagraph) be 80 percent or more, such ratio for such quarter shall be 100 percent.

"(D) RATIO OF 20 PERCENT OR LESS.—If the ratio for any calendar quarter determined under subparagraph (A) or (B) would (but for this subparagraph) be 20 percent or less, such ratio for such quarter shall be zero.

"(E) LOOK-THRU OF PARTNERSHIPS.—For purposes of this paragraph, a qualified investment entity which holds a partnership interest shall be treated (in lieu of holding a partnership interest) as holding its proportionate share of the assets held by the partnership.

"(3) TREATMENT OF RETURN OF CAPITAL DISTRIBUTIONS.—Except as otherwise provided by the Secretary, a distribution with respect to stock in a qualified investment entity which is not a dividend and which results in a reduction in the adjusted basis of such stock shall be treated as allocable to stock acquired by the taxpayer in the order in which such stock was acquired.

"(4) QUALIFIED INVESTMENT ENTITY.—For purposes of this subsection, the term 'qualified investment entity' means—

"(A) a regulated investment company (within the meaning of section 851), and

"(B) a real estate investment trust (within the meaning of section 856).

"(f) OTHER PASS-THRU ENTITIES.—

"(1) PARTNERSHIPS.—

"(A) IN GENERAL.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

"(B) SPECIAL RULE IN THE CASE OF SECTION 754 ELECTIONS.—In the case of a transfer of an interest in a partnership with respect to which the election provided in section 754 is in effect—

"(i) the adjustment under section 743(b)(1) shall, with respect to the transferor partner, be treated as a sale of the partnership assets for purposes of applying this section, and

"(ii) with respect to the transferee partner, the partnership's holding period for purposes of this section in such assets shall be treated as beginning on the date of such adjustment.

"(2) S CORPORATIONS.—In the case of an S corporation, the adjustment made under subsection (a) at the corporate level shall be passed through to the shareholders. This section shall not apply for purposes of determining the amount of any tax imposed by section 1374 or 1375.

"(3) COMMON TRUST FUNDS.—In the case of a common trust fund, the adjustment made under subsection (a) at the trust level shall be passed through to the participants.

"(4) INDEXING ADJUSTMENT DISREGARDED IN DETERMINING LOSS ON SALE OF INTEREST IN ENTITY.—Notwithstanding the preceding provisions of this subsection, for purposes of determining the amount of any loss on a sale or exchange of an interest in a partnership, S corporation, or common trust fund, the adjustment made under subsection (a) shall not be taken into account in determining the adjusted basis of such interest.

"(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

"(1) IN GENERAL.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

"(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

"(B) persons treated as single employer under subsection (b) or (c) of section 414.

"(h) TRANSFERS TO INCREASE INDEXING ADJUSTMENT.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is to secure or increase an adjustment under subsection (a), the Secretary may disallow part or all of such adjustment or increase.

"(i) SPECIAL RULES.—For purposes of this section—

"(1) TREATMENT OF IMPROVEMENTS, ETC.—If there is an addition to the adjusted basis of any tangible property or of any stock in a corporation during the taxable year by reason of an improvement to such property or a contribution to capital of such corporation—

"(A) such addition shall never be taken into account under subsection (c)(1)(A) if the aggregate amount thereof during the taxable year with respect to such property or stock is less than $1,000, and

"(B) such addition shall be treated as a separate asset acquired at the close of such taxable year if the aggregate amount thereof during the taxable year with respect to such property or stock is $1,000 or more.

A rule similar to the rule of the preceding sentence shall apply to any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—The applicable inflation adjustment shall be appropriately reduced for periods during which the asset was not an indexed asset.

"(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

"(4) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

"(5) COLLAPSIBLE CORPORATIONS.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Indexing of certain assets acquired after December 31, 1996, for purposes of determining gain."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to the disposition of any property the holding period of which begins after December 31, 1996.

(2) CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS.—The amendments made by this section shall not apply to the disposition of any property acquired after December 31, 1996, from a related person (as defined in section 1022(g)(2) of the Internal Revenue Code of 1986, as added by this section) if—

(A) such property was so acquired for a price less than the property's fair market value, and

(B) the amendments made by this section did not apply to such property in the hands of such related person.

(d) ELECTION TO RECOGNIZE GAIN ON ASSETS HELD ON JANUARY 1, 1997.—For purposes of the Internal Revenue Code of 1986—

(1) IN GENERAL.—A taxpayer other than a corporation may elect to treat—

(A) any readily tradable stock (which is an indexed asset) held by such taxpayer on January 1, 1997, and not sold before the next business day after such date, as having been sold on such next business day for an amount equal to its closing market price on such next business day (and as having been reacquired on such next business day for an amount equal to such closing market price), and

(B) any other indexed asset held by the taxpayer on January 1, 1997, as having been sold on such date for an amount equal to its fair market value on such date (and as having been reacquired on such date for an amount equal to such fair market value).

(2) TREATMENT OF GAIN OR LOSS.—

(A) Any gain resulting from an election under paragraph (1) shall be treated as received or accrued on the date the asset is treated as sold under paragraph (1) and shall be recognized notwithstanding any provision of the Internal Revenue Code of 1986.

(B) Any loss resulting from an election under paragraph (1) shall not be allowed for any taxable year.

(3) ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe and shall specify the assets for which such election is made. Such an election, once made with respect to any asset, shall be irrevocable.

(4) READILY TRADABLE STOCK.—For purposes of this subsection, the term "readily tradable stock" means any stock which, as of January 1, 1997, is readily tradable on an established securities market or otherwise.

(e) TREATMENT OF PRINCIPAL RESIDENCES.—Property held and used by the taxpayer on January 1, 1997, as his principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986) shall be treated—

(1) for purposes of subsection (c)(1) of this section and section 1022 of such Code, as having a holding period which begins on January 1, 1997, and

(2) for purposes of section 1022(c)(2)(B)(ii) of such Code, as having been acquired on January 1, 1997.

Subsection (d) shall not apply to property to which this subsection applies.

SEC. 203. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) Subsection (a) of section 57 is amended by striking paragraph (7).

(2) Subclause (II) of section 53(d)(1)(B)(ii) is amended by striking ", (5), and (7)" and inserting "and (5)".

(b) STOCK OF LARGER BUSINESSES ELIGIBLE FOR REDUCED RATES.—Paragraph (1) of section 1203(d), as redesignated by section 201, is amended by striking "$50,000,000" each place it appears and inserting "$100,000,000".

(c) REPEAL OF PER-ISSUER LIMITATION.—Section 1203, as so redesignated, is amended by striking subsection (b).

(d) OTHER MODIFICATIONS.—

(1) REPEAL OF WORKING CAPITAL LIMITATION.—Paragraph (6) of section 1203(e), as so redesignated, is amended—

(A) by striking "2 years" in subparagraph (B) and inserting "5 years", and

(B) by striking the last sentence.

(2) EXCEPTION FROM REDEMPTION RULES WHERE BUSINESS PURPOSE.—Paragraph (3) of section 1203(c), as so redesignated, is amended by adding at the end the following new subparagraph:

"(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitations of this section."

(e) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 1203, as so redesignated, is amended by striking "subsections (f) and (h)" and inserting "subsections (e) and (g)".

(2) Paragraph (2) of section 1203(c), as so redesignated, is amended—

(A) by striking "subsection (e)" each place it appears and inserting "subsection (d)", and

(B) by striking "subsection (e)(4) in subparagraph (B)(ii) and inserting "subsection (d)(4)".

(3) Paragraph (1) of section 1203(e), as so redesignated, is amended by striking "subsection (c)(2)" and inserting "subsection (b)(2)".

(4) Paragraph (1) of section 1203(g), as so redesignated, is amended to read as follows:

"(1) IN GENERAL.—If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2), such amount shall be treated as gain from the sale or exchange of any qualified small business stock held for more than 5 years."

(5) Section 1203, as so redesignated, as amended by the preceding provisions of this section, is amended by redesignating subsections (c) through (k) as subsections (b) through (j), respectively.

(f) CLERICAL AMENDMENT.—Section 1203, as so redesignated, is amended by adding at the end the following new subsection:

"(k) CROSS REFERENCE.—

"For reduced rates on gain of qualified small business stock held more than 5 years, see sections 1201(b) and 1202(e)."

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock issued after August 10, 1993.

(2) INCREASE IN SIZE.—The amendment made by subsection (b) shall apply to stock issued after the date of the enactment of this Act.

Subtitle B—Corporate Capital Gains

SEC. 211. REDUCTION OF ALTERNATIVE CAPITAL GAIN TAX FOR CORPORATIONS.

(a) IN GENERAL.—Section 1201 is amended to read as follows:

"SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS.

"(a) GENERAL RULE.—If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, and 831 (a) and (b) (whichever is applicable), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

"(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(2) a tax of 28 percent of the net capital gain.

"(b) SPECIAL RULES FOR QUALIFIED SMALL BUSINESS GAIN.—

"(1) IN GENERAL.—If for any taxable year a corporation has gain from the sale or exchange of any qualified small business stock held for more than 5 years, the amount determined under subsection (a)(2) for such taxable year shall be equal to the sum of—

"(A) 21 percent of the lesser of such gain or the corporation's net capital gain, plus

"(B) 28 percent of the net capital gain reduced by the gain taken into account under subparagraph (A).

"(2) QUALIFIED SMALL BUSINESS STOCK.—For purposes of paragraph (1), the term 'qualified small business stock' has the meaning given such term by section 1203(b), except that stock shall not be treated as qualified small business stock if such stock was at any time held by a member of the parent-subsidiary controlled group (as defined in section 1203(c)(3)) which includes the qualified small business.

"(c) TRANSITIONAL RULE.—

"(1) IN GENERAL.—In applying this section, net capital gain for any taxable year shall not exceed the net capital gain determined by taking into account only gains and losses properly taken into account for the portion of the taxable year after December 31, 1996.

"(2) SPECIAL RULE FOR PASS-THRU ENTITIES.—Section 1202(d)(3)(C) shall apply for purposes of paragraph (1).

"(d) CROSS REFERENCES.—

"For computation of the alternative tax—

"(1) in the case of life insurance companies, see section 801(a)(2),

"(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3) (A) and (D), and

"(3) in the case of real estate investment trusts, see section 857(b)(3)(A)."

(b) TECHNICAL AMENDMENT.—Clause (iii) of section 852(b)(3)(D) is amended by striking "65 percent" and inserting "72 percent".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after December 31, 1996.

(2) QUALIFIED SMALL BUSINESS STOCK.—Section 1201(b) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to gain from qualified small business stock acquired on or after the date of the enactment of this Act.

Subtitle C—Capital Loss Deduction Allowed With Respect to Sale or Exchange of Principal Residence

SEC. 221. CAPITAL LOSS DEDUCTION ALLOWED WITH RESPECT TO SALE OR EXCHANGE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (c) of section 165 (relating to limitation on losses of individuals) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "; and", and by adding at the end the following new paragraph:

"(4) losses arising from the sale or exchange of the principal residence (within the meaning of section 1034) of the taxpayer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales and exchanges after December 31, 1996, in taxable years ending after such date.

TITLE III—ESTATE AND GIFT PROVISIONS

SEC. 301. INCREASE IN UNIFIED ESTATE AND GIFT TAX CREDIT.

(a) ESTATE TAX CREDIT.—

(1) IN GENERAL.—Section 2010(a) (relating to unified credit against estate tax) is amended by striking "$192,800" and inserting "the applicable credit amount".

(2) APPLICABLE CREDIT AMOUNT.— Section 2010 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) APPLICABLE CREDIT AMOUNT.—For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the applicable exclusion amount determined in accordance with the following table:

"In the case of estates of decedents dying, and gifts made, during:	**The applicable exclusion amount is:**
1997	$650,000
1998	$700,000
1999	$750,000
2000	$800,000
2001	$850,000
2002	$900,000
2003	$950,000
2004 or thereafter	$1,000,000."

(3) CONFORMING AMENDMENTS.—

(A) Section 6018(a)(1) is amended by striking "$600,000" and inserting "the applicable exclusion amount in effect under section 2010(c) for the calendar year which includes the date of death".

(B) Section 2001(c)(2) is amended by striking "$21,040,000" and inserting "the amount at which the average tax rate under this section is 55 percent".

(C) Section 2102(c)(3)(A) is amended by striking "$192,800" and inserting "the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death".

(b) UNIFIED GIFT TAX CREDIT.—Section 2505(a)(1) (relating to unified credit against gift tax) is amended by striking "$192,800" and inserting "the applicable credit amount in effect under section 2010(c) for such calendar year".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 1996.

SEC. 302. FAMILY-OWNED BUSINESS EXCLUSION.

(a) IN GENERAL.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2033 the following new section:

"SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.

"(a) IN GENERAL.—In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

"(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

"(2) the sum of—

"(A) $1,500,000, plus

"(B) 50 percent of the excess (if any) of the adjusted value of such interests over $1,500,000.

"(b) ESTATES TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to an estate if—

"(A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

"(B) the sum of—

"(i) the adjusted value of the qualified family-owned business interests described in paragraph (2), plus

"(ii) the amount of the gifts of such interests determined under paragraph (3),

exceeds 50 percent of the adjusted gross estate, and

"(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

"(i) such interests were owned by the decedent or a member of the decedent's family, and

"(ii) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

"(2) INCLUDIBLE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—The qualified family-owned business interests described in this paragraph are the interests which—

"(A) are included in determining the value of the gross estate (without regard to this section), and

"(B) are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

"(3) INCLUDIBLE GIFTS OF INTERESTS.—The amount of the gifts of qualified family-owned business interests determined under this paragraph is the excess of—

"(A) the sum of—

"(i) the amount of such gifts from the decedent to members of the decedent's family taken into account under subsection 2001(b)(1)(B), plus

"(ii) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death, over

"(B) the amount of such gifts from the decedent to members of the decedent's family otherwise included in the gross estate.

"(c) ADJUSTED GROSS ESTATE.—For purposes of this section, the term 'adjusted gross estate' means the value of the gross estate (determined without regard to this section)—

"(1) reduced by any amount deductible under paragraph (3) or (4) of section 2053(a), and

"(2) increased by the excess of—

"(A) the sum of—

"(i) the amount of gifts determined under subsection (b)(3), plus

"(ii) the amount (if more than de minimis) of other transfers from the decedent to the decedent's spouse (at the time of the transfer) within 10 years of the date of the decedent's death, plus

"(iii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, other than gifts to members of the decedent's family otherwise excluded under section 2503(b), over

"(B) the sum of the amounts described in clauses (i), (ii), and (iii) of subparagraph (A) which are otherwise includible in the gross estate.

For purposes of the preceding sentence, the Secretary may provide that de minimis gifts to persons other than members of the decedent's family shall not be taken into account.

"(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

"(1) any amount deductible under paragraph (3) or (4) of section 2053(a), over

"(2) the sum of—

"(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

"(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152), plus

"(C) any indebtedness not described in clause (i) or (ii), to the extent such indebtedness does not exceed $10,000.

"(e) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified family-owned business interest' means—

"(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

"(B) an interest in an entity carrying on a trade or business, if—

"(i) at least—

"(I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,

"(II) 70 percent of such entity is so owned by members of 2 families, or

"(III) 90 percent of such entity is so owned by members of 3 families, and

"(ii) for purposes of subclause (II) or (III) of clause (i), at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

"(2) LIMITATION.—Such term shall not include—

"(A) any interest in a trade or business the principal place of business of which is not located in the United States,

"(B) any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years of the date of the decedent's death,

"(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a)),

"(D) that portion of an interest in a trade or business that is attributable to—

"(i) cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business, and

"(ii) any other assets of the trade or business (other than assets used in the active conduct of a trade or business described in section 542(c)(2)), the income of which is described in section 543(a) or in subparagraph (B), (C), (D), or (E) of section 954(c)(1) (determined by substituting 'trade or business' for 'controlled foreign corporation').

"(3) RULES REGARDING OWNERSHIP.—

"(A) OWNERSHIP OF ENTITIES.—For purposes of paragraph (1)(B)—

"(i) CORPORATIONS.—Ownership of a corporation shall be determined by the holding of stock possessing the appropriate percentage of the total combined voting power of all classes of stock entitled to vote and the appropriate percentage of the total value of shares of all classes of stock.

"(ii) PARTNERSHIPS.—Ownership of a partnership shall be determined by the owning of the appropriate percentage of the capital interest in such partnership.

"(B) OWNERSHIP OF TIERED ENTITIES.—For purposes of this section, if by reason of holding an interest in a trade or business, a decedent, any member of the decedent's family, any qualified heir, or any member of any qualified heir's family is treated as holding an interest in any other trade or business—

"(i) such ownership interest in the other trade or business shall be disregarded in determining if the ownership interest in the first trade or business is a qualified family-owned business interest, and

"(ii) this section shall be applied separately in determining if such interest in any other trade or business is a qualified family-owned business interest.

"(C) INDIVIDUAL OWNERSHIP RULES.—For purposes of this section, an interest owned, directly or indirectly, by or for an entity described in paragraph (1)(B) shall be considered as being owned proportionately by or for the entity's shareholders, partners, or beneficiaries. A person shall be treated as a beneficiary of any trust only if such person has a present interest in such trust.

"(f) TAX TREATMENT OF FAILURE TO MATERIALLY PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTERESTS.—

"(1) IN GENERAL.—There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

"(A) the material participation requirements described in section 2032A(c)(6)(B) are not met with respect to the qualified family-owned business interest which was acquired (or passed) from the decedent,

"(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)),

"(C) the qualified heir loses United States citizenship (within the meaning of section 877) or with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) occurs, and such heir does not comply with the requirements of subsection (g), or

"(D) the principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

"(2) ADDITIONAL ESTATE TAX.—

"(A) IN GENERAL.—The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

"(i) the applicable percentage of the adjusted tax difference attributable to the qualified family-owned business interest (as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

"(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

"(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined under the following table:

"If the event described in paragraph (1) occurs in the following year of material participation:	The applicable percentage is:
1 through 6	100
7	80
8	60
9	40
10	20.

"(g) SECURITY REQUIREMENTS FOR NONCITIZEN QUALIFIED HEIRS.—

"(1) IN GENERAL.—Except upon the application of subparagraph (F) or (M) of subsection (h)(3), if a qualified heir is not a citizen of the United States, any interest under this section passing to or acquired by such heir (including any interest held by such heir at a time described in subsection (f)(1)(C)) shall be treated as a qualified family-owned business interest only if the interest passes or is acquired (or is held) in a qualified trust.

"(2) QUALIFIED TRUST.—The term 'qualified trust' means a trust—

"(A) which is organized under, and governed by, the laws of the United States or a State, and

"(B) except as otherwise provided in regulations, with respect to which the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation.

"(h) OTHER DEFINITIONS AND APPLICABLE RULES.—For purposes of this section—

"(1) QUALIFIED HEIR.—The term 'qualified heir'—

"(A) has the meaning given to such term by section 2032A(e)(1), and

"(B) includes any active employee of the trade or business to which the qualified family-owned business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent's death.

"(2) MEMBER OF THE FAMILY.—The term 'member of the family' has the meaning given to such term by section 2032A(e)(2).

"(3) APPLICABLE RULES.—Rules similar to the following rules shall apply:

"(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

"(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

"(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

"(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

"(E) Section 2032A(c)(4) (relating to due date).

"(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

"(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treated as material participation).

"(H) Section 2032A(e)(10) (relating to community property).

"(I) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

"(J) Section 2032A(f) (relating to statute of limitations).

"(K) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

"(L) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).

"(M) Section 6324B (relating to special lien for additional estate tax).

"(4) COORDINATION WITH OTHER ESTATE TAX BENEFITS.—If there is a reduction in the value of the gross estate under this section—

"(A) the dollar limitation applicable under section 2032A(a)(2), and

"(B) the $1,000,000 amount under section 6601(j)(3) (as adjusted),

shall each be reduced (but not below zero) by the amount of such reduction."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by inserting after the item relating to section 2033 the following new item:

"Sec. 2033A. Family-owned business exclusion."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1996.

SEC. 303. 20-YEAR INSTALLMENT PAYMENT WHERE ESTATE CONSISTS LARGELY OF INTEREST IN CLOSELY HELD BUSINESS.

(a) IN GENERAL.—Section 6166(a) (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business) is amended by striking "10" in paragraph (1) and the heading thereof and inserting "20".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1996.

SEC. 304. NO INTEREST ON CERTAIN PORTION OF ESTATE TAX EXTENDED UNDER 6166.

(a) IN GENERAL.—Section 6601(j) (relating to 4-percent rate on certain portion of estate tax extended under section 6166) is amended—

(1) by striking the first sentence of paragraph (1) and inserting the following new sentence: "If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6166, no interest on the no-interest portion of such amount shall (in lieu of the annual rate provided by subsection (a)) be paid.",

(2) by striking "4-percent" each place it appears in paragraphs (2) and (3) and inserting "no-interest",

(3) by striking "4-PERCENT" in the heading of paragraph (2) and inserting "NO INTEREST", and

(4) by striking "4-PERCENT RATE" in the heading thereof and inserting "NO INTEREST".

(b) CONFORMING AMENDMENTS.—

(1) Section 6166(b)(7)(A)(iii) is amended by striking "4-percent rate of interest" and inserting "no-interest portion".

(2) Section 6166(b)(8)(A)(iii) is amended to read as follows:

"(iii) NO-INTEREST PORTION NOT TO APPLY.—Section 6601(j) (relating to no-interest portion) shall not apply."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1996.

TITLE IV—SAVINGS INCENTIVES

SEC. 401. RESTORATION OF IRA DEDUCTION.

(a) MODIFICATIONS OF RESTRICTIONS ON ACTIVE PARTICIPANTS.—Subparagraph (B) of section 219(g)(3) (relating to applicable dollar amount) is amended to read as follows:

"(B) APPLICABLE DOLLAR AMOUNT.—The term 'applicable dollar amount' means the following:

"(i) In the case of a taxpayer filing a joint return:

"For taxable years beginning in:	The applicable dollar amount is:
1997	$65,000
1998	$90,000
1999	$115,000
2000	$140,000

"(ii) In the case of any other taxpayer (other than a married individual filing a separate return):

"For taxable years beginning in:	The applicable dollar amount is:
1997	$50,000
1998	$75,000
1999	$100,000
2000	$125,000

"(iii) In the case of a married individual filing a separate return, zero.".

(b) REPEAL OF RESTRICTIONS ON ACTIVE PARTICIPANTS.—

(1) IN GENERAL.—Section 219 (relating to deduction for retirement savings), as amended by section 402, is amended by striking subsection (g) and by redesignating subsection (h) as subsection (g).

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Subsection (f) of section 219 is amended by striking paragraph (7).

(B) Paragraph (5) of section 408(d) is amended by striking the last sentence.

(C) Section 408(o) is amended by adding at the end the following new paragraph:

"(5) TERMINATION.—This subsection shall not apply to any designated nondeductible contribution for any taxable year beginning after December 31, 2000.".

(D) Sections 408A(c)(2)(A) and 4973(b)(2)(B)(ii), as added by section 403, are each amended by striking "(computed without regard to subsection (g) of such section)".

(c) COORDINATION OF IRA DEDUCTION LIMIT WITH ELECTIVE DEFERRAL LIMIT.—Section 219(b) (relating to maximum amount of deduction) is amended by adding at the end the following new paragraph:

"(5) COORDINATION WITH ELECTIVE DEFERRAL LIMIT.—The amount determined under paragraph (1) with respect to any individual for any taxable year shall not exceed the excess (if any) of—

"(A) the limitation applicable for the taxable year under section 402(g)(1), over

"(B) the elective deferrals (as defined in section 402(g)(3)) of such individual for such taxable year."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to taxable years beginning after December 31, 1996.

(2) TERMINATION.—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2000.

SEC. 402. IRA ALLOWED FOR SPOUSES WHO ARE NOT ACTIVE PLAN PARTICIPANTS.

(a) IN GENERAL.—Section 219(g)(1) of the Internal Revenue Code of 1986 is amended by striking "or the individual's spouse".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 403. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

"SEC. 408A. IRA PLUS ACCOUNTS.

"(a) GENERAL RULE.—Except as provided in this section, an IRA Plus account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) IRA PLUS ACCOUNT.—For purposes of this title, the term 'IRA Plus account' means an individual retirement plan (as defined in section 7701(a)(37)) which is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as an IRA Plus account.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to an IRA Plus account.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all IRA Plus accounts maintained for the benefit of an individual shall not exceed the excess (if any) of—

"(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year (computed without regard to subsection (g) of such section), over

"(B) the amount so allowed.

"(3) CONTRIBUTIONS PERMITTED AFTER AGE 70½.—Contributions to an IRA Plus account may be made even after the individual for whom the account is maintained has attained age 70½.

"(4) MANDATORY DISTRIBUTION RULES NOT TO APPLY, ETC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), subsections (a)(6) and (b)(3) of section 408 (relating to required distributions) and section 4974 (relating to excise tax on certain accumulations in qualified retirement plans) shall not apply to any IRA Plus account.

"(B) POST-DEATH DISTRIBUTIONS.—Rules similar to the rules of section 401(a)(9) (other than subparagraph (A) thereof) shall apply for purposes of this section.

"(5) ROLLOVER CONTRIBUTIONS.—

"(A) IN GENERAL.—No rollover contribution may be made to an IRA Plus account unless it is a qualified rollover contribution.

"(B) COORDINATION WITH LIMIT.—A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

"(6) TIME WHEN CONTRIBUTIONS MADE.—For purposes of this section, the rule of section 219(f)(3) shall apply.

"(d) DISTRIBUTION RULES.—For purposes of this title—

"(1) GENERAL RULES.—

"(A) EXCLUSIONS FROM GROSS INCOME.—Any qualified distribution from an IRA Plus account shall not be includible in gross income.

"(B) NONQUALIFIED DISTRIBUTIONS.—In applying section 72 to any distribution from an IRA Plus account which is not a qualified distribution, such distribution shall be treated as made from contributions to the IRA Plus account to the extent that such distribution, when added to all previous distributions from the IRA Plus account, does not exceed the aggregate amount of contributions to the IRA Plus account. For purposes of the preceding sentence, all IRA Plus accounts maintained for the benefit of an individual shall be treated as 1 account.

"(C) EXCEPTION FROM PENALTY TAX.—Section 72(t) shall not apply to any qualified distribution from an IRA Plus account.

"(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' means any payment or distribution—

"(i) made on or after the date on which the individual attains age 59½,

"(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

"(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

"(iv) which is a qualified special purpose distribution.

"(B) CERTAIN DISTRIBUTIONS WITHIN 5 YEARS.—A payment or distribution shall not be treated as a qualified distribution under clause (i) of subparagraph (A) if—

"(i) it is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to an IRA Plus account (or such individual's spouse made a contribution to an IRA Plus account) established for such individual, or

"(ii) in the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary) to a qualified rollover contribution (or income allocable thereto), it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.

Clause (ii) shall not apply to a qualified rollover contribution from an IRA plus account.

"(3) ROLLOVERS.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any distribution which is transferred in a qualified rollover contribution to an IRA Plus account.

"(B) INCOME INCLUSION FOR ROLLOVERS FROM NON-PLUS IRAS.—In the case of any qualified rollover contribution from an individual retirement plan (other than an IRA Plus account) to an IRA Plus account established for the benefit of the payee or distributee, as the case may be—

"(i) sections 72(t) and 408(d)(3) shall not apply, and

"(ii) in any case where such contribution is made before January 1, 1999, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the 4-taxable year period beginning with the taxable year in which the payment or distribution is made.

"(C) ADDITIONAL REPORTING REQUIREMENTS.—The Secretary shall require that trustees of IRA Plus accounts, trustees of individual retirement plans, or both, whichever is appropriate, shall include such additional information in reports required under section 408(i) as is necessary to ensure that amounts required to be included in gross income under subparagraph (B) are so included.

"(4) QUALIFIED SPECIAL PURPOSE DISTRIBUTION.—For purposes of this section, the term 'qualified special purpose distribution' means any distribution to which subparagraph (B), (D), (E), or (F) of section 72(t)(2) applies.

"(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to an IRA Plus account from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan to an IRA Plus account.

"(2) CONVERSIONS.—The conversion of an individual retirement plan to an IRA Plus account shall be treated as if it were a qualified rollover contribution."

(b) EXCESS DISTRIBUTIONS TAX NOT TO APPLY.—

(1) Subparagraph (A) of section 4980A(d)(3) is amended by inserting "(other than IRA Plus accounts described in section 408A(b))" after "retirement plans".

(2) Section 4980A(e)(1) is amended by adding at the end the following flush sentence: "Such term shall not include any amount distributed from an IRA Plus account or any qualified rollover contribution (as defined in section 408A(e)) from an individual retirement plan to an IRA Plus account."

(c) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended to read as follows:

"(b) EXCESS CONTRIBUTIONS.—For purposes of this section—

"(1) IN GENERAL.—In the case of individual retirement accounts or individual retirement annuities, the term 'excess contributions' means the sum of—

"(A) the amount determined under paragraph (2) for the taxable year, plus

"(B) the carryover amount determined under paragraph (3) for the taxable year.

"(2) CURRENT YEAR.—The amount determined under this paragraph for any taxable year is an amount equal to the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than IRA Plus accounts), over

"(ii) the amount allowable as a deduction under section 219 for the taxable year, plus

"(B) the excess (if any) of—

"(i) the amount described in clause (i) (taking into account contributions to IRA Plus accounts) contributed for the taxable year, over

"(ii) the amount allowable as a deduction under section 219 for the taxable year (computed without regard to subsection (g) of such section).

"(3) CARRYOVER AMOUNT.—The carryover amount determined under this paragraph for any taxable year is the amount determined under paragraph (2) for the preceding taxable year, reduced by the sum of—

"(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

"(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

"(C) the excess (if any) of the amount determined under paragraph (2)(B)(ii) over the amount determined under paragraph (2)(B)(i).

"(4) SPECIAL RULES.—For purposes of this subsection—

"(A) ROLLOVER CONTRIBUTIONS.—Rollover distributions described in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 408A(e) shall not be taken into account.

"(B) CONTRIBUTIONS RETURNED BEFORE DUE DATE.—Any contribution which is distributed from an individual retirement plan in a distribution to which section 408(d)(4) applies shall not be taken into account.

"(C) EXCESS CONTRIBUTIONS TREATED AS CONTRIBUTIONS.—In applying paragraph (3)(C), the determination as to amounts contributed for a taxable year shall be made without regard to section 219(f)(6)."

(d) SPOUSAL IRA.—Clause (ii) of section 219(c)(1)(B) is amended to read as follows:

"(ii) the compensation includible in the gross income of such individual's spouse for the taxable year reduced by—

"(I) the amount allowed as a deduction under subsection (a) to such spouse for such taxable year, and

"(II) the amount of any contribution on behalf of such spouse to an IRA Plus account under section 408A for such taxable year."

(e) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. IRA Plus accounts."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 404. TAX-FREE WITHDRAWALS FROM INDIVIDUAL RETIREMENT PLANS FOR BUSINESS STARTUPS.

(a) EXCLUSION.—Section 408(d) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS USED FOR BUSINESS START-UP EXPENSES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any payments or distributions from an individual retirement plan during any taxable year to the extent the aggregate amount of such payments and distributions does not exceed the business start-up costs of the taxpayer for the taxable year.

"(B) BUSINESS START-UP COSTS.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'business start-up costs' means any amount which is paid or incurred—

"(I) in connection with a trade or business with respect to which the taxpayer is a 50-percent owner, and

"(II) on or before the date which is one year after the date on which the active conduct of such trade or business began (as determined under section 195(c)).

"(ii) CERTAIN COSTS INCLUDED.—The term 'business start-up costs' shall include—

"(I) any start-up expenditures (as defined in section 195(c)), and

"(II) any organizational expenses (as defined in section 709(b)).

"(C) DENIAL OF DOUBLE BENEFIT.—

"(i) DEDUCTIONS.—No deduction otherwise allowable under this chapter with respect to any business start-up costs taken into account under subparagraph (A) shall be allowed to the extent of the amount which would have been includible in gross income but for the application of this paragraph.

"(ii) BASIS REDUCTIONS.—If any portion of the business start-up costs taken into account under subparagraph (A) are properly chargeable to capital account, the basis of the property to which such costs are chargeable shall be reduced by the amount which would have been includible in gross income but for the application of this paragraph.

"(iii) ALLOCATION.—The Secretary shall provide rules for the allocation of amounts excluded from gross income by reason of this paragraph to business start-up costs for purposes for applying this subparagraph.

"(D) 50-PERCENT OWNER.—For purposes of clause (i), the term '50-percent owner' means any individual if the individual—

"(i) in the case of a corporation, own more than 50 percent of the value of the outstanding stock of the corporation or stock possessing more than 50 percent of the total combined voting power of all stock of the corporation, or

"(ii) in the case of a trade or business other than a corporation, own more than 50 percent of the capital or profits interest in the trade or business.

For purposes of this subparagraph, an individual shall be treated as owning stock and capital or profits interests owned by the individual's spouse."

(b) EXEMPTION FROM ADDITIONAL TAX.—

(1) IN GENERAL.—Section 72(t)(2) is amended by adding at the end the following new subparagraph:

"(E) DISTRIBUTIONS USED FOR BUSINESS START-UP EXPENSES.—Distributions from an individual retirement plan to the extent such distributions do not exceed the business start-up costs (as defined in section 408(d)(8)) of the taxpayer for the taxable year."

(2) CONFORMING AMENDMENT.—Section 72(t)(2)(B) is amended by striking "(C) or (D)" and inserting "(C), (D), or (E)".

(c) EXEMPTION FROM PROHIBITED TRANSACTION.—Section 4975(d) is amended by striking "or" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting "; or", and by adding after paragraph (15) the following new paragraph:

"(16) any distribution from an individual retirement plan which is used for the payment of any business start-up costs (as defined in section 408(d)(8)) of the distributee."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1996.

SEC. 405. TAX-FREE WITHDRAWALS FROM INDIVIDUAL RETIREMENT PLANS FOR LONG-TERM UNEMPLOYED.

(a) EXCLUSION.—Section 408(d), as amended by section 404, is amended by adding at the end the following new paragraph:

"(9) DISTRIBUTIONS TO LONG-TERM UNEMPLOYED.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any payments or distributions from an individual retirement plan during any taxable year to an individual if—

"(i) such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation, and

"(ii) such payments and distributions are made during the taxable year in which such unemployment compensation was paid or the succeeding taxable year.

"(B) DISTRIBUTIONS AFTER REEMPLOYMENT.—Subparagraph (A) shall not apply to any distribution or payment made after the individual has been employed for at least 60 days after the separation from employment to which subparagraph (A) applies.

"(C) SELF-EMPLOYED INDIVIDUALS.—To the extent provided in regulations, a self-employed individual shall be treated as meeting the requirements of subparagraph (A)(i) if, under Federal or State law, the individual would have received unemployment compensation but for the fact the individual was self-employed."

(b) EXEMPTION FROM ADDITIONAL TAX.—Section 72(t)(2)(D) is amended to read as follows:

"(D) DISTRIBUTIONS TO UNEMPLOYED INDIVIDUALS.—Distributions from an individual retirement plan which are described in section 408(d)(9)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1996.

SEC. 406. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PAY HIGHER EDUCATION EXPENSES.

(a) EXCLUSION.—Section 408(d), as amended by sections 404 and 405, is amended by adding at the end the following new paragraph:

"(10) DISTRIBUTIONS USED FOR QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any payments or distributions from an individual retirement plan during any taxable year to the extent the aggregate amount of such payments and distributions does not exceed the qualified higher education expenses of the taxpayer for the taxable year.

"(B) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'qualified higher education expenses' means the cost of attendance (within the meaning of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll)) of—

"(I) the taxpayer,

"(II) the taxpayer's spouse, or

"(III) any child (as defined in section 151(c)(3)), grandchild, or ancestor of the taxpayer or the taxpayer's spouse,

at an eligible educational institution (as defined in section 135(c)(3)).

"(ii) COORDINATION WITH OTHER PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by—

"(I) any amount excludable from gross income under section 135, and

"(II) any amount described in section 135(d)(1) (relating to certain scholarships and veterans benefits)."

(b) EXEMPTION FROM ADDITIONAL TAX.—

(1) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans), as amended by section 402, is amended by adding at the end the following new subparagraph:

"(F) DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan to the extent such distributions do not exceed the qualified higher education expenses (as defined in section 408(d)(10)(B)) of the taxpayer for the taxable year."

(2) CONFORMING AMENDMENT.—Section 72(t)(2)(B), as amended by section 402, is amended by striking "or (E)" and inserting ", (E), or (F)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

DESCRIPTION OF S. 2—AMERICAN FAMILY TAX RELIEF ACT

INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of S. 2 ("American Family Tax Relief Act"). S. 2 was introduced on January 21, 1997, by Senators Roth and Lott.

Part I of the document is a summary of the bill. Part II is a description of the provisions of the bill: Title I of the bill provides a child tax credit for children under age 18; Title II relates to capital gains and loss provisions; Title III relates to estate and gift tax provisions; and Title IV relates to individual retirement account ("IRA") provisions.

The document (Part III) also provides estimated revenue effects of the bill for fiscal years 1997–2007.

I. SUMMARY OF S. 2 "AMERICAN FAMILY TAX RELIEF ACT"

Child tax credit (title I)

The bill would allow taxpayers a nonrefundable tax credit of $500 for each qualifying child under the age of 18. The credit amount would not be indexed for inflation. For taxpayers with AGI in excess of certain thresholds, the allowable child credit would be reduced by $25 for each $1,000 of AGI (or fraction thereof) in excess of the threshold. For married taxpayers filing joint returns, the threshold would be $110,000. For taxpayers filing single or head of household returns, the threshold would be $75,000. For married taxpayers filing separate returns, the threshold would be $55,000. These thresholds are not indexed for inflation. The provision would be effective for taxable years beginning after December 31, 1996.

Capital gains provisions (title II)

This bill would allow individuals a deduction equal to 50 percent of net capital gain for the taxable year. The bill repeals the present-law maximum 28-percent rate. Thus, the effective rate under the regular tax on the net capital gain of an individual in the highest (i.e., 39.6 percent) marginal rate bracket would be 19.8 percent. In addition, the bill would provide an alternative tax of 28 percent on the net capital gain of a corporation if that rate is less than the corporation's regular tax rate.

The bill generally would provide for an inflation adjustment to (i.e., indexing of) the adjusted basis of certain assets for purposes of determining gain (but not loss) upon a sale or other disposition of such assets by a taxpayer other than a C corporation. To be eligible for indexing, an asset must be held by the taxpayer for more than three years.

In addition, the bill would make certain modifications related to the present-law exclusion for gain from certain small business stock. The bill would repeal the minimum tax preference applicable to such gain, increase the size of an eligible corporation from gross assets of $50 million to gross assets of $100 million, repeal the limitation on the amount of gain an individual can exclude with respect to the stock of any corporation, modify the working capital requirements, and provide corporate taxpayers an alternative rate of 21 percent on the gain from the sale or exchange of qualified small business stock (other than stock of a subsidiary corporation).

The bill would provide that losses recognized by a taxpayer on the sale of his or her personal residence may be deducted as capital losses rather than be treated as nondeductible personal losses.

The changes generally would be effective for dispositions occurring after December 31, 1996. In the case of the indexing of the basis of assets, the bill would be effective for dispositions occurring after December 31, 1996, with respect to assets the holding period of which begins after December 31, 1996.

Estate and gift tax provisions (title III)

Increases in Estate and Gift Tax Unified Credit

The bill would increase ratably the present-law unified estate and gift tax credit over an 8-year period beginning in 1997, from an effective exemption of $600,000 to an effective exemption of $1,000,000. The full $1,000,000 effective exemption would be available for decedents dying, and gifts made, after December 31, 2003.

Estate Tax Exclusion for Qualified Family-Owned Businesses

The bill would provide special estate tax treatment for qualified "family-owned business interests" if such interests comprise more than 50 percent of a decedent's estate. Subject to certain requirements, the bill would exclude the first $1,500,000 in value of qualified family-owned business interests from the decedent's estate and would also exclude 50 percent of the remaining value of qualified family-owned business interests. In general, a qualified family-owned business interest would be any nonpublicly-traded interest in a trade or business (regardless of the form in which it is held) with a principal place of business in the United States if ownership of the trade or business is held at least 50 percent by one family, 70 percent by two families, or 90 percent by three families, as long as the decedent's family owns at least 30 percent of the trade or business. To qualify for the beneficial treatment, the decedent (or a member of the decedent's family) must have owned and materially participated in the trade or business for at least five of the eight years preceding the decedent's death, and each qualified heir (or a member of the qualified heir's family) would be required to materially participate in the trade or business for at least five years of each eight-year period ending within ten years after the decedent's death.

The provision would be effective for decedents dying after December 31, 1996.

Installment Payments of Estate Tax Attributable to Closely Held Business

The bill would extend the period for which Federal estate tax installments could be made under section 6166 to a maximum period of 24 years. If the election were made,

[1]This document may be cited as follows: Joint Committee on Taxation, *Description of S. 2 ("American Family Tax Relief Act")* (JCX-2-97), January 21, 1997.

the estate would pay only interest for the first four years, followed by up to 20 annual installments of principal and interest. Under the bill, there would be no interest imposed on the amount of deferred estate tax attributable to the first $1,000,000 in value of the closely held business. The interest rate imposed on the amount of deferred estate tax attributable to the value of the closely held business in excess of $1,000,000 would remain as under present law (i.e., the rate applicable to underpayments of tax under section 6621, which is the Federal short-term rate plus 3 percentage points). The provision would be effective for decedents dying after December 31, 1996.

IRA provisions (title IV)

Restoration of IRA Deduction for All Taxpayers

The bill would increase the AGI limits applicable to deductible IRA contributions for active participants in 1997, 1998, 1999, and 2000. Thereafter, the bill would repeal the limits on IRA deductions for active participants in employer-sponsored retirement plans. Thus, under the bill, after 2000, an individual would be entitled to make a $2,000 deductible IRA contribution without regard to whether the individual was an active participant in an employer-sponsored retirement plan. The bill would be effective for taxable years beginning after December 31, 1996.

Allow Full Spousal IRA Deduction for Nonworking Spouses

The bill would permit nonworking spouses to make a full deductible IRA contribution, effective for taxable years beginning after December 31, 1996.

Nondeductible Contributions to Tax-Free IRA Plus Accounts

The bill would permit taxpayers to make nondeductible contributions to new IRA Plus accounts. Generally, IRA Plus accounts would be treated in the same manner as and be subject to the same rules applicable to deductible IRAs.

Under the bill, any qualified distribution from an IRA Plus account would not be included in gross income and would not be subject to the 10-percent additional income tax on early withdrawals. A qualified distribution from an IRA Plus account would include any payment or distribution (1) made on or after the date the IRA Plus owner attains age 59½, (2) made to a beneficiary of the IRA Plus owner after death, (3) on account of disability of the IRA Plus owner, or (4) which is a qualified special purpose distribution (i.e., a distribution for medical expenses, the costs of starting a business of the IRA Plus owner or the owner's spouse, long-term unemployment, and higher education expenses).

The bill would permit amounts withdrawn from IRAs to be transferred into an IRA Plus. The amount transferred would be includible in gross income in the year the withdrawal was made, except that amounts transferred to an IRA Plus before January 1, 1999, would be includible in income rapidly over a 4-year period. The 10-percent early withdrawal tax would not apply to amounts transferred from an IRA to an IRA Plus account.

The provisions of the bill relating to IRA Plus accounts would be effective for taxable years beginning after December 31, 1996.

Penalty-Free IRA Withdrawals for Starting a Business, Long-Term Unemployment, and Post Secondary Education Expenses

The bill would permit penalty-free and tax-free withdrawals from an individual retirement arrangement (IRA) for starting a business of the IRA owner, starting a business of the spouse of the IRA owner, in the case of long-term unemployment of the IRA owner, for any reason, and for the post-secondary education expenses of the IRA owner, the spouse of the IRA owner, or a dependent child of the IRA owner or spouse. The provision would be effective for distributions after December 31, 1996.

A. Child tax credit for children under age 18 (title I)

Present Law

Present law does not provide tax credits based solely on the taxpayer's number of dependent children. Taxpayers with dependent children, however, generally are able to claim a personal exemption for each of these dependents. The total amount of personal exemptions is subtracted (along with certain other items) from adjusted gross income (AGI) in arriving at taxable income. The amount of each personal exemption is $2,650 for 1997, and is adjusted annually for inflation. In 1997, the amount of the personal exemption is phased out for taxpayers with AGI in excess of $121,200 for single taxpayers, $151,500 for heads of household, and $181,800 for married couples filing joint returns. These phaseout thresholds are adjusted annually for inflation.

Description of the Bill

The bill would allow taxpayers a nonrefundable tax credit of $500 for each qualifying child under the age of 18. The credit amount would not be indexed for inflation.

For taxpayers with AGI in excess of certain thresholds, the allowable child credit would be reduced by $25 for each $1,000 of AGI (or fraction thereof) in excess of the threshold. For married taxpayers filing joint returns, the threshold would be $110,000. For taxpayers filing single or head of household returns, the threshold would be $75,000. For married taxpayers filing separate returns, the threshold would be $55,000. These thresholds would not be indexed for inflation.

Effective Date

The provision would be effective for taxable years beginning after December 31, 1996.

B. Capital gains provisions (title II)

1. 50-Percent Capital Gains Deduction for Individuals (Sec. 201 of the Bill)

Present Law

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of capital assets, the net capital gain is taxed at the same rate as ordinary income, except that individuals are subject to a maximum marginal rate of 28 percent of the net capital gain. Net capital gain is the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

A capital asset generally means any property except (1) inventory, stock in trade, or property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business, (2) depreciable or real property used in the taxpayer's trade or business, (3) specified literary or artistic property, (4) business accounts or notes receivable, or (5) certain U.S. publications. In addition, the net gain from the disposition of certain property used in the taxpayer's trade or business is treated as long-term capital gain. However, gain is not treated as capital gain to the extent of previous depreciation allowances (in the case of real property, generally one to the extent in excess of the allowances that would have been available under the straight-line method).

Prior to the enactment of the Tax Reform Act of 1986, individuals were allowed a deduction equal to 60 percent of net capital gain. The deduction resulted in a maximum effective tax rate of 20 percent on such gains.

Capital losses are generally deductible in full against capital gains. In addition, individuals may deduct capital losses against up to $3,000 of ordinary income in each year. Capital losses in excess of the amount deductible are carried forward indefinitely. Prior to the Tax Reform Act of 1986, individuals were required to use two dollars of long-term capital loss to offset each dollar of ordinary income.

Description of the Bill

The bill would allow individuals a deduction equal to 50 percent of net capital gain for the taxable year. The bill would repeal the present-law maximum 28-percent rate. Thus, under the bill, the effective rate under the regular tax on the net capital gain of an individual in the highest (i.e., 39.6 percent) marginal rate bracket would be 19.8 percent.

Collectibles would not be allowed the capital gains deduction; instead a maximum rate of 28 percent would apply to the gain of an individual from the sale or exchange of collectibles held for more than one year.

The bill would reinstate the rule in effect prior to the 1986 Tax Reform Act that required two dollars of the long-term capital loss of an individual to offset one dollar of ordinary income. The $3,000 limitation on the deduction of capital losses against ordinary income would continue to apply.

Effective Date

The provision would generally apply to taxable years ending after December 31, 1996.

For a taxpayer's taxable year that includes January 1, 1997, the 50-percent capital gains deduction would not apply to any amount properly taken into account before January 1, 1997. In the case of gain taken into account by a pass-through entity (i.e., a RIC, a REIT, a partnership, an estate or trust, or a common trust fund), the date taken into account by the entity would be the appropriate date for applying this rule.

The capital loss rule would apply to taxable years beginning after December 31, 1997, but would not apply to the carryover of capital losses sustained in taxable years beginning before January 1, 1998.

The bill would not affect the capital gains treatment of lump sum distributions grandfathered by the Tax Reform Act of 1986.

2. Indexing of Basis of Certain Assets for Purposes of Determining Gain (Sec. 202 of the Bill)

Present Law

Under present law, gain or loss from the disposition of any asset generally is the sales price of the asset reduced by the taxpayer's adjusted basis in that asset. The taxpayer's adjusted basis generally is the taxpayer's cost in the asset adjusted for depreciation, depletion, and certain other amounts. No adjustment is allowed for inflation.

Description of the Bill

In general

The bill generally would provide for an inflation adjustment to (i.e., indexing of) the adjusted basis of certain assets (called "indexed assets") for purposes of determining gain (but not loss) upon a sale or other disposition of such assets by a taxpayer other than a C corporation. Assets held by trusts, estates, S corporations, regulated investment companies ("RICs"), real estate investment trusts ("REITs"), and partnerships are

eligible for indexing, to the extent gain on such assets is taken into account by taxpayers other than C corporations.

Indexed assets

Assets eligible for the inflation adjustment generally would include common (but not preferred) stock of C corporations and tangible property that are capital assets or property used in a trade or business. To be eligible for indexing, an asset must be held by the taxpayer for more than three years.

Computation of inflation adjustment

The inflation adjustment under the provision would be computed by multiplying the taxpayer's adjusted basis in the indexed asset by an inflation adjustment percentage. The inflation adjustment percentage would be the percentage by which the gross domestic product deflator for the last calendar quarter ending before the disposition exceeds the gross domestic product deflator for the last calendar quarter ending before the asset was acquired by the taxpayer. The inflation adjustment percentage would be rounded to the nearest one-tenth of a percent. No adjustment would be made if the inflation adjustment is one or less.

Special entities

RICs and REITs

In the case of a RIC or a REIT, the indexing adjustments generally would apply in computing the taxable income and the earnings and profits of the RIC or REIT. The indexing adjustments, however, would not be applicable in determining whether a corporation qualifies as a RIC or REIT.

In the case of shares held in a RIC or REIT, partial indexing generally would be provided by the provision based on the ratio of the value of indexed assets held by the entity to the value of all its assets. The ratio of indexed assets to total assets would be determined quarterly (for RICs, the quarterly ratio would be based on a three-month average). If the ratio of indexed assets to total assets exceeds 80 percent in any quarter, full indexing of the shares would be allowed for that quarter. If less than 20 percent of the assets are indexed assets in any quarter, no indexing would be allowed for that quarter for the shares. Partnership interests held by a RIC or REIT would be subject to a look-through test for purposes of determining whether, and to what degree, the shares in the RIC or REIT are indexed.

A return of capital distribution by a RIC or REIT generally would be treated by a shareholder as allocable to stock acquired by the shareholder in the order in which the stock was acquired.

Partnership and S corporations, etc.

Under the bill, stock in an S corporation or an interest in a partnership or common trust fund would not be an indexed asset. Under the provision, the individual owner would receive the benefit of the indexing adjustment when the S corporation, partnership, or common trust fund disposes of indexed assets. Under the provision, any inflation adjustments at the entity level would flow through to the holders and result in a corresponding increase in the basis of the holder's interest in the entity. Where a partnership has a section 754 election in effect, a partner transferring his interest in the partnership would be entitled to any indexing adjustment that has accrued at the partnership level with respect to the partner and the transferee partner is entitled to the benefits of indexing for inflation occurring after the transfer.

The indexing adjustment would be disregarded in determining any loss on the sale of an interest in a partnership, S corporation or common trust fund.

Foreign corporations

Common stock of a foreign corporation generally would be an indexed asset if the stock is regularly traded on an established securities market. Indexed assets, however, would not include stock in a foreign investment company, a passive foreign investment company (including a qualified electing fund), a foreign personal holding company, or, in the hands of a shareholder who meets the requirements of section 1248(a)(2) (generally pertaining to 10-percent shareholders of controlled foreign corporations), any other foreign corporation. An American Depository Receipt (ADR) for common stock in a foreign corporation would be treated as common stock in the foreign corporation and, therefore, the basis in an ADR for common stock generally would be indexed.

Other rules

Improvements and contributions to capital

No indexing would be provided for improvements or contributions to capital if the aggregate amount of the improvements or contributions to capital during the taxable year with respect to the property or stock is less than $1,000. If the aggregate amount of such improvements or contributions to capital is $1,000 or more, each addition would be treated as a separate asset acquired at the close of the taxable year.

Suspension of holding period

No indexing adjustment would be allowed during any period during which there is a substantial diminution of the taxpayer's risk of loss from holding the indexed asset by reason of any transaction entered into by that taxpayer, or a related party.

Short sales

In the case of a short sale of an indexed asset with a short sale period in excess of three years, the bill would require that the amount realized be indexed for inflation for the short sale period.

Related parties

The bill would not index the basis of property for sales or dispositions between related persons, except to the extent the adjusted basis of property in the hands of the transferee is a substituted basis (e.g. gifts).

Collapsible corporations

Under the bill, indexing would not reduce the amount of ordinary gain that would be recognized in cases where a corporation is treated as a collapsible corporation (under Code sec. 341) with respect to a distribution or sale of stock.

Effective Date

The provision would apply to dispositions of property the holding period of which begins after December 31, 1996. The provision also would apply to a principal residence held by the taxpayer on January 1, 1997 (as if the holding period began on that date). An individual holding any indexed asset (other than a personal residence) on January 1, 1997, may elect to treat the indexed asset as having been sold and reacquired for its fair market value.

3. Small Business Stock (Sec. 203 of the Bill)

Present Law

The Revenue Reconciliation Act of 1993 provided individuals a 50-percent exclusion for the sale of certain small business stock acquired at original issue and held for at least five years. One-half of the excluded gain is a minimum tax preference.

The amount of gain eligible for the 50-percent exclusion by an individual with respect to any corporation is the greater of (1) ten times the taxpayer's basis in the stock or (2) $10 million.

In order to qualify as a small business, when the stock is issued, the gross assets of the corporation may not exceed $50 million. The corporation also must meet an active trade or business requirement.

Description of the Bill

Under the bill, the maximum rate of regular tax on the qualifying gain from the sale of small business stock by a taxpayer other than a corporation would remain at 14 percent. The minimum tax preference would be repealed.

The bill would increase the size of an eligible corporation from gross assets of $50 million to gross assets of $100 million. The bill would also repeal the limitation on the amount of gain an individual can exclude with respect to the stock of any corporation.

The bill would provide that certain working capital must be expended within 5 years (rather than two years) in order to be treated as used in the active conduct of a trade or business. No limit on the percent of the corporation's assets that are working capital would be imposed.

The bill would provide that if the corporation establishes a business purpose for a redemption of its stock, the redemption is disregarded in determining whether other newly issued stock could qualify as eligible stock.

Effective Date

The increase in the size of corporations whose stock is eligible for the exclusion would apply to stock issued after the date of the enactment of the bill. The remaining provisions would apply to stock issued after August 10, 1993 (the original effective date of the small business stock provision).

4. 28-Percent Corporate Alternative Tax for Capital Gains (Sec. 204 of the Bill)

Present Law

Under present law, the net capital gain of a corporation is taxed at the same rate as ordinary income, and subject to tax at graduated rates up to 35 percent. Prior to the Tax Reform Act of 1986, the net capital gain of a corporation was subject to a maximum effective tax rate of 28 percent.

Description of the Bill

The bill would provide an alternative tax of 28 percent on the net capital gain of a corporation if that rate is less than the corporation's regular tax rate.

The bill would also provide an alternative rate of 21 percent on the gain from the sale or exchange of qualified small business stock (other than stock of a subsidiary corporation) held more than 5 years.

Effective Date

The provision would generally apply to taxable years ending after December 31, 1996. For a taxable year which includes January 1, 1997, the 28-percent rate would apply to the lesser of (1) the net capital gain for the taxable year or (2) the net capital gain taking into account only gain or loss properly taken into account for the portion of the taxable year after December 31, 1996.

The small business stock provision would apply to stock issued after the date of enactment.

5. Capital Loss Deduction on the Sale or Exchange of a Principal Residence (Sec. 205 of the Bill)

Present Law

Under present law, the sale or exchange of a principal residence is treated as a nondeductible personal loss.

Description of the Bill

The bill would provide that a loss from the sale or exchange of a principal residence would be treated as a deductible capital loss.

Effective Date

The provision would apply to sales and exchanges after December 31, 1996.

C. Estate and gift tax provisions (title III)

1. Increase Estate and Gift Tax Unified Credit (Sec. 301 of the Bill)

Present Law

A unified credit is available with respect to taxable transfers by gift and at death. Since 1987, the unified credit amount has been fixed at $192,800, which effectively exempts a total of $600,000 in cumulative taxable transfers from the estate and gift tax. The benefits of the unified credit (and the graduated estate and gift tax rates) are phased out by a 5-percent surtax imposed upon cumulative taxable transfers over $10 million and not exceeding $21,040,000.[2]

The unified credit was originally enacted in the Tax Reform Act of 1976. The unified credit has not been increased since 1987.

Description of the Bill

The bill would increase the present-law unified credit over an eight-year period beginning in 1997, from an effective exemption of $600,000 to an effective exemption of $1,000,000. The increase would be phased in as follows:

Decedents Dying and Gifts

Made in	*Effective exemption*
1997	$650,000
1998	700,000
1999	750,000
2000	800,000
2001	850,000
2002	900,000
2003	950,000
2004 and thereafter	1,000,000

Conforming amendments to reflect the increased unified credit are made (1) to the general filing requirements for an estate tax return under section 6018(a), and (2) to the amount of the unified credit allowed under section 2102(c)(3) with respect to nonresident aliens with U.S. situs property who are residents of certain treaty countries.

Effective Date

The provision would apply to the estates of decedents dying, and gifts made, after December 31, 1996.

2. Estate Tax Exclusion for Qualified Family-Owned Businesses (Sec. 302 of the Bill)

Present Law

There are no special estate tax rules for qualified family-owned businesses. All taxpayers are allowed a unified credit in computing the taxpayer's estate and gift tax, which effectively exempts a total of $600,000 in cumulative taxable transfers from the estate and gift tax (sec. 2010). An executor also may elect, under section 2032A, to value certain qualified real property used in farming or another qualifying closely-held trade or business at its current use value, rather than its highest and best use value (up to a maximum reduction of $750,000). In addition, an executor may elect to pay the Federal estate tax attributable to a qualified closely-held business in installments over, at most, a 14-year period (sec. 6166). The tax attributable to the first $1,000,000 in value of a closely-held business is eligible for a special 4-percent interest rate (sec. 6601(j)).

[2]Thus, if a taxpayer has made cumulative taxable transfers exceeding $21,040,000, his or her effective transfer tax rate is 55 percent under present law.

Description of the Bill

The bill would provide special estate tax treatment for qualified "family-owned business interests" if such interests comprise more than 50 percent of a decedent's estate. Subject to certain requirements, the bill would exclude the first $1.5 million of value in qualified family-owned business interests from a decedent's estate, and also would exclude 50 percent of the remaining value of qualified family-owned business interests. This new exclusion for qualified family-owned business interests would be provided in addition to the unified credit.

A qualified family-owned business interest would be defined as any interest in a trade or business (regardless of the form in which it is held) with a principal place of business in the United States if one family owns at least 50 percent of the trade or business, two families own 70 percent, or three families own 90 percent, as long as the decedent's family owns at least 30 percent of the trade or business. An interest in a trade or business would not qualify if any interest in the business (or a related entity) was publicly-traded at any time within three years of the decedent's death. An interest in a trade or business also would not qualify if more than 35 percent of the adjusted ordinary gross income of the business for the year of the decedent's death was personal holding company income (as defined in sec. 543). In the case of a trade or business that owns an interest in another trade or business (i.e., "tiered entities"), special look-through rules would apply. The value of a trade or business qualifying as a family-owned business interest would be reduced to the extent the business holds passive assets or excess cash or marketable securities.

To qualify for the beneficial treatment provided under the bill the decedent (or a member of the decedent's family) must have owned and materially participated in the trade or business for at least five of the eight years preceding the decedent's date of death. In addition, each qualified heir (or a member of the qualified heir's family) would be required to materially participate in the trade or business for at least five years of each eight-year period ending within ten years following the decedent's death.

The benefit of the exclusion for qualified family-owned business interests would be subject to recapture if, within 10 years of the decedent's death and before the qualified heir's death, one of the following "recapture events" occurs: (1) the qualified heir ceases to meet the material participation requirements; (2) the qualified heir disposes of any portion of his or her interest in the family-owned business, other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution; (3) the principal place of business of the trade or business ceases to be located in the United States; or (4) the qualified heir loses U.S. citizenship.

The portion of the reduction in estate taxes that is recaptured would depend upon the number of years that the qualified heir (or members of the qualified heir's family) materially participated in the trade or business between the date of the decedent's death and the date of the recapture event. If the qualified heir (or his or her family members) materially participated in the trade or business after the decedent's death for less than six years, 100 percent of the reduction in estate taxes attributable to that heir's interest would be recaptured; if the participation was for at least six years but less than seven years, 80 percent of the reduction in estate taxes would be recaptured; if the participation was for at least seven years but less than eight years, 60 percent would be recaptured; if the participation was for at least eight years but less than nine years, 40 percent would be recaptured; and if the participation was for at least nine years but less than ten years, 20 percent of the reduction in estate taxes would be recaptured. In general, there would be no requirement that the qualified heir (or members of his or her family) continue to hold or participate in the trade or business more than 10 years after the decedent's death. As under present-law section 2032A, however, the 10-year recapture period could be extended for a period of up to two years if the qualified heir did not begin to use the property for a period of up to two years after the decedent's death.

In addition, the bill would coordinate the benefit for qualified family-owned business interests with the present-law benefits relating to special-use valuation (sec. 2032A) and the special 4-percent interest rate available for closely-held businesses (sec. 6601(j)). The bill would provide that any amount excluded from a decedent's estate under the qualified family-owned business provision would reduce the ceilings with respect to both section 2032A and section 6601(j). Thus, for example, if a decedent had $100,000 of qualified family-owned business interests, the entire value of his qualified family-owned business property would be excluded from the estate; if the decedent's estate also qualified for treatment under 2032A or 6601(j), the executor could take a maximum reduction under section 2032A of $650,000 (i.e., $750,000 less $100,000), and/or could use the special 4-percent rate provided in section 6601(j) with respect to the Federal estate tax liability attributable to the first $900,000 in value of a qualifying business (i.e., $1,000,000 less $100,000).

Effective Date

The provision would be effective with respect to the estates of decedents dying after December 31, 1996.

3. Installment Payments of Estate Tax Attributable to Closely Held Businesses (Secs. 303–304 of the Bill)

Present Law

In general, the Federal estate tax is due within nine months of a decedent's death. Under Code section 6166, an executor generally may elect to pay the estate tax attributable to an interest in a closely held business in installments over, at most, a 14-year period. If the election is made, the estate may pay only interest for the first four years, followed by up to 10 annual installments of principal and interest. Interest generally is imposed at the rate applicable to underpayments of tax under section 6621 (i.e., the Federal short-term rate plus 3 percentage points). Under section 6601(j), however, a special 4-percent interest rate applies to the amount of deferred estate tax attributable to the first $1,000,000 in value of the closely-held business.

To qualify for the installment payment election, the business must be an active trade or business and the value of the decedent's interest in the closely held business must exceed 35 percent of the decedent's adjusted gross estate. An interest in a closely held business includes: (1) any interest as a proprietor in a business carried on as a proprietorship; (2) any interest in a partnership carrying on a trade or business if the partnership has 15 or fewer partners, or if at least 20 percent of the partnership's assets are included in determining the decedent's gross

estate; or (3) stock in a corporation if the corporation has 15 or fewer shareholders, of if at least 20 percent of the value of the voting stock is included in determining the decedent's gross estate.

Description of the Bill

The bill would extend the period for which Federal estate tax installments could be made under section 6166 to a maximum period of 24 years. If the election were made, the estate could pay only interest for the first four years, followed by up to 20 annual installments of principal and interest. Under the bill, there would be no interest imposed on the amount of deferred estate tax attributable to the first $1,000,000 in value of the closely held business. The interest rate imposed on the amount of deferred estate tax attributable to the value of the closely held business in excess of $1,000,000 would remain as under present law (i.e., the Federal short-term rate plus 3 percentage points).

Effective Date

The provision would be effective for decedents dying after December 31, 1996.

D. IRA provisions (title IV)

1. Restoration of IRA Deduction for All Taxpayers (Sec. 401 of the Bill)

Present Law

Under present law, under certain circumstances, an individual is allowed to deduct contributions up to the lesser of $2,000 or 100 percent of the individual's compensation (or earned income) to an individual retirement arrangement (IRA). The amounts held in an IRA, including earnings on contributions, generally are not included in taxable income until withdrawn.

The $2,000 deduction limit is phased out over certain adjusted gross income (AGI) levels if the individual or the individual's spouse is an active participant in an employer-sponsored retirement plan. The phaseout is between $25,000 and $35,000 of AGI for single taxpayers and between $40,000 and $50,000 of AGI for married taxpayers. There is no phaseout of the deduction limit if the individual and the individual's spouse are not active participants in an employer-sponsored retirement plan.

Description of the Bill

The bill would increase the AGI limits applicable to deductible IRA contributions for active participants in 1997, 1998, 1999, and 2000. Thereafter, the bill would repeal the limits on IRA deductions for active participants in employer-sponsored retirement plans. Thus, under the bill, after 2000, an individual would be entitled to make a $2,000 deductible IRA contribution without regard to whether the individual was an active participant in an employer-sponsored retirement plan.

In the case of married taxpayers filing a joint return, for years before 2001, the IRA deduction for active participants would be phased out between the following AGI amounts: for 1997, $65,000 and $75,000; for 1998, $90,000 and $100,000; for 1999, $115,000 and $125,000; and for 2000, $140,000 and $150,000.

In the case of single taxpayers, for years before 2001, the IRA deduction for active participants would be phased out between the following AGI amounts: for 1997, $50,000 and $60,000; for 1998, $75,000 and $85,000; for 1999, $100,000 and $110,000; and for 2000, $125,000 and $135,000.

The bill would provide that the IRA deduction limit for any individual is coordinated with the limit on elective deferrals. Thus, an individual's deductible contributions to an IRA and elective deferrals could not exceed the annual limit on elective deferrals.

Effective Date

The provision would be effective for taxable years beginning after December 31, 1996.

2. Deductible IRAs for Nonworking Spouses (Sec. 402 of the Bill)

Present Law

Within limits, an individual is allowed a deduction for contributions to an individual retirement arrangement ("IRA"). An individual generally is not subject to income tax on amounts held in an IRA, including earnings on contributions, until the amounts are withdrawn from the IRA.

The maximum deductible contribution that can be made to an IRA generally is the lesser of $2,000 or 100 percent of an individual's compensation (earned income in the case of a self-employed individual). In the case of a married individual, a deductible contribution of up to $2,000 may be made for each spouse (including, for example, a homemaker who does not work outside the home) if the combined compensation of both spouses is at least equal to the contributed amount.

The maximum permitted IRA deduction is phased out if the individual (or the individual's spouse) is an active participant in an employer-sponsored retirement plan. The phase-out range is from $25,000 to $35,000 of adjusted gross income for single taxpayers and from $40,000 to $50,000 for married taxpayers filing a joint return.

Description of the Bill

Under the bill, an individual would not be considered an active participant in an employer-sponsored retirement plan merely because the individual's spouse is such an active participant. Thus, the bill would permit a nonworking spouse to make a deductible IRA contribution of up to $2,000 without regard to the present-law income phaseouts.

Effective Date

The provision would be effective for taxable years beginning after December 31, 1996.

3. Nondeductible Contributions to Tax-Free IRA Plus Accounts (Sec. 403 of the Bill)

Present Law

Under present law, under certain circumstances, an individual is allowed to deduct contributions up to the lesser of $2,000 or 100 percent of the individual's compensation (or earned income) to an individual retirement arrangement (IRA). The amounts held in an IRA, including earnings on contributions, generally are not included in taxable income until withdrawn.

An individual may make nondeductible contributions (up to the $2,000 or 100 percent of compensation limit) to an IRA to the extent the individual is not permitted to make deductible IRA contributions. Nondeductible contributions provide the same tax benefits as deferred annuities, that is, earnings are not includible in income until withdrawn. However, deferred annuities are not subject to contribution limits.

Distributions from IRAs are generally includible in income when withdrawn. Distributions prior to death, disability, or attainment of age 59½ are subject to an additional 10-percent tax. The 10-percent tax does not apply to distributions made in the form of an annuity.

Description of the Bill

The bill would permit taxpayers to make nondeductible contributions to new IRA Plus accounts. Generally, IRA Plus accounts would be treated in the same manner as and be subject to the same rules applicable to deductible IRAs. However, a number of special rules would apply.

Contributions to an IRA Plus would be nondeductible. The amount of nondeductible contributions to an IRA Plus that could be made for any taxable year would be tied to the limits for deductible IRAs, so that the aggregate amount of contributions to an IRA Plus could not exceed the excess of (1) the IRA deduction limit for the year (determined without regard to the rule coordinating the IRA deduction limit with the elective deferral limit) over (2) the amount of IRA contributions actually deducted for the year.

Under the bill, any qualified distribution from an IRA Plus account would not be included in gross income and would not be subject to the 10-percent additional income tax on early withdrawals. A qualified distribution from an IRA Plus would include any payment or distribution (1) made on or after the date the IRA Plus owner attains age 59½, (2) made to a beneficiary of the IRA Plus owner after death, (3) on account of disability of the IRA Plus owner, or (4) which is a qualified special purpose distribution (i.e., a distribution for medical expenses; the costs of starting a business of the IRA Plus owner or the owner's spouse, long-term unemployment, and higher education expenses)

The bill provides that a distribution would not be treated as a qualified distribution if it is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to an IRA Plus account (or such individual's spouse made a contribution to an IRA Plus account). In addition, the bill provides that a distribution would not be treated as a qualified distribution if, in the case of a distribution attributable to a qualified rollover contribution, the distribution is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.

In the case of a distribution from an IRA Plus account that is not a qualified distribution, in applying the rules of section 72, the distribution would be treated as made from contributions to the IRA Plus account to the extent that such distribution, when added to all previous distributions from the IRA Plus account, does not exceed the aggregate amount of contributions to the IRA Plus account. Thus, nonqualified distributions from an IRA Plus account would not be included in income (and subject to the additional 10-percent tax on early withdrawals) until the IRA owner had withdrawn amounts in excess of all contributions to the IRA Plus account.

Rollover contributions would be permitted to an IRA Plus only to the extent such contributions consist of a payment or distribution from another IRA Plus or from an individual retirement plan. Such rollover contributions would not be taken into account in determining the contribution limit for a taxable year. The normal IRA rollover rules would otherwise govern the eligibility of withdrawals from IRA Plus accounts to be rolled over.

The bill would permit amounts withdrawn from IRAs to be transferred into an IRA Plus. The amount transferred would be includible in gross income in the year the withdrawal was made, except that amounts transferred to an IRA Plus before January 1, 1999, would be includible in income ratably over a 4-year period. The 10-percent early withdrawal tax would not apply to amounts transferred from an IRA to an IRA Plus account.

Under the bill, the excise tax on excess distributions from qualified retirement plans (sec. 4980A) would not apply to distributions from the IRA Plus account or to any qualified rollover contribution from an individual retirement plan to an IRA Plus account.

Effective Date

The provisions of the bill relating to IRA Plus accounts would be effective for taxable years beginning after December 31, 1996.

4. IRA Withdrawals for Business Startup, Long-Term Unemployment, and Post-Secondary Education Expenses (Secs. 404–406 of the Bill)

Present Law

Amounts withdrawn from an individual retirement arrangement ("IRA") are includible in income (except to the extent of any nondeductible contributions). In addition, a 10-percent additional tax applies to withdrawals from IRAs made before age 59½, unless the withdrawal is made on account of death or disability or is made in the form of annuity payments or is made for medical expenses that exceed 7.5 percent of adjusted gross income ("AGI") or is made for medical insurance (without regard to the 7.5 percent of AGI floor) if the individual has received unemployment compensation for at least 12 weeks, and the withdrawal is made in the year such unemployment compensation is received or the following year. If a self-employed individual is not eligible for unemployment compensation under applicable law, then, to the extent provided in regulations, a self-employed individual is treated as having received unemployment compensation for at least 12 weeks if the individual would have received unemployment compensation but for the fact that the individual was self-employed. The exception to the additional tax ceases to apply if the individual has been reemployed for at least 60 days.

Description of the Bill

The bill would permit withdrawals to be made income tax free and exempt from the 10-percent additional tax if made (1) for the business start-up expenses of the individual or the spouse of the individual; (2) in the event of long-term unemployment, for any reason; or (3) for the post-secondary education expenses of the individual, the spouse of the individual, or a dependent child of the individual or the individual's spouse.

For purposes of this provision, business start-up expenses include expenses associated with the establishment of the business that are incurred on or before the business start date and on or before the date which is one year after the business start date, such as start-up expenditures within the meaning of section 195(c), organizational expenses within the meaning of sections 248(b) and 709(b) and other expenses related to starting a business (e.g., purchasing a computer, software, inventory, etc.). No deduction otherwise allowable with respect to any business start-up expense will be allowed to the extent this provision applies to such expense. In addition, to the extent this provision applies to any portion of business start-up expenses which are properly chargeable to capital account, the basis of the property to which such expenses are chargeable will be reduced by the amount taken into account under this provision.

For purposes of this provision, long-term unemployment has the same meaning as under present law (i.e., the individual has received unemployment compensation for at least 12 weeks).

For purposes of this provision, post-secondary education expenses would be defined as the student's cost of attendance as defined in section 472 of the Higher Education Act of 1965 (generally, tuition, fees, room and board, and related expenses).

Effective Date

The provision would be effective for distributions after December 31, 1996.

By Mr. HATCH (for himself, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. CRAIG, Mr. D'AMATO, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. GRASSLEY, Mr. HAGEL, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. NICKLES, Mr. ROBERTS, Mr. SMITH of New Hampshire Mr. THOMAS, Mr. THURMOND, Mr. WARNER, and Mr. COVERDELL):

S. 3. A bill to provide for fair and accurate criminal trials, reduce violent juvenile crime, promote accountability by juvenile criminals, punish and deter violent gang crime, reduce the fiscal burden imposed by criminal alien prisoners, promote safe citizen self-defense, combat the importation, production, sale, and use of illegal drugs, and for other purposes; to the Committee on the Judiciary.

THE OMNIBUS CRIME CONTROL ACT OF 1997

Mr. HATCH. Mr. President, this is a very important bill. We know juvenile crime is on the increase. Gang violence is on the increase. This bill would take care of both of those problems, and it does it in an intelligent, official, and decent way. I hope that our colleagues on the other side will look at it carefully. We will certainly work with them and with Senator BIDEN and others on the Judiciary Committee to try and make sure that we do the best we can.

This is an excellent bill. It would make immediate inroads into the problems of juvenile violence and crime and gang violence. I hope all of our colleagues will get behind this and support it.

Mr. President, this is a very important omnibus crime bill if we want to do something about crime in this society. In addition to what we have done in the past, this is an excellent Republican alternative to the violent crime that we have in the streets, the drugs permeating our society, and, of course, the many other difficulties that are literally making our society a less wonderful society to live in.

Mr. President, I ask unanimous consent that the remainder of my remarks be printed in the RECORD at this point.

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

Mr. President, I rise today along with the distinguished Majority Leader and other Republicans to introduce S. 3, the Hatch-Lott Omnibus Crime Control Act of 1997 and S. 10, the Hatch-Sessions Violent and Repeat Juvenile Offender Act of 1997. Together, these two bills build on the successful Republican 104th Congress, in which we passed habeas corpus reform, truth-in-sentencing reform, prison litigation reform, federal mandatory victim restitution, and the toughest antiterrorism law in our nation's history. These initiatives continue the Republican commitment to enacting the kind of serious laws that the American people want, that the American people need, and that the American people deserve to continue the fight against crime, and in particular, crime committed by violent youths.

Each year, our nation's violent crime problem tops the list of concerns for the American people, and their concerns are valid. According to the Uniform Crime Reports, recently published by the FBI, there was virtually no change in violent crime between 1994 and 1995. In fact, on average, one violent crime is committed every 18 seconds in this country.

This crisis is not limited to our major cities. In my home state of Utah, the number of violent crimes per 100,000 persons increased by eight percent in 1995, while the rate decreased by 12.8 percent in New York City that same year. In Utah, reported violent crimes increased by more than 10 percent, from 5,810 in 1994, to 6,415 in 1995. Property crimes in Utah increased by 17.9 percent, and murder by a depressing 35.7 percent during the same time period. Mr. President, we need to do something to curb this wave of violent crime affecting my State of Utah and every other State and community across America. The bill we introduce today will help law enforcement stem this tide of crime.

This legislation attacks the nations crime problem on many fronts including: Initiatives to revive the faltering war on drugs; stepping up the fight on terrorism; strengthening juvenile justice reform; increasing personal security; encouraging sensible prison reform; continuing the fight against child pornography; improving criminal justice reform; and continuing support for the successful Violence Against Women Act.

This bill takes several steps toward reviving the war on drugs. First, it enhances drug penalties for drug traffickers. Republicans want to ensure that large-scale drug traffickers face punishment that is commensurate with the harm they inflict on society. Second, the bill addresses the increasing menace of street level drug traffickers. This bill lowers the quantity of cocaine in powder form that triggers the mandatory minimums under title 21. It also creates mandatory minimum penalties for methamphetamine traffickers and dealers.

S. 3 also makes a strong statement about the nation's new problem with drug legalization. California and Arizona recently passed initiatives legalizing marijuana for medicinal purposes. But there is no legitimate medicinal use for marijuana, and the use of marijuana and other Schedule I drugs still violates federal law. In order to discourage the medical community from violating federal drug laws, S. 3 requires that HMO's and other recipients of federal Medicare and Medicaid funds certify that none of their participating physicians prescribed marijuana or other Schedule I controlled substances for medical purposes. This bill also combats recent lax attitudes toward drug use by education. This bill requires that the FCC encourage public service programs to emphasize the importance of anti-drug abuse announcements and attack the pro-legalization movement. This bill will also reauthorize the Drug Czar with an emphasis on enforcement, prevention, interdiction and effective treatment for juveniles who use drugs.

FIGHTING TERRORISM

This legislation toughens the anti-terrorism initiatives that the Republican 104th Congress enacted. It demands bombing laws to ensure that all uses of a bomb to commit murder can be punished capitally. This bill also establishes a National Commission on

Terrorism to examine a long-term strategy against terrorism. This legislation also makes it a federal offense to stockpile chemical weapons, and it tightens restrictions on human pathogens. This bill also makes it a federal offense to murder, or attempt to murder, athletes, guests, and spectators at Olympic games, and centralizes in the Attorney General federal authority for their security.

JUVENILE JUSTICE REFORM

The youth violence bill will ensure that violent and repeat juvenile offenders are treated as adults by authorizing US Attorneys to prosecute 14-year-olds for any federal felony that is a crime of violence or a serious drug trafficking offense. This legislation also confines juveniles prosecuted in the federal system for the length of their sentence. New federal penalties for offenses committed by criminal street gangs will create a sustained effort to target violent youth gang activity. Federal prosecutors will be able to charge gang leaders or members under this bill if they engage in two or more criminal gang offenses. It will also be a crime to recruit someone into a gang, or solicit their participation in a gang crime.

This legislation also will reform federal aid to State youth crime programs by eliminating needless federal mandates on state criminal justice systems that have stifled innovative state efforts to address violent youth crime. This bill also requires that states not exclude religious organizations from participating in juvenile rehabilitative programs. In an effort to encourage the states to undertake progressive responses to violent youth crime, this bill authorizes funding for a variety of programs, such as fingerprinting, DNA testing, and improved record keeping practices for juvenile offenders. The Juvenile Justice bill also fosters youth crime prevention that works by ensuring that there are 2,000 Boys & Girls Clubs by the year 2000, and by permitting some federal grant funds to be used to establish a role model speakers program.

PERSONAL SECURITY

Recent studies show that the adoption by more than 30 states of laws allowing citizens to carry firearms has had, and will have, a material and positive effect in preventing violent crime. S. 3 will empower current and retired law enforcement officers to carry firearms in other states, and will authorize states to enter into interstate compacts recognizing each other's citizen carry laws. It will also create an exception to federal firearm purchase waiting periods for persons protected under a protective order. Thus, for instance, no longer will a threatened and abused woman be forced to wait in fear for the right to protect herself.

SENSIBLE PRISON REFORM

American taxpayers should not be saddled with the burden of paying for the cost of incarcerating aliens convicted of crimes in this country. In an effort to lessen this burden, this legislation requires the Department of State to negotiate treaties with all foreign governments that receive U.S. aid. Under these treaties, receipt of American aid will be contingent upon foreign governments receiving and incarcerating their citizens and nationals who are convicted of crimes in the United States for a majority of their sentences.

This legislation also continues the authorization for the pilot project on privatization of federal prisons. It will also build on the Prison Litigation Reform Act enacted last Congress by amending and clarifying features of the PLRA. Provisions of this bill will also make it more difficult for prisoners to pursue their criminal careers while in prison by making it more difficult to conduct criminal activity by phone.

Importantly, this bill also eliminates inappropriate and counter-productive "incentives" of early release for federal inmates to get drug treatment. Further, our bill will require all federal prisoners to work, and impose no-frills prisons in the federal system.

CHILD PORNOGRAPHY

This legislation also builds on the advances made in the 104th Congress by requiring the Secretary of State to renegotiate extradition treaties with foreign governments to ensure that child pornography offenses under federal law are extraditable offenses. It also modifies current federal law so that the statute of limitations is tolled when the federal child pornography laws are violated, in whole or in part, by persons beyond the jurisdiction of the United States.

CRIMINAL JUSTICE REFORM

S. 3 will improve public confidence in the criminal justice system by enhancing the accuracy of the trial process. The current exclusionary rule often unjustifiably bars use of probative evidence at trial. This law will amend the exclusionary rule to allow evidence to be admitted if law enforcement officers had an objectively reasonable belief that their conduct was lawful. Further, 18 U.S.C. §3501 provides that judges must admit a confession as long as it is voluntary. This bill will direct the Justice Department to ensure this provision is enforced. This bill also proposes various reforms to ensure fairness for both the defendant and the victim in criminal trials. These reforms to the criminal justice process that are critical if we are to prevent our cherished liberties from further devolving into merely a cynical shield for the guilty to avoid just punishment.

Mr. President, these bills alone will not solve our crime problem. That must be done community by community. Crime cannot thrive in a society that will not tolerate it. But by enacting these common sense reforms, we can signal our determination to build such a society. I urge my colleagues to support these bills.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Crime Control Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Severability.

TITLE I—TRANSFER OF ALIEN PRISONERS

Sec. 101. Short title.
Sec. 102. Transfers of alien prisoners.
Sec. 103. Consent unnecessary.
Sec. 104. Certification transfer requirement.
Sec. 105. International prisoner transfer report.
Sec. 106. Annual reports on foreign assistance.
Sec. 107. Annual certification procedures.
Sec. 108. Prisoner transfers treaties.
Sec. 109. Judgments unaffected.
Sec. 110. Definition.
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TITLE II—EXCLUSIONARY RULE REFORM

Subtitle A—Exclusionary Rule Reform

Sec. 201. Short title.
Sec. 202. Admissibility of certain evidence.

Subtitle B—Confession Reform

Sec. 211. Enforcement of confession reform statute.

TITLE III—VIOLENT CRIME, DRUGS, AND TERRORISM

Sec. 301. Short title.

Subtitle A—Criminal Penalties and Procedures

Sec. 311. Protection of the Olympics.
Sec. 312. Federal responsibility for security at international athletic competitions.
Sec. 313. Technical revision to penalties for crimes committed by explosives.
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Subtitle B—International Terrorism

Sec. 321. Multilateral sanctions.
Sec. 322. Information on cooperation with United States antiterrorism efforts in annual country reports on terrorism.
Sec. 323. Report on international terrorism.
Sec. 324. Revision of Department of State rewards program.

Subtitle C—Commissions and Studies

Sec. 331. National commission on terrorism.

TITLE IV—COMMUNITY PROTECTION

Sec. 401. Short title.

Subtitle A—Law Enforcement Assistance

Sec. 411. Exemption of qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed firearms.

Subtitle B—Citizens' Assistance

Sec. 421. Short title.
Sec. 422. Authorization to enter into interstate compacts.
Sec. 423. Authorized uses of Federal grant funds.
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Sec. 501. The right of the victim to an impartial jury.
Sec. 502. Jury trial improvements.
Sec. 503. Rebuttal of attacks on the character of the victim.
Sec. 504. Use of notice concerning release of offender.
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Sec. 521. Mandatory minimum sentences for criminals possessing firearms.
Sec. 522. Firearms possession by violent felons and serious drug offenders.
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Sec. 524. Possession of an explosive during the commission of a felony.
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Sec. 541. Strengthening of Federal death penalty standards and procedures.
Sec. 542. Murder of witness as aggravating factor.

Sec. 543. Death penalty for murders committed in the District of Columbia.

TITLE VI—INCREASED PENALTIES FOR TRAFFICKING AND MANUFACTURE OF METHAMPHETAMINE AND PRECURSORS

Sec. 601. Trafficking in methamphetamine penalty increases.
Sec. 602. Reduction of sentence for providing useful investigative information.
Sec. 603. Implementation of a sentence of death.
Sec. 604. Limitation on drug enforcement administrator tenure.
Sec. 605. Serious juvenile drug offenses as armed career criminal act predicates.
Sec. 606. Mandatory minimum prison sentences for persons who use minors in drug trafficking activities or sell drugs to minors.
Sec. 607. Penalty increases for trafficking in listed chemicals.

TITLE VII—COMBATING VIOLENCE AGAINST WOMEN AND CHILDREN

Subtitle A—General Reforms

Sec. 701. Participation of religious organizations in violence against women act programs.
Sec. 702. Domestic violence arrest grants.
Sec. 703. Rural domestic violence and child abuse enforcement assistance.
Sec. 704. Runaway, homeless, and street youth assistance grants.

Subtitle B—Domestic Violence

Sec. 711. Death penalty for fatal interstate domestic violence offenses.
Sec. 712. Death penalty for fatal interstate violations of protective orders.
Sec. 713. Evidence of disposition of defendant toward victim in domestic violence cases and other cases.
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TITLE VIII—VIOLENT CRIME AND TERRORISM

Subtitle A—Violent Crime and Terrorism

Sec. 801. Amendments to anti-terrorism statutes.
Sec. 802. Kidnapping; death of victim before crossing State line as not defeating prosecution, and other changes.
Sec. 803. Expansion of section 1959 of title 18 to cover commission of all violent crimes in aid of racketeering activity and increased penalties.
Sec. 804. Conforming amendment to conspiracy penalty.
Sec. 805. Inclusion of certain additional serious drug offenses as armed career criminal act predicates.
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Subtitle B—Courts and Sentencing

Sec. 821. Allowing a reduction of sentence for providing useful investigative information although not regarding a particular individual.
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Sec. 827. Technical correction to assure compliance of sentencing guidelines with provisions of all Federal statutes.

Subtitle C—White Collar Crime

Sec. 841. Clarification of scienter requirement for receiving property stolen from an indian tribal organization.
Sec. 842. Larceny involving post office boxes and postal stamp vending machines.
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Sec. 911. Prison communications.
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TITLE X—MISCELLANEOUS PROVISIONS

Sec. 1001. Sense of the Senate regarding ondcp.
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TITLE XI—VIOLENT AND REPEAT JUVENILE OFFENDERS

Sec. 1101. Short title.
Sec. 1102. Findings and purposes.
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Subtitle A—Juvenile Justice Reform

Sec. 1111. Repeal of general provision.
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Sec. 1141. Short title.
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Sec. 1143. Amendment of title 18 with respect to criminal street gangs.
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Sec. 1145. Solicitation or recruitment of persons in criminal gang activity.
Sec. 1146. Crimes involving the recruitment of persons to participate in criminal street gangs and firearms offenses as rico predicates.
Sec. 1147. Prohibitions relating to firearms.
Sec. 1148. Amendment of sentencing guidelines with respect to body armor.
Sec. 1149. Additional prosecutors.

Subtitle C—Juvenile Crime Control and Accountability

Sec. 1161. Findings; declaration of purpose; definitions.
Sec. 1162. Youth crime control and accountability block grants.
Sec. 1163. Runaway and homeless youth.
Sec. 1164. Authorization of appropriations.
Sec. 1165. Repeal.
Sec. 1166. Transfer of functions and savings provisions.
Sec. 1167. Repeal of unnecessary and duplicative programs.
Sec. 1168. Housing juvenile offenders.
Sec. 1169. Civil monetary penalty surcharge.

SEC. 2. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

TITLE I—TRANSFER OF ALIEN PRISONERS

SEC. 101. SHORT TITLE.

This title may be cited as the "Transfer of Alien Prisoners Act of 1997".

SEC. 102. TRANSFERS OF ALIEN PRISONERS.

(a) IN GENERAL.—Not later than December 31, 1998, the Attorney General shall begin

transferring undocumented aliens who are in the United States, incarcerated in a Federal, State, or local prison, whose convictions have become final, to the custody of the government of the alien's country of nationality for service of the duration of the alien's sentence in the alien's country.

(b) INAPPLICABILITY TO CERTAIN ALIENS.—This section does not apply to aliens who are nationals of a foreign country that the Secretary of State has determined under section 6(j) of the Export Administration Act of 1979 has repeatedly provided support for acts of international terrorism.

SEC. 103. CONSENT UNNECESSARY.

(a) TREATY RENEGOTIATION.—The Secretary of State shall renegotiate all treaties requiring the consent of an alien who is in the United States, whether present lawfully or unlawfully, who is, or who is about to be, incarcerated in a Federal, State, or local prison or jail before such person may be transferred to the country of nationality of that person to ensure that no such consent is required in any case under any treaty. If the Secretary of State is unable to negotiate with a foreign nation a new treaty that would go into effect by December 31, 1998, that does not require such consent, the Secretary shall withdraw the United States as a party to any existing treaty requiring such consent.

(b) GENERAL REPEAL.—Notwithstanding any other provision of law, the consent of an alien covered by this title shall not be required before such alien may be designated for transfer or before such alien may be transferred to the country of nationality of that alien.

SEC. 104. CERTIFICATION TRANSFER REQUIREMENT.

Not later than March 1 of each year, the President shall submit to Congress a certification as to whether each foreign country has accepted, and has confined for the duration of their sentences, the persons described in section 403(a).

SEC. 105. INTERNATIONAL PRISONER TRANSFER REPORT.

(a) IN GENERAL.—Not later than March 1 of each year, the President shall transmit to the Majority Leader of the Senate, the Speaker of the House of Representatives, the chairmen and ranking members of the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives a report that—

(1) describes the operation of the provisions of this title; and

(2) highlights the effectiveness of those provisions with regard to the 10 countries having the greatest number of their nationals incarcerated in the United States, both in transferring such persons from the United States to their country of nationality and in confining such persons for the duration of their sentences.

(b) CONTENTS OF REPORT.—The report prepared under subsection (a) shall set forth—

(1) the number of aliens convicted of a Federal, State, or local criminal offense in the United States, and the types of offenses involved, during the preceding calendar year;

(2) the number of aliens described in paragraph (1) who were sentenced to terms of incarceration;

(3) the number of aliens described in paragraph (1) who were eligible for transfer pursuant to those provisions;

(4) the number of aliens described in paragraph (2) who were transferred pursuant to the provisions of this title;

(5) the number, location, length of their period of incarceration in the United States, and present status of aliens described in paragraph (2) who have not yet been transferred to the country of nationality;

(6) the extent to which each foreign country whose nationals have been convicted of a Federal, State, or local criminal offense in the United States has accepted the transfer of such persons, including the percentage of such persons accepted by each foreign country;

(7) the extent to which each foreign country described in paragraph (6) has confined such persons for 85 percent of the duration of their sentences, including the percentage of such persons confined by each foreign country;

(8) the extent to which each foreign country described in paragraph (5) has accomplished (or has failed to accomplish) the goals described in any applicable bilateral or multilateral agreement to which the United States is a party that deals with the subject of the transfer of alien prisoners;

(9) for each foreign country described in paragraph (6)—

(A) a description of the plans, programs, and timetables adopted by such country to accept its own nationals for crimes committed in the United States;

(B) a description of the plans, programs, and timetables adopted by such country for the continued incarceration of its own nationals for crimes committed in the United States;

(C) a list of those countries that are negotiating in good faith with the United States to establish a mechanism for the transfer, receipt, and continued incarceration of such country's nationals;

(D) a list of those countries that have adopted laws or regulations that ensure the transfer, receipt, and incarceration of its nationals in accordance with the provisions of this title; and

(E) a list of those countries that have adopted laws or regulations that ensure the availability to appropriate United States Government personnel of adequate records in connection with the transfer, receipt, and continued incarceration of prisoners pursuant to this title;

(10) a description of the policies adopted, agreements concluded, and plans and programs implemented or proposed by the Federal Government in pursuit of its responsibilities for the prompt transfer of aliens described in subsection (b)(1), as well as for identifying and preventing the re-entry of such persons after their transfer from the United States; and

(11) a description of instances of refusals to cooperate with the United States Government regarding the transfer of aliens described in subsection (b)(1).

SEC. 106. ANNUAL REPORTS ON FOREIGN ASSISTANCE.

At the time that the report required by section 634 of the Foreign Assistance Act of 1961 is submitted each year, the Secretary of State shall submit a copy of such report to the Chairmen and Ranking Members of the Committees on the Judiciary of the House of Representatives and the Senate, the Chairman and Ranking Member of the Committee on Foreign Relations of the Senate, and the Chairman and Ranking Member of the Committee on International Relations of the House of Representatives.

SEC. 107. ANNUAL CERTIFICATION PROCEDURES.

(a) WITHHOLDING OF BILATERAL ASSISTANCE, OPPOSITION TO MULTILATERAL DEVELOPMENT ASSISTANCE, AND WITHHOLDING OF VISAS.—

(1) BILATERAL ASSISTANCE.—

(A) IN GENERAL.—Fifty percent of the United States assistance allocated each fiscal year for each foreign country shall be withheld from obligation and expenditure to any such country if that country has refused to accept not less than 75 percent of nationals covered by this title and designated for transfer by the Attorney General within either of the 2 immediately preceding fiscal years or to confine such transferred persons for not less than 85 percent of their sentence, except as provided in subsection (b).

(B) INAPPLICABILITY TO CERTAIN COUNTRIES.—This paragraph does not apply with respect to a country if the President determines in accordance with subsection (b) that its application to that country would be contrary to the vital national interests of the United States, except that any such determination shall not take effect until not less than 30 days after the President submits written notification of that determination to the congressional committees listed in section 306 in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961.

(C) BILATERAL ASSISTANCE EXEMPTION.—In this subsection, the term "bilateral assistance" does not include—

(i) narcotics-related assistance under the Foreign Assistance Act of 1961;

(ii) disaster relief assistance;

(iii) assistance that involves the provision of food (including monetization of food) or medicine; or

(iv) assistance for refugees.

(2) MULTILATERAL ASSISTANCE.—

(A) IN GENERAL.—The Secretary of the Treasury may instruct the United States Executive Directors of each multilateral development bank to vote against any loan or other utilization of the funds of such bank or institution for the benefit of any country if that country has refused to accept not less than 75 percent of its nationals covered by this title and designated for transfer by the Attorney General or to confine such transferred persons for not less than 85 percent of their sentences within either of the 2 immediately preceding fiscal years, except as provided in subsection (b).

(B) DEFINITION OF "MULTILATERAL DEVELOPMENT BANK".—In this paragraph, the term "multilateral development bank" means the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the European Bank for Reconstruction and Development.

(3) VISAS.—All visas shall be denied to nationals employed by the government of any foreign country if that country has refused to accept not fewer than 75 percent of its nationals covered by this title and designated for transfer by the Attorney General within either of the 2 immediately preceding fiscal years or to confine such transferred persons for not less than 85 percent of their sentences, except as provided in subsection (b), except that the President or the Secretary of State nonetheless may grant visas to heads of state, certified diplomats, or members of a foreign country's mission to the United Nations.

(b) CERTIFICATION PROCEDURES.—

(1) WHAT MUST BE CERTIFIED.—Subject to subsection (d), the assistance withheld from a country pursuant to subsection (a)(1) may be obligated and expended, the requirement

of subsection (a)(2) to vote against multilateral development bank assistance to a country shall not apply, and the withholding of visas from nationals of a country of subsection (a)(3) shall not apply, if the President determines and certifies to Congress, at the time of the submission of the report required by section 305, that—

(A) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, to achieve full compliance with the goals and objectives established by this title, except that the President may make such a finding only once during any 5-year period;

(B) for a country that would not otherwise qualify for certification under subparagraph (A), the vital national interests of the United States require that the assistance withheld pursuant to subsection (a)(1) be provided, that the United States not vote against multilateral development bank assistance for that country pursuant to subsection (a)(2), and that visas not be withheld pursuant to subsection (a)(3); or

(C) only in the case of multilateral development bank assistance, such assistance is directed specifically to programs that provide, or support a foreign country's ability itself to provide, food, water, clothing, shelter, and medical care of that country.

(2) CONSIDERATIONS REGARDING COOPERATION.—In making the determinations described in subsection (b)(1), the President shall consider the extent to which the country has—

(A) met the goals and objectives of this title;

(B) accomplished the goals described in an applicable bilateral agreement with the United States or a multilateral agreement to implement the provisions and purposes of this title; and

(C) taken domestic legal and law enforcement measures to implement the provisions and purposes of this title;

(3) CASE-BY-CASE WAIVER AUTHORITY.—

(A) AUTHORITY.—The President or the Secretary of State may, on a case-by-case basis, allow an alien subject to transfer under section 402 to remain in the custody of the Attorney General if the President or Secretary of State determines that doing so is necessary to serve the vital interests of the United States or to protect the life or health of the citizen or national. It is the sense of Congress that such case-by-case determinations rarely should be made.

(B) NONDELEGATION OF AUTHORITY.—The authority to make a determination under subparagraph (A) may not be delegated.

(4) INFORMATION TO BE INCLUDED IN NATIONAL INTEREST CERTIFICATION.—If the President makes a certification with respect to a country pursuant to subsection (b)(1), the President shall include in such certification—

(A) a full and complete description of the vital national interests placed at risk if United States bilateral assistance to that country is terminated pursuant to this section, multilateral development bank assistance is not provided to such country, and visas are not issued to the nationals of such country; and

(B) a statement weighing the risk described in subparagraph (A) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in implementing the provisions and purposes of this title.

(c) CONGRESSIONAL REVIEW.—Subsection (d) shall apply if, not later than 30 calendar days after receipt of a certification submitted under subsection (b) at the time of submission of the report required by this title, Congress enacts a joint resolution disapproving the determination of the President contained in such certification.

(d) DENIAL OF ASSISTANCE FOR COUNTRIES DECERTIFIED.—If the President does not make a certification under subsection (b) with respect to a country or Congress enacts a joint resolution disapproving such certification, then until such time as the conditions specified in subsection (e) are satisfied—

(1) funds may not be obligated for United States assistance for that government, and funds previously appropriated, but unobligated, for United States assistance for that government may not be expended for the purpose of providing assistance for that government;

(2) the requirement to vote against multilateral development bank assistance pursuant to subsection (a)(2) shall apply with respect to that country, without regard to the date specified in that subsection; and

(3) no visas may be issued to nationals of that country, and no visas already issued shall be held valid by the Department of State, the Immigration and Naturalization Service, or any other department or agency of the Federal Government.

(e) RECERTIFICATION.—Subsection (d) shall apply to a country described in that subsection until—

(1) the President, at the time of submission of the report required by this title, makes a certification under subsection (b)(1)(A) or (b)(1)(B) with respect to that country, and Congress does not enact a joint resolution under subsection (c) disapproving the determination of the President contained in that certification; or

(2) the President, at any other time, makes the certification described in subsection (b)(1)(A) or subsection (b)(1)(B) with respect to that country, except that this paragraph applies only if either—

(A) the President also certifies that—

(i) that country has undergone a fundamental change in government, or

(ii) there has been a fundamental change in the conditions that were the reasons—

(I) why the President had not made a certification with respect to that country under subsections (b)(1) (A) or (B); or

(II) if the defendant had made such a certification and Congress enacted a joint resolution disapproving the determination contained in the certification, why Congress enacted that joint resolution; or

(B) Congress enacts a joint resolution approving the determination contained in the certification under subsection (b)(1) (A) or (B).

Any certification under subparagraph (A) of paragraph (2) shall discuss the justification for the certification.

(f) SENATE PROCEDURES.—Any joint resolution under this section shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

SEC. 108. PRISONER TRANSFERS TREATIES.

(a) NEGOTIATION.—The Secretary of State shall begin to negotiate and renegotiate, not later than 90 days after the date of enactment of this Act, bilateral prisoner transfer treaties. The focus of such negotiations should be—

(1) to expedite the transfer of aliens unlawfully in the United States who are (or are about to be) incarcerated in United States prisons;

(2) to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts; and

(3) to allow the Federal Government or the States to maintain their original prison sentences in effect so that transferred prisoners who return to the United States prior to the completion of their original United States sentences can be returned to custody for the balance of their prison sentences.

(b) CERTIFICATION.—The President shall submit to Congress, annually, a certification as to whether each prisoner transfer treaty in force is effective in returning aliens unlawfully in the United States who have committed offenses for which they are incarcerated in the United States to their country of nationality for further incarceration.

SEC. 109. JUDGMENTS UNAFFECTED.

Nothing in this title shall in any way be construed to nullify or reduce the effect of a judgment of conviction and sentence entered by a Federal, State, or local court in the United States.

SEC. 110. DEFINITION.

In this title, the term "United States assistance" means any assistance under the Foreign Assistance Act of 1961.

SEC. 111. REPEALS.

The following provisions of law are repealed:

(1) The first sentence in section 4100(a) of title 18, United States Code, is repealed.

(2) The first, third, fourth, fifth, and sixth sentences in section 4100(b) of title 18, United States Code, are repealed.

(3) Subsection (c) of section 4100 of title 18, United States Code is repealed.

(4) Subsection (d) of section 4100(a) of title 18, United States Code, is redesignated as subsection (c).

(5) Subsection (a)(2) of section 330 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is amended by inserting "during fiscal years 1997 and 1998," after "compensation,".

(6) Section 330(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is amended by striking ", except as required by treaty,".

(7) Section 332 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is repealed.

TITLE II—EXCLUSIONARY RULE REFORM

Subtitle A—Exclusionary Rule Reform

SEC. 201. SHORT TITLE.

This subtitle may be cited as the "Exclusionary Rule Reform Act of 1997".

SEC. 202. ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"§ 3510. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—

"(1) IN GENERAL.—Evidence that is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that the search or seizure was in conformity with the fourth amendment.

"(2) PRIMA FACIE EVIDENCE.—The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment.

"(b) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—

"(1) IN GENERAL.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless the exclusion is expressly authorized by statute or by a rule prescribed by the Supreme Court pursuant to statutory authority.

"(2) SPECIAL RULE RELATING TO OBJECTIVELY REASONABLE SEARCHES AN SEIZURES.—Evidence that is otherwise excludable under paragraph (1) shall not be excluded if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that the search or seizure was in conformity with the statute, administrative rule or regulation, or rule of procedure, the violation of which occasioned its being excludable.".

(b) RULES OF CONSTRUCTION.—This section and the amendments made by this section shall not be construed to require or authorize the exclusion of evidence in any proceeding. Nothing in this section or the amendments made by this section shall be construed so as to violate the fourth amendment to the Constitution of the United States.

(c) CLERICAL AMENDMENT.—The chapter analysis for chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"3510. Admissibility of evidence obtained by search or seizure.".

Subtitle B—Confession Reform

SEC. 211. ENFORCEMENT OF CONFESSION REFORM STATUTE.

(a) IN GENERAL.—Section 3501 of title 18, United States Code, is amended by adding at the end the following:

"(f) ENFORCEMENT OF CONFESSION REFORM.—

"(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Omnibus Crime Control Act of 1997, the Attorney General shall promulgate guidelines that require the Department of Justice to enforce, and defend nationally, the legality of this section. Specifically, the Department shall pursue the admission into evidence of confessions that are voluntarily given.

"(2) VOLUNTARINESS.—In determining the issue of voluntariness for purposes of this subsection—

"(A) the Department shall take into consideration all the circumstances surrounding the giving of the confession, including—

"(i) the time elapsing between arrest and arraignment of the defendant making the confession, if the confession was made after arrest and before arraignment;

"(ii) whether the defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession;

"(iii) whether the defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him; and

"(iv) whether the defendant was without the assistance of counsel when he was questioned and when he made a confession;

"(B) the presence or absence of any of the factors described in paragraph (1) shall not be conclusive in the Department's determination of whether a confession was voluntary; and

"(C) the fact that the defendant had not been advised prior to questioning of his or her right to silence and to the assistance of counsel shall not be dispositive.

"(g) DEFINITION OF ANY CRIMINAL PROSECUTION BY THE UNITED STATES.—In this section—

"(1) the term 'any criminal prosecution by the United States' includes any prosecution by the United States under the Uniform Code of Military Justice; and

"(2) the term 'offenses against the laws of the United States' includes offense defined by the Uniform Code of Military Justice.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act and shall apply to any criminal prosecution brought by or under the authority of the United States, including a military prosecution or a prosecution brought by the District of Columbia, regardless of whether that prosecution has begun or has concluded and has yet to become final.

TITLE III—VIOLENT CRIME, DRUGS, AND TERRORISM

SEC. 301. SHORT TITLE.

This title may be cited as the "Drug Investigation Support and Antiterrorism Act of 1997".

Subtitle A—Criminal Penalties and Procedures

SEC. 311. PROTECTION OF THE OLYMPICS.

(a) IN GENERAL.—Section 1111 of title 18, United States Code, is amended by adding at the end the following:

"(c) OLYMPIC GAMES.—

"(1) IN GENERAL.—Whoever kills a person during and in relation to any international Olympic Games that are held within any State shall be punished in accordance with subsection (b) and section 1112.

"(2) AMENDMENT.—Whoever attempts to violate this subsection shall be punished in accordance with section 1113.

"(3) STATE DEFINED.—In this subsection, the term 'State' means each of the several States, the District of Columbia, and any territory or possession of the United States.".

(b) INTERNATIONALLY PROTECTED PERSONS.—Section 1116 (b)(4) of title 18, United States Code, is amended—

(1) by striking "or at the end of subparagraph (A)";

(2) by striking the period at the end of subparagraph (B), and inserting "; or"; and

(3) by adding at the end the following:

"(C) any participant or guest attending any international sporting event sponsored or sanctioned by the International Olympic Committee or the United States Olympic Committee incorporated under the Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (36 U.S.C. 371 et seq.).".

SEC. 312. FEDERAL RESPONSIBILITY FOR SECURITY AT INTERNATIONAL ATHLETIC COMPETITIONS.

(a) IN GENERAL.—

(1) DUTY OF ATTORNEY GENERAL.—The Attorney General, in consultation with the Secretary of State and the Secretary of the Treasury, shall supervise other Federal authorities and personnel in the provision of security services (including conducting a comprehensive review of plans for the housing of athletes and other eligible guests) by establishing a task force to be known as the "Olympic Security Task Force" (referred to in this subsection as the "task force").

(2) DUTIES OF TASK FORCE.—The task force shall assist the Attorney General in overseeing security for any international Olympic Games held in any State.

(3) STATE DEFINED.—In this section, the term "State" means each of the several States, the District of Columbia, and any territory or possession of the United States.

(b) TASK FORCE COMPOSITION.—

(1) IN GENERAL.—The Attorney General shall determine the number of members and composition of the task force in accordance with this section. The Attorney General shall appoint representatives from State and local law enforcement to serve as members of the task force.

(2) REPRESENTATIVES.—In addition to the members referred to in paragraph (1), the Attorney General may appoint as members representatives of—

(A) the Federal Bureau of Investigation;

(B) the Department of Defense;

(C) the Secret Service;

(D) the United States Marshals Service;

(E) the United States Attorney with jurisdiction over a venue for Olympic Games (referred to in this section as an "Olympic venue");

(F) the Bureau of Alcohol, Tobacco, and Firearms;

(G) the Central Intelligence Agency; and

(H) any other appropriate agency of the Federal Government, as the Attorney General determines to be appropriate.

(c) DISBANDING OF TASK FORCE.—The President may disband the task force and relieve the Attorney General of responsibility for supervising security at international Olympic Games, if the President finds that appropriate State or local law enforcement officials refused, or otherwise failed adequately to participate in, the planning, preparation, or execution of a plan providing for security under this section.

(d) ASSISTANCE.—

(1) IN GENERAL.—In carrying out this section, the Attorney General may request assistance from—

(A) the head of any department or agency of the United States; and

(B) the appropriate officials of any appropriate department or agency of the State in which an Olympic venue is located (referred to in this section as the "host State"), or any political subdivision of such State, including State and local law enforcement officials in the host State to ensure the effective implementation of security under this subsection.

(2) UNITED STATES OLYMPIC ORGANIZING COMMITTEE.—The Attorney General may request the United States Olympic Committee (incorporated under the Act entitled "An Act to incorporate the United States Olympic Association", approved September 21, 1950 (36 U.S.C. 371 et seq.)) and the Olympic organizing committee of the city in which an Olympic venue is located (referred to in this section as a "host city") to provide all reasonable cooperation and assistance required to carry out this subsection. Upon receipt of such a request, the United States Olympic Committee and organizing committees shall endeavor to provide that assistance.

(e) AGREEMENTS AND REGULATIONS.—To carry out this section, the Attorney General may enter into interagency or intergovernmental agreements and promulgate regulations.

(f) EXPEDITED REVIEW.—In the case of Olympic Games that occur after the date of enactment of this Act in the United States with respect to which the Olympic venue is selected before the date of enactment of this section, the review of housing required by paragraph (1) shall be conducted not later than 120 days after such date of enactment. The review shall consider the suitability of the proposed Olympic Village site, building options, and any other issue the Attorney

General considers appropriate to ensure maximum security for the Olympic Village, its residents, and its environs.

(g) CONSTRUCTION.—Nothing in this section shall be construed to create a cause of action against the United States or any officer or employee of the United States in favor of any person who is not otherwise authorized.

SEC. 313. TECHNICAL REVISION TO PENALTIES FOR CRIMES COMMITTED BY EXPLOSIVES.

Section 844 of title 18, United States Code, is amended—

(1) in subsection (f)(1), by inserting "or any institution or organization receiving Federal financial assistance," after "or agency thereof,"; and

(2) by striking subsection (i) and inserting the following:

"(i) MALICIOUS DESTRUCTION BY FIRE OR EXPLOSIVES.—

"(1) IN GENERAL.—Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, public place, or other personal or real property used in interstate or foreign commerce or used in any activity affecting interstate or foreign commerce, shall be imprisoned for a period of not less than 5 years and not more than 20 years, fined under this title, or both.

"(2) PERSONAL INJURY.—Whoever engages in conduct prohibited by this subsection, and as a result of such conduct, directly or proximately causes personal injury or creates a substantial risk of injury to any person, including any public safety officer performing duties, shall be imprisoned for a period of not less than 7 years and not more than 40 years, fined under this title, or both.

"(3) DEATH.—Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both.".

SEC. 314. CHEMICAL WEAPONS RESTRICTIONS.

(a) IN GENERAL.—Section 2332c of title 18, United States Code, is amended—

(1) in subsection (a), by inserting after paragraph (2) the following:

"(3) RESTRICTIONS.—

"(A) IN GENERAL.—Whoever without lawful authority knowingly develops, produces, acquires, stockpiles, retains, transfers, owns, or possesses any chemical weapon, or knowingly assists, encourages or induces any person to do so, or attempts or conspires to do so, shall be punished under paragraph (2).

"(B) JURISDICTION.—The United States has jurisdiction over an offense under this paragraph if—

"(i) the prohibited activity takes place in the United States; or

"(ii) the prohibited activity takes place outside the United States and is committed by a national of the United States.

"(C) ADDITIONAL PENALTY.—The court shall order any person convicted of an offense under this paragraph to pay to the United States any expenses incurred incident to the seizure, storage, handling, transportation, and destruction or other disposition of property seized for violation of this section.";

(2) by adding at the end the following:

"(c) CRIMINAL FORFEITURE.—

"(1) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—A person who is convicted of an offense under this section shall forfeit to the United States the interest of that person in—

"(A) any chemical weapon, including any component thereof;

"(B) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(C) any property, real or personal, used or intended to be used to commit or to promote the commission of the offense.

"(2) THIRD PARTY TRANSFERS.—

"(A) IN GENERAL.—All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section.

"(B) FORFEITURE.—Except as provided in subparagraph (C), any property referred to in subparagraph (A) that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States.

"(C) EXCEPTION.—The property referred to in subparagraph (B) shall not be ordered forfeited if the transferee establishes in a hearing conducted pursuant to subsection (l) that the party is a bona fide purchaser for value of such property who, at the time of purchase, was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(3) PROTECTIVE ORDERS.—

"(A) IN GENERAL.—Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

"(i) upon the filing of an indictment or information—

"(I) charging a violation of this chapter for which criminal forfeiture may be ordered under this section; and

"(II) alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(ii) prior to the filing of an indictment or information referred to in clause (i), if, after providing notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

"(I) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

"(II) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered pursuant to subparagraph (B) shall be effective for a period not to exceed 90 days, unless extended by the court for good cause shown or unless an indictment or information described in this subparagraph has been filed.

"(B) TEMPORARY RESTRAINING ORDERS.—

"(i) IN GENERAL.—A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that—

"(I) the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; and

"(II)(aa) exigent circumstances exist that place the life or health of any person in danger; or

"(bb) that provision of notice will jeopardize the availability of the property for forfeiture.

"(ii) EXPIRATION.—A temporary restraining order described in clause (i) shall expire not later than 10 days after the date on which the order is entered, unless—

"(I) the order is extended for good cause shown; or

"(II) the party against whom it is entered consents to an extension for a longer period.

"(iii) HEARING.—A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(C) INAPPLICABILITY OF FEDERAL RULES OF EVIDENCE.—The court may receive and consider, at a hearing held pursuant to this paragraph, evidence and information that would otherwise be inadmissible under the Federal Rules of Evidence.

"(d) WARRANT OF SEIZURE.—

"(1) IN GENERAL.—The Government of the United States may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant.

"(2) DETERMINATIONS BY COURT.—The court shall issue a warrant authorizing the seizure of the property referred to in paragraph (1) if the court determines that there is probable cause to believe that—

"(A) the property to be seized would, in the event of conviction, be subject to forfeiture; and

"(B) an order under subsection (c) may not be sufficient to ensure the availability of the property for forfeiture.

"(e) ORDER OF FORFEITURE.—The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, by a preponderance of the evidence, that the property is subject to forfeiture.

"(f) EXECUTION.—

"(1) IN GENERAL.—Upon entry of an order of forfeiture or temporary restraining order under this section, the court shall authorize the Attorney General to seize all property ordered forfeited or restrained on such terms and conditions as the court determines to be appropriate.

"(2) ACTIONS BY COURT.—Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited.

"(3) OFFSET.—Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property that—

"(A) are required by law; or

"(B) are necessary to protect the interests of the United States or third parties.

"(g) DISPOSITION OF PROPERTY.—

"(1) IN GENERAL.—Following the seizure of property ordered forfeited under this section, the Attorney General shall, making due provision for the rights of any innocent persons—

"(A) destroy or retain for official use any article described in paragraph (1) of subsection (a); and

"(B) retain for official use or direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means.

"(2) REVERSION PROHIBITED.—With respect to the forfeiture, any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with the defendant or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States.

"(3) RESTRAINT OF SALE OR DISPOSITION.—Upon application of a person, other than the defendant or person acting in concert with the defendant or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to the applicant.

"(h) AUTHORITY OF ATTORNEY GENERAL.—With respect to property ordered forfeited under this section, the Attorney General may—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this section, or take any other action to protect the rights of innocent persons that—

"(A) is in the interest of justice; and

"(B) is not inconsistent with this section;

"(2) compromise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, under section 616 of the Tariff Act of 1930 (19 U.S.C. 1616a), of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take such appropriate measures as are necessary to safeguard and maintain property ordered forfeited under this section pending the disposition of that property.

"(i) BAR ON INTERVENTION.—Except as provided in subsection (l), no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of that property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of the alleged interest of that party in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(j) JURISDICTION TO ENTER ORDERS.—Each district court of the United States shall have jurisdiction to enter an order of forfeiture under this section without regard to the location of any property that—

"(1) may be subject to forfeiture under this section; or

"(2) has been ordered forfeited under this section.

"(k) DEPOSITIONS.—In order to facilitate the identification and location of property declared forfeited under this section and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States under this section, the court may, upon application of the United States, order that—

"(1) the testimony of any witness relating to the property forfeited be taken by deposition; and

"(2) any designated book, paper, document, record, recording, or other material that is not privileged be produced at the same time and place, and in the same manner, as provided for the taking of depositions under rule 15 of the Federal Rules of Criminal Procedure.

"(l) THIRD PARTY INTERESTS.—

"(1) IN GENERAL.—

"(A) NOTICE.—Following the entry of an order of forfeiture under this section, the United States Government shall publish notice of the order and of the intent of the Government to dispose of the property in such manner as the Attorney General may direct.

"(B) DIRECT WRITTEN NOTICE.—In addition to providing the notice described in subparagraph (A), the Government may, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

"(2) PETITION BY PERSON OTHER THAN DEFENDANT.—

"(A) IN GENERAL.—Any person, other than the defendant, who asserts a legal interest in property that has been ordered forfeited to the United States pursuant to this section may petition the court for a hearing to adjudicate the validity of his alleged interest in the property not later than the earlier of—

"(i) the date that is 30 days after the final publication of notice; or

"(ii) the date that is 30 days after the receipt of notice by the person under paragraph (1).

"(B) REQUIREMENTS FOR HEARING.—A hearing described in subparagraph (A) shall be held before the court without a jury.

"(3) REQUIREMENTS FOR PETITION.—A petition referred to in paragraph (2) shall—

"(A) be signed by the petitioner under penalty of perjury; and

"(B) set forth—

"(i) the nature and extent of the petitioner's right, title, or interest in the property;

"(ii) the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property;

"(iii) the relief sought; and

"(iv) any additional facts supporting the petitioner's claim.

"(4) DATE; CONSOLIDATION.—

"(A) DATE OF HEARING.—The hearing on a petition referred to in paragraph (2) shall, to the extent practicable and consistent with the interests of justice, be held not later than 30 days after the filing of the petition.

"(B) CONSOLIDATION.—The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) ACTIONS AT HEARINGS.—

"(A) IN GENERAL.—At a hearing referred to in paragraph (4)—

"(i) the petitioner may testify and present evidence and witnesses on his or her own behalf, and cross-examine witnesses who appear at the hearing; and

"(ii) the Government may present evidence and witnesses in rebuttal and in defense of its claim to the property that is the subject and cross-examine witnesses who appear at the hearing.

"(B) CONSIDERATION BY COURT.—In addition to considering testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case that resulted in the order of forfeiture.

"(6) AMENDMENT OF ORDER OF FORFEITURE.—If, after holding a hearing under this subsection, the court determines that a petitioner has established by a preponderance of the evidence that—

"(A)(i) the petitioner has a legal right, title, or interest in the property that is the subject of the hearing; and

"(ii) that right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest—

"(I) was vested in the petitioner rather than the defendant; or

"(II) was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) ACTIONS OF COURT AFTER DISPOSITION OF PETITION.—After the disposition of the court of all petitions filed under this subsection, or if no such petitions are filed after the expiration of the period specified in paragraph (2), the United States—

"(A) shall have clear title to property that is the subject of the order of forfeiture; and

"(B) may warrant good title to any subsequent purchaser or transferee.

"(m) CONSTRUCTION.—This section shall be liberally construed in such manner as to effectuate the remedial purposes of this section.

"(n) SUBSTITUTE ASSETS.—

"(1) IN GENERAL.—In accordance with paragraph (2), the court shall order the forfeiture of property of a defendant other than property described in subsection (a) if, as a result of an act or omission of the defendant, any of the property of the defendant that is described in subsection (a)—

"(A) cannot be located upon the exercise of due diligence;

"(B) has been transferred or sold to, or deposited with, a third party;

"(C) has been placed beyond the jurisdiction of the court;

"(D) has been substantially diminished in value; or

"(E) has been commingled with other property which cannot be divided without difficulty.

"(2) VALUE OF PROPERTY.—The value of any property subject to forfeiture under paragraph (1) shall not exceed the value of property of the defendant with respect to which subparagraph (A), (B), (C), (D), or (E) of paragraph (1) applies."; and

(3) by amending the section heading to read as follows:

"SEC. 2332c. USE AND STOCKPILING OF CHEMICAL WEAPONS.".

(b) CONFORMING AMENDMENT TO FEDERAL RULES OF EVIDENCE.—Section 1101(d)(3) of the Federal Rules of Evidence is amended by striking "; and proceedings with respect to release on bail or otherwise" and inserting ", proceedings with respect to release on bail or otherwise; and proceedings under section 2232c(c)(3) of title 18, United States Code (except that the rules with respect to privilege under subsection (c) of this section also shall apply).".

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 113B of title 18, United States Code, is amended by striking the item relating to section 2332b and inserting the following:

"2332c. Use and stockpiling of chemical weapons.".

Subtitle B—International Terrorism

SEC. 321. MULTILATERAL SANCTIONS.

(a) POLICY ON ESTABLISHMENT OF SANCTIONS REGIMES.—

(1) POLICY.—Congress urges the President to commence immediately after the date of enactment of this Act diplomatic efforts, in appropriate international fora (including the United Nations) and bilaterally, with allies of the United States, to establish, as appropriate, a multilateral sanctions regime against each country that the Secretary of State determines under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) to have repeatedly provided support for acts of international terrorism.

(2) REPORT.—The President shall include in the annual report on patterns of global terrorism prepared under section 143 a description of the extent to which the diplomatic efforts referred to in paragraph (1) have been carried out and the degree of success of those efforts.

(b) ACTION PLANS FOR DESIGNATED TERRORIST NATIONS.—The President shall provide to Congress as a part of each report on patterns of global terrorism prepared under section 143 a plan of action (to be known as an "action plan") for inducing each country referred to in paragraph (1) to cease the support of that country for acts of international terrorism.

SEC. 322. INFORMATION ON COOPERATION WITH UNITED STATES ANTITERRORISM EFFORTS IN ANNUAL COUNTRY REPORTS ON TERRORISM.

Section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f) is amended—

(1) in subsection (a)—

(A) by striking "and" at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting a semicolon; and

(C) by adding at the end the following:

"(3) with respect to each foreign country from which the United States Government has sought cooperation during the preceding 5-year period in the investigation or prosecution of an act of international terrorism against United States citizens or interests, information on—

"(A) the extent to which the government of the foreign country is cooperating with the United States Government in apprehending, convicting, and punishing each individual responsible for the act; and

"(B) the extent to which the government of the foreign country is cooperating in preventing further acts of terrorism against United States citizens in the foreign country; and

"(4) with respect to each foreign country from which the United States Government has sought cooperation during the preceding 5-year period in the prevention of an act of international terrorism against such citizens or interests, the information described in paragraph (3)(B).''; and

(2) in subsection (c)—

(A) by striking "The report" and inserting the following:

"(1) IN GENERAL.—Except as provided in paragraph (2), the report";

(B) by adding at the end the following:

"(2) CLASSIFIED FORM.—If the Secretary of State determines that the transmittal of the information under paragraph (3) or (4) of subsection (a) in classified form with respect to a foreign country would increase the likelihood of cooperation of the government of the foreign country (as specified in that paragraph), the Secretary may transmit the information under that paragraph in classified form.".

SEC. 323. REPORT ON INTERNATIONAL TERRORISM.

(a) ANNUAL REPORT.—Not later than 60 days after the date of enactment of this Act, and annually thereafter, at the same time as the Secretary of State submits the report required by section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), the Secretary of State, in consultation with the Director of Central Intelligence, shall submit, in classified and unclassified versions, to the Speaker and the Minority Leader of the House of Representatives, the Majority Leader and the Minority Leader of the Senate, the chairman and the ranking minority member of the Committee on International Relations of the House of Representatives, and the chairman and the ranking minority member of the Committee on Foreign Relations of the Senate a report that includes—

(1) an assessment of—

(A) the magnitude of the anticipated threat from international terrorism to United States interests, persons, and property in the United States and abroad, including the names and background of major terrorist groups and the leadership of those groups;

(B) the sources of financial and logistical support of the groups;

(C) the nature and scope of the human and technical infrastructure;

(D) the goals, doctrine, and strategies of the groups;

(E) the quality and type of education and training of the groups;

(F) the level of advancement of the groups;

(G) the bases of operation and training of the groups;

(H) the operational capabilities of the groups;

(I) the bases of recruitment of the groups;

(J) the linkages with governmental and nongovernmental actors (such as ethnic groups, religious communities, or criminal organizations) of the groups; and

(K) the intent and capability of each of the groups to access and use weapons of mass destruction;

(2) a detailed assessment of any country that provided support of any type for international terrorism, terrorist groups, or individual terrorists, including any country with respect to which the government of that country knowingly allowed terrorist groups or individuals to transit or reside in the territory of that country, without regard to whether terrorist acts were committed by the terrorist groups or individuals in that territory;

(3) a detailed assessment of efforts of individual countries to take effective action against countries that the Secretary of State determines under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) to have repeatedly supported acts of international terrorism, including the status of—

(A) compliance with international sanctions; and

(B) bilateral economic relations; and

(4)(A) a detailed assessment of efforts of the United States Government to carry out this section; and

(B) an identification of any failure or insufficient action on the part of the Government to carry out this section.

(b) CONTENT OF ASSESSMENTS.—An assessment under subsection (a)(1) shall—

(1) characterize the quality of the information that supports the assessment and identify areas that require enhanced information; and

(2) identify and analyze potential vulnerabilities of terrorist groups that could serve to guide the development of governmental policy.

(c) SUBMISSION TO THE COMMISSION ON TERRORISM.—During the period that the National Commission on Terrorism established under section 341 is operating, the President shall submit a property of each report prepared under subsection (a).

SEC. 324. REVISION OF DEPARTMENT OF STATE REWARDS PROGRAM.

(a) IN GENERAL.—Section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended to read as follows:

"SEC. 36. DEPARTMENT OF STATE REWARDS PROGRAM.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Secretary of State shall establish a program for the payment of rewards by the Secretary in accordance with this section.

"(2) CONSULTATION.—The rewards program established under paragraph (1) shall be administered by the Secretary of State, in consultation (as appropriate), with the Attorney General.

"(b) REWARDS PROGRAM.—

"(1) The rewards program established under subsection (a)(1) shall be designed to assist in the prevention of acts of international terrorism, international narcotics trafficking, and other related criminal acts.

"(2) At the sole discretion of the Secretary of State and in consultation, as appropriate, with the Attorney General, the Secretary of State may pay a reward to any individual who furnishes information leading to—

"(A) the arrest or conviction in any country of any individual for the commission of an act of international terrorism against a person or property;

"(B) the arrest or conviction in any country of any individual conspiring or attempting to commit an act of international terrorism against a United States person or United States property;

"(C) the arrest or conviction in any country of any individual for committing, primarily outside the territorial jurisdiction of the United States, any narcotics-related offense if that offense involves or is a significant part of conduct that involves—

"(i) a violation of United States narcotics laws which is such that the individual would be a major violator of such laws;

"(ii) the killing or kidnapping of—

"(I) any officer, employee, or contract employee of the United States Government while that individual is engaged in official duties, or on account of the performance of official duties of that individual, in connection with—

"(aa) the enforcement of United States narcotics laws; or

"(bb) the implementation of United States narcotics control objectives; or

"(II) a member of the immediate family of any individual described in subclause (I) on account of the official duties of that individual in connection with—

"(aa) the enforcement of United States narcotics laws; or

"(bb) the implementation of United States narcotics control objectives; or

"(iii) an attempt or conspiracy to commit any act described in clause (i) or (ii);

"(D) the arrest or conviction in any country of any individual who aids or abets in the commission of an act described in subparagraph (A), (B), or (C); or

"(E) the prevention, frustration, or favorable resolution of an act described in subparagraph (A), (B), or (C).

"(c) COORDINATION.—

"(1) IN GENERAL.—To ensure that the payment of rewards under this section does not duplicate or interfere with the payment of informants or the obtaining of evidence or information, as authorized for the Department of Justice, the offering, administration, and payment of rewards under this section shall be conducted in accordance with procedures that the Secretary of State, in consultation with the Attorney General, shall establish.

"(2) CONTENTS OF PROCEDURES.—The procedures referred to in paragraph (2) shall include procedures for—

"(A) identifying individuals, organizations, and offenses with respect to which rewards are to be offered;

"(B) the publication of rewards;

"(C) the offering of joint rewards with the governments of foreign countries;

"(D) the receipt and analysis of data; and

"(E) the payment and approval of payment.

"(3) CONSULTATION WITH ATTORNEY GENERAL.—Before making a reward under this section in a matter subject to Federal criminal jurisdiction, the Secretary of State shall advise and consult with the Attorney General.

"(d) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—Notwithstanding section 102 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (99 Stat. 408), and subject to paragraph (2), there are authorized to be appropriated to the Department of State such sums as may be necessary to carry out this section.

"(2) LIMITATION.—No amount of funds may be appropriated to the Department of State for the purpose specified in paragraph (1) in excess of the difference between $15,000,000 and the amount of unobligated funds available for that purpose to the Secretary of State for the fiscal year involved.

"(3) DISTRIBUTION OF FUNDS.—To the maximum extent practicable, funds made available to carry out this section shall be distributed in equal amounts for the purpose of preventing acts of international terrorism and for the purpose of preventing international narcotics trafficking.

"(4) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization under paragraph (1) are authorized to remain available until expended.

"(e) LIMITATION AND CERTIFICATION.—

"(1) LIMITATION.—A reward made under this section by the Secretary of State may not exceed $5,000,000.

"(2) APPROVAL OF PRESIDENT OR SECRETARY OF STATE.—A reward under this section in an amount greater than $100,000 may not be made under the program under this section without the approval of the President or the Secretary of State.

"(3) APPROVAL OF SECRETARY OF STATE.—Any reward granted under the program under this section shall be approved and certified for payment by the Secretary of State.

"(4) PROHIBITION.—Neither the President nor the Secretary of State may delegate the authority under paragraph (2) to any other officer or employee of the United States Government.

"(5) PROTECTION.—If the Secretary of State determines that it is necessary to protect the identity of the recipient of a reward or of the members of the recipient's immediate family, the Secretary may take such measures in connection with the payment of the reward as the Secretary considers necessary to effect that protection.

"(f) INELIGIBILITY.—An officer or employee of any governmental entity who, while in the performance of the official duties of that officer, furnishes information described in subsection (b) shall not be eligible for a reward under this section.

"(g) REPORTS.—

"(1) IN GENERAL.—

"(A) POST-AWARD REPORT.—Not later than 30 days after the payment of any reward under this section, the Secretary of State shall submit a report to the appropriate congressional committees with respect to that reward.

"(B) CLASSIFIED FORM.—If necessary, a report under subparagraph (A) may be submitted in classified form.

"(C) CONTENT OF REPORT.—A report submitted under subparagraph (A) shall specify—

"(i) the amount of the reward paid;

"(ii) the recipient of the reward;

"(iii) the acts related to the information for which the reward was paid; and

"(iv) the significance of the information for which the reward was paid in dealing with the acts described under clause (iii).

"(2) ANNUAL REPORT.—

"(A) IN GENERAL.—Not later than 60 days after the end of each fiscal year, the Secretary of State shall submit a report to the appropriate congressional committees concerning the operation of the rewards program under this section.

"(B) CONTENTS OF REPORTS.—Each report under subparagraph (A), shall provide information concerning—

"(i) the total amounts expended during the fiscal year that is the subject of the report to carry out this section, including amounts spent to publicize the availability of rewards; and

"(ii) all requests made for the payment of rewards under this section, including the reasons for the denial of any such request.

"(h) DEFINITIONS.—In this section:

"(1) ACT OF INTERNATIONAL TERRORISM.—The term 'act of international terrorism' includes—

"(A) any act substantially contributing to the acquisition of unsafeguarded special nuclear material (as that term is defined in section 830(8) of the Nuclear Proliferation Prevention Act of 1994 (108 Stat. 521)) or any nuclear explosive device (as that term is defined in section 830(4) of that Act (108 Stat. 521)) by an individual, group, or non-nuclear weapon state (as that term is defined in section 830(5) of that Act (108 Stat. 521));

"(B) any act, as determined by the Secretary of State, that materially supports the conduct of international terrorism, including the counterfeiting of United States currency or the illegal use of other monetary instruments by an individual, group, or country supporting international terrorism as determined under section 6(j) of the Export Administration Act of 1979; and

"(C) any act that would be a violation of chapter 113B of title 18, United States Code, relating to terrorism.

"(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

"(3) MEMBER OF THE IMMEDIATE FAMILY.—The term 'member of the immediate family' includes—

"(A) a spouse, parent, brother, sister, or child of the individual;

"(B) a person to whom the individual stands in loco parentis; and

"(C) any other person living in the individual's household and related to the individual by blood or marriage.

"(4) UNITED STATES NARCOTICS LAWS.—The term 'United States narcotics laws' means the laws of the United States for the prevention and control of illicit traffic in controlled substances (as such term is defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))).

"(i) JUDICIAL REVIEW.—A determination made by the Secretary of State concerning whether to authorize a reward under this section, or the amount of a reward, shall not be subject to judicial review.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of State should pursue additional means of funding the program established by section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708), including the authority—

(1) to seize and dispose of assets used in the commission of any offense under sections 1028, 1541 through 1544, and 1546 of title 18, United States Code;

(2) to retain the proceeds derived from the disposition of the assets referred to in paragraph (1);

(3) to participate in asset-sharing programs conducted by the Department of Justice; and

(4) to retain earnings accruing on all assets of foreign countries blocked by the President pursuant to the International Emergency Powers Act (50 U.S.C. 1701 et seq.) to carry out the purposes of section 36 of the State Department Basic Authorities Act of 1956.

Subtitle C—Commissions and Studies

SEC. 331. NATIONAL COMMISSION ON TERRORISM.

(a) ESTABLISHMENT.—There is established a commission to be known as the "National Commission on Terrorism" (in this section referred to as the "Commission").

(b) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—

(A) IN GENERAL.—The Commission shall be composed of 11 members, appointed from persons specially qualified by training and experience to perform the duties of the Commission, of whom—

(i) 3 shall be appointed by the Speaker of the House of Representatives, and 1 shall be appointed by the Minority Leader of the House of Representatives;

(ii) 3 shall be appointed by the Majority Leader of the Senate, and 1 shall be appointed by the Minority Leader of the Senate; and

(iii) 3 shall be appointed by the President.

(B) TIMING OF APPOINTMENTS.—The appointing authorities shall make their appointments to the Commission not later than 45 days after the date of enactment of this Act.

(2) DESIGNATION OF THE CHAIRPERSON AND VICE CHAIRPERSON.—The Majority Leader of the Senate, in consultation with Speaker of the House of Representatives, shall designate a chairperson from the members of the Commission (in this section referred to as the "Chairperson"). The Speaker of the House of Representatives and the Majority Leader of the Senate shall jointly designate a vice chairperson from the members of the Commission (in this section referred to as the "Vice Chairperson").

(3) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in Commission membership shall not affect the exercise of the Commission's powers, and shall be filled in the same manner as the original appointment.

(c) MEETINGS.—

(1) IN GENERAL.—Not later than 60 days after the date on which all initial members of the Commission are appointed under subsection (b), the Commission shall hold its initial meeting. Each subsequent meeting of the Commission shall be held at the call of the Chairperson.

(2) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(d) SECURITY CLEARANCES.—Appropriate security clearances shall be required for each member of the Commission. Each such clearance shall—

(1) be processed and completed on an expedited basis by appropriate elements of the executive branch of the Federal Government; and

(2) to the extent practicable, be completed not later than 90 days after the date on which the member is appointed.

(e) APPLICATION OF CERTAIN PROVISIONS OF LAW.—

(1) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.), and the regulations issued pursuant to that Act, shall not apply to the Commission.

(2) FREEDOM OF INFORMATION ACT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), section 552 of title 5, United States Code (commonly known as the "Freedom of Information Act"), shall not apply to the Commission.

(B) EXCEPTIONS.—Records of the Commission shall be subject to chapters 21 through 31 of title 44, United States Code. Any such record that is transferred to the National Archives and Records Agency shall not be exempt from section 552 of title 5, United States Code.

(f) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall—

(A) prepare and transmit the reports described in paragraph (2);

(B) examine the long-term strategy of the Federal Government in addressing the threat of international terrorism, including intelligence capabilities, international cooperation, military responses, and technological capabilities;

(C) examine the efficacy and appropriateness of efforts of the Federal Government to prevent, detect, investigate, and prosecute acts of terrorism, including—

(i) the coordination of counter terrorism efforts among Federal departments and agencies, and coordination by the Federal Government of law enforcement with State and local law enforcement entities in responding to terrorist threats and acts;

(ii) the ability and utilization of counterintelligence or counterterrorism efforts to infiltrate and disable or disrupt international terrorist organizations and the activities of those organizations;

(iii) the impact of Federal immigration laws and policies on acts of terrorism transcending national boundaries;

(iv) the effectiveness of regulations and practices in effect at the time of the examination relating to civil aviation safety and security to prevent acts of terrorism, including a study of—

(I) the desirability of assigning, on a permanent basis, personnel of the Federal Bureau of Investigation at high-risk airports; and

(II) the practicality and desirability of transferring authority for United States airport security to an entity other than the Federal Aviation Administration;

(v) the extent and effectiveness of present cooperative efforts with foreign nations to prevent, detect, investigate, and prosecute acts of terrorism; and

(vi)(I) the impact on counterterrorism efforts in use at the time of the examination attributable to the failure to expend and utilize resources made available, and authority delegated by law for the implementation of enhanced counter terrorism activities; and

(II) the reasons why the resources referred to in subclause (I) have not been expended in a timely manner; and

(D) examine all laws (including statutes and regulations) relating to—

(i) the collection and dissemination of personal information concerning individuals by law enforcement or other governmental entities; and

(ii) the necessity for additional protections to prevent and deter the inappropriate collection and dissemination of the information referred to in clause (i).

(2) REPORTS.—

(A) INITIAL REPORT.—Not later than 2 months after the date on which the initial meeting of the Commission is held, the Commission shall transmit to the Committees on the Judiciary of the House of Representatives and the Senate, the Committee on Foreign Relations of the Senate, the Committee on International Relations of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report setting forth a plan for the work of the Commission.

(B) INTERIM REPORTS.—Prior to the submission of the report under subparagraph (C), the Commission may issue such interim reports as the Commission determines to be necessary or appropriate.

(C) FINAL REPORT.—

(i) IN GENERAL.—

(I) SUBMISSION.—Not later than January 31, 1999, the Commission shall submit to the President and to the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, the Committee on Foreign Relations of the Senate, the Committee on International Relations of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives, a report that describes the activities, findings, and recommendations of the Commission, including any recommendations for the enactment of legislation that the Commission considers advisable.

(II) AVAILABILITY OF REPORT.—To the extent feasible, the final report shall be unclassified and made available to the public. The report shall be supplemented as necessary by a classified report or annex that shall be provided separately to the President and the committees of the Congress listed in subclause (I).

(ii) PROTECTION OF INDIVIDUALS.—Prior to the submission of a report under this paragraph—

(I) the Commission shall forward a draft of the report to the Director of Central Intelligence; and

(II) the Director of Central Intelligence shall—

(aa) review the report to ensure that disclosure of its contents will not endanger the life or safety of any person; and

(bb) upon completion of the review, promptly provide conclusions and recommendations to the Commission.

(g) POWERS.—

(1) HEARINGS.—The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any intelligence agency or from any other Federal department or agency any information that the Commission considers necessary to enable the Commission to carry out the responsibilities of the Commission under this section. Upon request of the Chairperson, the head of any such department or agency expeditiously shall furnish such information to the Commission, unless the head of the department or agency determines that providing such information would threaten national security, the health or safety of any individual, or the integrity of an ongoing investigation or prosecution.

(3) POSTAL, PRINTING, AND BINDING SERVICES.—The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) SUBCOMMITTEES.—

(A) IN GENERAL.—The Commission may establish panels composed of less than the full membership of the Commission for the purpose of carrying out the duties of the Commission.

(B) ACTIONS OF PANELS.—The actions of each such panel shall be subject to the review and control of the Commission.

(C) FINDINGS AND DETERMINATIONS OF PANEL.—Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

(5) AUTHORITY OF INDIVIDUALS TO ACT FOR COMMISSION.—Any member or agent of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this section.

(h) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Commission who is not otherwise employed by the Federal Government shall be paid, if requested, at a rate equal to the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission. Each Federal officer or member of the Commission who is otherwise an officer or employee of the Federal Government (including any Member of Congress or member of the Federal Judiciary) shall serve without compensation in addition to that received for services as an officer or employee of the Federal Government.

(2) TRAVEL EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) STAFF.—

(A) IN GENERAL.—

(i) IN GENERAL.—The Chairperson may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties.

(ii) STAFF DIRECTOR.—The staff director of the Commission shall be a representative of

the private sector. The appointment shall be subject to the approval of the Commission as a whole.

(B) COMPENSATION.—The Chairperson may fix the pay of the staff director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that—

(i) the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title; and

(ii) the rate of pay for other personnel may not exceed the maximum rate payable for grade GS–15 of the General Schedule.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—Upon the request of the Chairperson, the head of any Federal department or agency may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its administrative and clerical functions.

(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

(i) PAYMENT OF COMMISSION EXPENSES.—The compensation, travel expenses, per diem allowances of members and employees of the Commission, and other expenses of the Commission shall be paid equally out of funds available to the Attorney General, the Secretary of Defense, and the Secretary of State for the payment of compensation, travel allowances, and per diem allowances, respectively, of employees of the Department of Justice, the Department of Defense, and the Department of State.

(j) TERMINATION OF THE COMMISSION.—The Commission shall terminate 1 month after the date on which the final report is submitted under subsection (f)(2)(C).

TITLE IV—COMMUNITY PROTECTION

SEC. 401. SHORT TITLE.

This title may be cited as the "Community Protection Initiative of 1997".

Subtitle A—Law Enforcement Assistance

SEC. 411. EXEMPTION OF QUALIFIED CURRENT AND FORMER LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

"§ 926B. Carrying of concealed firearms by qualified current and former law enforcement officers

"(a) IN GENERAL.—Notwithstanding any provision of the law of any State or any political subdivision of a State, an individual may carry a concealed firearm if that individual is—

"(1) a qualified law enforcement officer or a qualified former law enforcement officer; and

"(2) carrying appropriate written identification.

"(b) EFFECT ON OTHER LAWS.—

"(1) COMMON CARRIERS.—Nothing in this section shall be construed to exempt from section 46505(B)(1) of title 49—

"(A) a qualified law enforcement officer who does not meet the requirements of section 46505(D) of title 49; or

"(B) a qualified former law enforcement officer.

"(2) FEDERAL LAWS.—Nothing in this section shall be construed to supersede or limit any Federal law or regulation prohibiting or restricting the possession of a firearm on any Federal property, installation, building, base, or park.

"(3) STATE LAWS.—Nothing in this section shall be construed to supersede or limit the laws of any State that—

"(A) grant rights to carry a concealed firearm that are broader than the rights granted under this section;

"(B) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

"(C) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

"(4) DEFINITIONS.—In this section:

"(A) APPROPRIATE WRITTEN IDENTIFICATION.—The term 'appropriate written identification' means, with respect to an individual, a document that—

"(i) was issued to the individual by the public agency with which the individual serves or served as a qualified law enforcement officer; and

"(ii) identifies the holder of the document as a current or former officer, agent, or employee of the agency.

"(B) QUALIFIED LAW ENFORCEMENT OFFICER.—The term 'qualified law enforcement officer' means an individual who—

"(i) is presently authorized by law to engage in or supervise the prevention, detection, or investigation of any violation of criminal law;

"(ii) is authorized by the agency to carry a firearm in the course of duty;

"(iii) meets any requirements established by the agency with respect to firearms; and

"(iv) is not the subject of a disciplinary action by the agency that prevents the carrying of a firearm.

"(C) QUALIFIED FORMER LAW ENFORCEMENT OFFICER.—The term 'qualified former law enforcement officer' means, an individual who is—

"(i) retired from service with a public agency, other than for reasons of mental disability;

"(ii) immediately before such retirement, was a qualified law enforcement officer with that public agency;

"(iii) has a nonforfeitable right to benefits under the retirement plan of the agency;

"(iv) was not separated from service with a public agency due to a disciplinary action by the agency that prevented the carrying of a firearm;

"(v) meets the requirements established by the State in which the individual resides with respect to—

"(I) training in the use of firearms; and

"(II) carrying a concealed weapon; and

"(vi) is not prohibited by Federal law from receiving a firearm.

"(D) FIREARM.—The term 'firearm' means, any firearm that has, or of which any component has, traveled in interstate or foreign commerce.".

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 926A the following:

"926B. Carrying of concealed firearms by qualified current and former law enforcement officers.".

Subtitle B—Citizens' Assistance

SEC. 421. SHORT TITLE.

This subtitle may be cited as the "Citizens' Assistance Act of 1997".

SEC. 422. AUTHORIZATION TO ENTER INTO INTERSTATE COMPACTS.

(a) IN GENERAL.—The consent of Congress is hereby given to any 2 or more States—

(1) to enter into compacts or agreements for cooperative effort in enabling individuals to carry concealed weapons as dictated by laws of the State within which the owner of the weapon resides and is authorized to carry a concealed weapon; and

(2) to establish agencies or guidelines as they may determine to be appropriate for making effective such agreements and compacts.

(b) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal this section is hereby expressly reserved by Congress.

SEC. 423. AUTHORIZED USES OF FEDERAL GRANT FUNDS.

(a) IN GENERAL.—Section 501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended—

(1) in paragraph (25), by striking "and" at the end;

(2) in paragraph (26), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(27) at the discretion of State or local law enforcement authorities, to train members of the public in the safe possession, ownership, handling, carry, and use of firearms, including handguns.".

(b) EVALUATING DATA BAN.—Section 501(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(c)) is amended—

(1) by striking "Each" and inserting the following:

"(1) IN GENERAL.—Each";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(2) adding at the end the following:

"(2) COLLECTION AND USE OF DATA.—

"(A) IN GENERAL.—As a part of any evaluation required by paragraph (1) or otherwise, the Attorney General may not require the collection, and a grant recipient may not undertake any collection, of any data about any person who participates in any program funded under this section for the purpose of training members of the public in the safe possession, ownership, handling, carry, and use of firearms, including handguns, other than data necessary to determine whether such a member lawfully may possess a firearm.

"(B) DESTRUCTION OF DATA.—Any data described in subparagraph (A) shall be destroyed by any party in possession of that data not later than 7 days after the date on which it is collected or once a member of the public receives the training offered, whichever comes first.".

SEC. 424. SELF DEFENSE FOR VICTIMS OF ABUSE.

Section 922(s)(1)(B) of title 18, United States Code, is amended—

(1) by striking "the transferee has" and inserting "the transferee—

"(i) has"; and

(2) by adding at the end the following: "or

"(ii) is named as a person protected under a court order described in subsection (g)(8).".

TITLE V—CRIMINAL PROCEDURE IMPROVEMENTS

Subtitle A—Equal Protection for Victims

SEC. 501. THE RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.

Rule 24(b) of the Federal Rules of Criminal Procedure is amended by striking "the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges" and inserting "each side is entitled to 10 peremptory challenges".

SEC. 502. JURY TRIAL IMPROVEMENTS.

(a) JURIES OF 6.—

(1) IN GENERAL.—Rule 23(b) of the Federal Rules of Criminal Procedure is amended—

(A) by striking "JURY OF LESS THAN TWELVE. JURIES" and inserting the following:

"(b) NUMBER OF JURORS.—

"(1) IN GENERAL.—Except as provided in subsection (2), juries"; and

(B) by adding at the end the following:

"(2) JURIES OF 6.—Juries may be of 6 upon request in writing by the defendant with the approval of the court and the consent of the government.".

(2) ALTERNATE JURORS.—Rule 24(c) of the Federal Rules of Criminal Procedure is amended by inserting after the first sentence the following: "In the case of a jury of 6, the court shall direct that not more than 3 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors.".

(b) CAPITAL CASES.—Section 3593(b) of title 18, United States Code, is amended by striking the last sentence and inserting the following: "A jury impanelled pursuant to paragraph (2) may be made of 6 upon request in writing by the defendant with the approval of the court and the consent of the government. Otherwise, such jury shall be made of 12, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.".

SEC. 503. REBUTTAL OF ATTACKS ON THE CHARACTER OF THE VICTIM.

Rule 404(a)(1) of the Federal Rules of Evidence is amended by inserting before the semicolon the following: ", or, if an accused offers evidence of a pertinent trait of character of the victim of the crime, evidence of a pertinent trait of character of the accused offered by the prosecution".

SEC. 504. USE OF NOTICE CONCERNING RELEASE OF OFFENDER.

Section 4042(b) of title 18, United States Code, is amended by striking paragraph (4).

SEC. 505. BALANCE IN THE COMPOSITION OF RULES COMMITTEES.

Section 2073 of title 28, United States Code, is amended—

(1) in subsection (a)(2), by adding at the end the following: "On each such committee that makes recommendations concerning rules that affect criminal cases, including the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Federal Rules of Appellate Procedure, the Rules Governing Section 2254 Cases, and the Rules Governing Section 2255 Cases, the number of members who represent or supervise the representation of defendants in the trial, direct review, or collateral review of criminal cases shall not exceed the number of members who represent or supervise the representation of the Government or a State in the trial, direct review, or collateral review of criminal cases."; and

(2) in subsection (b), by adding at the end the following: "The number of members of the standing committee who represent or supervise the representation of defendants in the trial, direct review, or collateral review of criminal cases shall not exceed the number of members who represent or supervise the representation of the Government or a State in the trial, direct review, or collateral review of criminal cases.".

Subtitle B—Firearms

SEC. 521. MANDATORY MINIMUM SENTENCES FOR CRIMINALS POSSESSING FIREARMS.

Section 924(c) of title 18, United States Code, is amended—

(1) by striking "(c)" and all that follows through "(2)" and inserting the following:

"(c) POSSESSION OF FIREARM DURING COMMISSION OF CRIME OF VIOLENCE OR DRUG TRAFFICKING CRIME.—

"(1) TERM OF IMPRISONMENT.—

"(A) IN GENERAL.—Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which a person may be prosecuted in a court of the United States, uses, carries, or possesses a firearm shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

"(i) be sentenced to a term of imprisonment of not less than 5 years;

"(ii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years; and

"(iii) if the death of any person results, be sentenced to a term of imprisonment for life or sentenced to death.

"(B) EXCEPTION FOR CERTAIN OFFENSES.—If the firearm possessed by a person convicted of a violation of this subsection—

"(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be—

"(I) sentenced to a term of imprisonment of not less than 10 years; and

"(II) if the death of any person results, sentenced to a term of imprisonment for life or sentenced to death; and

"(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be—

"(I) sentenced to a term of imprisonment of not less than 30 years; and

"(II) if the death of any person results, sentenced to a term of imprisonment for life or sentenced to death.

"(C) EXCEPTION FOR CERTAIN OFFENDERS.—In the case of a second or subsequent conviction under this subsection, a person shall be sentenced to a term of imprisonment for life.

"(D) PROBATION AND CONCURRENT SENTENCES.—Notwithstanding any other provision of law—

"(i) a court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection; and

"(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

"(2) DEFINITION OF 'DRUG TRAFFICKING CRIME'.—"; and

(2) in paragraph (3)—

(A) by striking "(3) For" and inserting the following:

"(3) DEFINITION OF 'CRIME OF VIOLENCE'.—For"; and

(B) by indenting each of subparagraphs (A) and (B) 2 ems to the right.

SEC. 522. FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS.

Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the period the following: ", and if the violation is of section 922(g)(1) by a person who has a previous conviction for a violent felony (as defined in subsection (e)(2)(B)) or a serious drug offense (as defined in subsection (e)(2)(A)), a sentence imposed under this paragraph shall include a term of imprisonment of not less than 10 years"; and

(2) by adding at the end the following:

"(o)(1) Notwithstanding paragraph (2), any person who violates section 922(g) and has 2 previous convictions by any court referred to in section 922(g)(1) for a violent felony (as defined in subsection (e)(2)(B)) or a serious drug offense (as defined in subsection (e)(2)(A)) committed on different occasions shall be fined as provided in this title, imprisoned not less than 20 years.

"(2) Notwithstanding any other law, the court shall not grant a probationary sentence to a person described in paragraph (1) with respect to the conviction under section 922(g).".

SEC. 523. USE OF FIREARMS IN CONNECTION WITH COUNTERFEITING OR FORGERY.

Section 924(c)(1) of title 18, United States Code, is amended in the first sentence by inserting "or during and in relation to any felony punishable under chapter 25," after "United States,".

SEC. 524. POSSESSION OF AN EXPLOSIVE DURING THE COMMISSION OF A FELONY.

Section 844(h) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking "carries an explosive during" and inserting "uses, carries, or otherwise possesses an explosive during"; and

(2) by striking "used or carried" and inserting "used, carried, or possessed".

SEC. 525. SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FELONY.

Section 844(h) of title 18, United States Code, is amended by striking "10" and inserting "20".

SEC. 526. INCREASED PENALTIES FOR INTERNATIONAL DRUG TRAFFICKING.

(a) IN GENERAL.—Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by adding at the end the following:

"(e)(1) Notwithstanding any other provision of law, the court shall sentence a person convicted of a violation of subsection (a), consisting of bringing into the United States a mixture or substance—

"(A) which is described in subsection (b)(1); and

"(B) in an amount the Attorney General by rule has determined is equal to 100 usual dosage amounts of such mixture or substance;

to imprisonment for life without possibility of release. If the defendant has violated this subsection on more than one occasion and the requirements of chapter 228 of title 18, United States Code, are satisfied, the court shall sentence the defendant to death.

"(2) The maximum fine that otherwise may be imposed, but for this subsection, shall not be reduced by operation of this subsection."

(b) INCLUSION OF OFFENSE.—Section 3591(b) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by striking the comma at the end of paragraph (2) and inserting "; or" at the end of paragraph (2); and

(3) by inserting after paragraph (2) the following:

"(3) an offense described in section 1010(e)(1) of the Controlled Substances Import and Export Act;"

(c) ADDITIONAL AGGRAVATING FACTOR.—Section 3592(d) of title 18, United States Code, is amended by inserting after paragraph (8) the following:

"(9) SECOND IMPORTATION OFFENSE.—The offense consisted of a second or subsequent

violation of section 1010(a) of the Controlled Substances Import and Export Act consisting of bringing a controlled substance into the United States.".

Subtitle C—Federal Death Penalty

SEC. 541. STRENGTHENING OF FEDERAL DEATH PENALTY STANDARDS AND PROCEDURES.

(a) AMENDMENTS TO CHAPTER 228.—Chapter 228 of title 18, United States Code, is amended—

(1) in section 3592(c), by striking paragraph (2) and inserting the following:

"(2) INVOLVEMENT OF A FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING A FIREARM.—For any offense, other than an offense for which a sentence of death is sought on the basis of section 924(c), the defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm (as defined in section 921); or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than 1 year, involving the use or attempted or threatened use of a firearm (as defined in section 921) against another person.";

(2) in section 3593—

(A) in subsection (a)—

(i) in the heading, by inserting "AND THE DEFENDANT" after "GOVERNMENT";

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(iii) by striking "If, in a case" and inserting the following:

"(1) IN GENERAL.—If, in a case";

(iv) by designating the matter immediately following subparagraph (B), as redesignated, as paragraph (3), and indenting appropriately;

(v) by inserting after paragraph (1) as redesignated, the following:

"(2) NOTICE OF ANY MITIGATING FACTORS.—The defendant shall, during a reasonable period of time before a hearing under subsection (b), sign and file with the court a notice setting forth the mitigating factor or factors, if any, upon which the defendant intends to present information at the hearing."; and

(vi) in paragraph (3), as redesignated—

(I) by inserting "by the attorney for the Government" after "this subsection";

(II) by striking ", and may include" and all that follows through "relevant information";

(III) by inserting "or the defendant" after "permit the attorney for the government"; and

(IV) by inserting "under this subsection" after "to amend the notice".

(B) in subsection (c)—

(i) in the fourth sentence, by inserting "for which notice has been provided under subsection (a)" after "The defendant may present any information relevant to a mitigating factor"; and

(ii) by inserting after the fifth sentence the following: "The information presented by the government in support of factors concerning the effect of the offense on the victim and the family of the victim may include oral testimony, a victim impact statement that identifies the victim of the offense and the nature and extent of harm and loss suffered by the victim and the family of the victim, and any other relevant information."; and

(C) in subsection (e), by striking "shall consider" and all that follows through "lesser sentence." and inserting "shall then consider whether the aggravating factor or factors found to exist outweigh any mitigating factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds not less than 1 aggravating factor and no mitigating factor or if it finds one or more aggravating factors that outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and shall make such a recommendation as the information warrants. The jury shall be instructed that its recommendation concerning a sentence of death is to be based on the aggravating factor or factors and any mitigating factor or factors, but that the final decision whether any evidence, in fact, is aggravating or mitigating and concerning the balance of aggravating and mitigating factors is a matter for the judgment of the jury."; and

(3) in section 3595(c)(2), by striking the last sentence.

(b) UNIFORMITY OF PROCEDURES.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(1) by striking subsections (g) through (p), (q) (1) through (3), and (r); and

(2) in subsection (q) by—

(A) redesignating paragraphs (4) through (10) as paragraphs (1) through (7), respectively; and

(B) inserting "(g)" before "(1)" as redesignated.

(c) DEATH DURING COMMISSION OF ANOTHER CRIME.—Section 3592(c)(1) of title 18, United States Code, is amended by striking "of, or during the immediate flight from the commission of," and inserting "of a felony, or during the immediate flight from the commission of a felony, including".

(d) AGGRAVATING FACTORS.—Section 3592(c) of title 18, United States Code, is amended by inserting immediately after paragraph (15) the following:

"(16) OTHER CIRCUMSTANCES.—With regard to the capital offense—

"(A) the victim was a custodial parent or legal guardian of a child who was less than 18 years of age;

"(B) the offense was committed by a person imprisoned as a result of a felony conviction;

"(C) the offense was committed for the purpose of disrupting or hindering the lawful exercise of any government or political function;

"(D) the victim was found to have been murdered due to the association of the victim with a particular group, gang, organization, or other entity;

"(E) the offense was committed by a person lawfully or unlawfully at liberty after being sentenced to imprisonment as a result of a felony conviction;

"(F) the offense was committed by means of a destructive device, bomb, explosive, or similar device that the defendant planted, hid, or concealed in any place, area, dwelling, building, or structure, or mailed or delivered, or caused to be planted, hidden, concealed, mailed, or delivered, and the defendant knew that the actions of the defendant would create a great risk of death to human life;

"(G) the offense was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody;

"(H) the victim was a current or former judge or judicial officer of any civilian, military, or tribal court of record in the United States or the territories of the United States, a law enforcement officer or official, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the official duties of the victim;

"(I) the defendant has been convicted of more than one offense of murder in the first or second degree either in the proceeding at bar or as the result of any prior proceeding;

"(J) the victim was a witness or a relative of a witness—

"(i) to a crime who was intentionally killed for the purpose of preventing the testimony of any person in any judicial or administrative proceeding, and the killing was not committed during the commission or attempted commission of the crime to which the testimony would be relevant; or

"(ii) in a judicial or administrative proceeding and was intentionally killed in retaliation for the testimony of any person in such proceeding;

"(K) the victim was an elected or appointed official or former official of the Federal, State, local, or tribal government, or a relative of such an official, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the official duties of the victim;

"(L) the defendant intentionally killed the victim while lying in wait;

"(M) the victim was intentionally killed because of the race, color, gender, religion, nationality, or country of origin of the victim;

"(N) the victim was a juror in any court of record in the Federal, State, or local system in any State or judicial district, and the murder was intentionally carried out in retaliation for, or to prevent the performance of the official duties of the victim;

"(O) the murder was intentional and was perpetrated by means of discharging a firearm from a motor vehicle, whether or not the motor vehicle was moving, intentionally at another person or persons outside the vehicle;

"(P) the murder was committed against a person who was held or otherwise detained as a shield or hostage;

"(Q) the murder was committed against a person who was held or detained by the defendant for ransom or reward;

"(R) the defendant caused or directed another to commit murder or committed murder as an agent or employee of another person;

"(S) the victim was pregnant;

"(T) the victim was handicapped or severely disabled;

"(U) the victim was a child 16 years of age or younger;

"(V) at the time of the killing, the victim, or a relative of the victim, was or had been a nongovernmental informant or had otherwise provided any investigative, law enforcement, or police agency with information concerning criminal activity, and the killing was in retaliation for the activities of any person as a nongovernmental informant or in providing information concerning criminal activity to an investigative, law enforcement, or police agency;

"(W) the murder was committed for the purpose of interfering with the free exercise or enjoyment by the victim of any right, privilege, or immunity protected by the first amendment to the Constitution of the United States or because the victim exercised or enjoyed said right; and

"(X) the victim was employed in a jail, correctional facility, or halfway house, and was murdered while in the lawful performance of the duties of the victim or in retaliation for

the lawful performance of the duties of the victim.".

SEC. 542. MURDER OF WITNESS AS AGGRAVATING FACTOR.

Section 3592(c)(1) of title 18, United States Code, is amended by inserting "section 1512 (witness tampering), section 1513 (retaliation against witness)," after "(hostage taking),".

SEC. 543. DEATH PENALTY FOR MURDERS COMMITTED IN THE DISTRICT OF COLUMBIA.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"§ 1123. Capital punishment for murders in the District of Columbia

"(a) OFFENSE.—It shall be unlawful to cause the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or to cause the death of a person through the intentional infliction of serious bodily injury.

"(b) FEDERAL JURISDICTION.—There is Federal jurisdiction over an offense described in this section if the conduct resulting in death or the death occurs in the District of Columbia.

"(c) PENALTY.—An offense described in this section is a class A felony. A sentence of death may be imposed for an offense described in this section as provided in this section. Sections 3591 and 3592 of this title shall apply in relation to capital sentencing for an offense described in this section.

"(d) DEFINITIONS.—In this section—

"(1) the term 'State' has the meaning stated in section 513;

"(2) the term 'offense', as used in paragraphs (2), (5), and (13) of subsection (e), and in paragraph (5) of this subsection, means an offense under the law of a state or the United States.

"(e) OTHER CHARGES.—If an offense is charged under this section, the government may join any charge under the District of Columbia Code that arises from the same incident.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"1123. Capital punishment for murders in the District of Columbia.".

TITLE VI—INCREASED PENALTIES FOR TRAFFICKING AND MANUFACTURE OF METHAMPHETAMINE AND PRECURSORS

SEC. 601. TRAFFICKING IN METHAMPHETAMINE PENALTY INCREASES.

(a) CONTROLLED SUBSTANCES ACT.—

(1) LARGE AMOUNTS.—Section 401(b)(1)(A)(viii) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)(viii)) is amended by—

(A) striking "100 grams or more of methamphetamine," and inserting "50 grams or more of methamphetamine,"; and

(B) striking "1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(2) SMALLER AMOUNTS.—Section 401(b)(1)(B)(viii) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(B)(viii)) is amended by—

(A) striking "10 grams or more of methamphetamine," and inserting "5 grams or more of methamphetamine,"; and

(B) striking "100 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "50 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(b) IMPORT AND EXPORT ACT.—

(1) LARGE AMOUNTS.—Section 1010(b)(1)(H) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(H)) is amended by—

(A) striking "100 grams or more of methamphetamine," and inserting "50 grams or more of methamphetamine,"; and

(B) striking "1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(2) SMALLER AMOUNTS.—Section 1010(b)(2)(H) of the Controlled Substances Import and Export Act (21 U.S.C.960(b)(2)(H)) is amended by—

(A) striking "10 grams or more of methamphetamine," and inserting "5 grams or more of methamphetamine,"; and

(B) striking "100 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "50 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

SEC. 602. REDUCTION OF SENTENCE FOR PROVIDING USEFUL INVESTIGATIVE INFORMATION.

Section 3553(e) of title 18, United States Code, section 994(n) of title 28, United State Code, and Rule 35(b) of the Federal Rules of Criminal Procedure are each amended by striking "substantial assistance in the investigation or prosecution of another person who has committed an offense" and inserting "substantial assistance in an investigation of any offense or substantial assistance in an investigation or prosecution of another person who has committed an offense".

SEC. 603. IMPLEMENTATION OF A SENTENCE OF DEATH.

(a) IN GENERAL.—Section 3596(a) of title 18, United States Code, is amended—

(1) by striking "pursuant to this chapter"; and

(2) in the second sentence, by striking "in the manner" and all that follows through the end of the subsection and inserting "pursuant to regulations promulgated by the Attorney General.".

(b) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall promulgate regulations to provide for the implementation of a sentence of death under section 3596 of title 18, United State Code.

(c) IN GENERAL.—Section 3597 of title 18, United States Code, is amended—

(1) by striking the section designation and the section heading and inserting the following:

"§ 3597. Use of facilities and employees";

(2) by striking subsection (a) and inserting the following:

"(a) IN GENERAL.—A United States marshal charged with supervising the implementation of a sentence of death shall use appropriate Federal facilities for that purpose."; and

(3) in subsection (b), by striking "any State department of corrections,".

(d) TECHNICAL AMENDMENT.—The chapter analysis for chapter 228 of title 18, United States Code, is amended by striking item relating to section 3597 and inserting the following:

"3597. Use of facilities and employees.".

SEC. 604. LIMITATION ON DRUG ENFORCEMENT ADMINISTRATOR TENURE.

(a) IN GENERAL.—The term of office of the Administrator of the Drug Enforcement Agency (as established by section 5(a) of the Reorganization Plan No. 2 of 1973 (5 U.S.C. App.)) shall be for not more than a single 10-year period.

(b) APPLICABILITY.—This section does not apply to the individual who is serving as the Administrator of the Drug Enforcement Agency on the date of enactment of this Act, unless that individual is reappointed to the position on or after the date of enactment of this Act.

SEC. 605. SERIOUS JUVENILE DRUG OFFENSES AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by adding "or" at the end; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency, under Federal or State law, that, if committed by an adult, would be an offense described in clause (i) or (ii).".

SEC. 606. MANDATORY MINIMUM PRISON SENTENCES FOR PERSONS WHO USE MINORS IN DRUG TRAFFICKING ACTIVITIES OR SELL DRUGS TO MINORS.

(a) EMPLOYMENT OF PERSONS UNDER 18 YEARS OF AGE.—Section 420 of the Controlled Substances Act (21 U.S.C. 861) is amended—

(1) in subsection (b), by striking the second sentence and inserting the following: "Except to the extent that a greater minimum sentence is otherwise provided, a term of imprisonment of a person 21 or more years of age convicted under this subsection shall be not less than 10 years, and a term of imprisonment of a person between the ages of 18 and 21 convicted under this subsection shall be not less than 3 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence."; and

(2) in subsection (c)—

(A) by striking "one year" and inserting "6 years";

(B) by inserting after the second sentence the following: "Except to the extent that a greater minimum sentence is otherwise provided, a term of imprisonment of a person 21 or more years of age convicted under this subsection shall be a mandatory term of life imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence."; and

(C) in the third sentence, by striking "Penalties" and inserting: "Except to the extent that a greater minimum sentence is otherwise provided, penalties".

(b) MANDATORY MINIMUM PRISON SENTENCES FOR PERSONS CONVICTED OF DISTRIBUTION OF DRUGS TO MINORS.—

(1) IN GENERAL.—Section 418 of the Controlled Substances Act (21 U.S.C. 859) is amended—

(A) in subsection (a)

(i) by striking "at least eighteen" and inserting "not less than 21";

(ii) by striking "twenty-one" and inserting "18";

(iii) by striking "not less than one year" and inserting "not less than 10 years"; and

(iv) by striking the last sentence;

(B) in subsection (b)—

(i) by striking "at least eighteen" and inserting "not less than 21";

(ii) by striking "twenty-one" and inserting "18";

(iii) by striking "not less than one year" and inserting "a mandatory term of life imprisonment"; and

(iv) by striking the last sentence; and

(C) in the section heading, by striking "TWENTY-ONE" and inserting "18".

(2) TECHNICAL AMENDMENT.—The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended in the item relating to section 418 by striking "TWENTY-ONE" and inserting "18".

(c) PENALTIES FOR DRUG OFFENSES IN DRUG-FREE ZONES.—

(1) INCREASED PENALTIES.—Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—

(A) in subsection (a)—

(i) by striking "not less than one year" and inserting "not less than 5 years"; and

(ii) by striking the last sentence;

(B) in subsection (b), by striking "not less than three years" and inserting "not less than 10 years"; and

(C) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively.

SEC. 607. PENALTY INCREASES FOR TRAFFICKING IN LISTED CHEMICALS.

(a) CONTROLLED SUBSTANCES ACT.—Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended by inserting before the period at the end the following: "or, with respect to a violation of paragraph (1) or (2) of this subsection involving a list I chemical, if the government proves the quantity of controlled substance that could reasonably have been manufactured in a clandestine setting using the quantity of list I chemicals possessed or distributed, the penalty corresponding to the quantity of controlled substance that could have been produced under subsection (b)".

(b) CONTROLLED SUBSTANCE IMPORT AND EXPORT ACT.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended by inserting before the period at the end the following: ", or, with respect to an importation violation of paragraph (1) or (3) of this subsection involving a list I chemical, if the government proves the quality of controlled substance that could reasonably have been manufactured in a clandestine setting using the quantity of list I chemicals imported, the penalty corresponding to the quantity of controlled substance that could have been produced under title II".

(c) DETERMINATION OF QUANTITY.—

(1) IN GENERAL.—For the purpose of this section and the amendments made by this section, the quantity of controlled substance that could reasonably have been provided shall be determined by using a table of manufacturing conversion ratios for list I chemicals.

(2) TABLE.—The table described in paragraph (1) shall be—

(A) established by the United States Sentencing Commission based on scientific, law enforcement, and other data the Sentencing Commission determines to be appropriate; and

(B) dispositive of this issue.

TITLE VII—COMBATING VIOLENCE AGAINST WOMEN AND CHILDREN

Subtitle A—General Reforms

SEC. 701. PARTICIPATION OF RELIGIOUS ORGANIZATIONS IN VIOLENCE AGAINST WOMEN ACT PROGRAMS.

Notwithstanding any other provision of law, religious organizations shall be eligible to participate in any grant program authorized pursuant to the Violence Against Women Act of 1994 (Title IV of Public Law 103-322) which allow for the participation of nongovernmental entities, programs, or agencies, or any private organizations. No Federal or State governmental agency receiving funds under any such program shall discriminate against an organization on the basis that the organization has a religious character. Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

SEC. 702. DOMESTIC VIOLENCE ARREST GRANTS.

Paragraph (20) of section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "fiscal year 1998" and inserting "for each of the fiscal years 1998 and 1999."

SEC. 703. RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT ASSISTANCE.

Section 13971(c) of title 42 United States Code is amended by striking "fiscal year 1998" and inserting "for each of the fiscal years, 1998 and 1999."

SEC. 704. RUNAWAY, HOMELESS, AND STREET YOUTH ASSISTANCE GRANTS.

Section 319(c)(3) of part A of the Runaway and Homeless Youth Act (42 U.S.C. 5711 et seq.) is amended by striking "fiscal year 1998" and inserting "for each of the fiscal years 1998 and 1999".

Subtitle B—Domestic Violence

SEC. 711. DEATH PENALTY FOR FATAL INTERSTATE DOMESTIC VIOLENCE OFFENSES.

Sections 2261(b)(1) and 2262(b)(1) of title 18, United States Code, are each amended by inserting "or may be sentenced to death," after "years,".

SEC. 712. DEATH PENALTY FOR FATAL INTERSTATE VIOLATIONS OF PROTECTIVE ORDERS.

Section 2262 of title 18, United States Code, is amended by inserting "or may be sentenced to death," after "years,".

SEC. 713. EVIDENCE OF DISPOSITION OF DEFENDANT TOWARD VICTIM IN DOMESTIC VIOLENCE CASES AND OTHER CASES.

Rule 404(b) of the Federal Rules of Evidence is amended by striking "or absence of mistake or accident" and inserting "absence of mistake or accident, or a disposition toward a particular individual,".

SEC. 714. HIV TESTING OF DEFENDANTS IN SEXUAL ASSAULT CASES.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by adding at the end the following:

"§ 2249. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty

"(a) TESTING AT TIME OF PRETRIAL RELEASE DETERMINATION.—

"(1) IN GENERAL.—In a case in which a person is charged with an offense under this chapter, upon request of the victim, a judicial officer issuing an order pursuant to section 3142(a) shall include in the order a requirement that a test for the human immunodeficiency virus be performed upon the person, and that followup tests for the virus be performed 6 months and 12 months following the date of the initial test, unless the judicial officer determines that the conduct of the person created no risk of transmission of the virus to the victim, and so states in the order.

"(2) TIMING.—The order shall direct that the initial test be performed within 24 hours, or as soon thereafter as feasible.

"(3) NO RELEASE FROM CUSTODY.—Any person upon whom a test is performed under this section—

"(A) shall not be released from custody until the test is performed; and

"(B) unless indigent, shall be responsible for paying for the test at the time the test is performed.

"(b) TESTING AT LATER TIME.—

"(1) IN GENERAL.—If a person charged with an offense under this chapter was not tested for the human immunodeficiency virus pursuant to subsection (a), the court may at a later time direct that such a test be performed upon the person, and that followup tests be performed 6 months and 12 months following the date of the initial test, if it appears to the court that the conduct of the person may have risked transmission of the virus to the victim.

"(2) TIMING.—A testing requirement under this subsection may be imposed at any time while the charge is pending, or following conviction at any time prior to the completion of service of the sentence by the person.

"(c) TERMINATION OF TESTING REQUIREMENT.—A requirement of followup testing imposed under this section shall be canceled if any test is positive for the virus or the person obtains an acquittal on, or dismissal of, all charges under this chapter.

"(d) DISCLOSURE OF TEST RESULTS.—

"(1) IN GENERAL.—The results of any test for the human immunodeficiency virus performed pursuant to an order under this section shall be provided to the judicial officer or court.

"(2) DISCLOSURE TO VICTIM.—The judicial officer or court shall ensure that the results are disclosed to the victim (or to the parent or legal guardian of the victim, as appropriate), the attorney for the government, and the person tested.

"(3) APPLICABILITY OF OTHER LAW.—Test results disclosed pursuant to this subsection shall be subject to section 40503(b) (5) through (7) of the Violent Crime Control Act of 1994 (42 U.S.C. 14011(b)).

"(4) COUNSELING.—Any test result of the defendant given to the victim or the defendant must be accompanied by appropriate counseling, unless the recipient does not wish to receive such counseling.

"(e) EFFECT ON PENALTY.—The United States Sentencing Commission shall amend the Federal sentencing guidelines for sentences for offenses under this chapter to enhance the sentence if the offender knew or had reason to know that the offender was infected with the human immunodeficiency virus, except if the offender did not engage or attempt to engage in conduct creating a risk of transmission of the virus to the victim.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 109A of title 18, United States Code, is amended by inserting at the end the following:

"2249. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty.".

(c) AMENDMENTS TO TESTING PROVISIONS.—Section 40503(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14011(b)) is amended—

(1) by striking the subsection heading and inserting the following:

"(b) TESTING OF DEFENDANTS.—";

(2) in paragraph (1)—

(A) by inserting ", or the Government in such a case," after "subsection (a)";

(B) by inserting "(or to the parent or legal guardian of the victim, as appropriate)" after "communicated to the victim"; and

(C) by inserting ", unless the recipient does not wish to receive such counseling" after "counseling"; and

(3) in paragraph (2)—

(A) by striking "to obtain an order under paragraph (1), the victim must demonstrate that" and inserting "the victim or the Government may obtain an order under paragraph (1) by showing that";

(B) in subparagraph (A)—

(i) by striking "the offense" and inserting "a sexual assault involving alleged conduct that poses a risk of transmission of the etiologic agent for acquired immune deficiency syndrome"; and

(ii) by inserting "and" after the semicolon;

(C) in subparagraph (B), by striking "after appropriate counseling; and" and inserting a period; and

(D) by striking subparagraph (C).

TITLE VIII—VIOLENT CRIME AND TERRORISM

Subtitle A—Violent Crime and Terrorism

SEC. 801. AMENDMENTS TO ANTI-TERRORISM STATUTES.

(a) EXPLOSIVE MATERIALS.—Section 844(f)(1) of title 18, United States Code, is amended by inserting "or any institution or organization receiving Federal financial assistance" after "or agency thereof,"; and

(b) BIOLOGICAL WEAPONS.—(1) Section 178 of title 18, United States Code, is amended by—

(A) in paragraph (1), striking "means any microorganism, virus, or infectious substance, or biological product that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product" and inserting "means any microorganism (including bacteria, viruses, fungi, rickettsiae or protozoa), or infectious substance, or any naturally occurring, bioengineered or synthesized component of any such microorganism or infectious substance";

(B) in paragraph (2), striking "means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including" and inserting "means the toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes"; and

(C) in paragraph (4), striking "recombinant molecule, or biological product that may be engineered as a result of biotechnology" and inserting "recombinant or synthesized molecule".

(2) Section 2332a of title 18, United States Code, is amended by—

(A) in subsection (a), striking ", including any biological agent, toxin, or vector (as those terms are defined in section 178)"; and

(B) in subsection (b)(2)(C), striking "disease organism" and inserting "any biological agent, toxin, or vector (as those terms are defined in section 178 of this title)".

SEC. 802. KIDNAPPING; DEATH OF VICTIM BEFORE CROSSING STATE LINE AS NOT DEFEATING PROSECUTION, AND OTHER CHANGES.

Section 1201(a) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (4); and

(2) by adding the following new paragraphs:

"(6) an individual travels in interstate or foreign commerce in furtherance of the offense; or

"(7) the mail or a facility in interstate or foreign commerce is used in furtherance of the offense;".

SEC. 803. EXPANSION OF SECTION 1959 OF TITLE 18 TO COVER COMMISSION OF ALL VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY AND INCREASED PENALTIES.

Section 1959(a) of title 18, United States Code, is amended—

(1) by inserting "or commits any other crime of violence" before "or threatens to commit a crime of violence against";

(2) in paragraph (4), by inserting "committing any other crime of violence or for" before "threatening to commit a crime of violence", and by striking "five" and inserting "ten";

(3) in paragraph (5) by striking "ten" and inserting "twenty";

(4) in paragraph (6) by striking "or" before "assault resulting in serious bodily injury,", by inserting "or any other crime of violence" after those same words, and by striking "three" and inserting "ten"; and

(5) by inserting "(as defined in section 1365 of this title)" after "serious bodily injury" the first place it appears.

SEC. 804. CONFORMING AMENDMENT TO CONSPIRACY PENALTY.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(o) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (including the penalty of death) as those prescribed for the offense the commission of which was the object of the conspiracy.".

(b) EXPLOSIVES.—Section 844(n) of title 18, United States Code, is amended by striking "other than" and inserting "including".

SEC. 805. INCLUSION OF CERTAIN ADDITIONAL SERIOUS DRUG OFFENSES AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A)(ii) of title 18, United States Code, is amended by inserting before the semicolon the following: "or which, if it had been prosecuted as a violation of the Controlled Substances Act (21 U.S.C. 801 et seq.) at the time of the offense and because of the type and quantity of the controlled substance involved, would have been punishable by a maximum term of imprisonment of ten years or more".

SEC. 806. INCREASED PENALTIES FOR VIOLENCE IN THE COURSE OF RIOT OFFENSES.

Section 2101(a) of title 18, United States Code, is amended by striking "Shall be fined under this title, or imprisoned not more than five years, or both" and inserting "Shall be fined under this title or (i) if death results from such act, be imprisoned for any term of years or for life, or both, or may be sentenced to death; (ii) if serious bodily injury (as defined in section 1365 of this title) results from such act, be imprisoned for not more than twenty years, or both; or (iii) in any other case, be imprisoned for not more than five years, or both".

SEC. 807. ELIMINATION OF UNJUSTIFIED SCIENTER ELEMENT FOR CARJACKING.

Section 2119 of title 18, United States Code, is amended by striking ", with the intent to cause death or serious bodily harm".

SEC. 808. CRIMINAL OFFENSES COMMITTED OUTSIDE THE UNITED STATES BY PERSONS ACCOMPANYING THE ARMED FORCES.

Title 18, United States Code, is amended by adding after chapter 211 the following:

"§ 3261. Criminal offenses committed by persons formerly serving with, or presently employed by or accompanying, the armed forces outside the United States

"(a) Whoever, while serving with, employed by, or accompanying the armed forces outside the United States, engages in conduct which would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, shall be guilty of a like offense and subject to a like punishment.

"(b) Nothing contained in this chapter deprives courts-martial, military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect of offenders or offenses that by statute or by the law of war may be tried by courts-martial, military commissions, provost courts, or other military tribunals.

"(c) No prosecution may be commenced under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General of the United States or the Deputy Attorney General of the United States (or a person acting in either such capacity), which function of approval may not be delegated."

"(d)(1) The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest outside the United States any person described in subsection (a) of this section who there is probable cause to believe engaged in conduct which constitutes a criminal offense under such section.

"(2) A person arrested under paragraph (1) of this section shall be released to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such paragraph unless—

"(A) such person is delivered to authorities of a foreign country under section 3262 of this title; or

"(B) such person has had charges preferred against him under chapter 47 of title 10 for such conduct.

"§ 3262. Delivery to authorities of foreign countries

"(a) Any person designated and authorized under section 3261(d) of this title may deliver a person described in section 3261(a) of this title to the appropriate authorities of a foreign country in which such person is alleged to have engaged in conduct described in such subsection (a) of this section if—

"(1) the appropriate authorities of that country request the delivery of the person to such country for trial for such conduct as an offense under the laws of that country; and

"(2) the delivery of such person to that country is authorized by a treaty or other international agreement to which the United States is a party.

"(b) The Secretary of Defense shall determine what officials of a foreign country constitute appropriate authorities for the purpose of this section.

"§ 3263. Regulations

"The Secretary of Defense shall issue regulations governing the apprehension, detention, and removal of persons under this chapter. Such regulations shall be uniform throughout the Department of Defense.

"§ 3264. Definitions for chapter

As used in this chapter—

"(1) a person is "employed by the armed forces outside the United States"—

(i) if he or she is employed as a civilian employee of a military department or of the Department of Defense, as a Department of Defense contractor, or as an employee of a Department of Defense contractor;

(ii) is present or residing outside the United States in connection with such employment; and

(iii) is not a national of the host nation.

"(2) a person is "accompanying the armed forces outside the United States" if he or she—

(i) is a dependent of a member of the armed forces;

(ii) is a dependent of a civilian employee of a military department or of the Department of Defense;

(iii) is residing with the member or civilian employee outside the United States; and

(iv) is not a national of the host nation.".

SEC. 809. ASSAULTS OR OTHER CRIMES OF VIOLENCE FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by inserting "or other felony crime of violence against the person" after "murder".

SEC. 810. PENALTY ENHANCEMENT FOR CERTAIN OFFENSES RESULTING IN DEATH.

(a) MAILMEN.—Section 2114 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection (a); and

(2) by adding a new subsection (b) as follows:

"(b) Whoever, in committing an offense described in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, kills any person shall be punished by death or by imprisonment for life.";

(b) CONTROLLED SUBSTANCES.—Section 2118(c)(2) of title 18, United States Code, is amended by striking all after "kills any person" and inserting "shall be punished by death or by imprisonment for life.";

(c) INTERSTATE DOMESTIC VIOLENCE.—Sections 2261(b)(1) and 2262(b)(1) of title 18, United States Code, are each amended by inserting before the semicolon ", and may be sentenced to death";

(d) ANIMAL ENTERPRISE TERRORISM.—Section 43(b)(2) of title 18, United States Code, is amended by inserting "or may be sentenced to death" after "imprisoned for life or for any term of years"; and

(e) RACKETEERING.—Section 1952(a)(3)(B) of title 18, United States Code, is amended by inserting "or may be sentenced to death" after "imprisoned for any term of years or for life".

SEC. 811. VIOLENCE DIRECTED AT DWELLINGS IN INDIAN COUNTRY.

Section 1153(a) of title 18, United States Code, is amended by inserting "or 1363" after "section 661".

Subtitle B—Courts and Sentencing

SEC. 821. ALLOWING A REDUCTION OF SENTENCE FOR PROVIDING USEFUL INVESTIGATIVE INFORMATION ALTHOUGH NOT REGARDING A PARTICULAR INDIVIDUAL.

Section 3553(e) of title 18, United States Code, section 994(n) of title 28, United States Code, and Rule 35(b) of the Federal Rules of Criminal Procedure are each amended by striking "substantial assistance in the investigation or prosecution of another person who has committed an offense" and inserting "substantial assistance in an investigation of any offense or the prosecution of another person who has committed an offense".

SEC. 822. APPEALS FROM CERTAIN DISMISSALS.

Section 3731 of title 18, United States Code, is amended by inserting "or any part thereof" after "as to any one or more counts".

SEC. 823. ELIMINATION OF OUTMODED CERTIFICATION REQUIREMENT.

Section 3731 of title 18, United States Code, is amended in the second paragraph by striking ", if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding".

SEC. 824. IMPROVEMENT OF HATE CRIMES SENTENCING PROCEDURE.

Section 280003(b) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note) is amended by striking "the finder of fact at trial" and inserting "the court at sentencing".

SEC. 825. CLARIFICATION OF LENGTH OF SUPERVISED RELEASE TERMS IN CONTROLLED SUBSTANCE CASES.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended in each of subparagraphs (A), (B), (C), and (D), by striking "Any sentence" and inserting "Notwithstanding section 3583 of title 18, United States Code, any sentence".

SEC. 826. AUTHORITY OF COURT TO IMPOSE A SENTENCE OF PROBATION OR SUPERVISED RELEASE WHEN REDUCING A SENTENCE OF IMPRISONMENT IN CERTAIN CASES.

Section 3582(c)(1)(A) of title 18, United States Code, is amended by inserting "(and may impose a sentence of probation or supervised release with or without conditions)" after "may reduce the term of imprisonment".

SEC. 827. TECHNICAL CORRECTION TO ASSURE COMPLIANCE OF SENTENCING GUIDELINES WITH PROVISIONS OF ALL FEDERAL STATUTES.

Section 994(a) of title 28, United States Code, is amended by striking "consistent with all pertinent provisions of this title and title 18, United States Code," and inserting "consistent with all pertinent provisions of any Federal statute".

Subtitle C—White Collar Crime

SEC. 841. CLARIFICATION OF SCIENTER REQUIREMENT FOR RECEIVING PROPERTY STOLEN FROM AN INDIAN TRIBAL ORGANIZATION.

Section 1163 of title 18, United States Code, is amended in the second paragraph by striking "so".

SEC. 842. LARCENY INVOLVING POST OFFICE BOXES AND POSTAL STAMP VENDING MACHINES.

Section 2115 of title 18, United States Code, is amended—

(1) by striking "or" before "any building";

(2) by inserting "or any post office box or postal stamp vending machine for the sale of stamps owned by the Postal Service," after "used in whole or in part as a post office,";

(3) by inserting "or in such box or machine," after "so used".

SEC. 843. THEFT OF VESSELS.

(a) DEFINITIONS.—Section 2311 of title 18, United States Code, is amended by adding at the end the following:

"'Vessel' means any watercraft or other contrivance used or designed for transportation or navigation on, under, or immediately above, water.".

(b) TRANSPORTATION, SALE, OR RECEIPT OF STOLEN VEHICLES.—Sections 2312 and 2313 of title 18, United States Code, are each amended by striking "motor vehicle or aircraft" and inserting "motor vehicle, vessel, or aircraft".

SEC. 844. CONFORMING AMENDMENT TO LAW PUNISHING OBSTRUCTION OF JUSTICE BY NOTIFICATION OF EXISTENCE OF A SUBPOENA FOR RECORDS IN CERTAIN TYPES OF INVESTIGATIONS.

Section 1510(b)(3)(B) of title 18, United States Code, is amended—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(iii) the Controlled Substances Act, the Controlled Substances Import and Export Act, or section 6050I of the Internal Revenue Code of 1986.".

SEC. 845. INJUNCTIONS AGAINST COUNTERFEITING AND FORGERY.

(a) IN GENERAL.—Chapter 25 of title 18, United States Code, is amended by adding at the end the following:

"§ 514. Injunctions against counterfeiting and forgery

"(a)(1) If a person is violating or about to violate any provision of this chapter, the Attorney General may commence a civil action in any Federal court to enjoin such violation.

"(2) A permanent or temporary injunction or restraining order shall be granted without bond.

"(b) The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action as is warranted in its discretion. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 25 of title 18, United States Code, is amended by adding at the end:

"§ 514. Injunctions against counterfeiting and forgery.".

Subtitle D—Miscellaneous Provisions

SEC. 861. INCREASED MAXIMUM PENALTY FOR CERTAIN RICO VIOLATIONS.

Section 1963(a) of title 18, United States Code, is amended by striking "or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment)" and inserting "or imprisoned not more than the greater of 20 years or the statutory maximum term of imprisonment (including life) applicable to a racketeering activity on which the violation is based".

SEC. 862. CLARIFICATION OF INAPPLICABILITY TO CERTAIN DISCLOSURES.

Section 2515 of title 18, United States Code, is amended by adding at the end the following: "This section shall not apply to the disclosure by the United States, a State, or political subdivision in a criminal trial or hearing or before a grand jury of the contents of a wire or oral communication, or evidence derived therefrom, the interception of which was in violation of section 2511(2)(d)(relating to certain interceptions not involving governmental misconduct).".

SEC. 863. CONFORMING AMENDMENTS RELATING TO SUPERVISED RELEASE.

(a) Sections 1512(a)(1)(C), 1512(b)(3), 1512(c)(2), 1513(a)(1)(B), and 1513(b)(2) are each amended by striking "violation of conditions of probation, parole or release pending judicial proceedings" and inserting "violation of

conditions of probation, supervised release, parole, or release pending judicial proceedings".

(b) Section 3142 of title 18, United States Code, is amended—

(1) in subsection (d)(1), by inserting ", supervised release," "probation"; and

(2) in subsection (g)(3), by inserting "or supervised release" after "probation".

SEC. 864. ADDITION OF CERTAIN OFFENSES AS MONEY LAUNDERING PREDICATES.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or section 2339B (relating to providing material support to designated foreign terrorist organizations)" before "of this title".

SEC. 865. CLARIFICATION OF JURISDICTIONAL BASE INVOLVING THE MAIL.

Section 2422(b) of title 18, United States Code, is amended—

(1) by inserting "the mail" after "using"; and

(2) by striking "including the mail,".

SEC. 866. COVERAGE OF FOREIGN BANK BRANCHES IN THE TERRITORIES.

Section 20(9) of title 18, United States Code, is amended by inserting before the period the following: ", except that for purposes of this section the definition of the term 'State' in such Act shall be deemed to include a commonwealth, territory, or possession of the United States".

SEC. 867. CONFORMING STATUTE OF LIMITATIONS AMENDMENT FOR CERTAIN BANK FRAUD OFFENSES.

Section 3293 of title 18, United States Code, is amended—

(1) by inserting "225," after "215,"; and

(2) by inserting "1032," before "1033".

SEC. 868. CLARIFYING AMENDMENT TO SECTION 704.

Section 704(b)(2) of title 18, United States Code, is amended by striking "with respect to a Congressional Medal of Honor".

TITLE IX—PRISON REFORM

Subtitle A—Prison Litigation Reform

SEC. 901. AMENDMENT TO THE PRISON LITIGATION REFORM ACT.

Section 801 of the Prison Litigation Reform Act of 1995 is amended by striking "1995" and inserting "1996".

SEC. 902. APPROPRIATE REMEDIES FOR PRISON CONDITIONS.

Section 3626 of title 18, United States Code is amended—

(1) in subsection (a)—

(A) in paragraph (1)(B)(i), by striking "permits" and inserting "requires"; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking "no prisoner release order shall be entered unless—" and inserting "no court shall enter a prisoner release order unless—";

(ii) in subparagraph (B), by—

(I) striking "(B) In" and inserting "(B)(i) In"; and

(II) striking "title 28 if the requirements of subparagraph (E) have been met" and inserting "title 28";

(iii) by redesignating subparagraph (C) as clause (ii);

(iv) by redesignating subparagraph (D) as clause (iii);

(v) in subparagraph (E), by striking "The three-judge court shall enter a prisoner release order only if" and inserting "In any civil action with respect to prison conditions, no court shall enter a prisoner release order unless the requirements of subparagraph (A) have been met and";

(vi) by redesignating subparagraph (E) as subparagraph (B) and redesignating current subparagraph (B) as subparagraph (C) and current subparagraph (F) as subparagraph (D); and

(vii) in subparagraph (D), as redesignated, by striking "program" and inserting "prison";

(2) in subsection (b)—

(A) in paragraph (3), by striking "the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation" and inserting "the plaintiff establishes by a preponderance of the evidence and the court makes written findings based on the record that there is a current and ongoing violation of a Federal right, that prospective relief remains necessary to correct the current and ongoing violation of that Federal right, and that the relief extends no further than necessary to correct the current and ongoing violation of the Federal right, is narrowly drawn, and is the least intrusive means to correct the current and ongoing violation of the Federal right"; and

(B) by striking "or (2)" in paragraph 5, as redesignated;

(3) in subsection (e)—

(A) in paragraph (2), by striking "Any prospective relief subject to a pending motion shall be automatically stayed during the period—" and inserting "Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period—" ; and

(B) by adding the following:

"(3) ORDER REFUSING TO IMPOSE STAY.—Any order staying or suspending the operation of the automatic stay described in paragraph (2) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled and whether it is termed a preliminary or a final ruling.

"(4) INTERVENTION.—The court shall rule within 30 days on any motion to intervene as of right under subsection (a)(3)(D). Mandamus shall lie to remedy any failure to act on such a motion. Any State or local official or unit of government seeking to intervene as of right pursuant to subsection (a)(3)(D) may simultaneously file a motion to modify or terminate a prisoner release order. If the motion to intervene has not been denied by the 30th day after the motion to modify or terminate has been filed, in the case of a motion made under paragraph (1) or (2), or by the 180th day after the motion to modify or terminate has been filed, in the case of a motion made pursuant to any other law, the motion to modify or terminate shall operate as a stay of the prospective relief pursuant to the provisions of paragraph (2) beginning on the 30th or 180th day, respectively, and ending either on the date the court enters a final order denying the motion to intervene, or, if the court grants the motion to intervene, on the date that the court enters a final order ruling on the motion to terminate or modify the relief.";

(6) in subsection (f)—

(A) after "Special Masters" by inserting "In any civil action in a federal court with respect to prison conditions";

(B) In paragraph (1)(A), by striking from "In any civil action" through "prison conditions, the" and inserting "The";

(C) in paragraphs (1)(B) and (3), by striking "under this subsection";

(D) in paragraph (4), by striking "under this section"; and

(E) in paragraph (6), by striking "appointed under this subsection";

(F) in paragraph (2)(A), by striking "institution"; and

(G) in paragraph (2), by adding at the end the following:

"(D) The requirements of this paragraph shall apply only to special masters appointed after the date of enactment of the Prison Litigation Reform Act of 1995.";

(H) in paragraph (4), by adding at the end the following: "In no event shall the court require the parties to pay the compensation, expenses or costs of the special master.";

(I) in paragraph (5), by striking from "In any civil action" through "subsection, the" and inserting "The"; and

(J) in paragraph (6)—

(i) in subparagraph (A), by striking "hearings" and inserting "hearings on the record"; and by striking "and prepare proposed findings of fact, which shall be made on the record" and inserting ", and shall make any findings based on the record as a whole";

(ii) in subparagraph (B), by adding "and" at the end;

(iii) by striking subparagraph (C); and

(iv) by redesignating subparagraph (D) as subparagraph (C); and

(7) in subsection (g)—

(A) in paragraph (1), by striking "settlements" and inserting "settlement agreements";

(B) in paragraph (3)—

(i) by inserting "Federal, State, local, or other" before "facility";

(ii) by striking "violations" and inserting "a violation";

(iii) by striking "terms and conditions" and inserting "terms or conditions"; and

(iv) by inserting "or other post-conviction conditional or supervised release," after "probation,";

(C) in paragraph (5), by striking "or local facility" and inserting "local, or other facility";

(D) in paragraph (8), by striking "inherent";

(E) in paragraph (9), by striking "agreements." and inserting "agreements;";

(F) by reversing the order of paragraphs (8) and (9);

(G) by inserting at the end of the subsection the following new paragraph:

"(10)(A) the term 'violation of a Federal right' means a violation of a Federal constitutional or Federal statutory right;

"(B) The term 'violation of a Federal right' does not include a violation of a court order that is not independently a violation of a Federal statutory or Federal constitutional right;

"(C) The term 'violation of a Federal right' shall not be interpreted to expand the authority of any individual or class to enforce the legal rights that individual or class may have pursuant to existing law with regard to institutionalized persons, or to expand the authority of the United States to enforce those rights on behalf of any individual or class."; and

(H) by renumbering the paragraphs.

SEC. 903. CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS.

(a) IN GENERAL.—Section 7 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e), as amended by section 803(d) of the Prison Litigation Reform Act of 1995, is amended—

(1) by amending the title of the section to read "Civil Actions with Respect to Prison Conditions";

(2) in subsections (a),(c), and (d), by striking "by a prisoner confined in any jail, prison, or other correctional facility"

(3) in subsection (a), by striking "No action shall be brought with respect to prison conditions" and inserting "No civil action with respect to prison conditions shall be brought"; and by striking "until such administrative remedies as are available are exhausted." and inserting in its place "until the plaintiff has exhausted such administrative remedies as are available.";

(4) in subsection (c), by striking "any action brought with" and inserting "any civil action with";

(5) in subsection (d)

(A) in paragraph (1)

(i) by striking "any action brought by a prisoner who is" and inserting "any civil action with respect to prison conditions brought by a plaintiff who is or has been";

(ii) by amending subparagraph (A) to read as follows:

"(A) the fee was directly and reasonably incurred in—

"(i) proving an actual violation of the plaintiff's Federal rights;

"(ii) successfully obtaining contempt sanctions for a violation of previously ordered prospective relief that meets the standards set forth in section 3626 of title 18, United States Code, if the plaintiff made a good faith effort to resolve the matter without court action; or

"(iii) successfully obtaining court ordered enforcement of previously ordered prospective relief that meets the standards set forth in section 3626 of title 18, United States Code, if the enforcement order was necessary to prevent an imminent risk of serious bodily injury to the plaintiff and the plaintiff made a good faith attempt to resolve the matter without court action; and"; and

(iii) by amending subparagraph (B) to read as follows:

"(B) the amount of the fee is proportionately related to the court ordered relief for the violation.";

(B) in paragraph (2), by striking the last sentence and inserting "If a monetary judgment is the sole or principal relief awarded, the award of attorney's fees shall not exceed 100% of the judgment."; and

(C) in paragraph (3)—

(i) by striking "greater than 150 percent" and inserting "greater than the lesser of—

"(A) 150 percent"; and

(ii) by striking "counsel." and inserting "counsel; or

"(B) a rate of $100 per hour.";

(D) in paragraph (4), by striking "prisoner" and inserting "plaintiff";

(6) in subsection (e), by striking "Federal civil action" and inserting "civil action arising under federal law";

(7) in subsection (f), by striking "action brought with respect to prison conditions" and inserting "civil action with respect to prison conditions brought";

(8) in subsection (g)—

(i) by amending the heading to read as follows: "Waiver of Response";

(ii) by amending paragraph (1) to read as follows:

"(1) Any defendant may waive the right to respond to any complaint in any civil action arising under federal law brought by a prisoner. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint or waive any affirmative defense available to the defendant. No relief shall be granted to the plaintiff unless a response has been filed. The court may direct any defendant to file a response."; and

(iii) by striking paragraph (2); and

(9) by amending subsection (h) to read as follows:

"(h) As used in this section, the terms 'civil action with respect to prison conditions', 'prison', and 'prisoner' have the meanings given those terms in section 3626(g) of title 18, United States Code.".

SEC. 904. PROCEEDINGS IN FORMA PAUPERIS.

(a) IN GENERAL.—Section 1915(b)(1)(B) of title 28, United States Code is amended—

(1) by inserting after "average" the following: "of the highest";

(2) by inserting after "balance" the following: "recorded for";

(3) by striking "in"; and

(4) by striking "the 6-month period" and inserting "each of the 6 months".

(b) Section 1915(b)(2) of title 28, United States Code, is amended—

(1) by striking "forward" and inserting "deduct";

(2) by striking "to the clerk of the court"; and

(3) by adding at the end the following: "The agency having custody of the prisoner shall forward the deducted payments to clerk of the court either upon deduction or on a monthly basis accompanied by appropriate documentation.".

(c) Section 1915(f)(2)(A) of title 28, United States Code, is amended by inserting "provides for or" before "includes";

(d) Section 1915(f)(2)(B), of title 28, United States Code, is amended to add the following sentence at the end: "If the judgment for costs is held by the agency, or the employees of the agency, having custody of the prisoner, the agency may withdraw 20 percent of each deposit to the prisoner's account and apply that amount to payment of the judgment until the judgment is paid in full.";

(e) Section 1915(g) of title 28, United States Code, is amended—

(1) by striking "is frivolous" and inserting "was frivolous"; and

(2) by striking "fails" and inserting "failed".

(f) Section 1915(h) of title 28, United States Code, as added by section 804(e) of the Prison Litigation Reform Act of 1995, is amended—

(1) by inserting "Federal, State, local, or other" before "facility";

(2) by striking "violations" and inserting "a violation";

(3) by striking "terms and conditions" and inserting "terms or conditions"; and

(4) by inserting "or other post-conviction conditional or supervised release," after "probation,".

(g) Section 1915A of title 28, United States Code, is amended by striking ", before docketing, if feasible or, in any event,".

SEC. 905. NOTICE TO STATE AUTHORITIES OF MALICIOUS FILING BY PRISONER.

(a)AMENDMENT.—Chapter 123 of title 28, United States Code, is amended—

(1) by inserting after section 1915A the following new section:

"§ 1915B. Notice to state authorities of finding of malicious filing by a prisoner

"(1) Finding.—In any civil action brought in Federal court by a prisoner (other than a prisoner confined in a Federal correctional facility), the court may, on its own motion or the motion of any adverse party, make a finding whether—

"(A) the claim was filed for a malicious purpose;

"(B) the claim was filed to harass the party against which it was filed; or

"(C) the claimant testified falsely or otherwise knowingly presented false evidence or information to the court.

"(2) The court shall transmit to the State Department of Corrections or other appropriate authority any affirmative finding under paragraph (1). If the court makes such a finding, the Department of Corrections or other appropriate authority may, pursuant to State or local law—

(A) revoke such amount of good time credit or the institutional equivalent accrued to the prisoner as is deemed appropriate; or

(B) consider such finding in determining whether the prisoner should be released from prison under any other state or local program governing the release of prisoners, including parole, probation, other post-conviction or supervised release, or diversionary program.";

(2) by redesignating subsection 1915A(c) as section 1915C, and in that section, as redesignated—

(A) by striking "this section" and inserting "sections 1915A and 1915B";

(B) by inserting "Federal, State, local, or other" before "facility";

(C) by striking "violations" and inserting "a violation";

(D) by striking "terms and conditions" and inserting "terms or conditions"; and

(E) by inserting "or other post-conviction conditional or supervised release," after "probation,"; and

(3) by inserting in the analysis for chapter 123 of title 28, United States Code, and as further amended by this Act, after the item relating to section 1915A the following new items:

"1915B. Notice to State authorities of malicious filing by prisoner."; and

"1915C. Definition.".

SEC. 906. PAYMENT OF DAMAGE AWARD IN SATISFACTION OF PENDING RESTITUTION AWARDS.

(a) Section 807 of the Prison Litigation Reform Act of 1995 is designated as section 1915D(a) of chapter 123 of title 28, United States Code.

(b) That section is amended by striking the word "compensatory" and the last sentence of that section.

(c) Section 808 of the Prison Litigation Reform Act of 1995 is designated as section 1915D(b) of chapter 123 of title 28, United States Code.

(d) The analysis for chapter 123 of title 28, United States Code, is amended by inserting after the item relating to Section 1915C the following new item:

"§ 1915D. Payment of damage award in satisfaction of pending restitution order.".

SEC. 907. EARNED RELEASE CREDIT OR GOOD TIME CREDIT REVOCATION.

(a) Section 1932 of title 28, United States Code, is redesignated as section 3624A of title 18, United States Code.

(b) Section 3624A of title 18, United States Code, as redesignated by subsection (a) of this section, is amended—

(1) by striking "In any" and inserting "(a) Finding—In any";

(2) by striking "an adult" and inserting "a person";

(3) by striking "order the revocation" and all that follows through "finds that—" and inserting ", on its own motion or the motion of any adverse party, make a finding whether—";

(4) in paragraph (2), by striking "solely";

(5) in paragraph (3)—

(A) by striking "testifies" and inserting "testified"; and

(B) by striking "presents" and inserting "presented"; and

(6) by adding at the end the following:

"(b) TRANSMISSION OF FINDING.—The court shall transmit to the Bureau of Prisons any

affirmative finding under subsection (a). If the court makes such a finding, the Bureau of Prisons shall revoke an amount of unvested good time credit or the institutional equivalent accrued to the prisoner pursuant to section 3264 as is deemed appropriate by the Director of the Bureau of Prisons.".

(c)(1) The analysis for chapter 123 of title 28, United States Code, is amended by striking the item relating to section 1932.

(2) The analysis for chapter 229 of title 18, United States Code, is amended by inserting after the item relating to section 3624 the following:

"§ 3624A. Revocation of earned release credit.".

SEC. 908. RELEASE OF PRISONER.

Section 3624(b) of title 18, United States Code, is amended—

(1) in paragraph (1), by amending the fifth sentence to read as follows: "Credit that has not been earned may not later be granted, and credit that has been revoked pursuant to section 3624A may not later be reinstated."; and

(2) in paragraph (2), by inserting before the period at the end the following: ", and may be revoked by the Bureau of Prisons for noncompliance with institutional disciplinary regulations at any time before vesting".

SEC. 909. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect on the date of enactment of this Act, and shall apply to all proceedings in all pending cases on the date of enactment of this Act.

Subtitle B—Federal Prisons

SEC. 911. PRISON COMMUNICATIONS.

Section 2522 of title 18, United States Code, is amended by adding at the end the following:

"(e) EXEMPTION.—

"(1) IN GENERAL.—This chapter and chapter 121 do not apply with respect to the interception by a law enforcement officer of any wire, oral, or electronic communication, or the use of a pen register, a trap and trace device, or a clone pager, if—

"(A) in the case of any wire, oral, or electronic communication, at least one of the parties to the communication is, an inmate or detainee in the custody of the Attorney General of the United States or is in the custody of a State or political subdivision thereof; or

"(B) in the case of a pen register, a trap and trace device, or a clone pager, the facility is regularly used by, an inmate or detainee in the custody of the Attorney General of the United States or is in the custody of a State or political subdivision thereof.

"(2) STATE DEFINED.—As used in this subsection, the term 'State' means each of the several States of the United States, the District of Columbia, and the territories and possessions of the United States.

"(f) REGULATIONS.—The Attorney General shall promulgate regulations governing interceptions described in subsection (e) in order to protect communications protected by the attorney-client privilege and the right to counsel guaranteed by the sixth amendment to Constitution of the United States.".

SEC. 912. PRISON AMENITIES AND PRISONER WORK REQUIREMENT.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"§ 4048. Certain amenities for prisoners prohibited

"(a) IN GENERAL.—Except as provided in subsection (b), the Bureau of Prisons shall ensure that no prisoner or detainee under its jurisdiction—

"(1) engages in any physical activity designed to increase or enhance the fighting ability of the prisoner or detainee;

"(2) engages in any physical activity designed to increase the physical strength of such prisoner or detainee; or

"(3) is permitted—

"(A) access to in-cell television viewing, except for prisoners segregated from the general prison population for their own safety;

"(B) access to the viewing of any movie or film, through whatever medium presented, that has been given a Motion Picture Association of America rating of NC–17, R, or X;

"(C) possession of any in-cell coffee pot, hot plate, or other heating element;

"(D) access to any pornographic or other sexually explicit printed material;

"(E) access to any bodybuilding or weightlifting equipment; or

"(F) use or possession of any electric or electronic musical equipment.

"(b) EXCEPTION FOR CERTAIN PRISONERS.—The Director of the Bureau of Prisons may grant an exception to paragraph (2) or (3)(E) of subsection (a) with respect to a prisoner or detainee, if a licensed medical doctor employed by the Bureau of Prisons certifies that such exception is medically necessary in order to enable the prisoner or detainee to pursue a program of physical therapy or rehabilitation.

"(c) EFFECT ON OTHER REGULATIONS.—Nothing in the section shall be construed to preempt or repeal any regulation or policy of the Bureau of Prisons that imposes greater restrictions on prisoners and detainees than those required by this section, or to prevent the adoption by the Bureau of Prisons of any restriction or policy that imposes greater restrictions on prisoners and detainees than those required by this section.

"(d) NO CAUSE OF ACTION.—Nothing in this section shall be construed to create a cause of action by or on behalf of any person against the United States or any officer, employee, or contractor thereof.

"§ 4049. Prisoner work requirement

"(a) IN GENERAL.—Subject to subsection (b), the Director of the Bureau of Prisons shall ensure that each convicted inmate in the custody of the Attorney General and confined in any Federal prison, correctional facility, jail, or other facility shall be engaged in work. The type of work that a particular inmate shall be engaged in shall be determined on the basis of appropriate security and disciplinary considerations and by the health of the inmate.

"(b) EXCUSE.—An inmate described in subsection (a) may be excused from the requirement of subsection (a) in whole or in part, only as necessitated by—

"(1) security considerations;

"(2) disciplinary action;

"(3) medical certification of disability, such as would make it impractical for prison officials to arrange useful work for the inmate to perform; or

"(4) a need for the inmate to work less than a full work schedule in order to participate in literacy training, drug rehabilitation, or other similar program in addition to performing work.

"(c) NO COMPENSATION.—Nothing in this section shall be construed to entitle any inmate to any wage, compensation, or benefit, or be construed to provide a cause of action by or on behalf of any person against the United States or any officer, employee, or contractor thereof.".

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"4048. Certain prisoner amenities prohibited.
"4049. Prisoner work requirement.".

SEC. 913. ELIMINATION OF SENTENCING INEQUITIES AND AFTERCARE FOR FEDERAL INMATES.

Section 3621 of title 18, United States Code, is amended—

(1) in subsection (b), by striking the last sentence and inserting "The Bureau shall endeavor to make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable drug abuse problem, with a priority to be given to younger offenders and those who would benefit most from the treatment"; and

(2) in subsection (e), by striking paragraphs (1), (2), and (5), and redesignating paragraphs (3), (4), and (6), as paragraphs (1), (2), and (3), respectively.

TITLE X—MISCELLANEOUS PROVISIONS

SEC. 1001. SENSE OF THE SENATE REGARDING ONDCP.

It is the sense of the Senate that—

(1) the Office of National Drug Control Policy should, in principal, be reauthorized for an additional 5 years; and

(2) prior to any such reauthorization, the Committee on the Judiciary of the Senate should conduct an extensive review of the National Drug Control Strategy for 1997 submitted by President Clinton.

SEC. 1002. RESTRICTIONS ON DOCTORS PRESCRIBING SCHEDULE I SUBSTANCES.

(a) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate regulations that require any and all hospitals or health care service providers who receive Federal medicare or medicaid payments based upon appropriate compliance certification, as an additional certification requirement, to certify that no physician or other health care professional who has privileges with such hospital or health care service provider, or is otherwise employed by them, is currently, or will in the future, prescribe or otherwise recommend a schedule I substance to any person.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall report to Congress the number and names of institutions refusing or otherwise failing to fulfill certification requirement of subsection (a).

(c) REVOCATION OF CERTIFICATION.—The Attorney General shall promulgate regulations to revoke the DEA registration of any physician or other health care provider who recommends or prescribes a schedule I controlled substance.

SEC. 1003. ANTI-DRUG USE PUBLIC SERVICE REQUIREMENT.

The Federal Communications Commission shall—

(1) coordinate with the President's Commission on Alcohol and Drug Abuse Prevention, to develop a comprehensive education and public service program targeting youth drug abuse pursuant to section 8003 of Public Law 99–570 (21 U.S.C. 1302);

(2) encourage the priority use of public service resources dedicated to promoting youth drug abuse prevention and education;

(3) contact and encourage the donation of greater public resources dedicated to youth drug abuse programs from—

(A) television, radio, movies, cable communications, and print media;

(B) the recording industry;

(C) the advertising industry;
(D) business; and
(E) professional sports; and
(4) encourage each of the organizations and industries referred to in paragraph (3) to assist the implementation of new programs and national strategies for dissemination of information intended to prevent youth drug abuse.

SEC. 1004. CHILD PORNOGRAPHY.

(a) IN GENERAL.—The Secretary of State is directed to review all extradition treaties in force, and, if necessary, to renegotiate all such treaties, in order to ensure that offenses involving the sexual exploitation and abuse of children under sections 2251 through 2258 of title 18, United States Code, are extraditable offenses.

(b) STATUTE OF LIMITATIONS.—In any case in which a defendant is charged with an offense under chapter 110 of title 18, United States Code, and is alleged to have committed an offense, in whole or in part, beyond the jurisdiction of the United States, the statute of limitations shall be tolled during any period in which the defendant is beyond the jurisdiction of the United States.

SEC. 1005. 2,000 BOYS & GIRLS CLUBS BEFORE 2000.

(a) IN GENERAL.—Section 401(a) of the Economic Espionage Act of 1996 (Public Law 104-294; 110 Stat. 3496) is amended by striking paragraph (2) and inserting the following:

"(2) PURPOSE.—The purpose of this section is to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,000 additional local clubs where needed, with particular emphasis placed on establishing clubs in public housing projects and distressed areas, and to insure that there are a total of no less than 2000 Boys and Girls Club of America facilities in operation not later than December 31, 1999."

(b) ACCELERATED GRANTS.—Section 401 of the Economic Espionage Act of 1996 (Public Law 104-294; 110 Stat. 3496) is amended by striking subsection (c) and inserting the following:

"(c) ESTABLISHMENT.—

"(1) IN GENERAL.—For each of the fiscal years 1997, 1998, 1999, 2000, and 2001, the Director of the Bureau of Justice Assistance of the Department of Justice shall make a grant to the Boys and Girls Clubs of America for the purpose of establishing Boys and Girls Clubs facilities where needed, with particular emphasis placed on establishing clubs in public housing projects and distressed areas.

"(2) CONTRACTING AUTHORITY.—To the extent that the Secretary of Housing and Urban Development determines to be appropriate, the Secretary of Housing and Urban Development, in consultation with the Attorney General, shall enter into contracts with the Boys and Girls Clubs of America to establish clubs pursuant to the grants under paragraph (1).

"(3) APPLICATIONS.—The Attorney General shall accept an application for a grant under this subsection if submitted by the Boys and Girls Clubs of America, and approve or deny the grant not later than 90 days after the date on which the application is submitted, if the application—

"(A) includes a long-term strategy to establish 1,000 additional Boys and Girls Clubs and detailed summary of those areas in which new facilities will be established during the next fiscal year;

"(B) includes a plan to insure that there are a total of not less than 2,000 Boys and Girls Clubs of America facilities in operation before January 1, 2000;

"(C) certifies that there will be appropriate coordination with those communities where clubs will be located; and

"(D) explains the manner in which new facilities will operate without additional, direct Federal financial assistance to the Boys and Girls Clubs once assistance under this subsection is discontinued.".

(c) ROLE MODEL GRANTS.—Section 401 of the Economic Espionage Act of 1996 (Public Law 104-294; 110 Stat. 3496) is amended by adding at the end the following:

"(f) ROLE MODEL GRANTS.—Of amounts made available under subsection (e) in any fiscal year—

"(1) not more than 5 percent may be used to provide a grant to the Boys and Girls Clubs of America for administrative, travel, and other costs associated with a national role-model speaking tour program; and

"(2) no amount may be used to compensate speakers other than to reimburse speakers for reasonable travel and accommodation costs associated with the program described in paragraph (1).".

SEC. 1006. CELLULAR TELEPHONE INTERCEPTIONS.

Subsection 2511 of title 18, United States Code, is amended by inserting ", imprisoned not more than 1 year, or both" after "under this title".

TITLE XI—VIOLENT AND REPEAT JUVENILE OFFENDERS

SEC. 1101. SHORT TITLE.

This title may be cited as the "Violent and Repeat Juvenile Offender Act of 1997".

SEC. 1102. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) at the outset of the twentieth century, the States adopted 2 separate juvenile justice systems for violent and nonviolent offenders;

(2) violent crimes committed by juveniles, such as homicide, rape, and robbery, were an unknown phenomenon at that time, but the rate at which juveniles commit such crimes has escalated astronomically since that time;

(3) in 1994—

(A) the number of persons arrested overall for murder in the United States decreased by 5.8 percent, but the number of persons who are less than 15 years of age arrested for murder increased by 4 percent; and

(B) the number of persons arrested for all violent crimes increased by 1.3 percent, but the number of persons who are less than 15 years of age arrested for violent crimes increased by 9.2 percent, and the number of persons less than 18 years of age arrested for such crimes increased by 6.5 percent;

(4) from 1985 to 1996, the number of persons arrested for all violent crimes increased by 52.3 percent, but the number of persons under age 18 arrested for violent crimes rose by 75 percent;

(5) the number of juvenile offenders is expected to undergo a massive increase during the first 2 decades of the twenty-first century, culminating in an unprecedented number of violent offenders who are less than 18 years of age;

(6) the rehabilitative model of sentencing for juveniles, which Congress rejected for adult offenders when Congress enacted the Sentencing Reform Act of 1984, is inadequate and inappropriate for dealing with violent and repeat juvenile offenders;

(7) the Federal Government should encourage the States to experiment with progressive solutions to the escalating problem of juveniles who commit violent crimes and who are repeat offenders, including prosecuting all such offenders as adults, but should not impose specific strategies or programs on the States;

(8) an effective strategy for reducing violent juvenile crime requires greater collection of investigative data and other information, such as fingerprints and DNA evidence, as well as greater sharing of such information among Federal, State, and local agencies, including the courts, in the law enforcement and educational systems;

(9) data regarding violent juvenile offenders must be made available to the adult criminal justice system if recidivism by criminals is to be addressed adequately;

(10) holding juvenile proceedings in secret denies victims of crime the opportunity to attend and be heard at such proceedings, helps juvenile offenders to avoid accountability for their actions, and shields juvenile proceedings from public scrutiny and accountability;

(11) the injuries and losses suffered by the victims of violent crime are no less painful or devastating because the offender is a juvenile; and

(12) the investigation, prosecution, adjudication, and punishment of criminal offenses committed by juveniles is, and should remain, primarily the responsibility of the States, to be carried out without interference from the Federal Government.

(b) PURPOSES.—The purposes of this title are—

(1) to reform juvenile law so that the paramount concerns of the juvenile justice system are providing for the safety of the public and holding juvenile wrongdoers accountable for their actions, while providing the wrongdoer a genuine opportunity for self reform;

(2) to revise the procedures in Federal court that are applicable to the prosecution of juvenile offenders;

(3) to address specifically the problem of violent crime and controlled substance offenses committed by youth gangs; and

(4) to encourage and promote, consistent with the ideals of federalism, adoption of policies by the States to ensure that the victims of crimes of violence committed by juveniles receive the same level of justice as do victims of violent crimes that are committed by adults.

SEC. 1103. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Subtitle A—Juvenile Justice Reform

SEC. 1111. REPEAL OF GENERAL PROVISION.

(a) IN GENERAL.—Chapter 401 of title 18, United States Code, is amended—

(1) by striking section 5001; and

(2) by redesignating section 5003 as section 5001.

(b) TECHNICAL AMENDMENTS.—The chapter analysis for chapter 401 of title 18, United States Code, is amended—

(1) by striking the item relating to section 5001; and

(2) by redesignating the item relating to section 5003 as 5001.

SEC. 1112. TREATMENT OF FEDERAL JUVENILE OFFENDERS.

(a) IN GENERAL.—Section 5032 of title 18, United States Code, is amended to read as follows:

"§ 5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for other criminal prosecution

"(a) IN GENERAL.—A juvenile who is not less than 14 years of age and who is alleged to have committed an act that, if committed by an adult, would be a criminal offense, shall be tried in the appropriate district court of the United States—

"(1) as an adult at the discretion of the United States Attorney in the appropriate jurisdiction, upon a finding by that United States Attorney, which finding shall not be subject to review in or by any court, trial or appellate, that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction, if the juvenile is charged with a Federal offense that—

"(A) is a crime of violence (as that term is defined in section 16); or

"(B) involves a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the penalty is a term of imprisonment of not less than 5 years; and

"(2) in all other cases, as a juvenile.

"(b) REFERRAL BY UNITED STATES ATTORNEY.—

"(1) IN GENERAL.—If the United States Attorney in the appropriate jurisdiction declines prosecution of a charged offense under subsection (a)(2), the United States Attorney may refer the matter to the appropriate legal authorities of the State or Indian tribe.

"(2) DEFINITIONS.—In this section—

"(A) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

"(B) the term 'Indian tribe' has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act.

"(c) APPLICABLE PROCEDURES.—Any action prosecuted in a district court of the United States under this section—

"(1) shall proceed in the same manner as is required by this title and by the Federal Rules of Criminal Procedure in proceedings against an adult in the case of a juvenile who is being tried as an adult in accordance with subsection (a); and

"(2) in all other cases, shall proceed in accordance with this chapter, unless the juvenile has requested in writing, upon advice of counsel, to be proceeded against as an adult.

"(d) CAPITAL CASES.—Subject to section 3591, if a juvenile is tried and sentenced as an adult, the juvenile shall be subject to being sentenced to death on the same terms and in accordance with the same procedures as an adult.

"(e) APPLICATION OF LAWS.—In any case in which a juvenile is prosecuted in a district court of the United States as an adult, the juvenile shall be subject to the same laws, rules, and proceedings regarding sentencing that would be applicable in the case of an adult. No juvenile sentenced to a term of imprisonment shall be released from custody simply because the juvenile reaches the age of 18 years.

"(f) OPEN PROCEEDINGS.—

"(1) IN GENERAL.—Any offense tried in a district court of the United States pursuant to this section shall be open to the general public, in accordance with rules 10, 26, 31(a), and 53 of the Federal Rules of Criminal Procedure, unless good cause is established by the moving party or is otherwise found by the court, for closure.

"(2) STATUS ALONE INSUFFICIENT.—The status of the defendant as a juvenile, absent other factors, shall not constitute good cause for purposes of this subsection.

"(g) AVAILABILITY OF RECORDS.—

"(1) IN GENERAL.—In making a determination concerning the prosecution of a juvenile in a district court of the United States under this section, subject to the requirements of section 5038, the United States Attorney of the appropriate jurisdiction shall have complete access to the prior Federal juvenile records of the subject juvenile, and to the extent permitted by State law, the prior State juvenile records of the subject juvenile.

"(2) CONSIDERATION OF ENTIRE RECORD.—In any case in which a juvenile is found guilty in an action pursuant to this section, the district court responsible for imposing sentence shall have complete access to the prior juvenile records of the subject juvenile, and, to the extent permitted under State law, the prior State juvenile records of the subject juvenile. At sentencing, the district court shall consider the entire available prior juvenile record of the subject juvenile.

"(3) RELEASE OF RECORDS.—The United States Attorney may release such Federal records, and, to the extent permitted by State law, such State records, to law enforcement authorities of any jurisdiction and to officials of any school, school district, or postsecondary school at which the individual who is the subject of the juvenile record is enrolled or seeks, intends, or is instructed to enroll, if such school officials are held liable to the same standards and penalties to which law enforcement and juvenile justice system employees are held liable under Federal and State law, for the handling and disclosure of such information.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 403 of title 18, United States Code, is amended by striking the item relating to section 5032 and inserting the following:

"5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for other criminal prosecution.".

SEC. 1113. CAPITAL CASES.

Section 3591 of title 18, United States Code, is amended by striking "18 years" each place that term appears and inserting "16 years".

SEC. 1114. DEFINITIONS.

Section 5031 of title 18, United States Code, is amended to read as follows:

"§ 5031. Definitions

"In this chapter—

"(1) the term 'juvenile' means a person who is less than 18 years of age; and

"(2) the term 'juvenile delinquency' means the violation of a law of the United States committed by a juvenile that would be a crime if committed by an adult.".

SEC. 1115. NOTIFICATION AFTER ARREST.

Section 5033 of title 18, United States Code, is amended in the first sentence by striking "Attorney General" and inserting "United States Attorney of the appropriate jurisdiction".

SEC. 1116. DETENTION PRIOR TO DISPOSITION.

Section 5035 of title 18, United States Code, is amended—

(1) by striking "A juvenile" and inserting the following:

"(a) IN GENERAL.—A juvenile"; and

(2) by adding at the end the following:

"(b) DETENTION OF CERTAIN JUVENILES.—Notwithstanding subsection (a), a juvenile who is to be tried as an adult pursuant to section 5032 shall be subject to detention in accordance with chapter 203 in the same manner and to the same extent as an adult would be subject to that chapter.".

SEC. 1117. SPEEDY TRIAL.

Section 5036 of title 18, United States Code, is amended—

(1) by striking "thirty" and inserting "70"; and

(2) by striking "the court," and all that follows through the end of the section and inserting "the court. The periods of exclusion under section 3161(h) shall apply to this section.".

SEC. 1118. DISPOSITIONAL HEARINGS.

Section 5037 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "(a)" and all that follows through "After the" and inserting the following:

"(a) IN GENERAL.—

"(1) DISPOSITIONAL HEARING.—In any case in which a juvenile is found to be a juvenile delinquent in district court pursuant to section 5032, but is not tried as an adult under that section, not later than 20 days after the hearing in which a finding of juvenile delinquency is made, the court shall hold a disposition hearing concerning the appropriate disposition unless the court has ordered further study pursuant to subsection (d).

"(2) ACTIONS OF COURT AFTER HEARING.—After the";

(2) in subsection (b), by striking "extend—" and all that follows through "The provisions" and inserting the following: "extend, in the case of a juvenile, beyond the maximum term that would be authorized by section 3561(b), if the juvenile had been tried and convicted as an adult. The provisions";

(3) in subsection (c), by striking "extend—" and all that follows through "Section 3624" and inserting the following: "extend beyond the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult. No juvenile sentenced to a term of imprisonment shall be released from custody simply because the juvenile reaches the age of 18 years. Section 3624";

(4) by redesignating subsection (d) as subsection (e); and

(5) by inserting after subsection (c) the following:

"(d) APPLICABILITY OF RESTITUTION PROVISIONS.—If a juvenile has been tried and convicted as an adult, or adjudicated delinquent for any offense in which the juvenile is otherwise tried pursuant to section 5032, the restitution provisions contained in this title (including sections 3663, 3663A, 2248, 2259, 2264, and 2327) and title 21 shall apply to that juvenile in the same manner and to the same extent as those provisions apply to adults.".

SEC. 1119. USE OF JUVENILE RECORDS.

Section 5038 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (5), by striking "and" at the end;

(B) in paragraph (6), by striking the period at the end and inserting "; and";

(C) by inserting after paragraph (6) the following:

"(7) inquiries from any school or other educational institution for the purpose of ensuring the public safety and security at such institution."; and

(D) by striking "Unless" and inserting the following:

"(c) PROHIBITION ON RELEASE OF CERTAIN INFORMATION.—Unless";

(2) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively;

(3) by inserting immediately after subsection (a) the following:

"(b) ACCESS BY UNITED STATES ATTORNEY.—Notwithstanding subsection (a), in determining the appropriate disposition of a

juvenile matter under section 5032, the United States Attorney of the appropriate jurisdiction shall have complete access to the official records of the juvenile proceedings conducted under this title.";

(4) by inserting after subsection (e), as redesignated, the following:

"(f) RECORDS OF JUVENILES TRIED AS ADULTS.—In any case in which a juvenile is tried as an adult, access to the record of the offenses of the juvenile shall be made available in the same manner as is applicable to adult defendants.";

(5) by striking "(d) Whenever" and all that follows through "adult defendants." and inserting the following:

"(g) FINGERPRINTS AND PHOTOGRAPHS.—Fingerprints and photographs of a juvenile—

"(1) who is prosecuted as an adult, shall be made available in the same manner as is applicable to an adult defendant; and

"(2) who is not prosecuted as an adult, shall be made available only as provided in subsection (a).";

(6) by striking "(e) Unless," and inserting the following:

"(h) NO PUBLICATION OF NAME OR PICTURE.—Unless";

(7) by striking "(f) Whenever" and inserting the following:

"(i) INFORMATION TO FEDERAL BUREAU OF INVESTIGATION.—Whenever"; and

(8) in subsection (i), as redesignated—

(A) by striking "of committing an act" and all that follows through "5032 of this title" and inserting "by a district court of the United States pursuant to section 5032 of committing an act"; and

(B) by inserting "involved a juvenile tried as an adult or" before "were juvenile adjudications".

SEC. 1120. INCARCERATION OF VIOLENT OFFENDERS.

Section 5039 of title 18, United States Code, is amended—

(1) by designating the first 3 undesignated paragraphs as subsections (a) through (c), respectively; and

(2) by adding at the end the following:

"(d) SEGREGATION OF JUVENILES CONVICTED OF VIOLENT OFFENSES.—

"(1) DEFINITION.—In this subsection, the term 'crime of violence' has the same meaning as in section 16 of title 18, United States Code.

"(2) SEGREGATION.—The Director of the Bureau of Prisons shall ensure that juveniles who are alleged to be or determined to be delinquent are not confined in any institution in which the juvenile has regular sustained physical contact with adult persons who are detained or confined.".

SEC. 1121. FEDERAL SENTENCING GUIDELINES.

Section 994(h) of title 28, United States Code, is amended by inserting ", or in which the defendant is a juvenile who is tried as an adult," after "old or older".

Subtitle B—Juvenile Gangs

SEC. 1141. SHORT TITLE.

This subtitle may be cited as the "Federal Gang Violence Act".

SEC. 1142. INCREASE IN OFFENSE LEVEL FOR PARTICIPATION IN CRIME AS A GANG MEMBER.

(a) DEFINITION.—In this section, the term "criminal street gang" has the same meaning as in section 521(a) of title 18, United States Code, as amended by section 1243 of this subtitle.

(b) AMENDMENT OF SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate enhancement, increasing the offense level by not less than 6 levels, for any offense, if the offense was both committed in connection with, or in furtherance of, the activities of a criminal street gang and the defendant was a member of the criminal street gang at the time of the offense.

(c) CONSTRUCTION WITH OTHER GUIDELINES.—The amendment made pursuant to subsection (b) shall provide that the increase in the offense level shall be in addition to any other adjustment under chapter 3 of the Federal sentencing guidelines.

SEC. 1143. AMENDMENT OF TITLE 18 WITH RESPECT TO CRIMINAL STREET GANGS.

(a) IN GENERAL.—Section 521 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "(a) DEFINITIONS.—" and inserting the following:

"(a) DEFINITIONS.—In this section:", and

(B) by striking "'conviction'' and all that follows through the end of the subsection and inserting the following:

"(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means an ongoing group, club, organization, or association of 3 or more persons, whether formal or informal—

"(A) a primary activity of which is the commission of 1 or more predicate gang crimes;

"(B) any members of which engage, or have engaged during the 5-year period preceding the date in question, in a pattern of criminal gang activity; and

"(C) the activities of which affect interstate or foreign commerce.

"(2) PATTERN OF CRIMINAL GANG ACTIVITY.—The term 'pattern of criminal gang activity' means the commission of 2 or more predicate gang crimes committed in connection with, or in furtherance of, the activities of a criminal street gang—

"(A) at least 1 of which was committed after the date of enactment of the Federal Gang Violence Act;

"(B) the first of which was committed not more than 5 years before the commission of another predicate gang crime; and

"(C) that were committed on separate occasions.

"(3) PREDICATE GANG CRIME.—The term 'predicate gang crime' means an offense, including an act of juvenile delinquency that, if committed by an adult, would be an offense that is—

"(A) a Federal offense—

"(i) that is a crime of violence (as that term is defined in section 16) including carjacking, drive-by-shooting, shooting at an unoccupied dwelling or motor vehicle, assault with a deadly weapon, and homicide;

"(ii) that involves a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the penalty is imprisonment for not less than 5 years;

"(iii) that is a violation of section 844, section 875 or 876 (relating to extortion and threats), section 1084 (relating to gambling), section 1955 (relating to gambling), chapter 44 (relating to firearms), or chapter 73 (relating to obstruction of justice);

"(iv) that is a violation of section 1956 (relating to money laundering), insofar as the violation of such section is related to a Federal or State offense involving a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

"(v) that is a violation of section 274(a)(1)(A), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A), 1327, or 1328) (relating to alien smuggling);

"(B) a State offense involving conduct that would constitute an offense under subparagraph (A) if Federal jurisdiction existed or had been exercised; or

"(C) a conspiracy, attempt, or solicitation to commit an offense described in subparagraph (A) or (B).

"(3) STATE.—The term 'State' includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory of possession of the United States."; and

(2) by striking subsections (b), (c), and (d) and inserting the following:

"(b) CRIMINAL PENALTIES.—Any person who engages in a pattern of criminal gang activity—

"(1) shall be sentenced to—

"(A) a term of imprisonment of not less than 10 years and not more than life, fined in accordance with this title, or both; and

"(B) the forfeiture prescribed in section 413 of the Controlled Substances Act (21 U.S.C. 853); and

"(2) if any person engages in such activity after 1 or more prior convictions under this section have become final, shall be sentenced to—

"(A) a term of imprisonment of not less than 20 years and not more than life, fined in accordance with this title, or both; and

"(B) the forfeiture prescribed in section 412 of the Controlled Substances Act (21 U.S.C. 853).".

(b) CONFORMING AMENDMENT.—Section 3663(c)(4) of title 18, United States Code, is amended by inserting before "chapter 46" the following: "section 521 of this title,".

SEC. 1144. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF CRIMINAL STREET GANGS.

(a) TRAVEL ACT AMENDMENTS.—

(1) PROHIBITED CONDUCT AND PENALTIES.—Section 1952(a) of title 18, United States Code, is amended to read as follows:

"(a) PROHIBITED CONDUCT AND PENALTIES.—

"(1) IN GENERAL.—Any person who—

"(A) travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

"(i) distribute the proceeds of any unlawful activity; or

"(ii) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity; and

"(B) after travel or use of the mail or any facility in interstate or foreign commerce described in subparagraph (A), performs, attempts to perform, or conspires to perform an act described in clause (i) or (ii) of subparagraph (A),

shall be fined under this title, imprisoned not more than 10 years, or both.

"(2) CRIMES OF VIOLENCE.—Any person who—

"(A) travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to commit any crime of violence to further any unlawful activity; and

"(B) after travel or use of the mail or any facility in interstate or foreign commerce described in subparagraph (A), commits, attempts to commit, or conspires to commit any crime of violence to further any unlawful activity,

shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be sentenced to death or be imprisoned for any term of years or for life.".

(2) DEFINITIONS.—Section 1952(b) of title 18, United States Code, is amended to read as follows:

"(b) DEFINITIONS.—In this section:

"(1) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the same meaning as in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

"(2) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(3) UNLAWFUL ACTIVITY.—The term 'unlawful activity' means—

"(A) predicate gang crime (as that term is defined in section 521);

"(B) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances, or prostitution offenses in violation of the laws of the State in which the offense is committed or of the United States;

"(C) extortion, bribery, arson, robbery, burglary, assault with a deadly weapon, retaliation against or intimidation of witnesses, victims, jurors, or informants, assault resulting in bodily injury, possession of or trafficking in stolen property, illegally trafficking in firearms, kidnapping, alien smuggling, or shooting at an occupied dwelling or motor vehicle, in each case, in violation of the laws of the State in which the offense is committed or of the United States; or

"(D) any act that is indictable under section 1956 or 1957 of this title or under subchapter II of chapter 53 of title 31.".

(b) AMENDMENT OF SENTENCING GUIDELINES.—

(1) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend chapter 2 of the Federal sentencing guidelines so that—

(A) the base offense level for traveling in interstate or foreign commerce in aid of a criminal street gang or other unlawful activity is increased to 12; and

(B) the base offense level for the commission of a crime of violence in aid of a criminal street gang or other unlawful activity is increased to 24.

(2) DEFINITIONS.—In this subsection—

(A) the term "crime of violence" has the same meaning as in section 16 of title 18, United States Code;

(B) the term "criminal street gang" has the same meaning as in 521(a) of title 18, United States Code, as amended by section 1243 of this subtitle; and

(C) the term "unlawful activity" has the same meaning as in section 1952(b) of title 18, United States Code, as amended by this section.

SEC. 1145. SOLICITATION OR RECRUITMENT OF PERSONS IN CRIMINAL GANG ACTIVITY.

(a) PROHIBITED ACTS.—Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"§ 522. Recruitment of persons to participate in criminal street gang activity

"(a) PROHIBITED ACT.—It shall be unlawful for any person to—

"(1) use any facility in, or travel in, interstate or foreign commerce, or cause another to do so, to recruit, solicit, request, induce, counsel, command, or cause another person to be a member of a criminal street gang, or conspire to do so; or

"(2) recruit, solicit, request, induce, counsel, command, or cause another person to engage in a predicate gang crime for which such person may be prosecuted in a court of the United States, or conspire to do so.

"(b) PENALTIES.—A person who violates subsection (a) shall—

"(1) if the person recruited—

"(A) is a minor, be imprisoned for a term of not less than 4 years and not more than 10 years, fined in accordance with this title, or both; or

"(B) is not a minor, be imprisoned for a term of not less than 1 year and not more than 10 years, fined in accordance with this title, or both; and

"(2) be liable for any costs incurred by the Federal Government or by any State or local government for housing, maintaining, and treating the minor until the minor reaches the age of 18.

"(c) DEFINITIONS.—In this section—

"(1) the terms 'criminal street gang' and 'predicate gang crime' have the same meanings as in section 521; and

"(2) the term 'minor' means a person who is younger than 18 years of age.".

(b) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend chapter 2 of the Federal sentencing guidelines to provide an appropriate enhancement for any offense involving the recruitment of a minor to participate in a gang activity.

(c) TECHNICAL AMENDMENT.—The chapter analysis for chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"522. Recruitment of persons to participate in criminal street gang activity.".

SEC. 1146. CRIMES INVOLVING THE RECRUITMENT OF PERSONS TO PARTICIPATE IN CRIMINAL STREET GANGS AND FIREARMS OFFENSES AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(F)"; and

(2) by inserting before the semicolon at the end the following: ", (G) an offense under section 522 of this title, or (H) an act or conspiracy to commit any violation of chapter 44 of this title (relating to firearms)".

SEC. 1147. PROHIBITIONS RELATING TO FIREARMS.

(a) PENALTIES.—Section 924(a)(6) of title 18, United States Code, is amended—

(1) by striking subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (A);

(3) in subparagraph (A), as redesignated—

(A) by striking "(B) A person other than a juvenile who knowingly" and inserting "(A) A person who knowingly";

(B) in clause (i), by striking "not more than 1 year" and inserting "not less than 1 year and not more than 5 years"; and

(C) in clause (ii), by inserting "not less than 1 year and" after "imprisoned"; and

(4) by adding at the end the following:

"(B) Notwithstanding subparagraph (A), no mandatory minimum sentence shall apply to a juvenile who is less than 13 years of age.".

(b) SERIOUS JUVENILE DRUG OFFENSES AS ARMED CAREER CRIMINAL PREDICATES.—Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by adding "or" at the end; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be an offense described in clause (i) or (ii);".

(c) TRANSFER OF FIREARMS TO MINORS FOR USE IN CRIME.—Section 924(h) of title 18, United States Code, is amended by striking "10 years, fined in accordance with this title, or both" and inserting "10 years, and if the transferee is a person who is under 18 years of age, imprisoned for a term of not less than 3 years, fined in accordance with this title, or both".

SEC. 1148. AMENDMENT OF SENTENCING GUIDELINES WITH RESPECT TO BODY ARMOR.

(a) DEFINITIONS.—In this section—

(1) the term "body armor" means any product sold or offered for sale as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment; and

(2) the term "law enforcement officer" means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(b) SENTENCING ENHANCEMENT.—The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate sentencing enhancement, increasing the offense level not less than 2 levels, for any crime in which the defendant used body armor.

(c) APPLICABILITY.—No Federal sentencing guideline amendment made pursuant to this section shall apply if the Federal crime in which the body armor is used constitutes a violation of, attempted violation of, or conspiracy to violate the civil rights of a person by a law enforcement officer acting under color of the authority of such law enforcement officer.

SEC. 1149. ADDITIONAL PROSECUTORS.

There are authorized to be appropriated $20,000,000 for each of the fiscal years 1998, 1999, 2000, 2001, and 2002 for the hiring of Assistant United States Attorneys and attorneys in the Criminal Division of the Department of Justice to prosecute juvenile criminal street gangs (as that term is defined in section 521(a) of title 18, United States Code, as amended by section 1243 of this subtitle).

Subtitle C—Juvenile Crime Control and Accountability

SEC. 1161. FINDINGS; DECLARATION OF PURPOSE; DEFINITIONS.

Title I of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended to read as follows:

"TITLE I—FINDINGS AND DECLARATION OF PURPOSE

"SEC. 101. FINDINGS.

"Congress finds that—

"(1) during the past several years, the United States has experienced an alarming increase in arrests of adolescents for murder, assault, and weapons offenses;

"(2) in 1994, juveniles accounted for 1 in 5 arrests for violent crimes, including murder, robbery, aggravated assault, and rape, including 514 such arrests per 100,000 juveniles 10 through 17 years of age;

"(3) understaffed, overcrowded juvenile courts, prosecutorial and public defender offices, probation services, and correctional facilities no longer adequately address the changing nature of juvenile crime, protect the public, and correct youth offenders;

"(4) the juvenile justice system has proven inadequate to meet the needs of society, because insufficient sanctions are imposed on serious youth offenders and the needs of children, who may be at risk of becoming delinquents;

"(5) existing programs and policies have not adequately responded to the particular threat of drugs, alcohol abuse, violence, and gangs pose to the youth of the Nation;

"(6) demographic increases projected in the number of youth offenders require reexamination of the prosecution and incarceration policies for serious violent youth offenders;

"(7) State and local communities that experience directly the devastating failures of the juvenile justice system require assistance to deal comprehensively with the problems of juvenile delinquency;

"(8) existing Federal programs have not provided the States with necessary flexibility, and have not provided coordination, resources, and leadership required to meet the crisis of youth violence;

"(9) overlapping and uncoordinated Federal programs have created a multitude of Federal funding streams to State and local governments, that have become a barrier to effective program coordination, responsive public safety initiatives, and the provision of comprehensive services for children and youth;

"(10) violent crime by juveniles constitutes a growing threat to the national welfare that requires an immediate and comprehensive governmental response, combining flexibility and coordinated evaluation;

"(11) limited State and local resources are being wasted complying with the unnecessary Federal mandate that status offenders be desinstitutionalized. Some communities believe that curfews are appropriate for juveniles, and those communities should not be prohibited by the Federal Government from using confinement for status offenses as a means of dealing with delinquent behavior before it becomes criminal conduct;

"(12) limited State and local resources are being wasted complying with the unnecessary Federal mandate that no juvenile be detained or confined in any jail or lockup for adults, because it can be feasible to separate adults and juveniles in 1 facility. This mandate is particularly burdensome for rural communities;

"(13) the role of the Federal Government should be to encourage and empower communities to develop and implement policies to protect adequately the public from serious juvenile crime as well as comprehensive programs to reduce risk factors and prevent juvenile delinquency; and

"(14) a strong partnership among law enforcement, local government, juvenile and family courts, schools, businesses, philanthropic organizations, families, and the religious community, can create a community environment that supports the youth of the Nation in reaching their highest potential and reduces the destructive trend of juvenile crime.

"SEC. 102. PURPOSE AND STATEMENT OF POLICY.

"(a) IN GENERAL.—The purposes of this Act are—

"(1) to protect the public and to hold juveniles accountable for their acts;

"(2) to empower States and communities to develop and implement comprehensive programs that support families and reduce risk factors and prevent serious youth crime and juvenile delinquency;

"(3) to provide for the thorough and ongoing evaluation of all federally funded programs addressing juvenile crime and delinquency;

"(4) to provide technical assistance to public and private nonprofit entities that protect public safety, administer justice and corrections to delinquent youth, or provide services to youth at risk of delinquency, and their families;

"(5) to establish a centralized research effort on the problems of youth crime and juvenile delinquency, including the dissemination of the findings of such research and all related data;

"(6) to establish a Federal assistance program to deal with the problems of runaway and homeless youth;

"(7) to assist State and local governments in improving the administration of justice for juveniles;

"(8) to assist the State and local governments in reducing the level of youth violence;

"(9) to assist State and local governments in promoting public safety by supporting juvenile delinquency prevention and control activities;

"(10) to encourage and promote programs designed to keep in school juvenile delinquents expelled or suspended for disciplinary reasons;

"(11) to assist State and local governments in promoting public safety by encouraging accountability through the imposition of meaningful sanctions for acts of juvenile delinquency;

"(12) to assist State and local governments in promoting public safety by improving the extent, accuracy, availability and usefulness of juvenile court and law enforcement records and the openness of the juvenile justice system;

"(13) to assist State and local governments in promoting public safety by encouraging the identification of violent and hardcore juveniles and transferring such juveniles out of the jurisdiction of the juvenile justice system and into the jurisdiction of adult criminal court;

"(14) to assist State and local governments in promoting public safety by providing resources to States to build or expand juvenile detention facilities;

"(15) to provide for the evaluation of federally assisted juvenile crime control programs, and training necessary for the establishment and operation of such programs;

"(16) to ensure the dissemination of information regarding juvenile crime control programs by providing a national clearinghouse; and

"(17) to provide technical assistance to public and private nonprofit juvenile justice and delinquency prevention programs.

"(b) STATEMENT OF POLICY.—It is the policy of Congress to provide resources, leadership, and coordination—

"(1) to combat youth violence and to prosecute and punish effectively violent juvenile offenders; and

"(2) to improve the quality of juvenile justice in the United States.

"SEC. 103. DEFINITIONS.

"In this Act:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Office of Juvenile Crime Control and Accountability.

"(2) CONSTRUCTION.—The term 'construction' means acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees but not the cost of acquisition of land for buildings).

"(3) JUVENILE POPULATION.—The term 'juvenile population' means the population of a State under 18 years of age.

"(4) OFFICE.—The term 'Office' means the Office of Juvenile Crime Control and Accountability established under section 201.

"(5) OUTCOME OBJECTIVE.—The term 'outcome objective' means an objective that relates to the impact of a program or initiative, that measures the reduction of high risk behaviors, such as incidence of arrest, the commission of criminal acts or acts of delinquency, failure in school, violence, the use of alcohol or illegal drugs, involvement of youth gangs, and teenage pregnancy, among youth in the community.

"(6) PROCESS OBJECTIVE.—The term 'process objective' means an objective that relates to the manner in which a program or initiative is carried out, including—

"(A) an objective relating to the degree to which the program or initiative is reaching the target population; and

"(B) an objective relating to the degree to which the program or initiative addresses known risk factors for youth problem behaviors and incorporates activities that inhibit the behaviors and that build on protective factors for youth.

"(7) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(8) STATE OFFICE.—The term 'State office' means an office designated by the chief executive officer of a State to carry out this title, as provided in section 507 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3757).

"(9) TREATMENT.—The term 'treatment' includes medical and other rehabilitative services designed to protect the public, including any services designed to benefit addicts and other users by—

"(A) eliminating their dependence on alcohol or other addictive or nonaddictive drugs; or

"(B) controlling their dependence and susceptibility to addiction or use.

"(10) YOUTH.—The term 'youth' means an individual who is not less than 6 years of age and not more than 17 years of age.".

SEC. 1162. YOUTH CRIME CONTROL AND ACCOUNTABILITY BLOCK GRANTS.

(a) OFFICE OF JUVENILE CRIME CONTROL AND ACCOUNTABILITY.—Section 201 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611) is amended—

(1) in subsection (a), by striking "Office of Juvenile Justice and Delinquency Prevention" and inserting "Office of Juvenile Crime Control and Accountability"; and

(2) by adding at the end the following:

"(d) DELEGATION AND ASSIGNMENT.—

"(1) IN GENERAL.—Except as otherwise expressly prohibited by law or otherwise provided by this title, the Administrator may—

"(A) delegate any of the functions of the Administrator, and any function transferred or granted to the Administrator after the date of enactment of this Act, to such officers and employees of the Office as the Administrator may designate; and

"(B) authorize successive redelegations of such functions as may be necessary or appropriate.

"(2) RESPONSIBILITY.—No delegation of functions by the Administrator under this subsection or under any other provision of this title shall relieve the Administrator of responsibility for the administration of such functions.

"(e) REORGANIZATION.—The Administrator may allocate or reallocate any function transferred among the officers of the Office, and establish, consolidate, alter, or discontinue such organizational entities in that Office as may be necessary or appropriate.".

(b) NATIONAL PROGRAM.—Section 204 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614) is amended to read as follows:

"SEC. 204. NATIONAL PROGRAM.

"(a) NATIONAL JUVENILE CRIME CONTROL AND JUVENILE OFFENDER ACCOUNTABILITY PLAN.—

"(1) IN GENERAL.—The Administrator shall develop objectives, priorities, and short- and long-term plans, and shall implement overall policy and a strategy to carry out such plan, for all Federal juvenile crime control and juvenile offender accountability programs and activities relating to improving juvenile crime control and the enhancement of accountability by offenders within the juvenile justice system in the United States.

"(2) CONTENTS OF PLANS.—

"(A) IN GENERAL.—Each plan described in paragraph (1) shall—

"(i) contain specific, measurable goals and criteria for reducing the incidence of crime and delinquency among juveniles, improving juvenile crime control, and ensuring accountability by offenders within the juvenile justice system in the United States, and shall include criteria for any discretionary grants and contracts, for conducting research, and for carrying out other activities under this title;

"(ii) provide for coordinating the administration of programs and activities under this title with the administration of all other Federal juvenile crime control and juvenile offender accountability programs and activities, including proposals for joint funding to be coordinated by the Administrator;

"(iii) provide a detailed summary and analysis of the most recent data available regarding the number of juveniles taken into custody, the rate at which juveniles are taken into custody, and the trends demonstrated by such data.

"(iv) provide a description of the activities for which amounts are expended under this title;

"(v) provide specific information relating to the attainment of goals set forth in the plan, including specific, measurable standards for assessing progress toward national juvenile crime reduction and juvenile offender accountability goals; and

"(vi) provide for the coordination of Federal, State, and local initiatives for the reduction of youth crime and ensuring accountability for juvenile offenders.

"(B) SUMMARY AND ANALYSIS.—Each summary and analysis under subparagraph (A)(iii) shall set out the information required by clauses (i), (ii), and (iii) of this subparagraph separately for juvenile nonoffenders, juvenile status offenders, and other juvenile offenders. Such summary and analysis shall separately address with respect to each category of juveniles specified in the preceding sentence—

"(i) the types of offenses with which the juveniles are charged;

"(ii) the ages of the juveniles;

"(iii) the types of facilities used to hold the juveniles (including juveniles treated as adults for purposes of prosecution) in custody, including secure detention facilities, secure correctional facilities, jails, and lockups; and

"(iv) the number of juveniles who died while in custody and the circumstances under which each juvenile died.

"(3) ANNUAL REVIEW.—The Administrator shall annually—

"(A) review each plan submitted under this subsection;

"(B) revise the plans, as the Administrator considers appropriate; and

"(C) not later than March 1 of each year, present the plans to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) DUTIES OF ADMINISTRATOR.—In carrying out this title, the Administrator shall—

"(1) advise the President through the Attorney General as to all matters relating to federally assisted juvenile crime control and juvenile offender accountability programs, and Federal policies regarding juvenile crime and justice, including policies relating to juveniles prosecuted or adjudicated in the Federal courts;

"(2) implement and coordinate Federal juvenile crime control and juvenile offender accountability programs and activities among Federal departments and agencies and between such programs and activities and other Federal programs and activities that the Administrator determines may have an important bearing on the success of the entire national juvenile crime control and juvenile offender accountability effort;

"(3) provide for the auditing of grants provided pursuant to this title;

"(4) collect, prepare, and disseminate useful data regarding the prevention, correction, and control of juvenile crime and delinquency, and issue, not less frequently than once each calendar year, a report on successful programs and juvenile crime reduction methods utilized by States, localities, and private entities;

"(5) ensure the performance of comprehensive rigorous independent scientific evaluations, each of which shall—

"(A) be independent in nature, and shall employ rigorous and scientifically valid standards and methodologies; and

"(B) include measures of outcome and process objectives, such as reductions in juvenile crime, youth gang activity, youth substance abuse, and other high risk factors, as well as increases in protective factors that reduce the likelihood of delinquency and criminal behavior;

"(6) involve consultation with appropriate authorities in the States and with appropriate private entities in the development, review, and revision of the plans required by subsection (a) and in the development of policies relating to juveniles prosecuted or adjudicated in the Federal courts; and

"(7) provide technical assistance to the States, units of local government, and private entities in implementing programs funded by grants under this title.

"(c) NATIONAL JUVENILE CRIME CONTROL AND JUVENILE OFFENDER ACCOUNTABILITY BUDGET.—

"(1) IN GENERAL.—The Administrator shall—

"(A) develop for each fiscal year, with the advice of the program managers of departments and agencies with responsibilities for any Federal juvenile crime control or juvenile offender accountability program, a consolidated National Juvenile Crime Control and Juvenile Offender Accountability Plan budget proposal to implement the National Juvenile Crime Control and Juvenile Offender Accountability Plan; and

"(B) transmit such budget proposal to the President and to Congress.

"(2) SUBMISSION OF JUVENILE OFFENDER ACCOUNTABILITY BUDGET REQUEST.—

"(A) IN GENERAL.—Each Federal Government program manager, agency head, and department head with responsibility for any Federal juvenile crime control or juvenile offender accountability program shall submit the juvenile crime control and juvenile offender accountability budget request of the program, agency, or department to the Administrator at the same time as such request is submitted to their superiors (and before submission to the Office of Management and Budget) in the preparation of the budget of the President submitted to Congress under section 1105(a) of title 31, United States Code.

"(B) TIMELY DEVELOPMENT AND SUBMISSION.—The head of each department or agency with responsibility for a Federal juvenile crime control or juvenile offender accountability program shall ensure timely development and submission to the Administrator of juvenile crime control and juvenile offender accountability budget requests transmitted pursuant to this subsection, in such format as may be designated by the Administrator with the concurrence of the Administrator of the Office of Management and Budget.

"(3) REVIEW AND CERTIFICATION.—The Administrator shall—

"(A) review each juvenile crime control and juvenile offender accountability budget request transmitted to the Administrator under paragraph (2);

"(B) certify in writing as to the adequacy of such request in whole or in part to implement the objectives of the National Juvenile Crime Control and Juvenile Offender Accountability Plan for the year for which the request is submitted and, with respect to a request that is not certified as adequate to implement the objectives of the National Juvenile Crime Control and Juvenile Offender Accountability Plan, include in the certification an initiative or funding level that would make the request adequate; and

"(C) notify the program manager, agency head, or department head, as applicable, regarding the certification of the Administrator under subparagraph (B).

"(4) RECORDKEEPING REQUIREMENT.—The Administrator shall maintain records regarding certifications under paragraph (3)(B).

"(5) FUNDING REQUESTS.—The Administrator shall request the head of a department or agency to include in the budget submission of the department or agency to the Office of Management and Budget, funding requests for specific initiatives that are consistent with the priorities of the President for the National Juvenile Crime Control and Juvenile Offender Accountability Plan and certifications made pursuant to paragraph (3), and the head of the department or agency shall comply with such a request.

"(6) REPROGRAMMING AND TRANSFER REQUESTS.—

"(A) IN GENERAL.—No department or agency with responsibility for a Federal juvenile crime control or juvenile offender accountability program shall submit to Congress a reprogramming or transfer request with respect to any amount of appropriated amounts greater than $5,000,000 that is included in the National Juvenile Crime Control and Juvenile Offender Accountability Plan budget unless such request has been approved by the Administrator.

"(B) The head of any department or agency with responsibility for a Federal juvenile crime control or juvenile offender accountability program may appeal to the President any disapproval by the Administrator of a reprogramming or transfer request.

"(7) QUARTERLY REPORTS.—The Administrator shall report to Congress on a quarterly basis regarding the need for any reprogramming or transfer of appropriated amounts for National Juvenile Crime Control and Juvenile Offender Accountability Plan activities.

"(d) INFORMATION, REPORTS, STUDIES, AND SURVEYS FROM OTHER AGENCIES.—The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile crime control and juvenile offender accountability program to provide the Administrator with such information and reports, and to conduct such studies and surveys, as the Administrator determines to be necessary to carry out the purposes of this title.

"(e) UTILIZATION OF SERVICES AND FACILITIES OF OTHER AGENCIES; REIMBURSEMENT.—The Administrator may utilize the services and facilities of any agency of the Federal Government and of any other public agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement as may be agreed upon.

"(f) COORDINATION OF FUNCTIONS OF ADMINISTRATOR AND SECRETARY OF HEALTH AND HUMAN SERVICES.—All functions of the Administrator under title shall be coordinated as appropriate with the functions of the Secretary of Health and Human Services under title III.

"(g) ANNUAL JUVENILE DELINQUENCY DEVELOPMENT STATEMENTS.—

"(1) IN GENERAL.—The Administrator shall require through appropriate authority each Federal agency that administers a Federal juvenile crime control and juvenile offender accountability program to submit annually to the Office a juvenile crime control and juvenile offender accountability development statement. Such statement shall be in addition to any information, report, study, or survey that the Administrator may require under subsection (d).

"(2) CONTENTS.—Each development statement submitted to the Administrator under paragraph (1) shall contain such information, data, and analyses as the Administrator may require. Such analyses shall include an analysis of the extent to which the program of the Federal agency submitting such development statement conforms with and furthers Federal juvenile crime control and juvenile offender accountability prevention and treatment goals and policies.

"(3) REVIEW AND COMMENT.—

"(A) IN GENERAL.—The Administrator shall review and comment upon each juvenile crime control and juvenile offender accountability development statement transmitted to the Administrator under paragraph (1).

"(B) INCLUSION IN OTHER DOCUMENTATION.—Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation that significantly affects juvenile crime control and juvenile offender accountability.

"(h) JUVENILE CRIME CONTROL AND JUVENILE OFFENDER ACCOUNTABILITY INCENTIVE BLOCK GRANTS.—

"(1) IN GENERAL.—The Administrator shall make, subject to the availability of appropriations, grants to States to assist them in planning, establishing, operating, coordinating, and evaluating projects, directly or through grants and contracts with public and private agencies, for the development of more effective investigation, prosecution, and punishment (including the imposition of graduated sanctions) of crimes or acts of delinquency committed by juveniles, programs to improve the administration of justice for and ensure accountability by juvenile offenders, and programs to reduce the risk factors (such as truancy, drug or alcohol use, and gang involvement) associated with juvenile crime or delinquency.

"(2) USE OF GRANTS.—Grants under this title may be used—

"(A) for programs to enhance the identification, investigation, prosecution, and punishment of juvenile offenders, such as—

"(i) the utilization of graduated sanctions;

"(ii) the utilization of short-term confinement of juveniles who are charged with or who are convicted of—

"(I) a crime of violence (as that term is defined in section 16 of title 18, United States Code);

"(II) an offense involving a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

"(III) an offense involving possession of a firearm (as that term is defined in section 921(a) of title 18, United States Code); or

"(IV) an offense involving possession of a destructive device (as that term is defined in section 921(a) of title 18, United States Code);

"(iii) the hiring of prosecutors, judges, and probation officers to implement policies to control juvenile crime and ensure accountability of juvenile offenders; and

"(iv) the incarceration of violent juvenile offenders for extended periods of time (including up to the length of adult sentences);

"(B) for programs that provide restitution to the victims of crimes committed by juveniles;

"(C) for programs that require juvenile offenders to attend and successfully complete school or vocational training;

"(D) for programs that require juvenile offenders who are parents to demonstrate parental responsibility by working and paying child support;

"(E) for programs that seek to curb or punish truancy;

"(F) for programs designed to collect, record, and disseminate information useful in the identification, prosecution, and sentencing of offenders, such as criminal history information, fingerprints, and DNA tests;

"(G) for programs that provide that, whenever a juvenile who is not less than 14 years of age is adjudicated delinquent, as defined by Federal or State law in a juvenile delinquency proceeding for conduct that, if committed by an adult, would constitute a felony under Federal or State law, the State shall ensure that a record is kept relating to the adjudication that is—

"(i) equivalent to the record that would be kept of an adult conviction for such an offense;

"(ii) retained for a period of time that is equal to the period of time that records are kept for adult convictions;

"(iii) made available to law enforcement agencies of any jurisdiction; and

"(iv) made available to officials of a school, school district, or postsecondary school where the individual who is the subject of the juvenile record seeks, intends, or is instructed to enroll, and that such officials are held liable to the same standards and penalties that law enforcement and juvenile justice system employees are held liable to, under Federal and State law, for handling and disclosing such information;

"(H) for juvenile crime control and prevention programs (such as curfews, youth organizations, antidrug programs, antigang programs, and after school activities) that include a rigorous, comprehensive evaluation component that measures the decrease in risk factors associated with the juvenile crime and delinquency and employs scientifically valid standards and methodologies;

"(I) for the development and implementation of coordinated multijurisdictional or multiagency programs for the identification, control, supervision, prevention, investigation, and treatment of the most serious juvenile offenses and offenders, sometimes known as a 'SHOCAP Program' (Serious Habitual Offenders Comprehensive Action Program); or

"(J) for the development and implementation of coordinated multijurisdictional or multiagency programs for the identification, control, supervision, prevention, investigation, and disruption of youth gangs.

"(3) REQUIREMENTS.—To be eligible to receive a grant under this title, a State shall make reasonable efforts, as certified by the Governor, to ensure that, not later than July 1, 2000—

"(A) juveniles age 14 and older can be prosecuted under State law as adults, as a matter of law or prosecutorial discretion for a crime of violence (as that term is defined in section 16 of title 18, United States Code) such as murder or armed robbery, an offense involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or the unlawful possession of a firearm (as that term is defined in section 921(a) of title 18, United States Code) or a destructive device (as that term is defined in section 921(a) of title 18, United States Code);

"(B) the State has in place a system of graduated sanctions for juvenile offenders;

"(C) the State has in place a juvenile court system that treats juvenile offenders uniformly throughout the State;

"(D) the State collects, records, and disseminates information useful in the identification, prosecution, and sentencing of offenders, such as criminal history information, fingerprints, and DNA tests (if taken), to other Federal, State, and local law enforcement agencies;

"(E) the State ensures that religious organizations can participate in rehabilitative programs designed to purposes authorized by this title; and

"(F) the State shall not detain or confine juveniles who are alleged to be or determined to be delinquent in any institution in which the juvenile has regular sustained physical contact with adult persons who are detained or confined.

"(j) DISTRIBUTION BY STATE OFFICES TO ELIGIBLE APPLICANTS.—

"(1) IN GENERAL.—Of amounts made available to the State, not more than 20 percent shall be used for programs pursuant to paragraph (2)(ii).

"(2) ELIGIBLE APPLICANTS.—Entities eligible to receive amounts distributed by the State office under this title are—

"(A) a unit of local government;

"(B) local police or sheriff's departments;

"(C) State or local prosecutor's offices;

"(D) State or local courts responsible for the administration of justice in cases involving juvenile offenders;

"(E) schools;

"(F) nonprofit, educational, religious, or community groups active in crime prevention or drug use prevention and treatment; or

"(G) any combination of the entities described in subparagraphs (A) through (F).

"(k) APPLICATION TO STATE OFFICE.—

"(1) IN GENERAL.—To be eligible to receive amounts from the State office, the applicant shall prepare and submit to the State office an application in written form that—

"(A) describes the types of activities and services for which the amount will be provided;

"(B) includes information indicating the extent to which the activities and services achieve the purposes of the title;

"(C) provide for the evaluation component required by subsection (b)(2), which evaluation shall be conducted by an independent entity; and

"(D) provides any other information that the State office may require.

"(2) PRIORITY.—In approving applications under this subsection, the State office should give priority to those applicants demonstrating coordination with, consolidation of, or expansion of existing State or local juvenile crime control and juvenile offender accountability programs.

"(l) FUNDING PERIOD.—The State office may award such a grant for a period of not more than 3 years.

"(m) RENEWAL OF GRANTS.—The State office may renew grants made under this title. After the initial grant period, in determining whether to renew a grant to an entity to carry out activities, the State office shall give substantial weight to the effectiveness of the activities in achieving reductions in crimes committed by juveniles and in improving the administration of justice to juvenile offenders.

"(n) SPECIAL GRANTS.—Of amounts made available under this title in any fiscal year, the Administrator may use—

"(1) not more than 7 percent for grants for research and evaluation;

"(2) not more than 3 percent for grants to Indian tribes for purposes authorized by this title; and

"(3) not more than 5 percent for salaries and expenses of the Office related to administering this title.".

(c) REPEALS; ADMINISTRATIVE PROVISIONS.—Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended—

(1) by striking sections 206 and 207 and inserting the following:

"SEC. 206. ALLOCATION OF GRANTS AND AUTHORIZATION OF APPROPRIATIONS.—

"(a) ALLOCATION OF GRANT AMOUNTS.—

"(1) IN GENERAL.—Amounts made available under section 204(h) or part B shall be allocated to the States as follows:

"(A) 0.25 percent shall be allocated to each State; and

"(B) of the total amount remaining after the allocation under subparagraph (A), there shall be allocated to each State an amount that bears the same ratio to the amount of remaining funds described in this paragraph as the juvenile population of such State bears to the juvenile population of all the States.

"(2) EXCEPTIONS.—The amount allocated to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $75,000 and not more than $100,000.

"(3) REALLOCATION PROHIBITED.—Any amounts appropriated but not allocated due to the ineligibility or nonparticipation of any State shall not be reallocated, but shall revert to the Treasury at the end of the fiscal year for which they were appropriated.

"(4) RESTRICTIONS ON THE USE OF AMOUNTS.—

"(A) EXPERIMENTATION ON INDIVIDUALS.—

"(i) IN GENERAL.—No amounts made available to carry out this title may be used for any biomedical or behavior control experimentation on individuals or any research involving such experimentation.

"(ii) DEFINITION OF 'BEHAVIOR CONTROL'.—In this subparagraph, the term 'behavior control'—

"(I) means any experimentation or research employing methods that—

"(aa) involve a substantial risk of physical or psychological harm to the individual subject; and

"(bb) are intended to modify or alter criminal and other antisocial behavior, including aversive conditioning therapy, drug therapy, chemotherapy (except as part of routine clinical care), physical therapy of mental disorders, electroconvulsive therapy, or physical punishment; and

"(II) does not include a limited class of programs generally recognized as involving no such risk, including methadone maintenance and certain alcohol treatment programs, psychological counseling, parent training, behavior contracting, survival skills training, restitution, or community service, if safeguards are established for the informed consent of subjects (including parents or guardians of minors).

"(B) PROHIBITION AGAINST USE OF AMOUNTS IN CONSTRUCTION.—No amount made available to any public or private agency, or institution or to any individual under this title (either directly or through a State office) may be used for construction, except for minor renovations or additions to an existing structure.

"(C) JOB TRAINING.—No amount made available under this title may be used to carry out a youth employment program to provide subsidized employment opportunities, job training activities, or school-to-work activities for participants.

"(D) LOBBYING.—

"(i) IN GENERAL.—Except as provided in clause (ii), no amount made available under this title to any public or private agency, organization, or institution or to any individual shall be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a Member of Congress or any other Federal, State, or local elected official to favor or oppose any Act, bill, resolution, or other legislation, or any referendum, initiative, constitutional amendment, or any other procedure of Congress, any State legislature, any local council, or any similar governing body.

"(ii) EXCEPTION.—This subparagraph does not preclude the use of amounts made available under this title in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved.

"(E) LEGAL ACTION.—No amounts made available under this title to any public or private agency, organization, institution, or to any individual, shall be used in any way directly or indirectly to file an action or otherwise take any legal action against any Federal, State, or local agency, institution, or employee.

"(F) RELIGIOUS ORGANIZATIONS.—

"(i) IN GENERAL.—The purpose of this subparagraph is to allow State and local governments to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in this title, on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

"(ii) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS.—If a State or local government exercises its authority under religious organizations are eligible, on the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in this title, so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in clause (x), neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

"(iii) RELIGIOUS CHARACTER AND FREEDOM.—

"(I) RELIGIOUS ORGANIZATIONS.—A religious organization that participates in a program authorized by this title shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

"(II) ADDITIONAL SAFEGUARDS.—Neither the Federal Government nor a State shall require a religious organization to—

"(aa) alter its form of internal governance; or

"(bb) remove religious art, icons, scripture, or other symbols;

in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursements, funded under a program described in this title.

"(iv) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—If juvenile offender has an objection to the religious character of the organization or institution from which the juvenile offender receives, or would receive, assistance funded under any program described in this title, the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider.

"(v) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1a) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in this title.

"(vi) NONDISCRIMINATION AGAINST BENEFICIARIES.—Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in this title on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

"(vii) FISCAL ACCOUNTABILITY.—

"(I) IN GENERAL.—Subject to subclause (II), any religious organization contracting to provide assistance funded under any program described in clause (i)(II) shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

"(II) LIMITED AUDIT.—If such organization segregates Federal funds provided under such programs into separate accounts, then only

the financial assistance provided with such funds shall be subject to audit.

"(viii) COMPLIANCE.—Any party which seeks to enforce its rights under this subparagraph may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

"(ix) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.—No funds provided directly to institutions or organizations to provide services and administer programs under this title shall be expended for sectarian worship, instruction, or proselytization.

"(x) PREEMPTION.—Nothing in this subparagraph shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

"(5) PENALTIES.—

"(A) IN GENERAL.—If any amounts are used for the purposes prohibited in either subparagraph (D) or (E) of paragraph (4)—

"(i) all funding for the agency, organization, institution, or individual at issue shall be immediately discontinued;

"(ii) the agency, organization, institution, or individual using amounts for the purpose prohibited in subparagraph (D) or (E) of paragraph (4) shall be liable for reimbursement of all amounts granted to the individual or entity for the fiscal year for which the amounts were granted.

"(B) LIABILITY FOR EXPENSES AND DAMAGES.—In relation to a violation of paragraph (4)(D), the individual filing the lawsuit or responsible for taking the legal action against the Federal, State, or local agency or institution, or individual working for the Government, shall be individually liable for all legal expenses and any other expenses of the government agency, institution, or individual working for the Government, including damages assessed by the jury against the Government agency, institution, or individual working for the government, and any punitive damages.

"(b) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this title—

"(A) $650,000,000 for fiscal year 1998;

"(B) $650,000,000 for fiscal year 1999;

"(C) $650,000,000 for fiscal year 2000;

"(D) $650,000,000 for fiscal year 2001; and

"(E) $650,000,000 for fiscal year 2002.

"(2) ALLOCATION OF APPROPRIATIONS.—Of amounts authorized to be appropriated under paragraph (1) in each fiscal year—

"(A) $500,000,000 shall be for programs under section 204(h); and

"(B) $150,000,000 shall be for programs under part B.

"(3) AVAILABILITY OF FUNDS.—Amounts made available pursuant to this subsection, and allocated pursuant to paragraph (1) in any fiscal year shall remain available until expended.

"SEC. 207. ADMINISTRATIVE PROVISIONS.

"(a) AUTHORITY OF ADMINISTRATOR.—The Office shall be administered by the Administrator under the general authority of the Attorney General.

"(b) APPLICABILITY OF CERTAIN CRIME CONTROL PROVISIONS.—Sections 809(c), 811(a), 811(b), 811(c), 812(a), 812(b), and 812(d) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d(c), 3789f(a), 3789f(b), 3789f(c), 3789g(a), 3789g(b), 3789g(d)) shall apply with respect to the administration of and compliance with this Act, except that for purposes of this Act—

"(1) any reference to the Office of Justice Programs in such sections shall be considered to be a reference to the Assistant Attorney General who heads the Office of Justice Programs; and

"(2) the term 'this title' as it appears in such sections shall be considered to be a reference to this Act.

"(c) APPLICABILITY OF CERTAIN OTHER CRIME CONTROL PROVISIONS.—Sections 801(a), 801(c), and 806 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711(a), 3711(c), and 3787) shall apply with respect to the administration of and compliance with this Act, except that, for purposes of this Act—

"(1) any reference to the Attorney General, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, or the Director of the Bureau of Justice Assistance shall be considered to be a reference to the Administrator;

"(2) any reference to the Office of Justice Programs, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics shall be considered to be a reference to the Office of Juvenile Justice and Delinquency Prevention; and

"(3) the term 'this title' as it appears in such sections shall be considered to be a reference to this Act.

"(d) RULES, REGULATIONS, AND PROCEDURES.—The Administrator may, after appropriate consultation with representatives of States and units of local government, establish such rules, regulations, and procedures as are necessary for the exercise of the functions of the Office and as are consistent with the purpose of this Act.

"(e) WITHHOLDING.—The Administrator shall initiate such proceedings as the Administrator determines to be appropriate if the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this title, finds that—

"(1) the program or activity for which the grant or contract involved was made has been so changed that the program or activity no longer complies with this title; or

"(2) in the operation of such program or activity there is failure to comply substantially with any provision of this title.";

(2) in part B—

(A) in section 221(b)—

(i) in paragraph (1)—

(I) by striking "section 223" and inserting "section 222"; and

(II) by striking "section 223(c)" and inserting "section 222(c)"; and

(ii) in paragraph (2), by striking "section 299(c)(1)" and inserting "section 222(a)(1)"; and

(B) by striking sections 222 and 223 and inserting the following:

"SEC. 222. STATE PLANS.

"(a) IN GENERAL.—In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. The State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

"(1) designate a State agency as the sole agency for supervising the preparation and administration of the plan;

"(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

"(3) provide for the active consultation with and participation of units of general local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of local governments, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies, including religious organizations;

"(4) provide that the chief executive officer of the unit of general local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and administration of the local government's part of the State plan, to that agency within the local government's structure or to a regional planning agency (in this part referred to as the 'local agency') which can most effectively carry out the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;

"(5)(A) provide for—

"(i) an analysis of juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) within the relevant jurisdiction (including any geographical area in which an Indian tribe performs law enforcement functions), a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) of the jurisdiction;

"(ii) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and

"(iii) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;

"(B) contain—

"(i) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services; and

"(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

"(C) contain—

"(i) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particular placements of juveniles in order to receive such services) and of barriers to access to such services; and

"(ii) a plan for providing needed mental health services to juveniles in the juvenile justice system;

"(6) provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, special education,

recreation, health, and welfare within the State;

"(7) provide for the development of an adequate research, training, and evaluation capacity within the State;

"(8) provide that not less than 75 percent of the funds made available to the State pursuant to grants under section 221, whether expended directly by the State, by the unit of general local government, or by a combination thereof, or through grants and contracts with public or private nonprofit agencies, shall be used for—

"(A) community-based alternatives (including home-based alternatives) to incarceration and institutionalization, specifically—

"(i) for youth who can remain at home with assistance, home probation and programs providing professional supervised group activities or individualized mentoring relationships with adults that involve the family and provide counseling and other supportive services;

"(ii) for youth who need temporary placement, crisis intervention, shelter, and aftercare; and

"(iii) for youth who need residential placement, a continuum of foster care or group home alternatives that provide access to a comprehensive array of services;

"(B) community-based programs and services to work with—

"(i) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

"(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the families; and

"(iii) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability;

"(C) comprehensive juvenile justice and delinquency prevention programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services;

"(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth affected by the juvenile justice system;

"(E) educational programs or supportive services for delinquent or other juveniles, provided equitably regardless of sex, race, or family income, designed to—

"(i) encourage juveniles to remain in elementary and secondary schools or in alternative learning situations, including—

"(I) education in settings that promote experiential, individualized learning and exploration of academic and career options;

"(II) assistance in making the transition to the world of work and self-sufficiency;

"(III) alternatives to suspension and expulsion; and

"(IV) programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and

"(ii) enhance coordination with the local schools that such juveniles would otherwise attend, to ensure that—

"(I) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and

"(II) information regarding any learning problems identified in such alternative learning situations are communicated to the schools;

"(F) expanded use of home probation and recruitment and training of home probation officers, other professional and paraprofessional personnel, and volunteers to work effectively to allow youth to remain at home with their families as an alternative to incarceration or institutionalization;

"(G) youth-initiated outreach programs designed to assist youth (including youth with limited proficiency in English) who otherwise would not be reached by traditional youth assistance programs;

"(H) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped youth;

"(I) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth;

"(J) programs and projects designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or nonaddictive drugs;

"(K) law-related education programs (and projects) for delinquent and at-risk youth designed to prevent juvenile delinquency;

"(L) programs for positive youth development that assist delinquent and other at-risk youth in obtaining—

"(i) a sense of safety and structure;

"(ii) a sense of belonging and membership;

"(iii) a sense of self-worth and social contribution;

"(iv) a sense of independence and control over one's life;

"(v) a sense of closeness in interpersonal relationships; and

"(vi) a sense of competence and mastery including health and physical competence, personal and social competence, cognitive and creative competence, vocational competence, and citizenship competence, including ethics and participation;

"(M) programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

"(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

"(ii) assist in the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

"(N) programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration; and

"(O) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and cultural barriers that may prevent the complete treatment of such juveniles and the preservation of their families;

"(9) provide for the development of an adequate research, training, and evaluation capacity within the State;

"(10) provide that the State shall not detain or confine juveniles who are alleged to be or determined to be delinquent in any institution in which the juvenile has regular sustained physical contact with adult persons who are detained or confined;

"(11) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (10) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (10), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;

"(12) provide assurance that youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and mentally, emotionally, or physically handicapping conditions;

"(13) provide assurance that consideration will be given to and that assistance will be available for approaches designed to strengthen the families of delinquent and other youth to prevent juvenile delinquency (which approaches should include the involvement of grandparents or other extended family members when possible and appropriate and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible);

"(14) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

"(15) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this title;

"(16) provide reasonable assurances that Federal funds made available under this part for any period shall be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and shall in no event replace such State, local, and other non-Federal funds; and

"(17) provide that the State agency designated under paragraph (1) will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary.

"(b) APPROVAL BY STATE AGENCY.—The State agency designated under subsection (a)(1) shall approve the State plan and any modification thereof prior to submission to the Administrator.

"(c) APPROVAL BY ADMINISTRATOR; COMPLIANCE WITH STATUTORY REQUIREMENTS.—

"(1) IN GENERAL.—The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section.

"(2) REDUCED ALLOCATIONS.—If a State fails to comply with any requirement of subsection (a)(8) in any fiscal year beginning after January 1, 1998, the State shall be ineligible to receive any allocation under that section for such fiscal year unless—

"(A) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with subsection (a)(4)(C)) for that fiscal year only to achieve compliance with such paragraph; or

"(B) the Administrator determines, in the discretion of the Administrator, that the State—

"(i) has achieved substantial compliance with such paragraph; and

"(ii) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time."; and

(3) by striking parts C, D, E, F, G, and H, and each part designated as part I.

SEC. 1163. RUNAWAY AND HOMELESS YOUTH.

Section 385 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5751) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996" and inserting "1998 and such sums as may be necessary for fiscal years 1999, 2000, 2001, and 2002"; and

(B) by striking paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively;

(2) in subsection (b), by striking "1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996" and inserting "1998 and such sums as may be necessary for fiscal years 1999, 2000, 2001, and 2002"; and

(3) in subsection (c), by striking "1993, 1994, 1995, and 1996" and inserting "1998, 1999, 2000, 2001, and 2002".

SEC. 1164. AUTHORIZATION OF APPROPRIATIONS.

Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5771 et seq.) is amended—

(1) in section 403, by striking paragraph (2) and inserting the following:

"(2) the term 'Administrator' means the Administrator of the Office of Juvenile Crime Control and Accountability.";

(2) by striking section 404; and

(3) in section 408, by striking "1993, 1994, 1995, and 1996" and inserting "1998, 1999, 2000, 2001, and 2002".

SEC. 1165. REPEAL.

Title V of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5781 et seq.) is repealed.

SEC. 1166. TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS.

(a) DEFINITIONS.—In this section, unless otherwise provided or indicated by the context—

(1) the term "Administrator of the Office" means the Administrator of the Office of Juvenile Justice and Delinquency Prevention;

(2) the term "Bureau of Justice Assistance" means the bureau established under section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968;

(3) the term "Administrator" means the Administrator of the Office of Juvenile Crime Control and Accountability established by operation of subsection (b);

(4) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, United States Code;

(5) the term "function" means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program;

(6) the term "Office of Juvenile Crime Control and Accountability" means the office established by operation of subsection (b);

(7) the term "Office of Juvenile Justice and Delinquency Prevention" means the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice, established by section 201 of the Juvenile Justice and Delinquency Prevention Act of 1974, as in effect on the day before the date of enactment of this Act; and

(8) the term "office" includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Juvenile Crime Control and Accountability all functions that the Administrator of the Office exercised before the date of enactment of this Act (including all related functions of any officer or employee of the Office of Juvenile Justice and Delinquency Prevention), and authorized after the enactment of this Act, relating to carrying out the Juvenile Justice and Delinquency Prevention Act of 1974.

(c) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—

(1) IN GENERAL.—Except as otherwise provided in this section and in section 101(a) (relating to Juvenile Justice Programs) of the Omnibus Consolidated Appropriations Act, 1997, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other amounts employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office of Juvenile Crime Control and Accountability.

(2) UNEXPENDED AMOUNTS.—Any unexpended amounts transferred pursuant to this subsection shall be used only for the purposes for which the amounts were originally authorized and appropriated.

(d) INCIDENTAL TRANSFERS.—

(1) IN GENERAL.—The Director of the Office of Management and Budget, at such time or times as the Director of that Office shall provide, may make such determinations as may be necessary with regard to the functions transferred by this section, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other amounts held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out this section.

(2) TERMINATION OF AFFAIRS.—The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this section and for such further measures and dispositions as may be necessary to effectuate the purposes of this section.

(e) EFFECT ON PERSONNEL.—

(1) IN GENERAL.—Except as otherwise provided by this section, the transfer pursuant to this section of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer of such employee under this section.

(2) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this section, any person who, on the day before the date of enactment of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Office of Juvenile Crime Control and Accountability to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(3) TRANSITION RULE.—

(A) IN GENERAL.—The incumbent Administrator of the Office as of the date immediately preceding the date of enactment of this Act shall continue to serve as Administrator after the enactment of this Act until such time as the incumbent resigns, is relieved of duty by the President, or an Administrator is appointed by the President, by and with the advice and consent of the Senate.

(B) NOMINEE.—Not later than 6 months after the date of enactment of this Act, the President shall submit to the Senate for consideration the name of the individual nominated to be appointed as the Administrator.

(f) SAVINGS PROVISIONS.—

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions that are transferred under this section; and

(B) that are in effect at the time this section takes effect, or were final before the date of enactment of this Act and are to become effective on or after the date of enactment of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Administrator, or other authorized official, a court of competent jurisdiction, or by operation of law.

(2) PROCEEDINGS NOT AFFECTED.—

(A) IN GENERAL.—This section shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Office of Juvenile Justice and Delinquency Prevention on the date on which this section takes effect, with respect to functions transferred by this section but such proceedings and applications shall be continued.

(B) ORDERS; APPEALS; PAYMENTS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(C) DISCONTINUANCE OR MODIFICATION.—Nothing in this paragraph shall be construed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent

that such proceeding could have been discontinued or modified if this paragraph had not been enacted.

(3) SUITS NOT AFFECTED.—This section shall not affect suits commenced before the date of enactment of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(4) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Office of Juvenile Justice and Delinquency Prevention, or by or against any individual in the official capacity of such individual as an officer of the Office of Juvenile Justice and Delinquency Prevention, shall abate by reason of the enactment of this section.

(5) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Office of Juvenile Justice and Delinquency Prevention relating to a function transferred under this section may be continued, to the extent authorized by this section, by the Office of Juvenile Crime Control and Accountability with the same effect as if this section had not been enacted.

(g) TRANSITION.—The Administrator may utilize—

(1) the services of such officers, employees, and other personnel of the Office of Juvenile Justice and Delinquency Prevention with respect to functions transferred to the Office of Juvenile Crime Control and Accountability by this section; and

(2) amounts appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(h) REFERENCES.—Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

(1) the Administrator of the Office of Juvenile Justice and Delinquency Prevention with regard to functions transferred by operation of subsection (b), shall be considered to refer to the Administrator of the Office of Juvenile Crime Control and Accountability; and

(2) the Office of Juvenile Justice and Delinquency Prevention with regard to functions transferred by operation of subsection (b), shall be considered to refer to the Office of Juvenile Crime Control and Accountability.

(i) TECHNICAL AND CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code, is amended by striking "Administrator, Office of Juvenile Crime Control and Accountability".

SEC. 1167. REPEAL OF UNNECESSARY AND DUPLICATIVE PROGRAMS.

(a) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—

(1) TITLE III.—Title III of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13741 et seq.) is amended by striking subtitles A through S, subtitle U, and subtitle X.

(2) TITLE V.—Title V of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 3797 et seq.) is repealed.

(3) TITLE XXVII.—Title XXVII of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14191 et seq.) is repealed.

(b) ELEMENTARY AND SECONDARY EDUCATION ACT.—

(1) TITLE IV.—Title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7101) is repealed.

(2) TITLE V.—Part C of title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7261 et seq.) is repealed.

(d) PUBLIC HEALTH SERVICE ACT.—Section 517 of the Public Health Service Act (42 U.S.C. 290bb-23) is repealed.

(e) HUMAN SERVICES REAUTHORIZATION ACT.—Section 408 of the Human Services Reauthorization Act is repealed.

(f) COMMUNITY SERVICES BLOCK GRANTS ACT.—Section 682 of the Community Services Block Grants Act (42 U.S.C. 9901) is repealed.

(g) ANTI-DRUG ABUSE ACT.—Subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801 et seq.) is amended by striking chapters 1 and 2.

SEC. 1168. HOUSING JUVENILE OFFENDERS.

Section 20105(a)(1) of subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(a)(1)) is amended by striking "15" and inserting "30".

SEC. 1169. CIVIL MONETARY PENALTY SURCHARGE.

(a) IMPOSITION.—Subject to subsection (b) and notwithstanding any other provision of law, a surcharge of 40 percent of the principal amount of a civil monetary penalty shall be added to each civil monetary penalty assessed by the United States or any agency thereof at the time the penalty is assessed.

(b) LIMITATION.—This section does not apply to any monetary penalty assessed under the Internal Revenue Code of 1986.

(c) USE OF SURCHARGES.—Amounts collected from the surcharge imposed under this section shall be used for Federal programs to combat youth violence.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—A surcharge under subsection (b) shall be added to each civil monetary penalty assessed on or after the later of October 1, 1997 and the date of enactment of this Act.

(2) EXPIRATION OF AUTHORITY.—The authority to add a surcharge under this subsection shall terminate at the close of September 30, 2002.

By Mr. ASHCROFT (for himself, Mrs. HUTCHISON, Mr. LOTT, Mr. NICKLES, Mr. CRAIG, Ms. COLLINS, Mr. DEWINE, Mr. ALLARD, Mr. BROWNBACK, Mr. CHAFEE, Mr. COATS, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. THURMOND, Mr. WARNER, Mr. COVERDELL, and Mr. JEFFORDS):

S. 4. A bill to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes; to the Committee on Labor and Human Resources.

THE FAMILY FRIENDLY WORKPLACE ACT

Mr. ASHCROFT. Mr. President, I am delighted to have the opportunity to file, in conjunction with Senators HUTCHISON, LOTT, NICKLES, CRAIG, COLLINS, ENZI, GRASSLEY, COATS, WARNER, HELMS, B. SMITH, and GRAMM, the Family Friendly Workplace Act. This is an important piece of legislation, which should free our families from inflexible work schedules in order to meet the competing demands of the workplace and their families.

This demand for our time, which stresses us and stretches us, has been recognized by people on both sides of the political aisle. As a matter of fact, the Clinton administration's Labor Department developed a report to the Nation and to the President called "Working Women Count." In order to do so, they surveyed hundreds of thousands of working women. And the conclusion of the report is as follows:

The number one issue women want to bring to the President's attention is the difficulty of balancing work and family obligations.

The Family Friendly Workplace Act is a way of helping people do just that—meet their responsibilities to their employers and meet their responsibilities to their families. Frankly, it is a way of doing it without taking a pay cut.

Now, some have suggested that the way to do this is to have a family leave policy that allows workers to simply take time off work without pay. Well, that really exacerbates some of the tension in most of our families, because we have financial tension as well as this social tension that stretches us between the workplace and the home place. And so, really, what we have in the Family Friendly Workplace Act is the ability to have flexible working schedules at the option of the employee and at the request of the employee, when the employer will agree, that allows a person, for instance, to take time off on Friday afternoon and to make it up on Monday.

Most Americans don't realize it, but it is against the law for an employer to agree with his employee that the employee can take time off on Friday afternoon to see his daughter get an award at the local high school and to make up that same time on Monday. The strict laws about hours and overtime make it difficult for that to happen, make it impossible, make it illegal.

Those laws were developed in the 1930's. They put a lot of stress on American families. In the 1930's, we didn't have so many working mothers. One out of every 6 mothers of school-aged children worked in the 1930's, and well over 70 percent of them work in the 1990's. As we move to the next century, it is time for us to revamp our approach and to welcome the next century by accommodating these competing demands.

Flexible work arrangements have been available to Federal Government workers since 1978—in the 1970's, 1980's, and 1990's, Government workers have had a special privilege. The Federal program has been so successful that the President of the United States, by Executive order in 1993 extended it to parts of the Federal Government that had not yet had the benefits of that program. It is high time that the workers in the private sector of this country enjoy the same benefits of agreeing with their employers on flexible working arrangements at the option of the worker, never to be imposed by the employer, which would allow the worker to accommodate the competing needs and demands of family and the workplace.

Allowing workplace flexibility is a tremendous step forward. It has been asked for by the women of America as reflected in the Clinton administration document. It has been written about, like this Time Magazine article featuring the difficulties of Lori Lucas, a single mother, working full-time in Shrewsbury, Missouri. The President of the United States has talked about flextime and the need to have it, and it is time for us to deliver it to the American people—albeit 15 or more years after we delivered it to the workers in the FederalGovernment.

I believe that working women know what they need. Working Women Magazine and Working Mother magazines have endorsed it, and is time to have those flexible working arrangements. Working Women Magazine said in its support of this legislation, that it is time for Congress to give women what they want, and not what you Congress thinks they need.

Similarly, when parents spend time at work, they can never replace that time with their families no matter how much overtime they may bring home. Sometimes people would like, instead of being paid time and a half for overtime, to take time and a half off sometime later in order to spend time with their families. That is another part of this bill—to allow people to take as compensation for overtime—compensatory time instead of money. While it would allow a worker to ask for the money, the worker would have a complete, unchallenged and unfettered right to be paid money for the overtime.

This bill is really designed to give workers choices and the opportunity to choose to be with their families instead of being forced to take their overtime in money. For some workers, there comes a point when no matter how much money they have, they simply want and need to be able to spend some time with their families.

I am delighted that I have been joined in this particular endeavor in developing this legislation by one of the individuals who is most careful regarding the rights, options and choices of individuals not only in the workplace but as American citizens. I would like to yield to the Senator from Texas, Senator HUTCHISON, who is the primary cosponsor of this legislation, the Family Friendly Workplace Act, and to call upon her for remarks.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Texas is recognized.

Mrs. HUTCHISON. Thank you, Mr. President. I thank the Senator from Missouri for providing leadership on this very important issue. He was out there fighting for this issue from the first day he came to the Senate, and he has certainly demonstrated his commitment to family flexibility throughout his Government career.

I am reminded of the speech that I heard my friend, Congresswoman SUSAN MOLINARI, give this summer. Congresswoman MOLINARI is a working mom. She says what we need most as working moms in this country is more hours in the day. Senator ASHCROFT and I would like to provide more hours in the day. That is not an option for us. But we are going to do something that we think will be second best to producing more hours in a day for a working mom or a working dad who wants to work or is forced to work to make ends meet, either way, but yet also wants more time with his or her children.

This bill will primarily benefit the hourly employees in our country. Because salaried employees are presently exempt from many federal wage and hour laws, this is not as much an issue for them. They and their employers are able to work out flexible work arrangements. But in the hourly category, employers and employees do not have that option. They are not able to do what anybody would think in this country is common sense; and that is sit down and say, "Could I work 2 extra hours on Friday in order to take off at 3 o'clock to go to the PTA meeting on Monday?" That is what Senator ASHCROFT and I would like to do with the Family Friendly Workplace Act that we have introduced today.

It is a fact that in two-thirds of the households in this country, both the mother and the father are working. In fact, 75 percent of the mothers of young children are now in the workplace. So we must address the ever-increasing demands on working moms and working dads—to allow them to have more time to do what they need to do to bring their families together and to keep them close-knit. This requires going to the PTA meetings, going to the afternoon basketball game, or to the soccer game, or whatever it is that will allow that family to bond together and maintain its strength, thereby strengthening our country. We all know that the family unit is the core strength of our nation, and if we allow that to deteriorate, then nothing else is going to matter. In the history of civilization, no country has ultimately survived where the family unit has deteriorated.

That is why we are looking for creative ways to help the working family—and in this case it is the hourly wage working families who are struggling the hardest to make ends meet—to be able to do what they need to do for their families while maintaining a good working relationship with their employers and preserving their family income.

The bill that Senator ASHCROFT and I are introducing today will relieve stress in the family by allowing the employer and the hourly employee to sit down and negotiate to, for example, take off two hours today and work an additional two hours the following week, or perhaps to work an extra hour every day and bank that time for use when a family need arises, or to work required overtime and have a choice about whether they take time-and-a-half compensation or time and a half hours because then they can bank that time and do even more with their families.

In fact, there was a poll conducted by Penn & Shoen and Associates that revealed that 75 percent of all employees would like to have the ability to choose between getting time-and-a-half in either wages or time. Fifty-seven percent would take time off instead of being paid, if the option were available.

So why not make these options available? The Family Friendly Workplace Act makes these options available, on a totally voluntary basis. There are strict requirements in this law that will keep employers from in any way requiring or coercing an employee to work and not take overtime pay. We wantto make sure that does not happen. That is why the law is written very carefully to make sure that it could not happen, and that it will only give employees and employers the ability to voluntarily sit down and do what they think make sense for their schedules and needs.

Let me also mention that where there are union agreements in effect, this law will not affect those agreements. This legislation does not encroach on the collective bargaining of unions in any way. Rather, it would apply to employees who are not in unions who now are restricted by a wage-and-hour law that says you cannot have the option of working a couple of hours on Friday in order to take off at 3 o'clock on Monday. That is exactly what Senator ASHCROFT and I seek to enact with this legislation.

I commend Senator ASHCROFT for his leadership in this area. We are going to work with our colleagues on both sides of the aisle and on both sides of the Rotunda to enact this very important legislation. We must grant hourly wage

employees who have families in this country and the same options that people on salaries and, indeed, that federal employees already have.

Thank you, Mr. President. I yield back to the Senator from Missouri.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I thank the Senator from Texas for her sensitivity on this issue and for her commitment to it. I know she is dedicated to helping resolve this. There is simply no reason why the Government of the United States should put a barrier between the employers and employees of America who want to resolve stresses and strengths. We should have laws that allow people to reach these judgments about flexibly and allocating time, with adequate protection which are enforcement mechanisms through the Department of Labor.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 4

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 "Family Friendly Workplace Act".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to assist working people in the United States;

(2) to balance the demands of workplaces with the needs of families;

(3) to provide such assistance and balance such demands by allowing employers to offer compensatory time off, which employees may voluntarily elect to receive, and to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

(4) to give private sector employees the same benefits of compensatory time off, biweekly work schedules, and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

SEC. 3. WORKPLACE FLEXIBILITY OPTIONS.

(a) COMPENSATORY TIME OFF.—

(1) IN GENERAL.—Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

"(r) COMPENSATORY TIME OFF FOR PRIVATE EMPLOYEES.—

"(1) GENERAL RULE.—

"(A) COMPENSATORY TIME OFF.—An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which monetary overtime compensation is required by this section.

"(B) DEFINITION.—For purposes of this subsection, the term 'employee' does not include an employee of a public agency.

"(2) CONDITIONS.—An employer may provide compensatory time off to employees under paragraph (1)(A) only pursuant to the following:

"(A) Such time may be provided only in accordance with—

"(i) applicable provisions of a collective bargaining agreement between the employer and the representative of the employees recognized as provided in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)); or

"(ii) in the case of employees who are not represented by a labor organization recognized as provided in section 9(a) of the National Labor Relations Act, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if such agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

"(B) If such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

"(C) If the employee has not accrued compensatory time off in excess of the limit applicable to the employee prescribed by paragraph (3).

"(3) HOUR LIMIT.—

"(A) MAXIMUM HOURS.—An employee may accrue not more than 240 hours of compensatory time off.

"(B) COMPENSATION DATE.—Not later than January 31 of each calendar year, the employee's employer shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (6). An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

"(C) EXCESS OF 80 HOURS.—The employer may provide monetary compensation for an employee's unused compensatory time off in excess of 80 hours at any time after giving the employee at least 30 days' notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

"(D) POLICY.—An employer that has adopted a policy offering compensatory time off to employees may discontinue such policy upon giving employees 30 days' notice.

"(E) WRITTEN REQUEST.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time. An employee may also request in writing that monetary compensation be provided, at any time, for all compensatory time off accrued that has not yet been used. Within 30 days after receiving the written request, the employer shall provide the employee the monetary compensation due in accordance with paragraph (6).

"(4) PROHIBITION OF COERCION.—

"(A) IN GENERAL.—An employer that provides compensatory time off under paragraph (1) to employees shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of—

"(i) interfering with the rights of the employee under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation for overtime hours; or

"(ii) requiring the employee to use such compensatory time off.

"(B) DEFINITION.—As used in subparagraph (A), the term 'intimidate, threaten, or coerce' has the meaning given the term in section 13A(d)(3)(B).".

(2) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(A) in subsection (b), by striking "(b) Any employer" and inserting "(b) Except as provided in subsection (f), any employer"; and

(B) by adding at the end the following:

"(f)(1) An employer that violates section 7(r)(4) shall be liable to the employee affected in an amount equal to—

"(A) the product of—

"(i) the rate of compensation (determined in accordance with section 7(r)(6)(A)); and

"(ii)(I) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee; minus

"(II) the number of such hours used by the employee; and

"(B) as liquidated damages, the product of—

"(i) such rate of compensation; and

"(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

"(2) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17, including a criminal penalty under subsection (a) and a civil penalty under subsection (e).".

(3) CALCULATIONS AND SPECIAL RULES.—Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by paragraph (1), is amended by adding at the end the following:

"(5) TERMINATION OF EMPLOYMENT.—An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time off in accordance with paragraph (6).

"(6) RATE OF COMPENSATION FOR COMPENSATORY TIME OFF.—

"(A) GENERAL RULE.—If compensation is to be paid to an employee for accrued compensatory time off, such compensation shall be paid at a rate of compensation not less than—

"(i) the regular rate received by such employee when the compensatory time off was earned; or

"(ii) the final regular rate received by such employee,

whichever is higher.

"(B) CONSIDERATION OF PAYMENT.—Any payment owed to an employee under this subsection for unused compensatory time off shall be considered unpaid monetary overtime compensation.

"(7) USE OF TIME.—An employee—

"(A) who has accrued compensatory time off authorized to be provided under paragraph (1); and

"(B) who has requested the use of such compensatory time off,

shall be permitted by the employer of the employee to use such time within a reasonable period after making the request if the use of the compensatory time off does not unduly disrupt the operations of the employer.

"(8) DEFINITIONS.—The terms 'monetary overtime compensation' and 'compensatory time off' shall have the meanings given the terms 'overtime compensation' and 'compensatory time', respectively, by subsection (o)(7).".

(4) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published at 29 C.F.R. 516.4, to

employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 to employees so that such notice reflects the amendments made to such Act by this subsection.

(b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.—

(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following new section:

"SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOUR PROGRAMS.

"(a) PURPOSES.—The purposes of this section are—

"(1) to assist working people in the United States;

"(2) to balance the demands of workplaces with the needs of families;

"(3) to provide such assistance and balance such demands by allowing employers to establish biweekly work programs and flexible credit hour programs, in which employees may voluntarily participate; and

"(4) to give private sector employees the same benefits of biweekly work schedules and flexible credit hours as have been enjoyed by Federal Government employees since 1978.

"(b) BIWEEKLY WORK PROGRAMS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

"(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

"(B) in which more than 40 hours of the work requirement may occur in a week of the period.

"(2) COMPUTATION OF OVERTIME.—In the case of an employee participating in such a biweekly work program, all hours worked in excess of such a biweekly work schedule or in excess of 80 hours in the 2-week period, that are requested in advance by an employer, shall be overtime hours.

"(3) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

"(4) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7 or any other provision of law that relates to premium pay for overtime work, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

"(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, an employer may establish flexible credit hour programs, under which, at the election of an employee, the employer and the employee jointly designate hours for the employee to work that are in excess of the basic work requirement of the employee so that the employee can accumulate flexible credit hours to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

"(2) COMPUTATION OF OVERTIME.—In the case of an employee participating in such a flexible credit hour program, all hours worked in excess of 40 hours in a week that are requested in advance by an employer, other than flexible credit hours, shall be overtime hours.

"(3) OVERTIME COMPENSATION PROVISION.—The employee shall be compensated for each such overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1), or receive compensatory time off in accordance with section 7(r) for each such overtime hour.

"(4) COMPENSATION FOR FLEXIBLE CREDIT HOURS.—Notwithstanding section 7 or any other provision of law that relates to premium pay for overtime work, an employee shall be compensated for each flexible credit hour at a rate not less than the regular rate at which the employee is employed.

"(5) ACCUMULATION AND COMPENSATION.—

"(A) ACCUMULATION OF FLEXIBLE CREDIT HOURS.—An employee who is participating in such a flexible credit hour program can accumulate not more than 50 flexible credit hours.

"(B) COMPENSATION FOR FLEXIBLE CREDIT HOURS OF EMPLOYEES NO LONGER SUBJECT TO PROGRAM.—Any employee who was participating in such a flexible credit hour program and who is no longer subject to such a program shall be paid at a rate not less than the regular rate at which the employee is employed on the date the employee receives such payment, for not more than 50 flexible credit hours accumulated by such employee.

"(C) COMPENSATION FOR ANNUALLY ACCUMULATED FLEXIBLE CREDIT HOURS.—

"(i) IN GENERAL.—Not later than January 31 of each calendar year, the employer of an employee who is participating in such a flexible credit hour program shall provide monetary compensation for any flexible credit hours accumulated as described in subparagraph (A) during the preceding calendar year that were not used prior to December 31 of the preceding calendar year at a rate not less than the regular rate at which the employee is employed on the date the employee receives such payment.

"(ii) DIFFERENT 12-MONTH PERIOD.—An employer may designate and communicate to the employees of the employer a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

"(d) PARTICIPATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

"(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists, an employee may only be required to participate in such a program in accordance with the agreement.

"(3) PROHIBITION OF COERCION.—

"(A) IN GENERAL.—An employer may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of such employee under this section to elect or not to elect to work a biweekly work schedule, to elect or not to elect to participate in a flexible credit hour program, or to elect or not to elect to work flexible credit hours (including working flexible credit hours in lieu of overtime hours).

"(B) DEFINITION.—As used in subparagraph (A), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"(e) APPLICATION OF PROGRAMS IN THE CASE OF COLLECTIVE BARGAINING AGREEMENTS.—

"(1) APPLICABLE REQUIREMENTS.—In the case of employees in a unit represented by an exclusive representative, any biweekly work program or flexible credit hour program described in subsection (b) or (c), respectively, and the establishment and termination of any such program, shall be subject to the provisions of this section and the terms of a collective bargaining agreement between the employer and the exclusive representative.

"(2) INCLUSION OF EMPLOYEES.—Employees within a unit represented by an exclusive representative shall not be included within any program under this section except to the extent expressly provided under a collective bargaining agreement between the employer and the exclusive representative.

"(3) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this section shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefits program or plan that provides lesser or greater rights to employees than the benefits established under this section.

"(f) DEFINITIONS.—As used in this section:

"(1) BASIC WORK REQUIREMENT.—The term 'basic work requirement' means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

"(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the exclusive representative of employees in an appropriate unit to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

"(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

"(4) ELECTION.—The term 'at the election of', used with respect to an employee, means at the initiative of, and at the request of, the employee.

"(5) EMPLOYEE.—The term 'employee' means an employee, as defined in section 3, except that the term shall not include an employee, as defined in section 6121(2) of title 5, United States Code;".

"(6) EMPLOYER.—The term 'employer' means an employer, as defined in section 3, except that the term shall not include any person acting in relation to an employee, as defined in section 6121(2) of title 5, United States Code.

"(7) EXCLUSIVE REPRESENTATIVE.—The term 'exclusive representative' means any labor organization that—

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to Federal law; or

"(B) was recognized by an employer immediately before the date of enactment of this section as the exclusive representative of employees in an appropriate unit—

"(i) on the basis of an election; or

"(ii) on any basis other than an election;

and continues to be so recognized.

"(8) FLEXIBLE CREDIT HOURS.—The term 'flexible credit hours' means any hours,

within a flexible credit hour program established under subsection (c), that are in excess of the basic work requirement of an employee and that, at the election of the employee, the employer and the employee jointly designate for the employee to work so as to reduce the hours worked in a week or a day subsequent to the day on which the flexible credit hours are worked.

"(9) OVERTIME HOURS.—The term 'overtime hours'—

"(A) when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved or in excess of 80 hours in the 2-week period involved, that are requested in advance by an employer.

"(B) when used with respect to flexible credit hour programs under subsection (c), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

"(10) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).".

(2) PROHIBITIONS.—

(A) PURPOSES.—The purposes of this paragraph are to make violations of the biweekly work program and flexible credit hour program provisions by employers unlawful under the Fair Labor Standards Act of 1938, and to provide for appropriate remedies for such violations, including, as appropriate, fines, imprisonment, injunctive relief, and appropriate legal or equitable relief, including liquidated damages.

(B) REMEDIES AND SANCTIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended by inserting before the semicolon the following: ", or to violate any of the provisions of section 13A".

(c) LIMITATIONS ON SALARY PRACTICES RELATING TO EXEMPT EMPLOYEES.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

"(m)(1)(A) In the case of a determination of whether an employee is an exempt employee described in subsection (a)(1), the fact that the employee is subject to deductions in compensation for—

"(i) absences of the employee from employment of less than a full workday; or

"(ii) absences of the employee from employment of less than a full pay period,

shall not be considered in making such determination.

"(B) In the case of a determination described in subparagraph (A), an actual reduction in compensation of the employee may be considered in making the determination.

"(C) For the purposes of this paragraph, the term 'actual reduction in compensation' does not include any reduction in accrued paid leave, or any other practice, that does not reduce the amount of compensation an employee receives for a pay period.

"(2) The payment of overtime compensation or other additions to the compensation of an employee employed on a salary based on hours worked shall not be considered in determining if the employee is an exempt employee described in subsection (a)(1).".

Mr. JEFFORDS. Mr. President, I am pleased to rise in support of S. 4, the "Family Friendly Workplace Act of 1997." This legislation is designed to address the very pressing and legitimate needs of working families for more flexibility in their workplaces.

We all know how difficult it is for working parents to balance the demands of work and family responsibilities. There are soccer games, parent-teacher conferences, and doctor's appointments that demand a few hours of time during the workweek. Our workplace laws should allow workers the flexibility to work a few extra hours one week, in order to take time off later when they need to for family or personal reasons.

Ironically, current law inhibits more flexible schedules and compensation programs. While this may come as a surprise, it is really not all that hard to understand why. The world of the workplace has undergone a revolution in the last 60 years.

In the 1930's, as the Roosevelt administration and the Congress sought to establish minimum wage and overtime standards, the last thing on their minds was finding free time for workers. With as much as one-third of the work force unemployed, the problem was far too much free time, not too little. The purpose of premium pay for overtime work was not to enrich already-employed workers, but to spread work to the unemployed, in effect reducing free time.

The story of a woman from Poultney, Vermont, near my home town, brought this home to me. She was employed as a school teacher in the midst of the Depression, and had the further good fortune to fall in love and get married to a man who was also employed. Upon her marriage, she quickly resigned from her job. When asked why decades later, she explained it was simply understood that you would not have two full-time jobs in one family.

Such taboos today are little more than an interesting historical footnote. With the rise of single parent families and two-parent families in which both spouses work, it is incredibly difficult to balance the demands of work and family. That difficulty is increased by the Fair Labor Standards Act [FLSA] which was not designed with today's circumstances in mind. The law's minimum wage and overtime protections are just as important today as they were when enacted, but the law needs to be adjusted to the workplace of the 21st century.

For example, the FLSA bars private employers from offering employees the choice of receiving overtime in the form of compensatory time off instead of cash wages. While Federal and public sector workers have had this option since 1985, private sector workers do not. Many employees do not necessarily want money as much as time to address family needs. A recent public opinion poll conducted by Penn & Schoen Associates found that workers strongly favor more flexibility in their work schedules. Seventy-five percent of those surveyed said they would prefer the option to choose to be compensated for overtime with compensatory time off or cash overtime.

Now some of my colleagues may be familiar with what seems to be a contradictory poll conducted by Lake Research which found that nearly two-thirds of poll respondents opposed the policy we propose. Frankly, I would, too, if it was anything like what was described in the poll's question.

The Lake Research poll describes compensatory time off as the employer's decision. It is not. It describes biweekly scheduling as the employer's decision. It is not. Indeed, the poll's question concludes by saying: Employers could schedule you to work 60 hours one week and 20 hours the next, but you would not earn overtime pay. Do you support or oppose such a policy?

It comes as no surprise that most people would not support such a policy. As my colleagues know, you can structure a question on a poll to yield just about any result you want. This is a pretty good example of just that.

What is interesting to me is that even when faced with such a slanted presentation, one-third of the people either supported such a policy or were unsure. It stands toreason that when presented with the facts—that is, that each of these proposals is predicated on the employee's decision, not the employer's—three quarters of Americans support having the option of taking time off instead of cash.

This bill incorporates provisions which passed the House of Representatives last year that would allow the payment of overtime with compensatory time off at a rate of 1.5 hours for each hour worked over 40 in a workweek. Just like in the public sector, however, no employee could be forced to accept comp time off instead of being paid for overtime. A written agreement between the employer and the employee is required, and there are strong penalties against any employer who coerces, intimidates, or threatens workers into accepting such an agreement.

Not all employees want to work a traditional 8-hour day, 5 days a week, with no variation. Some employees would prefer to trade hours between weeks—e.g. work 45 hours one week, 35 hours the next and take every other Friday off—or shift to a schedule that compresses many hours at the front end of the week so that they can put together several days off later. However, companies would have to pay workers overtime for any hours over 40 in the first week, even if the employee would prefer to flex his or her schedule. Currently, only Federal workers can flex their schedules without their employer being subject to the overtime penalty.

S. 4 would remove this limitation and permit employers and employees to mutually agree on a flexible, biweekly schedule consisting of any combination

of 80 hours over a 2-week period. As with the comp time provisions, nothing would be forced upon the employer or the employee. If they agreed on such schedules, the employee could trade hours over a 2-week period without violating the FLSA. Any hours in excess of 80 hours would still be paid at 1.5 times the employee's regular rate of pay. If it's good enough for Federal workers, it's good enough for all workers.

Finally, this bill corrects a flexibility problem for salaried workers in both the private and the public sectors. In many instances, salaried employees who want to take a few hours off for personal or family reasons must choose between two equally undesirable options: either to use a portion of their paid leave, that is, vacation or sick leave, or take a full day off without pay. If the employer grants an employee a few hours of unpaid leave—or merely has a policy which permits it—all the salaried employees may lose their exempt status under the FLSA.

Thus, a policy that allows for a partial day of unpaid leave can convert an exempt worker to a nonexempt one who is then owed overtime, even if the worker has a six-figure income and is employed at the highest levels of the company. Multiply this over an entire salaried work force, and the liability to public and private employers soars into the billions of dollars.

This bizarre situation does not apply, however, if an employee is taking leave pursuant to the Family and Medical Leave Act of 1993 [FMLA]. This bill would merely extend this practice to accommodate the desire of many salaried employees to take time off for reasons other than family and medical leave, or for employees who work for small companies. In order to provide maximum flexibility to all salaried workers who wish to take partial day leave under any circumstances, this bill would clarify that salaried workers do not lose their exempt status under the FLSA as long as there has not been an actual reduction in pay. In effect, this provision would encourage the very type of leave that President Clinton feels needs to be accommodated in our workplace laws.

Mr. President, the Senate Committee on Labor and Human Resources and its Subcommittee on Employment and Training, chaired by Senator DEWINE, will thoroughly and deliverately review and debate these proposals in the coming weeks. I am hopeful that we will reach agreement on the need to provide workers with more flexibility in their work arrangements, and will pass legislation that will achieve this goal.

By Mr. ASHCROFT (for himself, Mr. MCCAIN, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. BROWNBACK, Mr. CHAFEE, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. NICKLES, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SMITH of New Hampshire, Mr. THOMAS, Mr. THURMOND, Mr. WARNER, Mr. COATS, Mr. LUGAR, Mr. GRAMM, Mr. KEMPTHORNE, and Mrs. HUTCHISON):

S. 5. A bill to establish legal standards and procedures for product liability litigation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PRODUCT LIABILITY REFORM ACT OF 1997

Mr. ASHCROFT. Mr. President, let me quickly encapsulate this important piece of legislation for the American people.

Last year, in a bipartisan effort, we succeeded, and this year this bill is sponsored by a group of individuals including the chairman of the Commerce Committee, Senator MCCAIN, Senator LOTT, Senator COVERDELL, Senator MCCONNELL, Senator ABRAHAM, and Senator GRAMM, and I believe that we will again this year have a bipartisan approach. I have already spoken with a number of the people who were active in this measure—Senator GORTON, Senator ROCKEFELLER, Senator LIEBERMAN, and Senator DODD—about last year's approach. We again have introduced a similar bill. This is a step on the road of reforming the legal system to provide reason and rationality where the legal system, the tort system has been out of control.

Three years ago, for general aviation, the private airplane business, the small plane business, we passed a law which provided a framework of responsibility which put that part of the tort system back under control. People poohpoohed the idea. They said, "It won't help; it won't work to pass such a law." But we are now again building such airplanes in the United States. There are 9,000 new jobs in that industry alone because we made that decision, and the quality of the airplanes is better than it has ever been before. We have not deprived anyone of the capacity to receive compensatory damages as a result of inferior products or defects in products, and we want to extend the tort reform effort which began with general aviation a step further.

The second step we took last year, in 1996, when we enacted securities law tort reform. And that law went into effect this last year. So it is now time for us, having done the general aviation portion of legal reform and tort reform and having moved from that to the securities law, to move to manufacturing generally in the product liability area. It is not an attempt to curtail compensatory damages. People who are injured should be compensated for their injuries. But it is an attempt to bring sanity and reason to an out-of-control tort system which is hurting the quality of our products, stifling innovation and making it very difficult for some industries to survive here. I need not tell most folks that they have already made these kinds of adjustments in the European Economic Community and, of course, by our competition in the Pacific Rim.

This is another step forward in tort reform, and I commend those who have agreed to help us in this respect. I look forward to working with Senators on the other side of the aisle. The President of the United States has repeatedly reiterated his desire to sign a good bill in this respect and we will be fashioning a bill this year. The bill which we have signed is the conference report from last year's effort which passed both Houses of the Congress, and it will provide a place holder as we assemble good legislation this year which we can send to the President and urge him to sign.

Mr. President, I thank you for the opportunity to introduce these two measures, S. 4 and S. 5.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Product Liability Reform Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purposes.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Definitions.
Sec. 102. Applicability; preemption.
Sec. 103. Liability rules applicable to product sellers, renters, and lessors.
Sec. 104. Defense based on claimant's use of intoxicating alcohol or drugs.
Sec. 105. Misuse or alteration.
Sec. 106. Uniform time limitations on liability.
Sec. 107. Alternative dispute resolution procedures.
Sec. 108. Uniform standards for award of punitive damages.
Sec. 109. Liability for certain claims relating to death.
Sec. 110. Several liability for noneconomic loss.
Sec. 111. Workers' compensation subrogation.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

Sec. 201. Short title.
Sec. 202. Findings.
Sec. 203. Definitions.
Sec. 204. General requirements; applicability; preemption.
Sec. 205. Liability of biomaterials suppliers.
Sec. 206. Procedures for dismissal of civil actions against biomaterials suppliers.

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

Sec. 301. Effect of court of appeals decisions.
Sec. 302. Federal cause of action precluded.
Sec. 303. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) our Nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy;

(2) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services;

(3) the rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the States, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce;

(4) as a result of excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the marketplace, and from excessive liability costs passed on to them through higher prices;

(5) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability jeopardize the financial well-being of many individuals as well as entire industries, particularly the Nation's small businesses and adversely affects government and taxpayers;

(6) the excessive costs of the civil justice system undermine the ability of American companies to compete internationally, and serve to decrease the number of jobs and the amount of productive capital in the national economy;

(7) the unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, volunteers, and nonprofit organizations to protect themselves from liability with any degree of confidence and at a reasonable cost;

(8) because of the national scope of the problems created by the defects in the civil justice system, it is not possible for the States to enact laws that fully and effectively respond to those problems;

(9) it is the constitutional role of the national government to remove barriers to interstate commerce and to protect due process rights; and

(10) there is a need to restore rationality, certainty, and fairness to the civil justice system in order to protect against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

(b) PURPOSES.—Based upon the powers contained in Article I, Section 8, Clause 3 and the Fourteenth Amendment of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce and to uphold constitutionally protected due process rights by—

(1) establishing certain uniform legal principles of product liability which provide a fair balance among the interests of product users, manufacturers, and product sellers;

(2) placing reasonable limits on damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in civil actions;

(4) reducing the unacceptable costs and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; and

(5) establishing greater fairness, rationality, and predictability in the civil justice system.

TITLE I—PRODUCT LIABILITY REFORM

SEC. 101. DEFINITIONS.

For purposes of this title—

(1) ACTUAL MALICE.—The term "actual malice" means specific intent to cause serious physical injury, illness, disease, death, or damage to property.

(2) CLAIMANT.—The term "claimant" means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—The term "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS.—The term "commercial loss" means any loss or damage solely to a product itself, loss relating to a dispute over its value, or consequential economic loss, the recovery of which is governed by the Uniform Commercial Code or analogous State commercial or contract law.

(6) COMPENSATORY DAMAGES.—The term "compensatory damages" means damages awarded for economic and non-economic loss.

(7) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which has a normal life expectancy of 3 or more years, or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986 and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(8) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(9) HARM.—The term "harm" means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss.

(10) INSURER.—The term "insurer" means the employer of a claimant if the employer is self-insured or if the employer is not self-insured, the workers' compensation insurer of the employer.

(11) MANUFACTURER.—The term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who (i) designs or formulates the product (or component part of the product), or (ii) has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes or constructs and designs, or formulates, or has engaged another person to design or formulate, an aspect of the product (or component part of the product) made by another person; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(12) NONECONOMIC LOSS.—The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(13) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(14) PRODUCT.—

(A) IN GENERAL.—The term "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state which—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

(ii) electricity, water delivered by a utility, natural gas, or steam except to the extent that electricity, water delivered by a utility, natural gas, or steam, is subject, under applicable State law, to a standard of liability other than negligence.

(15) PRODUCT LIABILITY ACTION.—The term "product liability action" means a civil action brought on any theory for harm caused by a product.

(16) PRODUCT SELLER.—

(A) IN GENERAL.—The term "product seller" means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term "product seller" does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the

essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(17) PUNITIVE DAMAGES.—The term "punitive damages" means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(18) STATE.—The term "State" means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) PREEMPTION.—

(1) IN GENERAL.—This Act governs any product liability action brought in any State or Federal court on any theory for harm caused by a product.

(2) ACTIONS EXCLUDED.—A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law applies to an issue covered by this title. Any issue that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by otherwise applicable State or Federal law.

(c) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant;

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product—

(A) if the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) if the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product which allegedly caused the claimant's harm.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101(16)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

(d) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this section, but shall be subject to any applicable State law.

SEC. 104. DEFENSE BASED ON CLAIMANT'S USE OF INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—In any product liability action, it shall be a complete defense to such action if—

(1) the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug when the accident or other event which resulted in such claimant's harm occurred; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for such accident or other event.

(b) CONSTRUCTION.—For purposes of subsection (a)—

(1) the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law; and

(2) the term "drug" means any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that was not legally prescribed for use by the claimant or that was taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

SEC. 105. MISUSE OR ALTERATION.

(a) GENERAL RULE.—

(1) IN GENERAL.—In a product liability action, the damages for which a defendant is otherwise liable under Federal or State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the claimant's harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, a defendant's express warnings or instructions if the warnings or instructions are adequate as determined pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this Act, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) WORKPLACE INJURY.—Notwithstanding subsection (a), and except as otherwise provided in section 111, the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any coemployee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

SEC. 106. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered—

(A) the harm that is the subject of the action; and

(B) the cause of the harm.

(2) EXCEPTION.—A person with a legal disability (as determined under applicable law) may file a product liability action not later than 2 years after the date on which the person ceases to have the legal disability.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this Act concerning a product, that is a durable good, alleged to have

caused harm (other than toxic harm) may be filed after the 15-year period beginning at the time of delivery of the product to the first purchaser or lessee.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 15-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire, shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety or life expectancy of the specific product involved which was longer than 15 years, but it will apply at the expiration of that warranty.

(C) Paragraph (1) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action not later than 1 year after the date of enactment of this Act.

SEC. 107. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action may, not later than 60 days after the service of—

(1) the initial complaint; or

(2) the applicable deadline for a responsive pleading;

whichever is later, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in subsection (c), not later than 10 days after the service of an offer to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(c) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (b), extend the period for filling a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b). Discovery may be permitted during such period.

SEC. 108. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant if the claimant establishes by clear and convincing evidence that conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action in any product liability action.

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded in an action described in subsection (a) may not exceed the greater of—

(A) 2 times the sum of the amount awarded to the claimant for economic loss and noneconomic loss; or

(B) $250,000.

(2) SPECIAL RULE.—Notwithstanding paragraph (1), in any action described in subsection (a) against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer that 25 full-time employees, the punitive damages shall not exceed the lesser of—

(A) 2 times the sum of the amount awarded to the claimant for economic loss and noneconomic loss; or

(B) $250,000.

For the purpose of determining the applicability of this paragraph to a corporation, the number of employees of a subsidiary or wholly-owned corporation shall include all employees of a parent or sister corporation.

(3) EXCEPTION FOR INSUFFICIENT AWARD IN CASES OF EGREGIOUS CONDUCT.—

(A) DETERMINATION BY COURT.—If the court makes a determination, after considering each of the factors in subparagraph (B), that the application of paragraph (1) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of punitive damages (referred to in this paragraph as the "additional amount") in excess of the amount determined in accordance with paragraph (1) to be awarded against the defendant in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION.—In any proceeding under paragraph (A), the court shall consider—

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the conduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant; and

(viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected, including—

(I) compensatory and punitive damage awards to similarly situated claimants;

(II) the adverse economic effect of stigma or loss of reputation;

(III) civil fines and criminal and administrative penalties; and

(IV) stop sale, cease and desist, and other remedial or enforcement orders.

(C) REQUIREMENTS FOR AWARDING ADDITIONAL AMOUNT.—If the court awards an additional amount pursuant to this subsection, the court shall state its reasons for setting the amount of the additional amount in findings of fact and conclusions of law.

(D) PREEMPTION.—This section does not create a cause of action for punitive damages and does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages. Nothing in this subsection shall modify or reduce the ability of courts to order remittiturs.

(4) APPLICATION BY COURT.—This subsection shall be applied by the court and application of this subsection shall not be disclosed to the jury. Nothing in this subsection shall authorize the court to enter an award of punitive damages in excess of the jury's initial award of punitive damages.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party the trier of fact in any action that is subject to this section shall consider in a separate proceeding, held subsequent to the determination of the amount of compensatory damages, whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 109. LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 108, but only during such time as the State law so provides. This section shall cease to be effective September 1, 1997.

SEC. 110. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 111. WORKERS' COMPENSATION SUBROGATION.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this Act.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A),

the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this Act, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN NOTIFICATION.—Except as provided in subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the insurer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this Act, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the insurer.

(B) RIGHTS OF INSURER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an insurer shall, in the same manner as any party in the action (even if the insurer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is submitted to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the "Biomaterials Access Assurance Act of 1997".

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term "biomaterials supplier" means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf of or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR OR INCOMPETENT.—With respect to an action brought on behalf of or through a minor or incompetent, such term includes the parent or guardian of the minor or incompetent.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional health care services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a person acting in the capacity of a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term "component part" means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant non-implant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term "harm" means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term "implant" means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term "manufacturer" means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term "medical device" means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and includes any device component of any combination product as that term is used in section 503(g) of such Act (21 U.S.C. 353(g)).

(8) RAW MATERIAL.—The term "raw material" means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term "seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to

dismiss in accordance with section 206(c)(3)(B)(ii) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related seller meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j), and received clearance from the Secretary if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action against it on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2)(B)(i) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (2) of section 205(d).

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b)(3)(A) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 301. EFFECT OF COURT OF APPEALS DECISIONS.

A decision by a Federal circuit court of appeals interpreting a provision of this Act (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 302. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 303. EFFECTIVE DATE.

This Act shall apply with respect to any action commenced on or after the date of the enactment of this Act without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

Mr. MCCAIN. Mr. President, the Product Liability Reform Act of 1997 overhauls an unfair and inefficient product liability system for the benefit of American consumers and entrepreneurs. The text of this bill will be familiar to all Senators who are veterans of the 104th Congress: it is the conference report that Congress approved last year. Unfortunately, President Clinton vetoed that conference report, but I want to remind my colleagues that the President said in his veto statement "I support real common sense product liability reform." Well, Mr. President, we will soon again hold your words to task.

The introduction of this bill today, as one of the first 10 bills introduced in the Congress, is an indication of the importance of the legislation and the priority that we place on its consideration. The text of the Conference Report has been introduced because it is the last action Congress took on this matter.

Now members from both sides of the aisle will undertake bipartisan discussions and diverse viewpoints will be addressed. In the last Congress Senator GORTON and Senator ROCKEFELLER did an excellent job in developing a bipartisan consensus to pass this legislation. I appreciate their hard work and dedication. Their efforts will be called on again. Senator ASHCROFT has assumed the chairmanship of the subcommittee with jurisdiction over this bill and I know he will be a valuable asset as this legislation advances.

As we address this important legislation I look forward to working with the President as well. The President's veto statement outlined some of his concerns with the conference report. In my opinion, many of those concerns can be addressed easily and directly. Other issues, such as reform of punitive damages and joint and several liability, will require meaningful discussions.

I am nevertheless hopeful that those negotiations will succeed. I am encouraged that the President has strongly indicated his support for meaningful product liability reform. I recall that in the first Presidential debate with Senator Dole, in October 1996, the President said, when discussing product liability, "we're going to eliminate frivolous lawsuits, I'll sign the bill." In that debate, the President reminded the public that he has supported tort reform in the past. In 1994, the President signed the General Aviation Revitalization Act which, by instituting a statute of repose, truly revitalized a withering industry and in the process created hundreds of high quality jobs.

As this legislation moves forward, I remind my colleagues that we must not let the perfect be the enemy of the good. Much is at stake. Federal liability legislation is urgently needed. The present system in the United States for resolving product liability actions is costly, slow, inequitable and unpredictable. I find it shocking that the system's transaction costs exceed the compensation paid to individuals who have sustained injury. These transaction costs are inevitably passed on to consumers through higher product prices. The inefficiency and unpredictability of the product liability system has also stifled innovation, kept beneficial products off the market, and has handicapped American firms as they compete in a global market.

Consumers who are legitimately injured suffer most from this broken system. Many consumers who are injured by defective products and are in need of compensation are unable to recover damages or must wait years to recover them. They are thrown into a product liability litigation system where identical cases can produce shockingly different results. Sadly, severely injured victims tend to receive far less than their actual economic losses, while those with minor injuries often are dramatically overcompensated. This legislation will help fix this broken system. I feel it is important to emphasize that this legislation will greatly benefit consumers and it will not bar the door to the court house or limit the compensatory damages that an injuredplaintiff can receive.

The malfunctions of this system are particularly evident in the area of biomaterials where valuable life-saving products are kept from consumers. I was introduced to this issue when the Ransom family in Mesa, AZ wrote to me about their daughter's desperate need for a specialized brain shunt. They were concerned this life-saving device may not be available for their daughter because companies were no longer willing to supply the raw materials necessary due to the high risk of being unjustifiably sued.

In the last Congress, Senator LIEBERMAN and I introduced legislation to address this problem. That legislation, the Biomaterials Access Assurance Act, became part of the product liability bill and was included in the Conference Report of the bill. In the closing weeks of the last Congress, Senator LIEBERMAN and I proposed a version of our bill that excluded breast implant litigation from its coverage. I expect the legislation advanced in this Congress will also contain that exclusion for breast implant litigation. I look forward to working closely with Senator LIEBERMAN on this matter.

I hope that bipartisan negotiations begin in earnest on The Product Liability Reform Act. It is my desire to have this legislation be the first bill reported in this Congress by the Committee on Commerce, Science, and Transportation.

Mr. ABRAHAM. Mr. President, I rise today in support of S. 5, a bill to reform product liability law. This legislation will significantly curb the epidemic of frivolous lawsuits that are diverting our Nation's resources away from productive activity and into transaction costs.

Our current legal system, under which we spend $300 billion or 4½ percent of our gross domestic product each year, is not just broken, it is falling apart. This is a system in which plaintiffs receive less than half of every dollar spent on litigation-related costs. It is a system that forces necessary goods, such as pharmaceuticals that can treat a number of debilitating diseases and conditions, off the market in this country.

The bill I cosponsor today would do much to address these problems. It institutes caps on punitive damages, thereby limiting potential windfalls for plaintiffs without in any way interfering with their ability to obtain full recovery for their injuries. It provides product manufacturers with long-overdue relief from abusers of their products. And it protects these makers, and sellers, from being made to pay for all or most noneconomic damages when they are responsible for only a small percentage of them.

Last year, President Clinton chose to veto the bipartisan products liability bill that passed the Congress. For the sake of all Americans, I hope this year will be different.

Mr. ASHCROFT. Mr. President, today is an exciting day as I introduce, along with Senators MCCAIN, COVERDELL, MCCONNELL, and ABRAHAM, S. 5, the Product Liability Fairness Act of 1997.

Justice Holmes once wisely observed that a page of history is worth a volume of logic. With respect to the effort to enact product liability law, we have hundreds of pages of history and volumes of logic to support its enactment now.

The effort of the Federal Government to address product liability goes back almost two decades when President Ford established the Federal Inter-Agency Task Force on Product Liability. Although administration changed, President Carter did not abandon the effort, but enhanced it with resulting research that supports what we do today. President Carter chartered the drafting of the Model Uniform Product Liability Act, which tentatively was offered as a vehicle for state action.

Product liability legislation has been reported out of the Senate Commerce Committee seven times. Last Congress, legislation and a conference report containing many compromises and bipartisan agreements was voted upon favorably in each House. A bipartisan majority of the Senate approved the conference report on March 21, 1996.

The bill that we introduce today is that conference report. I appreciate that today's bill reflects a bill one that was vetoed by President Clinton. But, we are not here today to simply repeat history. We are here to make history and provide Americans with fair product liability legislation.

We are introducing the same bill as a "place marker" for discussions and a fair resolution of issues. The President's veto message suggested that he well may have been misinformed about the nature of the legislation passed by bipartisan majorities last year. Let us have discussions to clarify those matters so that the legislation is unequivocal in its meaning and purpose.

We are resolved to work with the White House to obtain the President's support. I take the President at his word when he said in the Presidential debate on October 6, 1996, "I signed a tort reform bill that dealt with civil aviation a couple of years ago. I proved that I will sign a reasonable tort reform."

It is interesting that the President referred to the General Aviation Revitalization Act of 1994, which he did sign on August 17, 1994. The aviation liability reform bill enacted a statute of repose for general aviation aircraft. In 1994, proponents of the bill said that it would produce jobs. It has. To date, over 9,000 new jobs, good jobs, have been created. Single engine aircraft are being manufactured in America again, and an endangered industry has been revitalized. President Clinton was right to support that bill.

What did opponents say in 1994 aviation bill? They said that no new jobs would be produced. And, they said that if planes were produced, they would be unsafe and, in hyperbole, suggested that they might be made of balsa wood. What actually happened? I already mentioned that 9,000 new jobs have been created. You should also know that the aircraft being made by American workers are the safest single engine aircraft produced in the history of this country.

Let us bring the results of the General Aviation Revitalization Act of 1994 to the broad segments of our country and industries.

We introduce this bill to stimulate job growth. We introduce this bill to remove the chilling effects that prevent the introduction of good and useful products. We introduce this bill to encourage new product development. On the other hand, it is our goal to assure that anyone that makes dangerous and defective products is appropriately sanctioned by our tort law.

From the perspective of many, this bill is a very modest one. From their perspective, there is a need to have liability reform in other crucial areas, such as: general punitive reform, medical liability reform, and volunteers' liability reform.

The principles contained in this bill are a good starting point to make the productliability laws in this nation fair for consumers who purchase defective products while placing the burden on those responsible for placing these products in the stream of commerce. It also ensures that those who misuse products, or use them while under the influence of drugs or alcohol, do not collect a windfall which becomes a burden for American consumers in the form of increased costs for products—useful products that are no longer available in the market, and the loss of jobs and greater opportunities.

This bill in no way limits compensatory damages. This bill would not affect the ability of plaintiffs to sue manufacturers or sellers of medical implants. It would, however, allow raw material suppliers to be dismissed from lawsuits if the generic raw material used in the medical device met contract specifications, and if the biomaterial supplier is not classified as either a manufacturer or seller of the implant.

Strong product liability reform is good for America. It ensures that consumers, injured by a product, will be fairly compensated. It will enhance American innovation, which is the best in the world, by treating responsible entrepreneurs fairly while treating the bad actors harshly and to the full extent of the law.

As chairman of the Consumer Affairs Subcommittee I am committed and look forward to working with this administration toward ending the 20-year study and painstaking endeavor to provide our Nation with sound and fair Federal product liability law. It took the European community about 6 years to accomplish this goal and create the European product liability directive. Japan enacted its first product liability reform law almost 2 years ago.

Our Nation, this Congress, and this administration should pull together and meet the challenge of our foreign competitors and enact fair and balanced product liability law. In that spirit and for that purpose, we introduce S. 5.

By Mr. SANTORUM (for himself and Mr. SMITH of New Hampshire):

S. 6. A bill to amend title 18, United States Code, to ban partial-birth abortions; to the Committee on the Judiciary.

THE PARTIAL-BIRTH BAN ACT OF 1997

Mr. SANTORUM. Mr. President, the agenda for the 105th Congress reflects a continuance of the very significant debate that occurred in the 104th Congress on the issue of partial birth abortion.

Four months ago, we debated and considered a presidential veto override on a bill to ban the partial birth abortion procedure. On a final vote, we came very close to banning this very gruesome procedure, and the number of colleagues who supported the override set the stage for consideration again this year.

A wide spectrum of individuals have coalesced around the effort to ban partial birth abortions. These varied individuals and groups have raised their voices in support of a ban both because of the brutality of partial birth abortions and because they recognize that this debate is not about Roe vs. Wade, the 1973 Supreme Court decision legalizing abortion. It is not about when a fetus becomes a baby. And it is certainly not about women's health. It is about infanticide, it is about killing a child as he or she is being born, an issue that neither Roe vs. Wade nor the subsequent Doe vs. Bolton decision addressed.

During the Senate debate last year, various traditionally pro-choice legislators voted in support of legislation to ban this particular procedure. Among them was a colleague who stated on the floor of the Senate, "In my legal judgement, the issue is not over a woman's right to choose within the constitutional context of Roe versus Wade. * * * The line of the law is drawn, in my legal judgement, when the child is partially out of the womb of the mother. It is no longer abortion; it is infanticide." He was joined in these sentiments by other like minded Senators.

This perspective is significant in that it suggests the scope of the tragedy that this procedure represents. And for those who may still be unclear what a partial birth abortion procedure is, it is this: a fully formed baby—in most cases a viable fetus of 23–26 weeks—is pulled from its mother until all but the head is delivered. Then, scissors are plunged into the base of the skull, a tube is inserted and the child's brains are suctioned out so that the head of the now-dead infant collapses and is delivered.

Partial birth abortion is tragic for the infant who loses his or her life in

this brutal procedure. It is also a personal tragedy for the families who choose the procedure, as it is for those who perform it—even if they aren't aware of it. But partial birth abortion is also a profound social tragedy. It rips through the moral cohesion of our public life. It cuts into our most deeply held beliefs about the importance of protecting and cherishing vulnerable human life. It fractures our sense that the laws of our country should reflect long-held, commonly accepted moral norms.

Yet this kind of tragedy—even as it calls forth and exposes our outrage—can be an unexpected catalyst for consensus, for new coalitions and configurations in our public life. The partial birth abortion debate moves us beyond the traditional lines of confrontation to hollow out a place in the public square where disparate individuals and groups can come together and draw a line that they know should not be crossed.

The stark tragedy of partial birth abortion can be the beginning of a significant public discussion where we define—or re-define—our first principles. Why is such a discussion important? Precisely because it throws into relief the fundamental truths around which a moral consensus is formed in this country. And, as John Courtney Murray reminds us in "We Hold These Truths, Catholic Reflections on the American Proposition", a public consensus which finds its expression in the law should be "an ensemble of substantive truths, a structure of basic knowledge, an order of elementary affirmations* * *".

If we do not have fundamental agreement about first principles, we simply cannot engage one another in civil debate. All we have is the confusion of different factions locked in their own moral universe. If we could agree publicly on just this one point—that partial birth abortion is not something our laws should sanction, and if we could then reveal the consensus—a consensus that I know exists—against killing an almost-born infant, we would have significantly advanced the discussion about what moral status and dignity we give to life in all its stages. Public agreement, codified by law, on this one prohibition gives us a common point of departure. It give us a common language even, because we agree, albeit in a narrow sense, on the meaning of fundamental terms such as life and death. And it is with this common point of departure and discourse—however narrow—that we gain a degree of coherence and unity in our public life and dialogue.

I truly believe that out of the horror and tragedy of partial birth abortions, we can find points of agreement across ideological, political and religious lines which enable us to work toward a life-sustaining culture. So, as hundreds of thousands of faithful and steadfast citizens come together to participate in this year's March for Life, let us remember that such a culture, the culture for which we hope and pray daily, might very well be achieved one argument at a time.

Mr. President, I am proud to have the opportunity to sponsor this legislation and to continue the very significant achievements of my colleague, Senator BOB SMITH. I look forward to continuing that effort in cooperation with Representative CHARLES CANADY, and I thank my colleagues for making this initiative a priority in our legislative agenda.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 6

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 "Partial-Birth Abortion Ban Act of 1997".

SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 73 the following:

"CHAPTER 74—PARTIAL BIRTH ABORTIONS

"Sec.
"1531. Partial-birth abortions prohibited.

"§ 1531. Partial-birth abortions prohibited

"(a) Whoever, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus or infant shall be fined under this title or imprisoned not more than two years, or both.

"(b) Subsection (a) does not apply to a partial-birth abortion that is necessary to save the life of a mother because her life is endangered by a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, if no other medical procedure would suffice for that purpose.

"(c) As used in this section—

"(1) the term 'partial-birth abortion' means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the infant and completing the delivery; and

"(2) the terms 'fetus' and 'infant' are interchangeable.

"(d)(1) Unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion, the father, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus or infant, may in a civil action obtain appropriate relief.

"(2) Such relief shall include—

"(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

"(B) statutory damages equal to three times the cost of the partial-birth abortion; even if the mother consented to the performance of an abortion.

"(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section for a conspiracy to violate this section, or an offense under section 2, 3, or 4 of this title based on a violation of this section.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

"75. Partial-birth abortions ..... 1531".

Mr. ABRAHAM. Mr. President, I rise today to cosponsor S. 6. In doing so I add my voice to the chorus calling for an end to partial birth abortion. The bill we are considering is designed to outlaw medical procedures "in which the person performing the abortion partially delivers a living fetus before killing the fetus and completing the delivery." It is a narrowly drafted bill which specifically and effectively targets a rare but grisly and unnecessary practice.

I understand, Mr. President, that the American people are divided on many issues within the abortion debate. I am firmly pro-life. But in my view one need not resort to broad, ideological arguments in this case. Partial birth abortions occur only in the third trimester of pregnancy. They are never required to save the life, health, or child-bearing ability of the mother. They are unnecessary and regrettable.

We in this chamber failed to override the President's veto of this legislation during the last Congress. But I remain convinced that all of us can agree that this Nation can do without this particular, rare, and grisly procedure. I urge my colleagues to support this legislation.

By Mr. LOTT (for himself, Mr. THURMOND, Mr. SMITH of New Hampshire, Mr. WARNER, Mr. KYL, Mr. COCHRAN, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mrs. HUTCHISON, Mr. HUTCHINSON, Mr. INHOFE, Mr. MURKOWSKI, Mr. NICKLES, Mr. SESSIONS, and Mr. KEMPTHORNE):

S. 7. A bill to establish a U.S. policy for the deployment of a national missile defense system, and for other purposes; to the Committee on Armed Services.

THE NATIONAL MISSILE DEFENSE ACT OF 1997

Mr. LOTT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 7

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 "National Missile Defense Act of 1997".

SEC. 2. NATIONAL MISSILE DEFENSE POLICY.

(a) NATIONAL MISSILE DEFENSE.—It is the policy of the United States to deploy by the end of 2003 a National Missile Defense system that—

(1) is capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate); and

(2) could be augmented over time to provide a layered defense against larger and more sophisticated ballistic missile threats if they emerge.

(b) COOPERATIVE TRANSITION.—It is the policy of the United States to seek a cooperative transition to a regime that does not feature an offense-only form of deterrence as the basis for strategic stability.

SEC. 3. NATIONAL MISSILE DEFENSE SYSTEM ARCHITECTURE.

(a) REQUIREMENT FOR DEVELOPMENT OF SYSTEM.—To implement the policy established in section 3(a), the Secretary of Defense shall develop for deployment a National Missile Defense (NMD) system which shall achieve an initial operational capability (IOC) by the end of 2003.

(b) ELEMENTS OF THE NMD SYSTEM.—The system to be developed for deployment shall include the following elements:

(1) INTERCEPTORS.—An interceptor system that optimizes defensive coverage of the continental United States, Alaska, and Hawaii against limited ballistic missile attack (whether accidental, unauthorized, or deliberate).

(2) GROUND-BASED RADARS.—Fixed ground-based radars.

(3) SPACE-BASED SENSORS.—Space-based sensors, including the Space and Missile Tracking System.

(4) BM/C³.—Battle management, command, control, and communications (BM/C³).

SEC. 4. IMPLEMENTATION OF NATIONAL MISSILE DEFENSE SYSTEM.

The Secretary of Defense shall—

(1) upon the enactment of this Act, promptly initiate required preparatory and planning actions that are necessary so as to be capable of meeting the initial operational capability (IOC) date specified in section 3(a);

(2) not later than the end of fiscal year 1999, conduct an integrated systems test which uses elements (including BM/C³ elements) that are representative of, and traceable to, the national missile defense system architecture specified in section 3(b);

(3) prescribe and use streamlined acquisition policies and procedures to reduce the cost and increase the efficiency of developing the system specified in section 3(a); and

(4) develop a national missile defense follow-on program that—

(A) leverages off of the national missile defense system specified in section 3(a); and

(B) could augment that system, if necessary, to provide for a layered defense.

SEC. 5. REPORT ON PLAN FOR NATIONAL MISSILE DEFENSE SYSTEM DEVELOPMENT AND DEPLOYMENT.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the Secretary's plan for development and deployment of a national missile defense system pursuant to this Act. The report shall include the following matters:

(1) The Secretary's plan for carrying out this Act, including—

(A) a detailed description of the system architecture selected for development under section 3(b); and

(B) a discussion of the justification for the selection of that particular architecture.

(2) The Secretary's estimate of the amount of appropriations required for research, development, test, evaluation, and for procurement, for each of fiscal years 1998 through 2003 in order to achieve the initial operational capability date specified in section 3(a).

(3) A determination of the point at which any activity that is required to be carried out under this Act would conflict with the terms of the ABM Treaty, together with a description of any such activity, the legal basis for the Secretary's determination, and an estimate of the time at which such point would be reached in order to meet the initial operational capability date specified in section 3(a).

SEC. 6. POLICY REGARDING THE ABM TREATY.

(a) ABM TREATY NEGOTIATIONS.—In light of the findings in section 232 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 102-106; 110 Stat. 228, 10 U.S.C. 2431 note) and the policy established in section 2, Congress urges the President to pursue, if necessary, high-level discussions with the Russian Federation to achieve an agreement to amend the ABM Treaty to allow deployment of the national missile defense system being developed for deployment under section 3.

(b) REQUIREMENT FOR SENATE ADVICE AND CONSENT.—If an agreement described in subsection (a) is achieved in discussions described in that subsection, the President shall present that agreement to the Senate for its advice and consent. No funds appropriated or otherwise available for any fiscal year may be obligated or expended to implement such an amendment to the ABM Treaty unless the amendment is made in the same manner as the manner by which a treaty is made.

(c) ACTION UPON FAILURE TO ACHIEVE NEGOTIATED CHANGES WITHIN ONE YEAR.—If an agreement described in subsection (a) is not achieved in discussions described in that subsection within one year after the date of the enactment of this Act, the President and Congress, in consultation with each other, shall consider exercising the option of withdrawing the United States from the ABM Treaty in accordance with the provisions of Article XV of that treaty.

SEC. 7. DEFINITIONS.

In this Act:

(1) ABM TREATY.—The term "ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, and signed at Moscow on May 26, 1972, and includes the Protocols to that Treaty, signed at Moscow on July 3, 1974.

(2) LIMITED BALLISTIC MISSILE ATTACK.—The term "limited ballistic missile attack" refers to a limited ballistic missile attack as that term is used in the National Ballistic Defense Capstone Requirements Document, dated August 24, 1996, that was issued by the United States Space Command and validated by the Joint Requirements Oversight Council of the Department of Defense.

Mr. HELMS. Mr. President, the Defend America Act of 1997 is a vital piece of legislation—one which provides a clear and concise blueprint for protecting the American people from the growing threat of attack from ballistic missiles carrying nuclear, chemical, or biological warheads.

It is critical that the United States begin immediately the 8-year task of building and deploying a national missile defense. I am grateful to the distinguished majority leader, Mr. LOTT, for introducing this bill and I am honored to join him as a cosponsor.

Just over a year ago the Clinton administration vetoed the 1996 Defense Authorization Act. In his veto message, the President explicitly objected to the missile defense provisions of the act. At that time, along with others, I found it beyond belief that the administration could arrive at the decision to block the deployment of a national missile defense. I remember wondering, given the fact that North Korea is known to be developing a missile capable of striking United States cities, how such a decision could be made.

The chairman of the National Intelligence Council, Richard Cooper, testified before the House National Security Committee on February 28, 1996, that ". . . North Korea is developing a missile, which we call the Taepo Dong 2, that could have a range sufficient to reach Alaska. The missile may also be capable of reaching some U.S. territories in the Pacific and the far western portion of the 2,000-km-long Hawaiian Island chain."

What Mr. Cooper did not add was the fact that nations can and have increased the ranges of their ballistic missiles by reducing payloads.

Mr. President, a September 29, 1995, article in the Washington Times reported that the Defense Intelligence Agency has estimated that the Taepo Dong 2 could, in fact, have a range of 4,650 miles and, with a smaller warhead, could reach 6,200 miles—approximately 10,000 km. Similarly, a September 11, 1995, article in a South Korean newspaper stated that Russia believes that once the Taepo Dong 2's inertial navigation system, warhead weight, and fuel injection devices are improved, the missile could reach over 9,600 kilometers. At those ranges, the Taepo Dong 2 could drop a nuclear or biological warhead on U.S. cities as far east as Denver or Minneapolis.

Mr. President, I ask unanimous consent that these two articles be printed in the RECORD.

Second, I cannot fathom why the Clinton administration objected to the deployment of a national missile defense in light of Red China's bellicose words and deeds. China fields of dozens of submarine-launched ballistic missiles, hundreds of warheads on heavy bombers, roughly 24 medium- and long-range ballistic missiles, and has several crash modernization initiatives in progress. Moreover, China intends to deploy, by the end of the century, four new types of ballistic missiles. Furthermore, the United States has very clear indications that Red China is at this moment pursuing MIRV-technology.

Mr. President, this is the same country, mind you, that flexed its military

might by conducting live missile-firing exercises in the Strait of Taiwan in an obviously intentional effort to bully and cower a valued and longstanding ally of the United States. This is the same country that issued thinly-veiled threats this spring suggesting that nuclear weapons would be used against the United States if the United States intervened on behalf of Taiwan. Assistant Secretary of State Winston Lord acknowledged that Chinese officials had declared that the United States "wouldn't dare defend Taiwan because they—China—would rain nuclear bombs on Los Angeles."

Now, if this was not nuclear blackmail, it will do while the Clinton administration folds its hands until the first nuclear missile hits the West Coast of the United States. China's ability to hold the United States hostage to such threats is made possible by the fact that a band of latter-day Luddites here in Washington have consistently refused even to consider building the very strategic missile defenses necessary to protect the American people from such an attack.

Mr. President, it is time for the defenders of the ABM Treaty to give up their pious devotion to an antiquated arms control theology, and to come to grips with the realities of the post-cold-war world. Dr. Henry Kissinger—the architect of the ABM Treaty—put it best when he recently wrote: "The end of the cold war has made * * * a strategy [of mutually assured destruction (MAD)] largely irrelevant. Barely plausible when there was only one strategic opponent, the theory makes no sense in a multipolar world of proliferating nuclear powers."

Dr. Kissinger went on to note specifically that MAD would not work against blackmail with nuclear weapons. Yet that is exactly what we faced when China blatantly threatened Los Angeles.

The truth of the matter is that no amount of policy reformulation by the Clinton administration can change the fact that the United States is vulnerable to nuclear-tipped missiles fielded by China, or any one else. Rectifying this dangerous deficiency requires leadership and action. It is an all the more pressing issue because the current course charted by the administration fails to recognize the inherent danger in China's pursuit of an advanced nuclear arsenal.

Mr. President, any further delay in the development of the United States of a flexible, cost-effective national missile defense is unconscionable. I am honored to be a cospsonor of the Defend America Act and urge Senators to support this legislation to ensure that the American people are protected from attack by ballistic missiles.

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

[From the Washington Times, Sept. 29, 1995]

NORTH KOREAN MISSILE COULD REACH UNITED STATES, INTELLIGENCE WARNS

(By Bill Gertz)

The Western United States could be within range of North Korea's longest-range missile armed with nuclear, chemical or biological warheads by the year 2000, according to U.S. and foreign intelligence assessments.

Sen. Jon Kyl, Arizona Republican, said new information indicates North Korea's Taepo Dong-2 missile, still under development, is an intercontinental ballistic missile (ICBM) capable of hitting U.S. cities and demonstrates the need for rapidly building a national missile defense.

A South Korean intelligence official, quoting a Russian assessment said the Taepo Dong-2 will be deployed by 2000 with a maximum range of 6,200 miles once warhead modifications and technical improvements are made, the newspaper Seoul Shinmun reported Sept. 11.

Mr. Kyl, a member of the Senate Intelligence Committee, said he investigated the report and found it "not inconsistent with some information that I have."

"The bottom line is that if the information is even close to the truth, it presents for the first time a very serious and relatively quick challenge to U.S. sovereignty," he said.

The Defense Intelligence Agency (DIA) estimates the Taepo Dong-2 will have a range of about 4,650 miles and confirmed that with a smaller warhead it could reach 6,200 miles, a Pentagon source said.

Information on the North Korean ICBM comes as a House and Senate conference committee is working on provisions of the fiscal 1996 defense authorization about whether the Pentagon should move ahead quickly with deployment of a national missile defense that could defend against such North Korean missiles.

"Given the time it takes to develop and deploy an effective national missile-defense system, overlayed on that intelligence information, it is clear we have to begin now if we are to avoid a 'missile-defense gap,'" Mr. Kyl said.

"In this case it would be real," he said, referring to the issue of the United States lagging behind the Soviet Union in strategic missiles. The missile-gap debate surfaced during the 1960 presidential election campaign and was later proved to have been unfounded.

Mr. Kyl said the intelligence report also counters claims by administration officials that national missile defenses are not needed because there is no immediate threat to the United States.

A DIA statement said the press information about the Taepo Dong-2 was "factual. . . . Clearly the successful deployment of these longer-range missiles would present a new dimension to the challenges to United States and regional interests."

One DIA computer simulation of the Taepo Dong-2 put the range of the missile at between 2,666 miles and 3,720 miles.

But according to South Korean intelligence, Russian missile experts believe the range of the Taepo Dong-2 could be extended to at least 6,000 miles after technical problems are solved, the Seoul newspaper reported.

The Russians told South Korea the greater range could be achieved if the guidance mechanism is improved, the warhead weight is decreased and fuel-injection technology is advanced.

The Pentagon's Ballistic Missile Defense Organization drew up charts showing the targets a long-range Taepo Dong-2 could hit. They include all major U.S. cities on the West Coast, in Arizona, Colorado, Kansas and just short of Chicago. It also could reach all the major European capitals.

A U.S. intelligence official said current North Korean missile technology is "Scud technology" with rudimentary guidance and control mechanisms.

"It will take a lot longer than the year 2000 to get to that point," he said of long-range missile capability. "Although there is no question they would like to achieve that."

But other intelligence officials said China is secretly helping the North Korean long-range missile project and a group of up to 200 North Korean missile engineers has undergone training in China.

As for the range of the Taepo Dong, the CIA report says only that its two versions will have ranges shorter and greater than 1,860 miles, respectively.

The accuracy of the missile is so poor that U.S. analysis see it as only useful for firing weapons of mass destruction—nuclear, chemical or biological warheads. The Pentagon says North Korea has covertly developed enough nuclear fuel for four or five nuclear devices. The CIA says it has aggressive chemical and biological warfare programs.

SOUTH KOREA

U.S. REPORTEDLY WITHIN NEW NORTH MISSILE RANGE

[Report by Pak Chae-pom]

[FBIS Translated Text] The new Taepodong missile No. 2 that North Korea is developing is believed to have a maximum range of 10,000 km—which means that the U.S. mainland would be within its range—and will be ready for actual deployment around 2000.

According to an ROK intelligence official on 10 September, the assessment is based on a Russian-source intelligence on North Korea's ground-to-ground missiles.

The data Russia handed over to the ROK reveal that North Korea is continuing the research and development of Taepodong No. 1 and No. 2 at a missile test site in Sanumtong and that it recently conducted a missile engine test.

A computer simulated test by the U.S. Defense Intelligence Agency estimated that the Taepodong No. 2 has a 4,300 to 6,000-km range, but the Russian authorities projected that when some technical problems are solved, the range could be expanded to over 9,600 km.

The Russian source analyzed that the safety of the inertial navigation system, adjustment of the warhead weight, and fuel injection device are the technologies North Korea needs to improve.

North Korea's Taepodong No. 2 is reportedly a two-stage missile with a 16-meter Taepodong No. 1 attached on a 16.2-meter thruster and a 1,000-kg warhead on the thruster.

An intelligence official said: "Irrespective of the recent economic setback, North Korea is speeding up the development of Taepodong No. 2 and other long-range weapons to block the support from the neighboring countries in case of an emergency on the Korean peninsula."

By Mr. SMITH of New Hampshire (for himself, Mr. CHAFEE, and Mr. LOTT):

S. 8. A bill to reauthorize and amend the Comprehensive Environmental Response, Liability, and Compensation

Act of 1980, and for other purposes; to the Committee on Environment and Public Works.

SUPERFUND CLEANUP ACCELERATION ACT OF 1997

Mr. CHAFEE. Mr. President, Senator SMITH from New Hampshire and I have been working on this not only this year, but in past years also. I think after 7 years, it is time to fix this program. Tens of billions of dollars have been spent with very modest results, as far as cleanups go. This bill, which Senator SMITH and I have submitted, addresses the so-called brownfields problem, for example.

What are brownfields? They are contaminated sites, usually within our cities, which can be cleaned up relatively quickly and inexpensively and can be returned to productive industrial commercial use, thereby generating jobs and revenue.

In this legislation, we deal with who will have to pay. Obviously, this is where the intense legal arguments have occurred, where you need to hire a hall because there are so many lawyers involved.

We eliminate the unfairness of joint and several liability at most sites, and we replace it with proportional allocations where each polluter pays its fair share.

We eliminate from liability anyone who legally sent waste to a municipal landfill.

We eliminate small businesses and persons whose share was less than 1 percent and persons who sent less than 200 pounds or 110 gallons.

In deciding how clean the cleanup ought to be, we take into consideration, what is the future use of the site going to be? Is it going to be for a children's playground, or is it going to be for a parking lot that is paved? Obviously, it makes a difference as to how clean the site should be cleaned up.

Mr. President, this bill is not written in concrete. Senator ABRAHAM, for example, is deeply concerned that we do not include here within our legislation tax incentives for brownfields cleanup in empowerment zones and in enterprise communities. Senator ABRAHAM, who is deeply concerned about our inner cities and the jobs that will flow from it if these sites within the inner cities are cleaned up, believes there should be some tax incentives provided. We have not done that because of a cost problem, but we have assured Senator ABRAHAM we will work with him to try to come up with the result that he seeks. I want to commend Senator ABRAHAM for the work that he has done on this and the intense concern he has shown throughout the process of formulating this legislation.

Mr. President, now I would like to turn it over to Senator SMITH who has labored so hard in this vineyard, not only this year but last year. I do not think anybody in this Senate knows more about this legislation or has worked harder on it than Senator SMITH from New Hampshire.

Mr. SMITH of New Hampshire addressed the Chair.

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

Mr. SMITH of New Hampshire. Thank you, Mr. President. I thank my distinguished colleague and chairman of the Environment and Public Works Committee for his kind remarks. He, too, has been deeply involved in this issue. We have spent a lot of hours on this.

I am just very excited about the fact that this is in the top 10 legislative initiatives that the majority leader and the Republican Party have, and I welcome the opportunity to make a few remarks here.

It is a tribute to Senator LOTT and to Senator CHAFEE that they have made this a priority. It is the right thing to do, Mr. President, because I share with the American people the belief that our children ought to be able to drink clean water and breathe clean air and live in safe homes so they do not have to worry about environmental pollution, most specifically not having to live next to the stigma of a so-called Superfund site that never gets cleaned up.

We have some very good environmental laws on the books in this country—the Clean Air Act, the Safe Drinking Water Act, and others—but there are a few that do not fit that category, that have failed. Superfund is one of those laws. It is up to this committee and to the Senate, I think, to take the leadership here and to try to make those corrections.

To achieve meaningful reform—and I mean reform—we have to cut transaction costs. That is goal No. 1. The second goal is to reduce the time necessary to complete cleanup at these sites. The third goal is to inject some common sense into our cleanup program to reach sensible levels that protect our children and our environment.

The bill we introduce today will accomplish each and every one of those goals. It improves the serious problem of brownfields, which our colleague, Senator CHAFEE, has already mentioned. Senator ABRAHAM of Michigan is very much involved in this issue. We commend his leadership and look forward to working with him on the brownfields portion of this bill.

But we provide $60 million in new funding each year for States and localities for grants and loan programs to spur the cleanup and the redevelopment of these sites.

I welcome the initiative on the part of our colleagues on the other side of our aisle on brownfields. It enhances the role of States by allowing them to take responsibility for conducting Superfund cleanups and increases citizen participation. It reinjects common sense back into the cleanup process by taking the future use of the site into consideration when cleanup remedies are elected.

It promotes the use of innovative technology to ensure that the citizenry can have the benefit of the most up-to-date scientific approaches to cleanup and eliminates potential liability for tens of thousands of average citizens, small businesses, schools, churches, the Boy Scouts, Girl Scouts, and others who have been caught up in this Superfund liability net. It caps the liability of municipalities and other entities that owned or operated municipal sites and did so legally.

Finally, it reduces litigation by creating a fair-share allocation process at multiparty sites where the trust fund will pick up the cost of the defunct or insolvent parties in wastes that cannot be attributed to a viable party.

Thus, Mr. President, what this bill does, in a nutshell, is it stops paying lawyers and starts paying for cleanup. I think that is a tremendous improvement over current law. So the discussions over the past 2 years, which Senator CHAFEE has mentioned, which I have been involved in with the administration, Administrator Browner, and my colleagues on the other side of the aisle, have been productive. We have learned a lot. We are ready to roll up our sleeves again and get it done. We were very close to an agreement last time. We look forward to working with our colleagues and with the President of the United States to get it done in a bipartisan way.

As the chairman of the Senate Subcommittee on Superfund, Waste Control and Risk Assessment, I am here today, along with Senator CHAFEE, the chairman of the Environment Committee, to introduce some commonsense legislation to put the Superfund law back on track toward achieving its original goal of protecting our Nation's children from environmental pollutants in the quickest practical manner possible.

I would like to thank the Republican leader, Senator LOTT and all of the members of the Republican Conference who have cosponsored our legislation—the Superfund Cleanup Acceleration Act—for recognizing the importance of improving the Superfund program. By making this one of the top 10 Senate priorities for the 105th Congress, I believe we have demonstrated our strong commitment toward protecting our environment, improving environmental laws, and preserving the health of our Nation's children.

Before I describe our legislation, I would like to take a few minutes to talk about Superfund and how we find ourselves here today.

The history of Superfund is long and somewhat checkered. The program was created in 1980 to clean up abandoned hazardous wastesites, and at that time,

it was anticipated that this program would clean up around 400 sites nationwide. Begun with the best of intentions, the program has not performed the way it should. So far Superfund has cost our Nation more than $40 billion yet, only 125 out of a total of around 1,300 sites have been removed from the Superfund list over the last 16 years. Superfund has become the classic example of a Federal program awash in redtape, litigation, and gold plated spending.

The problems in Superfund are many. First, the Superfund liability scheme allows the Environmental Protection Agency to hold any potentially responsible party liable for the entire cleanup cost at a site—irrespective of the type of contamination, when the material was disposed of, or whether the activity was legal. This is simply unfair and, not surprisingly, results in enormous litigation costs with 30 to 70 percent of every dollar spent on lawyers.

Because of the fear of Superfund liability, many of our Nation's inner cities contain abandoned or underutilized properties—dubbed brownfields—which lay fallow because private developers and municipalities don't want to be dragged into Superfund's litigation quagmire. In order to spur economic redevelopment, we must place a priority on fixing this problem.

Superfund sets out unrealistic cleanup goals which frequently ignore common sense in considering the future use of the site. All too often, sites that are destined to become industrial parks or parking lots are required to be cleaned to standards compatible with school playgrounds. We need to reinject common sense back into this program so that we protect real people from real risks, not hypothetical people from hypothetical risks. We must also recognize that the States, which are much better able to understand the concerns and needs of residents who live near these sites, should have the lead in determining how these sites are going to be cleaned up, and when.

Because I am also the chairman of the Armed Services Subcommittee on Strategic Forces, which funds the Department of Energy cleanup program, I am keenly aware that the real costs of Superfund are not limited solely to the private sector. Not only are there more than 155 Federal facilities on the Superfund list, but these sites represent the most complex and costly cleanup challenges in the program. The inability to create commonsense cleanup plans results in billions of dollars of additional liability to Federal agencies—costs that ultimately come from the taxes we all pay. In a period of budget deficits and declining resources, we need to do a better job of making cleanup decisions.

While Superfund was created with the hope of quickly dealing with the serious problem of toxic waste sites endangering our citizens, it is evident that Superfund has proceeded at a snail's pace and that most sites are still not cleaned up. I commend Carol Browner, the Administrator of the EPA, for recognizing this fact, and for instituting a series of administrative reforms in the last year—reforms that reflect changes that I, and other Republicans have advocated for many years.

Although I applaud the administration for making these changes, I believe it is too soon to declare victory in the effort to make Superfund work better. While improvements have been made in some areas, it is far too early to determine their true or lasting effect. I certainly do not agree with some in the Administration that feel that the administrative reforms have corrected all the problems of Superfund. The fact remains that even with the administrative reforms, too much money is spent on litigation, sites aren't being cleaned up fast enough, and children are being needlessly exposed to toxic contaminants.

Rather than reform Superfund on a piecemeal basis, as some may suggest, it is clear that comprehensive legislation is necessary to correct Superfund's deeper problems. The bill we have introduced will address those problems in a top-to-bottom fashion so that we can clean up all of these waste sites as quickly as possible.

To achieve meaningful Superfund reform, it is necessary to meet three goals. The first is to cut the transaction costs of the program. That means cutting out the lawyers and ensuring that every dollar meant for cleanup goes to cleanup. The second goal is to reduce the time necessary to complete cleanup at these sites. Currently, it takes more than 12 years to clean up a site. We can do better than that. The last goal is to inject common sense into our cleanup program to reach sensible levels that protect our children and protect the environment.

The bill we are introducing today will accomplish each of these goals.

Our legislation improves the serious problem of brownfields by providing $60 million in new funding each year to States and localities for grant and loan programs to spur the cleanup and redevelopment of these sites.

It enhances the roll of States by allowing them to take primary responsibility for conducting Superfund cleanups.

It increases citizen participation by setting up Citizen Response Organizations to improve coordination between citizens, government, and responsible parties.

It reinjects common sense back into the cleanup process by taking the future use of the site into consideration when cleanup remedies are selected.

It promotes the use of innovative technologies to insure that the citizenry can have the benefit of the most up-to-date scientific approaches to cleanup.

It eliminates potential liability from tens of thousands of average citizens, small businesses, schools, churches, and others who are currently caught in the Superfund liability net.

It caps the liability of municipalities and other entities that owned or operated municipal wastesites.

And finally, it reduces litigation by creating a fair-share allocation process at multiparty sites where the trust fund will pick up the cost of defunct or insolvent parties, or wastes that cannot be attributed to a viable party.

Among the significant issues we have focused on is the issue of brownfields. As many of my colleagues may know, there are a variety of bills that have been introduced by Senator ABRAHAM, Senator LIEBERMAN, Senator LAUTENBERG and others which attempt to take a crack at this issue.

Many of the brownfield bills that have been introduced rely on tax credits or tax deductions to promote the cleanup of these sites. While the issue of tax credits does not fall within the jurisdiction of the Environment Committee, as this bill progresses toward passage, it is my intention to work with my colleagues to find common ground and provide additional support for these areas.

Liability has always been one of the most contentious issues in the Superfund reform debate. My position has been clear from the beginning. I believe that retroactive liability is fundamentally unfair and if I had my way, I would repeal it. Some of my colleagues see things differently. It is important to understand that the bill we are introducing represents many hours of intense discussions and all the parties involved will recognize some of their positions. The bill does not go as far as I would like. Equally, it asks that the other side to take a step forward as well. We each must take this step to improve a system which is not helping our citizens the way it should.

Over the last 2 years, my staff and that of Senator CHAFEE have been engaged in bipartisian discussions with Democrats and the Clinton administration. These discussions were long and sometimes pointed, but the participants in these negotiations understood that the Superfund program has flaws which need to be corrected.

While there is general agreement that cleanups should occur faster, and that there are too many lawyers in the system, there are many ideas about how to correct these problems. The discussions over the past 2 years have been productive and on many issues we are close to agreement. We look forward to working with our colleagues and with the President to craft a bipartisan solution to the problems of Superfund.

The bill we introduce today incorporates many good ideas from our bipartisan negotiations. It represents a significant step away from where we started last Congress, and I believe it deserves, and will receive, bipartisan support.

Much has been said about the Republican and Democratic positions on the environment. I urge my colleagues to move beyond the rhetoric and the posturing of the last election and examine the real situation. The bill we are introducing today will speed cleanups, take lawyers out of the system, inject common sense back into the process, and protect children much faster from toxic exposure than under current law. This should not merely be a top-10 priority on the Republican agenda, but it should be a top ten item on our shared agenda. I urge all of my colleagues to join with us to reform this program this year.

I thank you, Mr. President. I thank my colleague.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I want to stress the comments that Senator SMITH made about a bipartisan approach.

As I mentioned before, this is legislation that we worked on. We believe it is very, very good legislation. We are not saying it is the end all and be all. Obviously, in our committee we will have hearings on it. All the members of the committee will have a chance to have their views expressed.

We look forward to contributions from the members of the Democratic Party who are part of our Environment Committee. It is our hope that when we come forward with a bill to present on this floor finally for consideration by the body, that it will come out unanimously from our committee, will have the support of the administration, and will fulfill the desires of all of us that this legislation become law.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 8

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Superfund Cleanup Acceleration Act of 1997."

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—BROWNFIELDS REVITALIZATION
Sec. 101. Brownfields.
Sec. 102. Assistance for qualifying State voluntary response programs.
Sec. 103. Enforcement in cases of a release subject to a State plan.
Sec. 104. Contiguous properties.
Sec. 105. Prospective purchasers and windfall liens.
Sec. 106. Safe harbor innocent landholders.
TITLE II—STATE ROLE
Sec. 201. Delegation to the States of authorities with respect to national priorities list facilities.
TITLE III—COMMUNITY PARTICIPATION
Sec. 301. Community response organizations; technical assistance grants; improvement of public participation in the superfund decision-making process.
TITLE IV—SELECTION OF REMEDIAL ACTIONS
Sec. 401. Definitions.
Sec. 402. Selection and implementation of remedial actions.
Sec. 403. Remedy selection methodology.
Sec. 404. Remedy selection procedures.
Sec. 405. Completion of physical construction and delisting.
Sec. 406. Transition rules for facilities currently involved in remedy selection.
Sec. 407. National Priorities List.
TITLE V—LIABILITY
Sec. 501. Liability exceptions and limitations.
Sec. 502. Contribution from the Fund.
Sec. 503. Allocation of liability for certain facilities.
Sec. 504. Liability of response action contractors.
Sec. 505. Release of evidence.
Sec. 506. Contribution protection.
Sec. 507. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.
Sec. 508. Common carriers.
Sec. 509. Limitation on liability of railroad owners.
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TITLE VI—FEDERAL FACILITIES
Sec. 601. Transfer of authorities.
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Sec. 603. Innovative technologies for remedial action at Federal facilities.
TITLE VII—NATURAL RESOURCE DAMAGES
Sec. 701. Restoration of natural resources.
Sec. 702. Assessment of injury to and restoration of natural resources.
Sec. 703. Consistency between response actions and resource restoration standards.
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TITLE IX—FUNDING
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Sec. 901. Authorization of appropriations from the Fund.
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Sec. 906. Additional limitations.
Sec. 907. Reimbursement of potentially responsible parties.

TITLE I—BROWNFIELDS REVITALIZATION

SEC. 101. BROWNFIELDS.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 127. BROWNFIELDS.

"(a) DEFINITIONS.—In this section:

"(1) ADMINISTRATIVE COST.—The term 'administrative cost' does not include the cost of—

"(A) investigation and identification of the extent of contamination;

"(B) design and performance of a response action; or

"(C) monitoring of natural resources.

"(2) BROWNFIELD FACILITY.—The term 'brownfield facility' means—

"(A) a parcel of land that contains an abandoned, idled, or underused commercial or industrial facility, the expansion or redevelopment of which is complicated by the presence or potential presence of a hazardous substance; but

"(B) does not include—

"(i) a facility that is the subject of a removal or planned removal under title I;

"(ii) a facility that is listed or has been proposed for listing on the National Priorities List or that has been delisted under section 134(d)(5);

"(iii) a facility that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h)) at the time at which an application for a grant concerning the facility is submitted under this section;

"(iv) a land disposal unit with respect to which—

"(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

"(II) closure requirements have been specified in a closure plan or permit;

"(v) a facility with respect to which an administrative order on consent or judicial consent decree requiring cleanup has been entered into by the United States under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

"(vi) a facility that is owned or operated by a department, agency, or instrumentality of the United States; or

"(vii) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

"(3) ELIGIBLE ENTITY.—The term 'eligible entity' means—

"(A) a general purpose unit of local government;

"(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

"(C) a regional council or group of general purpose units of local government;

"(D) a redevelopment agency that is chartered or otherwise sanctioned by a State; and

"(E) an Indian tribe.

"(b) BROWNFIELD CHARACTERIZATION GRANT PROGRAM.—

"(1) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide grants for the site characterization and assessment of brownfield facilities.

"(2) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT.—

"(A) IN GENERAL.—On approval of an application made by an eligible entity, the Administrator may make grants out of the Fund to the eligible entity to be used for the site characterization and assessment of 1 or more brownfield facilities or to capitalize a revolving loan fund.

"(B) APPROPRIATE INQUIRY.—A site characterization and assessment carried out with the use of a grant under subparagraph (A) shall be performed in accordance with section 101(35)(B).

"(3) MAXIMUM GRANT AMOUNT.—A grant under subparagraph (A) shall not exceed, with respect to any individual brownfield facility covered by the grant, $100,000 for any fiscal year or $200,000 in total.

"(c) BROWNFIELD REMEDIATION GRANT PROGRAM.—

"(1) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide grants to be used for capitalization of revolving loan funds for response actions (excluding site characterization and assessment) at brownfield facilities.

"(2) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT.—

"(A) IN GENERAL.—On approval of an application made by a State or an eligible entity, the Administrator may make grants out of the Fund to the State or eligible entity to capitalize a revolving loan fund to be used for response actions (excluding site characterization and assessment) at 1 or more brownfield facilities.

"(B) APPROPRIATE INQUIRY.—A site characterization and assessment carried out with the use of a grant under subparagraph (A) shall be performed in accordance with section 101(35)(B).

"(3) MAXIMUM GRANT AMOUNT.—A grant under subparagraph (A) shall not exceed, with respect to any individual brownfield facility covered by the grant, $150,000 for any fiscal year or $300,000 in total.

"(d) GENERAL PROVISIONS.—

"(1) SUNSET.—No amount shall be available from the Fund for purposes of this section after the fifth fiscal year after the date of enactment of this section.

"(2) PROHIBITION.—No part of a grant under this section may be used for payment of penalties, fines, or administrative costs.

"(3) AUDITS.—The Inspector General of the Environmental Protection Agency shall audit an appropriate number of grants made under subsections (b)(2) and (c)(2) to ensure that funds are used for the purposes described in this section.

"(4) AGREEMENTS.—Each grant made under this section shall be subject to an agreement that—

"(A) requires the eligible entity to comply with all applicable State laws (including regulations);

"(B) requires that the eligible entity shall use the grant exclusively for purposes specified in subsection (b)(2) or (c)(2);

"(C) in the case of an application by a State under subsection (c)(2), payment by the State of a matching share of at least 50 percent of the costs of the response action for which the grant is made, from other sources of State funding; and

"(D) contains such other terms and conditions as the Administrator determines to be necessary to carry out the purposes of this section.

"(5) LEVERAGING.—An eligible entity that receives a grant under paragraph (1) may use the funds for part of a project at a brownfield facility for which funding is received from other sources, but the grant shall be used only for the purposes described in subsection (b)(2) or (c)(2).

"(e) GRANT APPLICATIONS.—

"(1) IN GENERAL.—Any eligible entity may submit an application to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, for a grant under this section for 1 or more brownfield facilities.

"(2) APPLICATION REQUIREMENTS.—An application for a grant under this section shall include—

"(A) an identification of each brownfield facility for which the grant is sought and a description of the redevelopment plan for the area or areas in which the brownfield facilities are located, including a description of the nature and extent of any known or suspected environmental contamination within the area;

"(B) an analysis that demonstrates the potential of the grant to stimulate economic development on completion of the planned response action, including a projection of the number of jobs expected to be created at each facility after remediation and redevelopment and, to the extent feasible, a description of the type and skill level of the jobs and a projection of the increases in revenues accruing to Federal, State, and local governments from the jobs; and

"(C) information relevant to the ranking criteria stated in paragraph (4).

"(3) APPROVAL.—

"(A) INITIAL GRANT.—On or about March 30 and September 30 of the first fiscal year following the date of enactment of this section, the Administrator shall make grants under this section to eligible entities that submit applications before those dates that the Administrator determines have the highest rankings under ranking criteria established under paragraph (4).

"(B) SUBSEQUENT GRANTS.—Beginning with the second fiscal year following the date of enactment of this section, the Administrator shall make an annual evaluation of each application received during the prior fiscal year and make grants under this section to eligible entities that submit applications during the prior year that the Administrator determines have the highest rankings under the ranking criteria established under paragraph (4).

"(4) RANKING CRITERIA.—The Administrator shall establish a system for ranking grant applications that includes the following criteria:

"(A) The extent to which a grant will stimulate the availability of other funds for environmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

"(B) The potential of the development plan for the area in which the brownfield facilities are located to stimulate economic development of the area on completion of the cleanup, such as the following:

"(i) The relative increase in the estimated fair market value of the area as a result of any necessary response action.

"(ii) The potential of a grant to create new or expand existing business and employment opportunities (particularly full-time employment opportunities) on completion of any necessary response action.

"(iii) The estimated additional tax revenues expected to be generated by economic redevelopment in the area in which a brownfield facility is located.

"(iv) The estimated extent to which a grant would facilitate the identification of or facilitate a reduction of health and environmental risks.

"(v) The financial involvement of the State and local government in any response action planned for a brownfield facility and the extent to which the response action and the proposed redevelopment is consistent with any applicable State or local community economic development plan.

"(vi) The extent to which the site characterization and assessment or response action and subsequent development of a brownfield facility involves the active participation and support of the local community.

"(vii) Such other factors as the Administrator considers appropriate to carry out the purposes of this section.".

(b) FUNDING.—Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by adding at the end the following:

"(q) BROWNFIELD CHARACTERIZATION GRANT PROGRAM.—For each of fiscal years 1998 through 2002, not more than $15,000,000 of the amounts available in the Fund may be used to carry out section 127(b).

"(r) BROWNFIELD REMEDIATION GRANT PROGRAM.—For each of fiscal years 1998 through 2002, not more than $25,000,000 of the amounts available in the Fund may be used to carry out section 127(c).".

SEC. 102. ASSISTANCE FOR QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.

(a) DEFINITION.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

"(39) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAM.—The term 'qualifying State voluntary response program' means a State program that includes the elements described in section 128(b).".

(b) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 101(a)) is amended by adding at the end the following:

"SEC. 128. QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.

"(a) ASSISTANCE TO STATES.—The Administrator shall provide technical and other assistance to States to establish and expand qualifying State voluntary response programs that include the elements listed in subsection (b).

"(b) ELEMENTS.—The elements of a qualifying State voluntary response program are the following:

"(1) Opportunities for technical assistance for voluntary response actions.

"(2) Adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions.

"(3) Streamlined procedures to ensure expeditious voluntary response actions.

"(4) Oversight and enforcement authorities or other mechanisms that are adequate to ensure that—

"(A) voluntary response actions will protect human health and the environment and be conducted in accordance with applicable Federal and State law; and

"(B) if the person conducting the voluntary response action fails to complete the

necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

"(5) Mechanisms for approval of a voluntary response action plan.

"(6) A requirement for certification or similar documentation from the State to the person conducting the voluntary response action indicating that the response is complete.

"(c) COMPLIANCE WITH ACT.—A person that conducts a voluntary response action under this section at a facility that is listed or proposed for listing on the National Priorities List shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121(a).".

(c) FUNDING.—Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) (as amended by section 101(b)) is amended by adding at the end the following:

"(s) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAM.—For each of fiscal years 1998 through 2002, not more than $25,000,000 of the amounts available in the Fund may be used for assistance to States to establish and administer qualifying State voluntary response programs, during the first 5 full fiscal years following the date of enactment of this subparagraph, distributed among each of the States that notifies the Administrator of the State's intent to establish a qualifying State voluntary response program and each of the States with a qualifying State voluntary response program. For each fiscal year there shall be available to each eligible entity a grant in the amount of at least $250,000.".

SEC. 103. ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO A STATE PLAN.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 129. ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO A STATE PLAN.

"(a) IN GENERAL.—In the case of a facility at which there is a release or threatened release of a hazardous substance subject to a State remedial action plan or with respect to which the State has provided certification or similar documentation that response action has been completed under a State remedial action plan, neither the President nor any other person may use any authority under this Act to take an administrative or judicial enforcement action or to bring a private civil action against any person regarding any matter that is within the scope of the plan.

"(b) RELEASES NOT SUBJECT TO STATE PLANS.—For any facility at which there is a release or threatened release of hazardous substances that is not subject to a State remedial action plan, the President shall provide notice to the State within 48 hours after issuing an order under section 106(a) addressing a release or threatened release. Such an order shall cease to have force or effect on the date that is 90 days after issuance unless the State concurs in the continuation of the order.

"(c) COST OR DAMAGE RECOVERY ACTIONS.—Subsection (a) does not apply to an action brought by a State or Indian tribe for the recovery of costs or damages under section 107.".

SEC. 104. CONTIGUOUS PROPERTIES.

(a) IN GENERAL.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)) is amended by adding at the end the following:

"(o) CONTIGUOUS PROPERTIES.—

"(1) NOT CONSIDERED TO BE AN OWNER OR OPERATOR.—A person that owns or operates real property that is contiguous to or otherwise similarly situated with respect to real property on which there has been a release or threatened release of a hazardous substance and that is or may be contaminated by the release shall not be considered to be an owner or operator of a vessel or facility under subsection (a) (1) or (2) solely by reason of the contamination if—

"(A) the person did not cause, contribute, or consent to the release or threatened release; and

"(B) the person is not liable, and is not affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.

"(2) COOPERATION, ASSISTANCE, AND ACCESS.—Notwithstanding paragraph (1), a person described in paragraph (1) shall provide full cooperation, assistance, and facility access to the persons that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(3) ASSURANCES.—The Administrator may—

"(A) issue an assurance that no enforcement action under this Act will be initiated against a person described in paragraph (1); and

"(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f).".

(b) CONFORMING AMENDMENT.—Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by striking "of this section" and inserting "and the exemptions and limitations stated in this section".

SEC. 105. PROSPECTIVE PURCHASERS AND WINDFALL LIENS.

(a) DEFINITION.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 102(a)) is amended by adding at the end the following:

"(40) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person that acquires ownership of a facility after the date of enactment of this paragraph, or a tenant of such a person, that establishes each of the following by a preponderance of the evidence:

"(A) DISPOSAL PRIOR TO ACQUISITION.—All active disposal of hazardous substances at the facility occurred before the person acquired the facility.

"(B) INQUIRIES.—

"(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility and the facility's real property in accordance with generally accepted good commercial and customary standards and practices.

"(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in paragraph (35)(B)(ii) or those issued or adopted by the Administrator under that paragraph shall be considered to satisfy the requirements of this subparagraph.

"(iii) RESIDENTIAL USE.—In the case of property for residential or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

"(C) NOTICES.—The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

"(D) CARE.—The person exercised appropriate care with respect to each hazardous substance found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release and prevent or limit human or natural resource exposure to any previously released hazardous substance.

"(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and facility access to the persons that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(F) RELATIONSHIP.—The person is not liable, and is not affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.".

(b) AMENDMENT.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by section 104) is amended by adding at the end the following:

"(p) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

"(1) LIMITATION ON LIABILITY.—Notwithstanding subsection (a), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

"(2) LIEN.—If there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of section 101(20)(G)(iii) and each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may obtain from appropriate responsible party a lien on any other property or other assurances of payment satisfactory to the Administrator, for such unrecovered costs.

"(3) CONDITIONS.—The conditions referred to in paragraph (1) are the following:

"(A) RESPONSE ACTION.—A response action for which there are unrecovered costs is carried out at the facility.

"(B) FAIR MARKET VALUE.—The response action increases the fair market value of the facility above the fair market value of the facility that existed 180 days before the response action was initiated.

"(C) SALE.—A sale or other disposition of all or a portion of the facility has occurred.

"(4) AMOUNT.—A lien under paragraph (2)—

"(A) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of the property;

"(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

"(C) shall be subject to the requirements of subsection (l)(3); and

"(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.".

SEC. 106. SAFE HARBOR INNOCENT LANDHOLDERS.

(a) AMENDMENT.—Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended by striking subparagraph (B) and inserting the following:

"(B) KNOWLEDGE OF INQUIRY REQUIREMENT.—

"(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must show that, at or prior to the date on which the defendant acquired the facility, the defendant undertook all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.

"(ii) STANDARDS AND PRACTICES.—The Administrator shall by regulation establish as standards and practices for the purpose of clause (i)—

"(I) the American Society for Testing and Materials (ASTM) Standard E1527-94, entitled 'Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'; or

"(II) alternative standards and practices under clause (iii).

"(iii) ALTERNATIVE STANDARDS AND PRACTICES.—

"(I) IN GENERAL.—The Administrator may by regulation issue alternative standards and practices or designate standards developed by other organizations than the American Society for Testing and Materials after conducting a study of commercial and industrial practices concerning the transfer of real property in the United States.

"(II) CONSIDERATIONS.—In issuing or designating alternative standards and practices under subclause (I), the Administrator shall consider including each of the following:

"(aa) The results of an inquiry by an environmental professional.

"(bb) Interviews with past and present owners, operators, and occupants of the facility and the facility's real property for the purpose of gathering information regarding the potential for contamination at the facility and the facility's real property.

"(cc) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records to determine previous uses and occupancies of the real property since the property was first developed.

"(dd) Searches for recorded environmental cleanup liens, filed under Federal, State, or local law, against the facility or the facility's real property.

"(ee) Reviews of Federal, State, and local government records (such as waste disposal records), underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility or the facility's real property.

"(ff) Visual inspections of the facility and facility's real property and of adjoining properties.

"(gg) Specialized knowledge or experience on the part of the defendant.

"(hh) The relationship of the purchase price to the value of the property if the property was uncontaminated.

"(ii) Commonly known or reasonably ascertainable information about the property.

"(jj) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

"(iv) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.".

(b) STANDARDS AND PRACTICES.—

(1) ESTABLISHMENT BY REGULATION.—The Administrator of the Environmental Protection Agency shall issue the regulation required by section 101(35)(B)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as added by subsection (a) not later than 1 year after the date of enactment of this Act.

(2) INTERIM STANDARDS AND PRACTICES.—Until the Administrator issues the regulation described in paragraph (1), in making a determination under section 101(35)(B)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as added by subsection (a)), there shall be taken into account—

(A) any specialized knowledge or experience on the part of the defendant;

(B) the relationship of the purchase price to the value of the property if the property was uncontaminated;

(C) commonly known or reasonably ascertainable information about the property;

(D) the degree of obviousness of the presence or likely presence of contamination at the property; and

(E) the ability to detect the contamination by appropriate investigation.

TITLE II—STATE ROLE

SEC. 201. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 103) is amended by adding at the end the following:

"SEC. 130. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

"(a) DEFINITIONS.—In this section:

"(1) COMPREHENSIVE DELEGATION STATE.—The term 'comprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform all of the categories of delegable authority.

"(2) DELEGABLE AUTHORITY.—The term 'delegable authority' means authority to perform (or ensure performance of) all of the authorities included in any 1 or more of the categories of authority:

"(A) CATEGORY A.—All authorities necessary to perform technical investigations, evaluations, and risk analyses, including—

"(i) a preliminary assessment or facility evaluation under section 104;

"(ii) facility characterization under section 104;

"(iii) a remedial investigation under section 104;

"(iv) a facility-specific risk evaluation under section 131;

"(v) enforcement authority related to the authorities described in clauses (i) through (iv); and

"(vi) any other authority identified by the Administrator under subsection (b).

"(B) CATEGORY B.—All authorities necessary to perform alternatives development and remedy selection, including—

"(i) a feasibility study under section 104; and

"(ii)(I) remedial action selection under section 121 (including issuance of a record of decision); or

"(II) remedial action planning under section 133(b)(5);

"(iii) enforcement authority related to the authorities described in clauses (i) and (ii); and

"(iv) any other authority identified by the Administrator under subsection (b).

"(C) CATEGORY C.—All authorities necessary to perform remedial design, including—

"(i) remedial design under section 121;

"(ii) enforcement authority related to the authority described in clause (i); and

"(iii) any other authority identified by the Administrator under subsection (b).

"(D) CATEGORY D.—All authorities necessary to perform remedial action and operation and maintenance, including—

"(i) a removal under section 104;

"(ii) a remedial action under section 104 or section 10 (a) or (b);

"(iii) operation and maintenance under section 104(c);

"(iv) enforcement authority related to the authorities described in clauses (i) through (iii); and

"(v) any other authority identified by the Administrator under subsection (b).

"(E) CATEGORY E.—All authorities necessary to perform information collection and allocation of liability, including—

"(i) information collection activity under section 104(e);

"(ii) allocation of liability under section 136;

"(iii) a search for potentially responsible parties under section 104 or 107;

"(iv) settlement under section 122;

"(v) enforcement authority related to the authorities described in clauses (i) through (iv); and

"(vi) any other authority identified by the Administrator under subsection (b).

"(3) DELEGATED STATE.—The term 'delegated State' means a State to which delegable authority has been delegated under subsection (c), except as may be provided in a delegation agreement in the case of a limited delegation of authority under subsection (c)(5).

"(4) DELEGATED AUTHORITY.—The term 'delegated authority' means a delegable authority that has been delegated to a delegated State under this section.

"(5) DELEGATED FACILITY.—The term 'delegated facility' means a non-federal listed facility with respect to which a delegable authority has been delegated to a State under this section.

"(6) ENFORCEMENT AUTHORITY.—The term "enforcement authority" means all authorities necessary to recover response costs, require potentially responsible parties to perform response actions, and otherwise compel implementation of a response action, including—

"(A) issuance of an order under section 106(a);

"(B) a response action cost recovery under section 107;

"(C) imposition of a civil penalty or award under section 109 (a)(1)(D) or (b)(4);

"(D) settlement under section 122; and

"(E) any other authority identified by the Administrator under subsection (b).

"(7) NONCOMPREHENSIVE DELEGATION STATE.—The term 'noncomprehensive delegation State', with respect to a facility, means

a State to which the Administrator has delegated authority to perform fewer than all of the categories of delegable authority.

"(8) NONDELEGABLE AUTHORITY.—The term 'nondelegable authority' means authority to—

"(A) make grants to community response organizations under section 117; and

"(B) conduct research and development activities under any provision of this Act.

"(9) NON-FEDERAL LISTED FACILITY.—The term 'non-federal listed facility' means a facility that—

"(A) is not owned or operated by a department, agency, or instrumentality of the United States in any branch of the Government; and

"(B) is listed on the National Priorities List.

"(b) IDENTIFICATION OF DELEGABLE AUTHORITIES.—

"(1) IN GENERAL.—The President shall by regulation identify all of the authorities of the Administrator that shall be included in a delegation of any category of delegable authority described in subsection (a)(2).

"(2) LIMITATION.—The Administrator shall not identify a nondelegable authority for inclusion in a delegation of any category of delegable authority.

"(c) DELEGATION OF AUTHORITY.—

"(1) IN GENERAL.—Pursuant to an approved State application, the Administrator shall delegate authority to perform 1 or more delegable authorities with respect to 1 or more non-Federal listed facilities in the State.

"(2) APPLICATION.—An application under paragraph (1) shall—

"(A) identify each non-Federal listed facility for which delegation is requested;

"(B) identify each delegable authority that is requested to be delegated for each non-Federal listed facility for which delegation is requested; and

"(C) certify that the State, supported by such documentation as the State, in consultation with the Administrator, considers to be appropriate—

"(i) has statutory and regulatory authority (including appropriate enforcement authority) to perform the requested delegable authorities in a manner that is protective of human health and the environment;

"(ii) has resources in place to adequately administer and enforce the authorities;

"(iii) has procedures to ensure public notice and, as appropriate, opportunity for comment on remedial action plans, consistent with sections 117 and 133; and

"(iv) agrees to exercise its enforcement authorities to require that persons that are potentially liable under section 107(a), to the extent practicable, perform and pay for the response actions set forth in each category described in subsection (a)(2).

"(3) APPROVAL OF APPLICATION.—

"(A) IN GENERAL.—Not later than 60 days after receiving an application under paragraph (2) by a State that is authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), and not later than 120 days after receiving an application from a State that is not authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), unless the State agrees to a greater length of time for the Administrator to make a determination, the Administrator shall—

"(i) issue a notice of approval of the application (including approval or disapproval regarding any or all of the facilities with respect to which a delegation of authority is requested or with respect to any or all of the authorities that are requested to be delegated); or

"(ii) if the Administrator determines that the State does not have adequate legal authority, financial and personnel resources, organization, or expertise to administer and enforce any of the requested delegable authority, issue a notice of disapproval, including an explanation of the basis for the determination.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of all or any portion of an application within the applicable time period under subparagraph (A), the application shall be deemed to have been granted.

"(C) RESUBMISSION OF APPLICATION.—

"(i) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

"(ii) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the applicable time period under subparagraph (A), the resubmitted application shall be deemed to have been granted.

"(D) NO ADDITIONAL TERMS OR CONDITIONS.—The Administrator shall not impose any term or condition on the approval of an application that meets the requirements stated in paragraph (2) (except that any technical deficiencies in the application be corrected).

"(E) JUDICIAL REVIEW.—The State (but no other person) shall be entitled to judicial review under section 113(b) of a disapproval of a resubmitted application.

"(4) DELEGATION AGREEMENT.—On approval of a delegation of authority under this section, the Administrator and the delegated State shall enter into a delegation agreement that identifies each category of delegable authority that is delegated with respect to each delegated facility.

"(5) LIMITED DELEGATION.—

"(A) IN GENERAL.—In the case of a State that does not meet the requirements of paragraph (2)(C) the Administrator may delegate to the State limited authority to perform, ensure the performance of, or supervise or otherwise participate in the performance of 1 or more delegable authorities, as appropriate in view of the extent to which the State has the required legal authority, financial and personnel resources, organization, and expertise.

"(B) SPECIAL PROVISIONS.—In the case of a limited delegation of authority to a State under subparagraph (A), the Administrator shall specify the extent to which the State shall be considered to be a delegated State for the purposes of this Act.

"(d) PERFORMANCE OF DELEGATED AUTHORITIES.—

"(1) IN GENERAL.—A delegated State shall have sole authority (except as provided in paragraph (6)(B), subsection (e)(4), and subsection (g)) to perform a delegated authority with respect to a delegated facility.

"(2) AGREEMENTS FOR PERFORMANCE OF DELEGATED AUTHORITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a delegated State may enter into an agreement with a political subdivision of the State, an interstate body comprised of that State and another delegated State or States, or a combination of such subdivisions or interstate bodies, providing for the performance of any category of delegated authority with respect to a delegated facility in the State if the parties to the agreement agree in the agreement to undertake response actions that are consistent with this Act.

"(B) NO AGREEMENT WITH POTENTIALLY RESPONSIBLE PARTY.—A delegated State shall not enter into an agreement under subparagraph (A) with a political subdivision or interstate body that is, or includes as a component an entity that is, a potentially responsible party with respect to a delegated facility covered by the agreement.

"(C) CONTINUING RESPONSIBILITY.—A delegated State that enters into an agreement under subparagraph (A)—

"(i) shall exercise supervision over and approve the activities of the parties to the agreement; and

"(ii) shall remain responsible for ensuring performance of the delegated authority.

"(3) COMPLIANCE WITH ACT.—

"(A) NONCOMPREHENSIVE DELEGATION STATES.—A noncomprehensive delegation State shall implement each applicable provision of this Act (including regulations and guidance issued by the Administrator) so as to perform each delegated authority with respect to a delegated facility in the same manner as would the Administrator with respect to a facility that is not a delegated facility.

"(B) COMPREHENSIVE DELEGATION STATES.—

"(i) IN GENERAL.—A comprehensive delegation State shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121.

"(ii) COSTLIER REMEDIAL ACTION.—

"(I) IN GENERAL.—A delegated State may select a remedial action for a delegated facility that has a greater response cost (including operation and maintenance costs) than the response cost for a remedial action that would be selected by the Administrator under section 121, if the State pays for the difference in cost.

"(II) NO COST RECOVERY.—If a delegated State selects a more costly remedial action under subclause (I), the State shall not be entitled to seek cost recovery under this Act or any other Federal or State law from any other person for the difference in cost.

"(4) JUDICIAL REVIEW.—An order that is issued under section 106 by a delegated State with respect to a delegated facility shall be reviewable only in United States district court under section 113.

"(5) DELISTING OF NATIONAL PRIORITIES LIST FACILITIES.—

"(A) DELISTING.—After notice and an opportunity for public comment, a delegated State may remove from the National Priorities List all or part of a delegated facility—

"(i) if the State makes a finding that no further action is needed to be taken at the facility (or part of the facility) under any applicable law to protect human health and the environment consistent with section 121(a)(1) and (2);

"(ii) with the concurrence of the potentially responsible parties, if the State has an enforceable agreement to perform all required remedial action and operation and maintenance for the facility or if the cleanup will proceed at the facility under section 3004 (u) or (v) of the Solid Waste Disposal Act (42 U.S.C. 6924 (u), (v)); or

"(iii) if the State is a comprehensive delegation State with respect to the facility.

"(B) EFFECT OF DELISTING.—A delisting under subparagraph (A) (ii) or (iii) shall not affect—

"(i) the authority or responsibility of the State to complete remedial action and operation and maintenance;

"(ii) the eligibility of the State for funding under this Act;

"(iii) notwithstanding the limitation on section 104(c)(1), the authority of the Administrator to make expenditures from the Fund relating to the facility; or

"(iv) the enforceability of any consent order or decree relating to the facility.

"(C) NO RELISTING.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Administrator shall not relist on the National Priorities List a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A).

"(ii) CLEANUP NOT COMPLETED.—The Administrator may relist a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A) if cleanup is not completed in accordance with the enforceable agreement under subparagraph (A)(ii).

"(6) COST RECOVERY.—

"(A) RECOVERY BY A DELEGATED STATE.—Of the amount of any response costs recovered from a responsible party by a delegated State for a delegated facility under section 107—

"(i) 25 percent of the amount of any Federal response cost recovered with respect to a facility, plus an amount equal to the amount of response costs incurred by the State with respect to the facility, may be retained by the State; and

"(ii) the remainder shall be deposited in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

"(B) RECOVERY BY THE ADMINISTRATOR.—

"(i) IN GENERAL.—The Administrator may take action under section 107 to recover response costs from a responsible party for a delegated facility if—

"(I) the delegated State notifies the Administrator in writing that the delegated State does not intend to pursue action for recovery of response costs under section 107 against the responsible party; or

"(II) the delegated State fails to take action to recover response costs within a reasonable time in light of applicable statutes of limitation.

"(ii) NOTICE.—If the Administrator proposes to commence an action for recovery of response costs under section 107, the Administrator shall give the State written notice and allow the State at least 90 days after receipt of the notice to commence the action.

"(iii) NO FURTHER ACTION.—If the Administrator takes action against a potentially responsible party under section 107 relating to a release from a delegated facility, the delegated State may not take any other action for recovery of response costs relating to that release under this Act or any other Federal or State law.

"(e) FEDERAL RESPONSIBILITIES AND AUTHORITIES.—

"(1) REVIEW USE OF FUNDS.—

"(A) IN GENERAL.—The Administrator shall review the certification submitted by the Governor under subsection (f)(8) not later than 120 days after the date of its submission.

"(B) FINDING OF USE OF FUNDS INCONSISTENT WITH THIS ACT.—If the Administrator finds that funds were used in a manner that is inconsistent with this Act, the Administrator shall notify the Governor in writing not later than 120 days after receiving the Governor's certification.

"(C) EXPLANATION.—not later than 30 days after receiving a notice under subparagraph (B), the Governor shall—

"(i) explain why the Administrator's finding is in error; or

"(ii) explain to the Administrator's satisfaction how any misapplication or misuse of funds will be corrected.

"(D) FAILURE TO EXPLAIN.—If the Governor fails to make an explanation under subparagraph (C) to the Administrator's satisfaction, the Administrator may request reimbursement of such amount of funds as the Administrator finds was misapplied or misused.

"(E) REPAYMENT OF FUNDS.—If the Administrator fails to obtain reimbursement from the State within a reasonable period of time, the Administrator may, after 30 days' notice to the State, bring a civil action in United States district court to recover from the delegated State any funds that were advanced for a purpose or were used for a purpose or in a manner that is inconsistent with this Act.

"(2) WITHDRAWAL OF DELEGATION OF AUTHORITY.—

"(A) DELEGATED STATES.—If at any time the Administrator finds that contrary to a certification made under subsection (c)(2), a delegated State—

"(i) lacks the required financial and personnel resources, organization, or expertise to administer and enforce the requested delegated authorities;

"(ii) does not have adequate legal authority to request and accept delegation; or

"(iii) is failing to materially carry out the State's delegated authorities,

the Administrator may withdraw a delegation of authority with respect to a delegated facility after providing notice and opportunity to correct deficiencies under subparagraph (D).

"(B) STATES WITH LIMITED DELEGATIONS OF AUTHORITY.—If the Administrator finds that a State to which a limited delegation of authority was made under subsection (c)(5) has materially breached the delegation agreement, the Administrator may withdraw the delegation after providing notice and opportunity to correct deficiencies under subparagraph (D).

"(C) NOTICE AND OPPORTUNITY TO CORRECT.—If the Administrator proposes to withdraw a delegation of authority for any or all delegated facilities, the Administrator shall give the State written notice and allow the State at least 90 days after the date of receipt of the notice to correct the deficiencies cited in the notice.

"(D) FAILURE TO CORRECT.—If the Administrator finds that the deficiencies have not been corrected within the time specified in a notice under subparagraph (C), the Administrator may withdraw delegation of authority after providing public notice and opportunity for comment.

"(E) JUDICIAL REVIEW.—A decision of the Administrator to withdraw a delegation of authority shall be subject to judicial review under section 113(b).

"(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Administrator under this Act to—

"(A) take a response action at a facility listed on the National Priorities List in a State to which a delegation of authority has not been made under this section or at a facility not included in a delegation of authority; or

"(B) perform a delegable authority with respect to a facility that is not included among the authorities delegated to a State with respect to the facility.

"(4) RETAINED AUTHORITY.—

"(A) NOTICE.—Before performing an emergency removal action under section 104 at a delegated facility, the Administrator shall notify the delegated States of the Administrator's intention to perform the removal.

"(B) STATE ACTION.—If, after receiving a notice under subparagraph (A), the delegated State notifies the Administrator within 48 hours that the State intends to take action to perform an emergency removal at the delegated facility, the Administrator shall not perform the emergency removal action unless the Administrator determines that the delegated State has failed to act within a reasonable period of time to perform the emergency removal.

"(C) IMMEDIATE AND SIGNIFICANT DANGER.—If the Administrator finds that an emergency at a delegated facility poses an immediate and significant danger to human health or the environment, the Administrator shall not be required to provide notice under subparagraph (A).

"(5) PROHIBITED ACTIONS.—Except as provided in subsections (d)(6)(B), (e)(4), and (g) or except with the concurrence of the delegated State, the President, the Administrator, and the Attorney General shall not take any action under section 104, 106, 107, 109, 121, or 122 in performance of a delegable authority that has been delegated to a State with respect to a delegated facility.

"(f) FUNDING.—

"(1) IN GENERAL.—The Administrator shall provide grants to or enter into contracts or cooperative agreements with delegated States to carry out this section.

"(2) NO CLAIM AGAINST FUND.—Notwithstanding any other law, funds to be granted under this subsection shall not constitute a claim against the Fund or the United States.

"(3) INSUFFICIENT FUNDS AVAILABLE.—If funds are unavailable in any fiscal year to satisfy all commitments made under this section by the Administrator, the Administrator shall have sole authority and discretion to establish priorities and to delay payments until funds are available.

"(4) DETERMINATION OF COSTS ON A FACILITY-SPECIFIC BASIS.—The Administrator shall—

"(A) determine—

"(i) the delegable authorities the costs of performing which it is practicable to determine on a facility-specific basis; and

"(ii) the delegable authorities the costs of performing which it is not practicable to determine on a facility-specific basis; and

"(B) publish a list describing the delegable authorities in each category.

"(5) FACILITY-SPECIFIC GRANTS.—The costs described in paragraph (4)(A)(ii) shall be funded as such costs arise with respect to each delegated facility.

"(6) NONFACILITY-SPECIFIC GRANTS.—

"(A) IN GENERAL.—The costs described in paragraph (4)(A)(ii) shall be funded through nonfacility-specific grants under this paragraph.

"(B) FORMULA.—The Administrator shall establish a formula under which funds available for nonfacility-specific grants shall be allocated among the delegated States, taking into consideration—

"(i) the cost of administering the delegated authority;

"(ii) the number of sites for which the State has been delegated authority;

"(iii) the types of activities for which the State has been delegated authority;

"(iv) the number of facilities within the State that are listed on the National Priorities List or are delegated facilities under section 130(d)(5);

"(v) the number of other high priority facilities within the State;

"(vi) the need for the development of the State program;

"(vii) the need for additional personnel;

"(viii) the amount of resources available through State programs for the cleanup of contaminated sites; and

"(ix) the benefit to human health and the environment of providing the funding.

"(7) PERMITTED USE OF GRANT FUNDS.—A delegated State may use grant funds, in accordance with this Act and the National Contingency Plan, to take any action or perform any duty necessary to implement the authority delegated to the State under this section.

"(8) COST SHARE.—

"(A) ASSURANCE.—A delegated State to which a grant is made under this subsection shall provide an assurance that the State will pay any amount required under section 104(c)(3).

"(B) PROHIBITED USE OF GRANT FUNDS.—A delegated State to which a grant is made under this subsection may not use grant funds to pay any amount required under section 104(c)(3).

"(9) CERTIFICATION OF USE OF FUNDS.—

"(A) IN GENERAL.—Not later than 1 year after the date on which a delegated State receives funds under this subsection, and annually thereafter, the Governor of the State shall submit to the Administrator—

"(i) a certification that the State has used the funds in accordance with the requirements of this Act and the National Contingency Plan; and

"(ii) information describing the manner in which the State used the funds.

"(B) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a regulation describing with particularity the information that a State shall be required to provide under subparagraph (A)(ii).

"(g) COOPERATIVE AGREEMENTS.—Nothing in this section shall affect the authority of the Administrator under section 104(d)(1) to enter into a cooperative agreement with a State, a political subdivision of a State, or an Indian tribe to carry out actions under section 104.".

(b) STATE COST SHARE.—Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)) is amended—

(1) by striking "(c)(1) Unless" and inserting the following:

"(c) MISCELLANEOUS LIMITATIONS AND REQUIREMENTS.—

"(1) CONTINUANCE OF OBLIGATIONS FROM FUND.—Unless";

(2) by striking "(2) The President" and inserting the following:

"(2) CONSULTATION.—The President"; and

(3) by striking paragraph (3) and inserting the following:

"(3) STATE COST SHARE.—

"(A) IN GENERAL.—The Administrator shall not provide any remedial action under this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State will pay, in cash or through in-kind contributions, a specified percentage of the costs of the remedial action and operation and maintenance costs.

"(B) ACTIVITIES WITH RESPECT TO WHICH STATE COST SHARE IS REQUIRED.—No State cost share shall be required except for remedial actions under section 104.

"(C) SPECIFIED PERCENTAGE.—

"(i) IN GENERAL.—The specified percentage of costs that a State shall be required to share shall be the lower of 10 percent or the percentage determined under clause (ii).

"(ii) MAXIMUM IN ACCORDANCE WITH LAW PRIOR TO 1996 AMENDMENTS.—

"(I) On petition by a State, the Director of the Office of Management and Budget (referred to in this clause as the 'Director'), after providing public notice and opportunity for comment, shall establish a cost share percentage, which shall be uniform for all facilities in the State, at the percentage rate at which the total amount of anticipated payments by the State under the cost share for all facilities in the State for which a cost share is required most closely approximates the total amount of estimated cost share payments by the State for facilities that would have been required under cost share requirements that were applicable prior to the date of enactment of this subparagraph, adjusted to reflect the extent to which the State's ability to recover costs under this Act were reduced by reason of enactment of amendments to this Act by the Superfund Cleanup Acceleration Act of 1997.

"(II) The Director may adjust a State's cost share under this clause not more frequently than every 3 years.

"(D) INDIAN TRIBES.—In the case of remedial action to be taken on land or water held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe (if the land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph shall not apply.".

(c) USES OF FUND.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following:

"(7) GRANTS TO DELEGATED STATES.—Making a grant to a delegated State under section 130(f).".

(d) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—Section 114(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(b)) is amended by striking "removal" each place it appears and inserting "response".

(2) CONFORMING AMENDMENT.—Section 101(37)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(37)(B)) is amended by striking "section 114(c)" and inserting "section 114(b)".

TITLE III—COMMUNITY PARTICIPATION

SEC. 301. COMMUNITY RESPONSE ORGANIZATIONS; TECHNICAL ASSISTANCE GRANTS; IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.

(a) AMENDMENT.—Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

"(e) COMMUNITY RESPONSE ORGANIZATIONS.—

"(1) ESTABLISHMENT.—The Administrator shall create a community response organization for a facility that is listed or proposed for listing on the National Priorities List—

"(A) if the Administrator determines that a representative public forum will be helpful in promoting direct, regular, and meaningful consultation among persons interested in remedial action at the facility; or

"(B) at the request of—

"(i) 50 individuals residing in, or at least 20 percent of the population of, the area in which the facility is located;

"(ii) a representative group of the potentially responsible parties; or

"(iii) any local governmental entity with jurisdiction over the facility.

"(2) RESPONSIBILITIES.—A community response organization shall—

"(A) solicit the views of the local community on various issues affecting the development and implementation of remedial actions at the facility;

"(B) serve as a conduit of information to and from the community to appropriate Federal, State, and local agencies and potentially responsible parties;

"(C) serve as a representative of the local community during the remedial action planning and implementation process; and

"(D) provide reasonable notice of and opportunities to participate in the meetings and other activities of the community response organization.

"(3) ACCESS TO DOCUMENTS.—The Administrator shall provide a community response organization access to documents in possession of the Federal Government regarding response actions at the facility that do not relate to liability and are not protected from disclosure as confidential business information.

"(4) COMMUNITY RESPONSE ORGANIZATION INPUT.—

"(A) CONSULTATION.—The Administrator (or if the remedial action plan is being prepared or implemented by a party other than the Administrator, the other party) shall—

"(i) consult with the community response organization in developing and implementing the remedial action plan; and

"(ii) keep the community response organization informed of progress in the development and implementation of the remedial action plan.

"(B) TIMELY SUBMISSION OF COMMENTS.—The community response organization shall provide its comments, information, and recommendations in a timely manner to the Administrator (and other party).

"(C) CONSENSUS.—The community response organization shall attempt to achieve consensus among its members before providing comments and recommendations to the Administrator (and other party), but if consensus cannot be reached, the community response organization shall report or allow presentation of divergent views.

"(5) TECHNICAL ASSISTANCE GRANTS.—

"(A) PREFERRED RECIPIENT.—If a community response organization exists for a facility, the community response organization shall be the preferred recipient of a technical assistance grant under subsection (f).

"(B) PRIOR AWARD.—If a technical assistance grant concerning a facility has been awarded prior to establishment of a community response organization—

"(i) the recipient of the grant shall coordinate its activities and share information and technical expertise with the community response organization; and

"(ii) 1 person representing the grant recipient shall serve on the community response organization.

"(6) MEMBERSHIP.—

"(A) NUMBER.—The Administrator shall select not less than 15 nor more than 20 persons to serve on a community response organization.

"(B) NOTICE.—Before selecting members of the community response organization, the Administrator shall provide a notice of intent to establish a community response organization to persons who reside in the local community.

"(C) REPRESENTED GROUPS.—The Administrator shall, to the extent practicable, appoint members to the community response organization from each of the following groups of persons:

"(i) Persons who reside or own residential property near the facility;

"(ii) Persons who, although they may not reside or own property near the facility, may be adversely affected by a release from the facility.

"(iii) Persons who are members of the local public health or medical community and are practicing in the community.

"(iv) Representatives of Indian tribes or Indian communities that reside or own property near the facility or that may be adversely affected by a release from the facility.

"(v) Local representatives of citizen, environmental, or public interest groups with members residing in the community.

"(vi) Representatives of local governments, such as city or county governments, or both, and any other governmental unit that regulates land use or land use planning in the vicinity of the facility.

"(vii) Members of the local business community.

"(D) PROPORTION.—Local residents shall comprise not less than 60 percent of the membership of a community response organization.

"(E) PAY.—Members of a community response organization shall serve without pay.

"(7) PARTICIPATION BY GOVERNMENT REPRESENTATIVES.—Representatives of the Administrator, the Administrator of the Agency for Toxic Substances and Disease Registry, other Federal agencies, and the State, as appropriate, shall participate in community response organization meetings to provide information and technical expertise, but shall not be members of the community response organization.

"(8) ADMINISTRATIVE SUPPORT.—The Administrator, to the extent practicable, shall provide administrative services and meeting facilities for community response organizations.

"(9) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a community response organization.

"(f) TECHNICAL ASSISTANCE GRANTS.—

"(1) DEFINITIONS.—In this subsection:

"(A) AFFECTED CITIZEN GROUP.—The term 'affected citizen group' means a group of 2 or more individuals who may be affected by the release or threatened release of a hazardous substance, pollutant, or contaminant at any facility on the State Registry or the National Priorities List.

"(B) TECHNICAL ASSISTANCE GRANT.—The term 'technical assistance grant' means a grant made under paragraph (2).

"(2) AUTHORITY.—

"(A) IN GENERAL.—In accordance with a regulation issued by the Administrator, the Administrator may make grants available to affected citizen groups.

"(B) AVAILABILITY OF APPLICATION PROCESS.—To ensure that the application process for a technical assistance grant is available to all affected citizen groups, the Administrator shall periodically review the process and, based on the review, implement appropriate changes to improve availability.

"(3) SPECIAL RULES.—

"(A) NO MATCHING CONTRIBUTION.—No matching contribution shall be required for a technical assistance grant.

"(B) AVAILABILITY IN ADVANCE.—The Administrator shall make all or a portion (but not less than $5,000 or 10 percent of the grant amount, whichever is greater) of the grant amount available to a grant recipient in advance of the total expenditures to be covered by the grant.

"(4) LIMIT PER FACILITY.—

"(A) 1 GRANT PER FACILITY.—Not more than 1 technical assistance grant may be made with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of response action.

"(B) DURATION.—The Administrator shall set a limit by regulation on the number of years for which a technical assistance grant may be made available based on the duration, type, and extent of response action at a facility.

"(5) AVAILABILITY FOR FACILITIES NOT YET LISTED.—Subject to paragraph (6), 1 or more technical assistance grants shall be made available to affected citizen groups in communities containing facilities on the State Registry as of the date on which the grant is awarded.

"(6) FUNDING LIMIT.—

"(A) PERCENTAGE OF TOTAL APPROPRIATIONS.—Not more than 2 percent of the funds made available to carry out this Act for a fiscal year may be used to make technical assistance grants.

"(B) ALLOCATION BETWEEN LISTED AND UNLISTED FACILITIES.—Not more than the portion of funds equal to⅛ of the total amount of funds used to make technical assistance grants for a fiscal year may be used for technical assistance grants with respect to facilities not listed on the National Priorities List.

"(7) FUNDING AMOUNT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of a technical assistance grant may not exceed $50,000 for a single grant recipient.

"(B) INCREASE.—The Administrator may increase the amount of a technical assistance grant, or renew a previous technical assistance grant, up to a total grant amount not exceeding $100,000, to reflect the complexity of the response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected population, and the ability of the grant recipient to identify and raise funds from other non-Federal sources.

"(8) USE OF TECHNICAL ASSISTANCE GRANTS.—

"(A) PERMITTED USE.—A technical assistance grant may be used to obtain technical assistance in interpreting information with regard to—

"(i) the nature of the hazardous substances located at a facility;

"(ii) the work plan;

"(iii) the facility evaluation;

"(iv) a proposed remedial action plan, a remedial action plan, and a final remedial design for a facility;

"(v) response actions carried out at the facility; and

"(vi) operation and maintenance activities at the facility.

"(B) PROHIBITED USE.—A technical assistance grant may not be used for the purpose of collecting field sampling data.

"(9) GRANT GUIDELINES.—

"(A) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, the Administrator shall develop and publish guidelines concerning the management of technical assistance grants by grant recipients.

"(B) HIRING OF EXPERTS.—A recipient of a technical assistance grant that hires technical experts and other experts shall act in accordance with the guidelines under subparagraph (A).

"(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.—

"(1) IN GENERAL.—

"(A) MEETINGS AND NOTICE.—In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the Administrator shall provide the opportunity for, and publish notice of, public meetings before or during performance of—

"(i) a facility evaluation, as appropriate;

"(ii) announcement of a proposed remedial action plan; and

"(iii) completion of a final remedial design.

"(B) INFORMATION.—A public meeting under subparagraph (A) shall be designed to obtain information from the community, and disseminate information to the community, with respect to a facility concerning the Administrator's facility activities and pending decisions.

"(2) PARTICIPANTS AND SUBJECT.—The Administrator shall provide reasonable notice of an opportunity for public participation in meetings in which—

"(A) the participants include Federal officials (or State officials, if the State is conducting response actions under a delegated or authorized program or through facility referral) with authority to make significant decisions affecting a response action, and other persons (unless all of such other persons are coregulators that are not potentially responsible parties or are government contractors); and

"(B) the subject of the meeting involves discussions directly affecting—

"(i) a legally enforceable work plan document, or any significant amendment to the document, for a removal, facility evaluation, proposed remedial action plan, final remedial design, or remedial action for a facility on the National Priorities List; or

"(ii) the final record of information on which the Administrator will base a hazard ranking system score for a facility.

"(3) LIMITATION.—Nothing in this subsection shall be construed—

"(A) to provide for public participation in or otherwise affect any negotiation, meeting, or other discussion that concerns only the potential liability or settlement of potential liability of any person, whether prior to or following the commencement of litigation or administrative enforcement action;

"(B) to provide for public participation in or otherwise affect any negotiation, meeting, or other discussion that is attended only by representatives of the United States (or of a department, agency, or instrumentality of the United States) with attorneys representing the United States (or of a department, agency, or instrumentality of the United States); or

"(C) to waive, compromise, or affect any privilege that may be applicable to a communication related to an activity described in subparagraph (A) or (B).

"(4) EVALUATION.—

"(A) IN GENERAL.—To the extent practicable, before and during the facility evaluation, the Administrator shall solicit and evaluate concerns, interests, and information from the community.

"(B) PROCEDURE.—An evaluation under subparagraph (A) shall include, as appropriate—

"(i) face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community;

"(ii) a public meeting;

"(iii) written responses to significant concerns; and

"(iv) other appropriate participatory activities.

"(5) VIEWS AND PREFERENCES.—

"(A) SOLICITATION.—During the facility evaluation, the Administrator (or other person performing the facility evaluation) shall solicit the views and preferences of the community on the remediation and disposition of hazardous substances or pollutants or contaminants at the facility.

"(B) CONSIDERATION.—The views and preferences of the community shall be described in the facility evaluation and considered in the screening of remedial alternatives for the facility.

"(6) ALTERNATIVES.—Members of the community may propose remedial action alternatives, and the Administrator shall consider such alternatives in the same manner as the Administrator considers alternatives proposed by potentially responsible parties.

"(7) INFORMATION.—

"(A) THE COMMUNITY.—The Administrator, with all significant phases of the response action at the facility.

"(B) TECHNICAL STAFF.—The Administrator shall ensure that information gathered from the community during community outreach efforts reaches appropriate technical staff i

"(B) TECHNICAL STAFF.—The Administrator shall ensure that information gathered from the community during community outreach efforts reaches appropriate technical staff in a timely and effective manner.

"(C) RESPONSES.—The Administrator shall ensure that reasonable written or other appropriate responses will be made to such information.

"(8) NONPRIVILEGED INFORMATION.—Throughout all phases of response action at a facility, the Administrator shall make all nonprivileged information relating to a facility available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate.

"(9) PRESENTATION.—

"(A) DOCUMENTS.—

"(i) IN GENERAL.—The Administrator, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is complete and informative.

"(ii) RISK.—To the extent feasible, documents prepared by the Administrator and made available to the public that purport to describe the degree of risk to human health shall be consistent with the risk communication principles outlined in section 131(c).

"(B) COMPARISONS.—The Administrator, in carrying out responsibilities under this Act, shall provide comparisons of the level of risk from hazardous substances found at the facility to comparable levels of risk from those hazardous substances ordinarily encountered by the general public through other sources of exposure.

"(10) REQUIREMENTS.—

"(A) LENGTHY REMOVAL ACTIONS.—Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 that is expected to require more than 180 days to complete, and in any case in which implementation of a removal action is expected to obviate or that in fact obviates the need to conduct a long-term remedial action—

"(i) the Administrator shall, to the maximum extent practicable, allow for public participation consistent with paragraph (1); and

"(ii) the removal action shall achieve the goals of protecting human health and the environment in accordance with section 121(a)(1).

"(B) OTHER REMOVAL ACTIONS.—In the case of all other removal actions, the Administrator may provide the community with notice of the anticipated removal action and a public comment period, as appropriate.".

(b) ISSUANCE OF GUIDELINES.—The Administrator of the Environmental Protection Agency shall issue guidelines under section 117(e)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), not later than 90 days after the date of enactment of this Act.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

SEC. 401. DEFINITIONS.

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 105(a)) is amended by adding at the end the following:

"(41) ACTUAL OR PLANNED OR REASONABLY ANTICIPATED FUTURE USE OF THE LAND AND WATER RESOURCES.—The term 'actual or planned or reasonably anticipated future use of the land and water resources' means—

"(A) the actual use of the land, surface water, and ground water at a facility on the date of submittal of the proposed remedial action plan; and

"(B)(i) with respect to land—

"(I) the use of land that is authorized by the zoning or land use decisions formally adopted, at or prior to the time of the initiation of the facility evaluation, by the local land use planning authority for a facility and the land immediately adjacent to the facility; and

"(II) any other reasonably anticipated use that the local land use authority, in consultation with the community response organization (if any), determines to have a substantial probability of occurring based on recent (as of the time of the determination) development patterns in the area in which the facility is located and on population projections for the area; and

"(ii) with respect to water resources, the future use of the surface water and ground water that is potentially affected by releases from a facility that is reasonably anticipated, by the governmental unit that regulates surface or ground water use or surface or ground water use planning in the vicinity of the facility, on the date of submission of the proposed remedial action plan.

"(42) SUSTAINABILITY.—The term 'sustainability', for the purpose of section 121(a)(1)(B)(ii), means the ability of an ecosystem to continue to function within the normal range of its variability absent the effects of a release of a hazardous substance.".

SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended—

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

"SEC. 121. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

"(a) GENERAL RULES.—

"(1) SELECTION OF COST-EFFECTIVE REMEDIAL ACTION THAT PROTECTS HUMAN HEALTH AND THE ENVIRONMENT.—

"(A) IN GENERAL.—The Administrator shall select a cost-effective remedial action that achieves the goals of protecting human health and the environment as stated in subparagraph (B), and complies with other applicable Federal and State laws in accordance with subparagraph (C) on the basis of a facility-specific risk evaluation in accordance with section 131 and in accordance with the criteria stated in subparagraph (D) and the requirements of paragraph (2).

"(B) GOALS OF PROTECTING HUMAN HEALTH AND THE ENVIRONMENT.—

"(i) PROTECTION OF HUMAN HEALTH.—A remedial action shall be considered to protect human health if, considering the expected exposures associated with the actual or planned or reasonably anticipated future use of the land and water resources and on the basis of a facility-specific risk evaluation in accordance with section 131, the remedial action achieves a residual risk—

"(I) from exposure to nonthreshold carcinogenic hazardous substances, pollutants, or contaminants such that cumulative lifetime additional cancer from exposure to hazardous substances from releases at the facility range from 10^{-4} to 10^{-6} for the affected population; and

"(II) from exposure to threshold carcinogenic and noncarcinogenic hazardous substances, pollutants, or contaminants at the facility, that does not exceed a hazard index of 1.

"(ii) PROTECTION OF THE ENVIRONMENT.—A remedial action shall be considered to be protective of the environment if the remedial action—

"(I) protects ecosystems from significant threats to their sustainability arising from exposure to releases of hazardous substances at a site; and

"(II) does not cause a greater threat to the sustainability of ecosystems than a release of a hazardous substance.

"(iii) PROTECTION OF GROUND WATER.—A remedial action shall prevent or eliminate any actual human ingestion of drinking water containing any hazardous substance from the release at levels—

"(I) in excess of the maximum contaminant level established under the Safe Drinking Water Act (42 U.S.C. 300f et seq.); or

"(II) if no such maximum contaminant level has been established for the hazardous substance, at levels that meet the goals for protection of human health under clause (i).

"(C) COMPLIANCE WITH FEDERAL AND STATE LAWS.—

"(i) SUBSTANTIVE REQUIREMENTS.—

"(I) IN GENERAL.—Subject to clause (iii) and subparagraphs (A) and (D) and paragraph (2), a remedial action shall—

"(aa) comply with the substantive requirements of all promulgated standards, requirements, criteria, and limitations under each Federal law and each State law relating to the environment or to the siting of facilities (including a State law that imposes a more stringent standard, requirement, criterion, or limitation than Federal law) that is applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions; and

"(bb) comply with or attain any other promulgated standard, requirement, criterion, or limitation under any State law relating to the environment or siting of facilities, as determined by the State, after the date of enactment of the Superfund Cleanup Acceleration Act of 1997, through a rulemaking procedure that includes public notice, comment,

and written response comment, and opportunity for judicial review, but only if the State demonstrates that the standard, requirement, criterion, or limitation is of general applicability and is consistently applied to remedial actions under State law.

"(II) IDENTIFICATION OF FACILITIES.—Compliance with a State standard, requirement, criterion, or limitation described in subclause (I) shall be required at a facility only if the standard, requirement, criterion, or limitation has been identified by the State to the Administrator in a timely manner as being applicable to the facility.

"(III) PUBLISHED LISTS.—Each State shall publish a comprehensive list of the standards, requirements, criteria, and limitations that the State may apply to remedial actions under this Act, and shall revise the list periodically, as requested by the Administrator.

"(IV) CONTAMINATED MEDIA.—Compliance with this clause shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same media in or very near then-existing areas of contamination onsite at a facility.

"(ii) PROCEDURAL REQUIREMENTS.—Procedural requirements of Federal and State standards, requirements, criteria, and limitations (including permitting requirements) shall not apply to response actions conducted onsite at a facility.

"(iii) WAIVER PROVISIONS.—

"(I) DETERMINATION BY THE PRESIDENT.—The Administrator shall evaluate and determine if it is not appropriate for a remedial action to attain a Federal or State standard, requirement, criterion, or limitation as required by clause (i).

"(II) SELECTION OF REMEDIAL ACTION THAT DOES NOT COMPLY.—The Administrator may select a remedial action at a facility that meets the requirements of subparagraph (B) but does not comply with or attain a Federal or State standard, requirement, criterion, or limitation described in clause (i) if the Administrator makes any of the following findings:

"(aa) IMPROPER IDENTIFICATION.—The standard, requirement, criterion, or limitation, which was improperly identified as an applicable requirement under clause (i)(I)(aa), fails to comply with the rulemaking requirements of clause (i)(I)(bb).

"(bb) PART OF REMEDIAL ACTION.—The selected remedial action is only part of a total remedial action that will comply with or attain the applicable requirements of clause (i) when the total remedial action is completed.

"(cc) GREATER RISK.—Compliance with or attainment of the standard, requirement, criterion, or limitation at the facility will result in greater risk to human health or the environment than alternative options.

"(dd) TECHNICALLY IMPRACTICABILITY.—Compliance with or attainment of the standard, requirement, criterion, or limitation is technically impracticable.

"(ee) EQUIVALENT TO STANDARD OF PERFORMANCE.—The selected remedial action will attain a standard of performance that is equivalent to that required under a standard, requirement, criterion, or limitation described in clause (i) through use of another approach.

"(ff) INCONSISTENT APPLICATION.—With respect to a State standard, requirement, criterion, limitation, or level, the State has not consistently applied (or demonstrated the intention to apply consistently) the standard, requirement, criterion, or limitation or level in similar circumstances to other remedial actions in the State.

"(gg) BALANCE.—In the case of a remedial action to be undertaken under section 104 or 136 using amounts from the Fund, a selection of a remedial action that complies with or attains a standard, requirement, criterion, or limitation described in clause (i) will not provide a balance between the need for protection of public health and welfare and the environment at the facility, and the need to make amounts from the Fund available to respond to other facilities that may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of the threats presented by the various facilities.

"(III) PUBLICATION.—The Administrator shall publish any findings made under subclause (II), including an explanation and appropriate documentation.

"(D) REMEDY SELECTION CRITERIA.—In selecting a remedial action from among alternatives that achieve the goals stated in subparagraph (B) pursuant to a facility-specific risk evaluation in accordance with section 131, the Administrator shall balance the following factors, ensuring that no single factor predominates over the others:

"(i) The effectiveness of the remedy in protecting human health and the environment.

"(ii) The reliability of the remedial action in achieving the protectiveness standards over the long term.

"(iii) Any short-term risk to the affected community, those engaged in the remedial action effort, and to the environment posed by the implementation of the remedial action.

"(iv) The acceptability of the remedial action to the affected community.

"(v) The implementability and technical feasibility of the remedial action from an engineering perspective.

"(vi) The reasonableness of the cost.

"(2) TECHNICAL IMPRACTICABILITY.—

"(A) MINIMIZATION OF RISK.—If the Administrator, after reviewing the remedy selection criteria stated in paragraph (1)(D), finds that achieving the goals stated in paragraph (1)(B) is technically impracticable, the Administrator shall evaluate remedial measures that mitigate the risks to human health and the environment and select a technically practicable remedial action that will most closely achieve the goals stated in paragraph (1) through cost-effective means.

"(B) BASIS FOR FINDING.—A finding of technical impracticability may be made on the basis of a determination, supported by appropriate documentation, that, at the time at which the finding is made—

"(i) there is no known reliable means of achieving at a reasonable cost the goals stated in paragraph (1)(B); and

"(ii) it has not been shown that such a means is likely to be developed within a reasonable period of time.

"(3) PRESUMPTIVE REMEDIAL ACTIONS.—A remedial action that implements a presumptive remedial action issued under section 132 shall be considered to achieve the goals stated in paragraph (1)(B) and balance adequately the factors stated in paragraph (1)(D).

"(4) GROUND WATER.—

"(A) IN GENERAL.—The Administrator or the preparer of the remedial action plan shall select a cost effective remedial action for ground water that achieves the goals of protecting human health and the environment as stated in paragraph (1)(B) and with the requirements of this paragraph, and complies with other applicable Federal and State laws in accordance with subparagraph (C) on the basis of a facility-specific risk evaluation in accordance with section 131 and in accordance with the criteria stated in subparagraph (D) and the requirements of paragraph (2). If appropriate, a remedial action for ground water shall be phased, allowing collection of sufficient data to evaluate the effect of any other remedial action taken at the site and to determine the appropriate scope of the remedial action.

"(B) CONSIDERATIONS FOR GROUND WATER REMEDIAL ACTION.—A decision regarding a remedial action for ground water shall take into consideration—

"(i) the actual or planned or reasonably anticipated future use of ground water and the timing of that use; and

"(ii) any attenuation or biodegradation that would occur if no remedial action were taken.

"(C) UNCONTAMINATED GROUND WATER.—A remedial action shall protect uncontaminated ground water that is suitable for use as drinking water by humans or livestock if the water is uncontaminated and suitable for such use at the time of submission of the proposed remedial action plan. A remedial action to protect uncontaminated ground water may utilize natural attenuation (which may include dilution or dispersion, but in conjunction with biodegradation or other levels of attenuation necessary to facilitate the remediation of contaminated ground water) so long as the remedial action does not interfere with the actual or planned or reasonably anticipated future use of the uncontaminated ground water.

"(D) CONTAMINATED GROUND WATER.—

"(i) IN GENERAL.—In the case of contaminated ground water for which the actual or planned or reasonably anticipated future use of the resource is as drinking water for humans or livestock, if the Administrator determines that restoration of some portion of the contaminated ground water to a condition suitable for the use is technically practicable, the Administrator shall seek to restore the ground water to a condition suitable for the use.

"(ii) DETERMINATION OF RESTORATION PRACTICABILITY.—In making a determination regarding the technical practicability of ground water restoration—

"(I) there shall be no presumption of the technical practicability; and

"(II) the determination of technical practicability shall, to the extent practicable, be made on the basis of projections, modeling, or other analysis on a site-specific basis without a requirement for the construction or installation and operation of a remedial action.

"(iii) DETERMINATION OF NEED FOR AND METHODS OF RESTORATION.—In making a determination and selecting a remedial action regarding restoration of contaminated ground water the Administrator shall take into account—

"(I) the ability to substantially accelerate the availability of ground water for use as drinking water beyond the rate achievable by natural attenuation; and

"(II) the nature and timing of the actual or planned or reasonably anticipated use of such ground water.

"(iv) RESTORATION TECHNICALLY IMPRACTICABLE.—

"(I) IN GENERAL.—A remedial action for contaminated ground water having an actual or planned or reasonably anticipated future use as a drinking water source for humans or livestock for which attainment of the levels described in paragraph (1)(B)(iii) is technically impracticable shall be selected in accordance with paragraph (1)(D)(2).

"(II) NO INGESTION.—Selected remedies may rely on point-of-use treatment or other measures to ensure that there will be no ingestion of drinking water at levels exceeding the requirement of paragraph (1)(B)(iii) (I) or (II).

"(III) INCLUSION AS PART OF OPERATION AND MAINTENANCE.—The operation and maintenance of any treatment device installed at the point of use shall be included as part of the operation and maintenance of the remedy.

"(E) GROUND WATER NOT SUITABLE FOR USE AS DRINKING WATER.—Notwithstanding any other evaluation or determination of the potential suitability of ground water for drinking water use, ground water that is not suitable for use as drinking water by humans or livestock because of naturally occurring conditions, or is so contaminated by the effects of broad-scale human activity unrelated to a specific facility or release that restoration of drinking water quality is technically impracticable or is physically incapable of yielding a quantity of 150 gallons per day of water to a well or spring, shall be considered to be not suitable for use as drinking water.

"(F) OTHER GROUND WATER.—Remedial action for contaminated ground water (other than ground water having an actual or planned or reasonably anticipated future use as a drinking water source for humans or livestock) shall attain levels appropriate for the then-current or reasonably anticipated future use of the ground water, or levels appropriate considering the then-current use of any ground water or surface water to which the contaminated ground water discharges.

"(5) OTHER CONSIDERATIONS APPLICABLE TO REMEDIAL ACTIONS.—A remedial action that uses institutional and engineering controls shall be considered to be on an equal basis with all other remedial action alternatives.";

(2) by redesignating subsection (c) as subsection (b);

(3) by striking subsection (d); and

(4) by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

SEC. 403. REMEDY SELECTION METHODOLOGY.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 201(a)) is amended by adding at the end the following:

"SEC. 131. FACILITY-SPECIFIC RISK EVALUATIONS.

"(a) USES.—

"(1) IN GENERAL.—A facility-specific risk evaluation shall be used to—

"(A) identify the significant components of potential risk posed by a facility;

"(B) screen out potential contaminants, areas, or exposure pathways from further study at a facility;

"(C) compare the relative protectiveness of alternative potential remedies proposed for a facility; and

"(D) demonstrate that the remedial action selected for a facility is capable of protecting human health and the environment considering the actual or planned or reasonably anticipated future use of the land and water resources.

"(2) COMPLIANCE WITH PRINCIPLES.—A facility-specific risk evaluation shall comply with the principles stated in this section to ensure that—

"(A) actual or planned or reasonably anticipated future use of the land and water resources is given appropriate consideration; and

"(B) all of the components of the evaluation are, to the maximum extent practicable, scientifically objective and inclusive of all relevant data.

"(b) RISK EVALUATION PRINCIPLES.—A facility-specific risk evaluation shall—

"(1) be based on actual information or scientific estimates of exposure considering the actual or planned or reasonably anticipated future use of the land and water resources to the extent that substituting such estimates for those made using standard assumptions alters the basis for decisions to be made;

"(2) be comprised of components each of which is, to the maximum extent practicable, scientifically objective, and inclusive of all relevant data;

"(3) use chemical and facility-specific data and analysis (such as bioavailability, exposure, and fate and transport evaluations) in preference to default assumptions when—

"(A) such data and analysis are likely to vary by facility; and

"(B) facility-specific risks are to be communicated to the public or the use of such data and analysis alters the basis for decisions to be made; and

"(4) use a range and distribution of realistic and scientifically supportable assumptions when chemical and facility-specific data are not available, if the use of such assumptions would communicate more accurately the consequences of the various decision options.

"(c) RISK COMMUNICATION PRINCIPLES.—The document reporting the results of a facility-specific risk evaluation shall—

"(1) contain an explanation that clearly communicates the risks at the facility;

"(2) identify and explain all assumptions used in the evaluation, any alternative assumptions that, if made, could materially affect the outcome of the evaluation, the policy or value judgments used in choosing the assumptions, and whether empirical data conflict with or validate the assumptions;

"(3) present—

"(A) a range and distribution of exposure and risk estimates, including, if numerical estimates are provided, central estimates of exposure and risk using—

"(i) the most scientifically supportable assumptions or a weighted combination of multiple assumptions based on different scenarios; or

"(ii) any other methodology designed to characterize the most scientifically supportable estimate of risk given the information that is available at the time of the facility-specific risk evaluation; and

"(B) a statement of the nature and magnitude of the scientific and other uncertainties associated with those estimates;

"(4) state the size of the population potentially at risk from releases from the facility and the likelihood that potential exposures will occur based on the actual or planned or reasonably anticipated future use of the land and water resources; and

"(5) compare the risks from the facility to other risks commonly experienced by members of the local community in their daily lives and similar risks regulated by the Federal Government.

"(d) REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall issue a final regulation implementing this section that promotes a realistic characterization of risk that neither minimizes nor exaggerates the risks and potential risks posed by a facility or a proposed remedial action.

"SEC. 132. PRESUMPTIVE REMEDIAL ACTIONS.

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a final regulation establishing presumptive remedial actions for commonly encountered types of facilities with reasonably well understood contamination problems and exposure potential.

"(b) PRACTICABILITY AND COST-EFFECTIVENESS.—Such presumptive remedies must have been demonstrated to be technically practicable and cost-effective methods of achieving the goals of protecting human health and the environment stated in section 121(a)(1)(B).

"(c) VARIATIONS.—The Administrator may issue various presumptive remedial actions based on various uses of land and water resources, various environmental media, and various types of hazardous substances, pollutants, or contaminants.

"(d) ENGINEERING CONTROLS.—Presumptive remedial actions are not limited to treatment remedies, but may be based on, or include, institutional and standard engineering controls.".

SEC. 404. REMEDY SELECTION PROCEDURES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 403) is amended by adding at the end the following:

"SEC. 133. REMEDIAL ACTION PLANNING AND IMPLEMENTATION.

"(a) IN GENERAL.—

"(1) BASIC RULES.—

"(A) PROCEDURES.—A remedial action with respect to a facility that is listed or proposed for listing on the National Priorities List shall be developed and selected in accordance with the procedures set forth in this section.

"(B) NO OTHER PROCEDURES OR REQUIREMENTS.—The procedures stated in this section are in lieu of any procedures or requirements under any other law to conduct remedial investigations, feasibility studies, record of decisions, remedial designs, or remedial actions.

"(C) LIMITED REVIEW.—In a case in which the potentially responsible parties prepare a remedial action plan, only the work plan, facility evaluation, proposed remedial action plan, and final remedial design shall be subject to review, comment, and approval by the Administrator.

"(D) DESIGNATION OF POTENTIALLY RESPONSIBLE PARTIES TO PREPARE WORK PLAN, FACILITY EVALUATION, PROPOSED REMEDIAL ACTION, AND REMEDIAL DESIGN AND TO IMPLEMENT THE REMEDIAL ACTION PLAN.—In the case of a facility for which the Administrator is not required to prepare a work plan, facility evaluation, proposed remedial action, and remedial design and implement the remedial action plan—

"(i) if a potentially responsible party or group of potentially responsible parties—

"(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

"(II) demonstrates that the potentially responsible party or group of potentially responsible parties has the financial resources and the expertise to perform those functions, the Administrator shall designate the potentially responsible party or group of potentially responsible parties to perform those functions; and

"(ii) if more than 1 potentially responsible party or group of potentially responsible parties—

"(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and

to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

"(II) demonstrates that the potentially responsible parties or group of potentially responsible parties has the financial resources and the expertise to perform those functions, the Administrator, based on an assessment of the various parties' comparative financial resources, technical expertise, and histories of cooperation with respect to facilities that are listed on the National Priorities List, shall designate 1 potentially responsible party or group of potentially responsible parties to perform those functions.

"(E) APPROVAL REQUIRED AT EACH STEP OF PROCEDURE.—No action shall be taken with respect to a facility evaluation, proposed remedial action plan, remedial action plan, or remedial design, respectively, until a work plan, facility evaluation, proposed remedial action plan, and remedial action plan, respectively, have been approved by the Administrator.

"(F) NATIONAL CONTINGENCY PLAN.—The Administrator shall conform the National Contingency Plan regulations to reflect the procedures stated in this section.

"(2) USE OF PRESUMPTIVE REMEDIAL ACTIONS.—

"(A) PROPOSAL TO USE.—In a case in which a presumptive remedial action applies, the Administrator (if the Administrator is conducting the remedial action) or the preparer of the remedial action plan may, after conducting a facility evaluation, propose a presumptive remedial action for the facility, if the Administrator or preparer shows with appropriate documentation that the facility fits the generic classification for which a presumptive remedial action has been issued and performs an engineering evaluation to demonstrate that the presumptive remedial action can be applied at the facility.

"(B) LIMITATION.—The Administrator may not require a potentially responsible party to implement a presumptive remedial action.

"(b) REMEDIAL ACTION PLANNING PROCESS.—

"(1) IN GENERAL.—The Administrator or a potentially responsible party shall prepare and implement a remedial action plan for a facility.

"(2) CONTENTS.—A remedial action plan shall consist of—

"(A) the results of a facility evaluation, including any screening analysis performed at the facility;

"(B) a discussion of the potentially viable remedies that are considered to be reasonable under section 121(a), the respective capital costs, operation and maintenance costs, and estimated present worth costs of the remedies, and how the remedies balance the factors stated in section 121(a)(1)(D);

"(C) a description of the remedial action to be taken;

"(D) a description of the facility-specific risk-based evaluation under section 131 and a demonstration that the selected remedial action will satisfy sections 121(a) and 132; and

"(E) a realistic schedule for conducting the remedial action, taking into consideration facility-specific factors.

"(3) WORK PLAN.—

"(A) IN GENERAL.—Prior to preparation of a remedial action plan, the preparer shall develop a work plan, including a community information and participation plan, which generally describes how the remedial action plan will be developed.

"(B) SUBMISSION.—A work plan shall be submitted to the Administrator, the State, the community response organization, the local library, and any other public facility designated by the Administrator.

"(C) PUBLICATION.—The Administrator or other person that prepares a work plan shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the work plan is available for review at the local library and that comments concerning the work plan can be submitted to the preparer of the work plan, the Administrator, the State, or the local community response organization.

"(D) FORWARDING OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall forward the comments to the preparer of the work plan.

"(E) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a work plan, the Administrator shall—

"(i) identify to the preparer of the work plan, with specificity, any deficiencies in the submission; and

"(ii) require that the preparer submit a revised work plan within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

"(4) FACILITY EVALUATION.—

"(A) IN GENERAL.—The Administrator (or the preparer of the facility evaluation) shall conduct a facility evaluation at each facility to characterize the risk posed by the facility by gathering enough information necessary to—

"(i) assess potential remedial alternatives, including ascertaining, to the degree appropriate, the volume and nature of the contaminants, their location, potential exposure pathways and receptors;

"(ii) discern the actual or planned or reasonably anticipated future use of the land and water resources; and

"(iii) screen out any uncontaminated areas, contaminants, and potential pathways from further consideration.

"(B) SUBMISSION.—A draft facility evaluation shall be submitted to the Administrator for approval.

"(C) PUBLICATION.—Not later than 30 days after submission, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the draft facility evaluation, the Administrator shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the draft facility evaluation is available for review and that comments concerning the evaluation can be submitted to the Administrator, the State, and the community response organization.

"(D) AVAILABILITY OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall make the comments available to the preparer of the facility evaluation.

"(E) NOTICE OF APPROVAL.—If the Administrator approves a facility evaluation, the Administrator shall—

"(i) notify the community response organization; and

"(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

"(F) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a facility evaluation, the Administrator shall—

"(i) identify to the preparer of the facility evaluation, with specificity, any deficiencies in the submission; and

"(ii) require that the preparer submit a revised facility evaluation within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

"(5) PROPOSED REMEDIAL ACTION PLAN.—

"(A) SUBMISSION.—In a case in which a potentially responsible party prepares a remedial action plan, the preparer shall submit the remedial action plan to the Administrator for approval and provide a copy to the local library.

"(B) PUBLICATION.—After receipt of the proposed remedial action plan, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the remedial action plan, the Administrator shall cause to be published in a newspaper of general circulation in the area where the facility is located and posted in other conspicuous places in the local community a notice announcing that the proposed remedial action plan is available for review at the local library and that comments concerning the remedial action plan can be submitted to the Administrator, the State, and the community response organization.

"(C) AVAILABILITY OF COMMENTS.—If comments are submitted to a State or the community response organization, the State or community response organization shall make the comments available to the preparer of the proposed remedial action plan.

"(D) HEARING.—The Administrator shall hold a public hearing at which the proposed remedial action plan shall be presented and public comment received.

"(E) REMEDY REVIEW BOARDS.—

"(i) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this section, the Administrator shall establish and appoint the members of 1 or more remedy review boards (referred to in this subparagraph as a "remedy review board"), each consisting of independent technical experts within Federal and State agencies with responsibility for remediating contaminated facilities.

"(ii) SUBMISSION OF REMEDIAL ACTION PLANS FOR REVIEW.—Subject to clause (iii), a proposed remedial action plan prepared by a potentially responsible party or the Administrator may be submitted to a remedy review board at the request of the person responsible for preparing or implementing the remedial action plan.

"(iii) NO REVIEW.—The Administrator may preclude submission of a proposed remedial action plan to a remedy review board if the Administrator determines that review by a remedy review board would result in an unreasonably long delay that would threaten human health or the environment.

"(iv) RECOMMENDATIONS.—Not later than 180 days after receipt of a request for review (unless the Administrator, for good cause, grants additional time), a remedy review board shall provide recommendations to the Administrator regarding whether the proposed remedial action plan is—

"(I) consistent with the requirements and standards of section 121(a);

"(II) technically feasible or infeasible from an engineering perspective; and

"(III) reasonable or unreasonable in cost.

"(v) REVIEW BY THE ADMINISTRATOR.—

"(I) CONSIDERATION OF COMMENTS.—In reviewing a proposed remedial action plan, a remedy review board shall consider any comments submitted under subparagraphs (B)

and (D) and shall provide an opportunity for a meeting, if requested, with the person responsible for preparing or implementing the remedial action plan.

"(II) STANDARD OF REVIEW.—In determining whether to approve or disapprove a proposed remedial action plan, the Administrator shall give substantial weight to the recommendations of the remedy review board.

"(F) APPROVAL.—

"(i) IN GENERAL.—The Administrator shall approve a proposed remedial action plan if the plan—

"(I) contains the information described in section 131(b); and

"(II) satisfies section 121(a).

"(ii) DEFAULT.—If the Administrator fails to issue a notice of disapproval of a proposed remedial action plan in accordance with subparagraph (G) within 180 days after the proposed plan is submitted, the plan shall be considered to be approved and its implementation fully authorized.

"(G) NOTICE OF APPROVAL.—If the Administrator approves a proposed remedial action plan, the Administrator shall—

"(i) notify the community response organization; and

"(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

"(H) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a proposed remedial action plan, the Administrator shall—

"(i) inform the preparer of the proposed remedial action plan, with specificity, of any deficiencies in the submission; and

"(ii) request that the preparer submit a revised proposed remedial action plan within a reasonable time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

"(I) JUDICIAL REVIEW.—A recommendation under subparagraph (E)(iv) and the Administrator's review of such a recommendation shall be subject to the limitations on judicial review under section 113(h).

"(6) IMPLEMENTATION OF REMEDIAL ACTION PLAN.—A remedial action plan that has been approved or is considered to be approved under paragraph (5) shall be implemented in accordance with the schedule set forth in the remedial action plan.

"(7) REMEDIAL DESIGN.—

"(A) SUBMISSION.—A remedial design shall be submitted to the Administrator, or in a case in which the Administrator is preparing the remedial action plan, shall be completed by the Administrator.

"(B) PUBLICATION.—After receipt by the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall—

"(i) notify the community response organization; and

"(ii) cause a notice of submission or completion of the remedial design to be published in a newspaper of general circulation and posted in conspicuous places in the area where the facility is located.

"(C) COMMENT.—The Administrator shall provide an opportunity to the public to submit written comments on the remedial design.

"(D) APPROVAL.—Not later than 90 days after the submission to the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall approve or disapprove the remedial design.

"(E) NOTICE OF APPROVAL.—If the Administrator approves a remedial design, the Administrator shall—

"(i) notify the community response organization; and

"(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

"(F) NOTICE OF DISAPPROVAL.—If the Administrator disapproves the remedial design, the Administrator shall—

"(i) identify with specificity any deficiencies in the submission; and

"(ii) allow the preparer submitting a remedial design a reasonable time (which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator) in which to submit a revised remedial design.

"(c) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

"(1) NOTICE OF SIGNIFICANT DEVIATION.—If the Administrator determines that the implementation of the remedial action plan has deviated significantly from the plan, the Administrator shall provide the implementing party a notice that requires the implementing party, within a reasonable period of time specified by the Administrator, to—

"(A) comply with the terms of the remedial action plan; or

"(B) submit a notice for modifying the plan.

"(2) FAILURE TO COMPLY.—

"(A) CLASS ONE ADMINISTRATIVE PENALTY.—In issuing a notice under paragraph (1), the Administrator may impose a class one administrative penalty consistent with section 109(a).

"(B) ADDITIONAL ENFORCEMENT MEASURES.—If the implementing party fails to either comply with the plan or submit a proposed modification, the Administrator may pursue all additional appropriate enforcement measures pursuant to this Act.

"(d) MODIFICATIONS TO REMEDIAL ACTION.—

"(1) DEFINITION.—In this subsection, the term 'major modification' means a modification that—

"(A) fundamentally alters the interpretation of site conditions at the facility;

"(B) fundamentally alters the interpretation of sources of risk at the facility;

"(C) fundamentally alters the scope of protection to be achieved by the selected remedial action;

"(D) fundamentally alters the performance of the selected remedial action; or

"(E) delays the completion of the remedy by more than 180 days.

"(2) MAJOR MODIFICATIONS.—

"(A) IN GENERAL.—If the Administrator or other implementing party proposes a major modification to the plan, the Administrator or other implementing party shall demonstrate that—

"(i) the major modification constitutes the most cost-effective remedial alternative that is technologically feasible and is not unreasonably costly; and

"(ii) that the revised remedy will continue to satisfy section 121(a).

"(B) NOTICE AND COMMENT.—The Administrator shall provide the implementing party, the community response organization, and the local community notice of the proposed major modification and at least 30 days' opportunity to comment on any such proposed modification.

"(C) PROMPT ACTION.—At the end of the comment period, the Administrator shall promptly approve or disapprove the proposed modification and order implementation of the modification in accordance with any reasonable and relevant requirements that the Administrator may specify.

"(3) MINOR MODIFICATIONS.—Nothing in this section modifies the discretionary authority of the Administrator to make a minor modification of a record of decision or remedial action plan to conform to the best science and engineering, the requirements of this Act, or changing conditions at a facility.".

SEC. 405. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 404) is amended by adding at the end the following:

"SEC. 134. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

"(a) IN GENERAL.—

"(1) PROPOSED NOTICE OF COMPLETION AND PROPOSED DELISTING.—Not later than 180 days after the completion by the Administrator of physical construction necessary to implement a response action at a facility, or not later than 180 days after receipt of a notice of such completion from the implementing party, the Administrator shall publish a notice of completion and proposed delisting of the facility from the National Priorities List in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

"(2) PHYSICAL CONSTRUCTION.—For the purposes of paragraph (1), physical construction necessary to implement a response action at a facility shall be considered to be complete when—

"(A) construction of all systems, structures, devices, and other components necessary to implement a response action for the entire facility has been completed in accordance with the remedial design plan; or

"(B) no construction, or no further construction, is expected to be undertaken.

"(3) COMMENTS.—The public shall be provided 30 days in which to submit comments on the notice of completion and proposed delisting.

"(4) FINAL NOTICE.—Not later than 60 days after the end of the comment period, the Administrator shall—

"(A) issue a final notice of completion and delisting or a notice of withdrawal of the proposed notice until the implementation of the remedial action is determined to be complete; and

"(B) publish the notice in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

"(5) FAILURE TO ACT.—If the Administrator fails to publish a notice of withdrawal within the 60-day period described in paragraph (4)—

"(A) the remedial action plan shall be deemed to have been completed; and

"(B) the facility shall be delisted by operation of law.

"(6) EFFECT OF DELISTING.—The delisting of a facility shall have no effect on—

"(A) liability allocation requirements or cost-recovery provisions otherwise provided in this Act;

"(B) any liability of a potentially responsible party or the obligation of any person to provide continued operation and maintenance;

"(C) the authority of the Administrator to make expenditures from the Fund relating to the facility; or

"(D) the enforceability of any consent order or decree relating to the facility.

"(7) FAILURE TO MAKE TIMELY DISAPPROVAL.—The issuance of a final notice of completion and delisting or of a notice of withdrawal within the time required by subsection (a)(3) constitutes a nondiscretionary duty within the meaning of section 310(a)(2).

"(b) CERTIFICATION.—A final notice of completion and delisting shall include a certification by the Administrator that the facility has met all of the requirements of the remedial action plan (except requirements for continued operation and maintenance).

"(c) FUTURE USE OF A FACILITY.—

"(1) FACILITY AVAILABLE FOR UNRESTRICTED USE.—If, after completion of physical construction, a facility is available for unrestricted use and there is no need for continued operation and maintenance, the potentially responsible parties shall have no further liability under any Federal, State, or local law (including any regulation) for remediation at the facility, unless the Administrator determines, based on new and reliable factual information about the facility, that the facility does not satisfy section 121(a).

"(2) FACILITY NOT AVAILABLE FOR ANY USE.—If, after completion of physical construction, a facility is not available for any use or there are continued operation and maintenance requirements that preclude use of the facility, the Administrator shall—

"(A) review the status of the facility every 5 years; and

"(B) require additional remedial action at the facility if the Administrator determines, after notice and opportunity for hearing, that the facility does not satisfy section 121(a).

"(3) FACILITIES AVAILABLE FOR RESTRICTED USE.—The Administrator may determine that a facility or portion of a facility is available for restricted use while a response action is under way or after physical construction has been completed. The Administrator shall make a determination that uncontaminated portions of the facility are available for unrestricted use when such use would not interfere with ongoing operations and maintenance activities or endanger human health or the environment.

"(d) OPERATION AND MAINTENANCE.—The need to perform continued operation and maintenance at a facility shall not delay delisting of the facility or issuance of the certification if performance of operation and maintenance is subject to a legally enforceable agreement, order, or decree.

"(e) CHANGE OF USE OF FACILITY.—

"(1) PETITION.—Any person may petition the Administrator to change the use of a facility described in subsection (c) (2) or (3) from that which was the basis of the remedial action plan.

"(2) GRANT.—The Administrator may grant a petition under paragraph (1) if the petitioner agrees to implement any additional remedial actions that the Administrator determines are necessary to continue to satisfy section 121(a), considering the different use of the facility.

"(3) RESPONSIBILITY FOR RISK.—When a petition has been granted under paragraph (2), the person requesting the change in use of the facility shall be responsible for all risk associated with altering the facility and all costs of implementing any necessary additional remedial actions.".

SEC. 406. TRANSITION RULES FOR FACILITIES CURRENTLY INVOLVED IN REMEDY SELECTION.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 405) is amended by adding at the end the following:

"SEC. 135. TRANSITION RULES FOR FACILITIES INVOLVED IN REMEDY SELECTION ON DATE OF ENACTMENT.

"(a) NO RECORD OF DECISION.—

"(1) OPTION.—In the case of a facility or operable unit that, as of the date of enactment of this section, is the subject of a remedial investigation and feasibility study (whether completed or incomplete), the potentially responsible parties or the Administrator may elect to follow the remedial action plan process stated in section 133 rather than the remedial investigation and feasibility study and record of decision process under regulations in effect on the date of enactment of this section that would otherwise apply if the requesting party notifies the Administrator and other potentially responsible parties of the election not later than 90 days after the date of enactment of this section.

"(2) SUBMISSION OF FACILITY EVALUATION.—In a case in which the potentially responsible parties have or the Administrator has made an election under subsection (a), the potentially responsible parties shall submit the proposed facility evaluation within 180 days after the date on which notice of the election is given.

"(b) REMEDY REVIEW BOARDS.—

"(1) AUTHORITY.—A remedy review board established under section 133(b)(5)(E) (referred to in this subsection as a 'remedy review board') shall have authority to consider a petition under paragraph (3) or (4) of this subsection.

"(2) GENERAL PROCEDURE.—

"(A) COMPLETION OF REVIEW.—The review of a petition submitted to a remedy review board under this subsection shall be completed not later than 180 days after the receipt of the petition unless the Administrator, for good cause, grants additional time.

"(B) COSTS OF REVIEW.—All reasonable costs incurred by a remedy review board, the Administrator, or a State in conducting a review or evaluating a petition for possible objection shall be borne by the petitioner.

"(C) DECISIONS.—At the completion of the 180-day review period, a remedy review board shall issue a written decision including responses to all comments submitted during the review process with regard to a petition.

"(D) OPPORTUNITY FOR COMMENT AND MEETINGS.—In reviewing a petition under this subsection, a remedy review board shall provide an opportunity for all interested parties, including representatives of the State and local community in which the facility is located, to comment on the petition and, if requested, to meet with the remedy review board under this subsection.

"(E) REVIEW BY THE ADMINISTRATOR.—

"(i) IN GENERAL.—The Administrator shall have final review of any decision of a remedy review board under this subsection.

"(ii) STANDARD OF REVIEW.—In conducting a review of a decision of a remedy review board under this subsection, the Administrator shall accord substantial weight to the remedy review board's decision.

"(iii) REJECTION OF DECISION.—Any determination to reject a remedy review board's decision under this subsection must be approved by the Administrator or the Assistant Administrator for Solid Waste and Emergency Response.

"(F) JUDICIAL REVIEW.—A decision of a remedy review board under subparagraph (C) and the Administrator's review of such a decision shall be subject to the limitations on judicial review under section 113(h).

"(G) CALCULATIONS OF COST SAVINGS.—

"(i) IN GENERAL.—A determination with respect to relative cost savings and whether construction has begun shall be based on operable units or distinct elements or phases of remediation and not on the entire record of decision.

"(ii) ITEMS NOT TO BE CONSIDERED.—In determining the amount of cost savings—

"(I) there shall not be taken into account any administrative, demobilization, remobilization, or additional investigation costs of the review or modification of the remedy associated with the alternative remedy; and

"(II) only the estimated cost savings of expenditures avoided by undertaking the alternative remedy shall be considered as cost savings.

"(3) CONSTRUCTION NOT BEGUN.—

"(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed but construction has not yet begun prior to the date of enactment of this section and which meet the criteria of subparagraph (B), the implementor of the record of decision may file a petition with a remedy review board not later than 90 days after the date of enactment of this section to determine whether an alternate remedy under section 133 should apply to the facility or operable unit.

"(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

"(i) the alternative remedial action proposed in the petition satisfies section 121(a);

"(ii)(I) in the case of a record of decision with an estimated implementation cost of between $5,000,000 and $10,000,000, the alternative remedial action achieves cost savings of at least 25 percent of the total costs of the record of decision; or

"(II) in the case of a record of decision valued at a total cost greater than $10,000,000, the alternative remedial action achieves cost savings of $2,500,000 or more;

"(iii) in the case of a record of decision involving ground water extraction and treatment remedies for substances other than dense, nonaqueous phase liquids, the alternative remedial action achieves cost savings of $2,000,000 or more; or

"(iv) in the case of a record of decision intended primarily for the remediation of dense, nonaqueous phase liquids, the alternative remedial action achieves cost savings of $1,000,000 or more.

"(C) CONTENTS OF PETITION.—For the purposes of facility-specific risk assessment under section 131, a petition described in subparagraph (A) shall rely on risk assessment data that were available prior to issuance of the record of decision but shall consider the actual or planned or reasonably anticipated future use of the land and water resources.

"(D) INCORRECT DATA.—Notwithstanding subparagraph (B) and (C), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information.

"(4) ADDITIONAL CONSTRUCTION.—

"(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed and construction has begun prior to the date of enactment of this section and which meets the criteria of subparagraph (B), but for which additional construction or long-term operation and maintenance activities are anticipated, the implementor of the record of decision may file a petition with a remedy review board within 90 days after the date of enactment of this section to determine whether an alternative remedial action should apply to the facility or operable unit.

"(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board

shall approve a petition described in subparagraph (A) if—

"(i) the alternative remedial action proposed in the petition satisfies section 121(a); and

"(ii)(I) in the case of a record of decision valued at a total cost between $5,000,000 and $10,000,000, the alternative remedial action achieves cost savings of at least 50 percent of the total costs of the record of decision;

"(II) in the case of a record of decision valued at a total cost greater than $10,000,000, the alternative remedial action achieves cost savings of $5,000,000 or more; or

"(III) in the case of a record of decision involving monitoring, operations, and maintenance obligations where construction is completed, the alternative remedial action achieves cost savings of $1,000,000 or more.

(C) INCORRECT DATA.—Notwithstanding subparagraph (B), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information, and the alternative remedial action achieves cost savings of at least $2,000,000.

"(D) MANDATORY REVIEW.—A remedy review board shall not be required to entertain more than 1 petition under subparagraph (B)(ii)(III) or (C) with respect to a remedial action plan.

"(5) DELAY.—In determining whether an alternative remedial action will substantially delay the implementation of a remedial action of a facility, no consideration shall be given to the time necessary to review a petition under paragraph (3) or (4) by a remedy review board or the Administrator.

"(6) OBJECTION BY THE GOVERNOR.—

"(A) NOTIFICATION.—Not later than 7 days after receipt of a petition under this subsection, a remedy review board shall notify the Governor of the State in which the facility is located and provide the Governor a copy of the petition.

"(B) OBJECTION.—The Governor may object to the petition or the modification of the remedy, if not later than 90 days after receiving a notification under subparagraph (A) the Governor demonstrates to the remedy review board that the selection of the proposed alternative remedy would cause an unreasonably long delay that would be likely to result in significant adverse human health impacts, environmental risks, disruption of planned future use, or economic hardship.

"(C) DENIAL.—On receipt of an objection and demonstration under subparagraph (C), the remedy review board shall—

"(i) deny the petition; or

"(ii) consider any other action that the Governor may recommend.

"(7) SAVINGS CLAUSE.—Notwithstanding any other provision of this subsection, in the case of a remedial action plan for which a final record of decision under section 121 has been published, if remedial action was not completed pursuant to the remedial action plan before the date of enactment of this section, the Administrator or a State exercising authority under section 130(d) may modify the remedial action plan in order to conform the plan to the requirements of this Act, as in effect on the date of enactment of this section.".

SEC. 407. NATIONAL PRIORITIES LIST.

(a) AMENDMENTS.—Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended—

(1) in subsection (a)(8) by adding at the end the following:

"(C) provision that in listing a facility on the National Priorities List, the Administrator shall not include any parcel of real property at which no release has actually occurred, but to which a released hazardous substance, pollutant, or contaminant has migrated in ground water that has moved through subsurface strata from another parcel of real estate at which the release actually occurred, unless—

"(i) the ground water is in use as a public drinking water supply or was in such use at the time of the release; and

"(ii) the owner or operator of the facility is liable, or is affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed."; and

(2) by adding at the end the following:

"(h) LISTING OF PARTICULAR PARCELS.—

"(1) DEFINITION.—In subsection (a)(8)(C) and paragraph (2) of this subsection, the term 'parcel of real property' means a parcel, lot, or tract of land that has a separate legal description from that of any other parcel, lot, or tract of land the legal description and ownership of which has been recorded in accordance with the law of the State in which it is located.

"(2) STATUTORY CONSTRUCTION.—Nothing in subsection (a)(8)(C) shall be construed to limit the Administrator's authority under section 104 to obtain access to and undertake response actions at any parcel of real property to which a released hazardous substance, pollutant, or contaminant has migrated in the ground water.".

(b) REVISION OF NATIONAL PRIORITIES LIST.—The President shall revise the National Priorities List to conform with the amendments made by subsection (a) not later that 180 days of the date of enactment of this Act.

TITLE V—LIABILITY

SEC. 501. LIABILITY EXCEPTIONS AND LIMITATIONS.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Liability, and Compensation Act of 1980 (42 U.S.C. 9601) (as amended by section 401) is amended by adding at the end of the following:

"(43) CODISPOSAL LANDFILLS.—The 'term codisposal landfill' means a landfill that—

"(A) was listed on the National Priorities List as of January 1, 1997;

"(B) received for disposal municipal solid waste or sewage sludge; and

"(C) may also have received, before the effective date of requirements under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), any hazardous waste, if a substantial portion of the total volume of waste disposed of at the landfill consisted of municipal solid waste or sewage sludge that was transported to the landfill from outside the facility.

"(44) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste'—

"(A) means waste material generated by—

"(i) a household (such as a single- or multi-family residence) or a public lodging (such as a hotel or motel); or

"(ii) a commercial, institutional, or industrial source, to the extent that—

"(I) the waste material is essentially the same as waste normally generated by a household or public lodging; or

"(II) the waste material is collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services, and, regardless of when generated, would be conditionally exempt small quantity generator waste under the regulation issued under section 3001(d) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)); and

"(B) includes food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste; but

"(C) does not include combustion ash generated by resource recovery facilities or municipal incinerators or waste from manufacturing or processing (including pollution control) operations that is not essentially the same as waste normally generated by a household or public lodging.

"(45) MUNICIPALITY.—The term 'municipality' means—

"(A) means a political subdivision of a State (including a city, county, village, town, township, borough, parish, school district, sanitation district, water district, or other public entity performing local governmental functions); and

"(B) includes a natural person acting in the capacity of an official, employee, or agent of any entity described in subparagraph (A) in the performance of a governmental function.

"(46) SEWAGE SLUDGE.—The term 'sewage sludge' means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned treatment works.".

(b) EXCEPTIONS AND LIMITATIONS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by section 306(b)) is amended by adding at the end the following:

"(q) LIABILITY EXEMPTION FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—No person (other than the United States or a department, agency, or instrumentality of the United States) shall be liable to the United States or to any other person (including liability for contribution) under this section for any response costs at a facility listed on the National Priorities List to the extent that—

"(1) the person is liable solely under subparagraph (C) or (D) of subsection (a)(1); and

"(2) the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge.

"(r) DE MINIMIS CONTRIBUTOR EXEMPTION.—

"(1) IN GENERAL.—In the case of a vessel or facility that is not owned by the United States and is listed on the National Priorities List, no person described in subparagraph (C) or (D) of subsection (a)(1) (other than the United States or any department, agency, or instrumentality of the United States) shall be liable to the United States or to any other person (including liability for contribution) for any response costs under this section incurred after the date of enactment of this subsection, if no activity specifically attributable to the person resulted in—

"(A) the disposal or treatment of more than 1 percent of the volume of material containing a hazardous substance at the vessel or facility before January 1, 1997; or

"(B) the disposal or treatment of not more than 200 pounds or 110 gallons of material containing hazardous substances at the vessel or facility before January 1, 1997, or such

greater amount as the Administrator may determine by regulation.

"(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the Administrator determines that material described in paragraph (1)(A) or (B) has contributed or may contribute significantly to the amount of response costs at the facility.

"(s) SMALL BUSINESS EXEMPTION.—No person (other than the United States or a department, agency, or instrumentality of the United States) shall be liable to the United States or to any person (including liability for contribution) under this section for any response costs at a facility listed on the National Priorities List incurred after the date of enactment of this subsection if the person is a business that, during the taxable year preceding the date of transmittal of notification that the business is a potentially responsible party, had on average fewer than 30 employees or for that taxable year reported $3,000,000 or less in annual gross revenues.

"(t) CODISPOSAL LANDFILL EXEMPTION AND LIMITATIONS.—

"(1) EXEMPTION.—No person shall be liable to the United States or to any person (including liability for contribution) under this section for any response costs at a facility listed on the National Priorities List incurred after the date of enactment of this subsection to the extent that—

"(A) the person is liable under subparagraph (C) or (D) of subsection (a)(1); and

"(B) the arrangement for disposal, treatment, or transport for disposal or treatment or the acceptance for disposal or treatment occurred with respect to a codisposal landfill.

"(2) LIMITATIONS.—

"(A) DEFINITIONS.—In this paragraph:

"(i) LARGE MUNICIPALITY.—The term 'large municipality' means a municipality with a population of 100,000 or more according to the 1990 census.

"(ii) SMALL MUNICIPALITY.—The term 'small municipality' means a municipality with a population of less than 100,000 according to the 1990 census.

"(B) AGGREGATE LIABILITY OF SMALL MUNICIPALITIES.—With respect to a codisposal landfill listed on the National Priorities List that is owned or operated only by small municipalities and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of all small municipalities for response costs incurred on or after the date of enactment of this subsection shall be the lesser of—

"(i) 10 percent of the total amount of response costs at the facility; or

"(ii) the costs of compliance with the requirements of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997);.

"(C) AGGREGATE LIABILITY OF LARGE MUNICIPALITIES.—With respect to a codisposal landfill listed on the National Priorities List that is owned or operated only by large municipalities and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of all large municipalities for response costs incurred on or after the date of enactment of this subsection shall be the lesser of—

"(i) 20 percent of the proportion of the total amount of response costs at the facility; or

"(ii) the costs of compliance with the requirements of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997).

"(D) AGGREGATE PERSONS OTHER THAN MUNICIPALITIES.—With respect to a codisposal landfill listed on the National Priorities List that is owned or operated in whole or in part by persons other than municipalities and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of all persons other than municipalities shall be the lesser of—

"(i) 30 percent of the proportion of the total amount of response costs at the facility; or

"(ii) the costs of compliance with the requirements of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997).

"(E) AGGREGATE LIABILITY FOR MUNICIPALITIES AND NON-MUNICIPALITIES.—With respect to a codisposal landfill listed on the National Priorities List that is owned and operated by a combination of small and large municipalities or persons other than municipalities and that is subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation)—

"(i) the allocator shall determine the proportion of the use of the landfill that was made by small and large municipalities and persons other than municipalities during the time the facility was in operation; and

"(ii) shall allocate among the parties an appropriate percentage of total liability not exceeding the aggregate liability percentages stated in (B)(ii), (C)(ii), (D)(ii), respectively.

"(F) LIABILITY AT SUBTITLE D FACILITIES.—With respect to a codisposal landfill listed on the National Priorities List that is owned and operated by a small municipality, large municipality, or person other than municipalities, or a combination of thereof, and that is subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of such municipalities and persons shall be no greater than the costs of compliance with the requirements of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) for the facility.

"(3) APPLICABILITY.—This subsection shall not apply to—

"(A) a person that acted in violation of subtitle C of the Solid Waste Disposal Act (42 U.S.C. Sec. 6921 et seq.);

"(B) a person that owned or operated a codisposal landfill in violation of the applicable requirements for municipal solid waste landfill units under subtitle D of the Solid Waste Disposal Act (42 U.S.C. Sec. 6941 et seq.) after October 9, 1991;

"(C) a facility that was not operated pursuant to and in substantial compliance with any other applicable permit, license, or other approval or authorization relating to municipal solid waste or sewage sludge disposal issued by an appropriate State, Indian tribe, or local government authority;

"(D) a person described in section 136(t); or

"(E) a person that impedes the performance of a response action.".

(c) EFFECTIVE DATE AND TRANSITION RULES.—The amendments made by this section—

(1) shall take effect with respect to an action under section 106, 107, or 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606, 9607, and 9613) that becomes final on or after the date of enactment of this Act; but

(2) shall not apply to an action brought by any person under section 107 or 113 of that Act (42 U.S.C. 9607 and 9613) for costs or damages incurred by the person before the date of enactment of this Act.

SEC. 502. CONTRIBUTION FROM THE FUND.

Section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9612) is amended by adding at the end the following:

"(g) CONTRIBUTION FROM THE FUND.—

"(1) COMPLETION OF OBLIGATIONS.—A person that is subject to an administrative order issued under section 106 or has entered into a settlement decree with the United States or a State as of the date of enactment of this subsection shall complete the person's obligations under the order or settlement decree.

"(2) CONTRIBUTION.—A person described in paragraph (1) shall receive contribution from the Fund for any portion of the costs (excluding attorneys' fees) incurred for the performance of the response action after the date of enactment of this subsection if the person is not liable for such costs by reason of a liability exemption or limitation under this section.

"(3) APPLICATION FOR CONTRIBUTION.—

"(A) IN GENERAL.—Contribution under this section shall be made upon receipt by the Administrator of an application requesting contribution.

"(B) PERIODIC APPLICATIONS.—Beginning with the 7th month after the date of enactment of this subsection, 1 application for each facility shall be submitted every 6 months for all persons with contribution rights (as determined under subparagraph (2)).

"(4) REGULATIONS.—Contribution shall be made in accordance with such regulations as the Administrator shall issue within 180 days after the date of enactment of this section.

"(5) DOCUMENTATION.—The regulations under paragraph (4) shall, at a minimum, require that an application for contribution contain such documentation of costs and expenditures as the Administrator considers necessary to ensure compliance with this subsection.

"(6) EXPEDITION.—The Administrator shall develop and implement such procedures as may be necessary to provide contribution to such persons in an expeditious manner, but in no case shall a contribution be made later than 1 year after submission of an application under this subsection.

"(7) CONSISTENCY WITH NATIONAL CONTINGENCY PLAN.—No contribution shall be made under this subsection unless the Administrator determines that such costs are consistent with the National Contingency Plan.".

SEC. 503. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 406, is amended by adding at the end the following:

"SEC. 136. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

"(a) DEFINITIONS.—In this section:

"(1) ALLOCATED SHARE.—The term 'allocated share' means the percentage of liability assigned to a potentially responsible party by the allocator in an allocation report under subsection (f)(4).

"(2) ALLOCATION PARTY.—The term 'allocation party'—

"(A) means a party, named on a list of parties that will be subject to the allocation process under this section, issued by an allocator; and

"(B) with respect to a facility described in subparagraph (4)(C), includes only parties that are, by virtue of section 107(t)(3), not entitled to the exemption under section 107(t)(1) or the limitation under section 107(t)(2).

"(3) ALLOCATOR.—The term 'allocator' means an allocator retained to conduct an allocation for a facility.

"(4) MANDATORY ALLOCATION FACILITY.—The term 'mandatory allocation facility' means—

"(A) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section and at which there are 2 or more potentially responsive persons (including 1 or more persons that are qualified for an exemption under section 107 (q), (r), or (s)), if at least 1 potentially responsible person is viable and not entitled to an exemption under section 107 (q), (r), or (s);

"(B) a federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which 1 or more potentially responsible parties (other that a department, agency, or instrumentality of the United States) are liable or potentially liable if at least 1 potentially liable party is liable and not entitled to an exemption under section 107 (q), (r), or (s); and

"(C) a codisposal landfill listed on the National Priorities List with respect to which—

"(i) costs are incurred after the date of enactment of this section; and

(ii) by virtue of section 107(t)(3), 1 or more persons are not entitled to the exemption under section 107(t)(1) or the limitation under section 107(t)(2).

"(5) ORPHAN SHARE.—The term 'orphan share' means the total of the allocated shares determined by the allocator under subsection (h).

"(b) ALLOCATIONS OF LIABILITY.—

"(1) MANDATORY ALLOCATIONS.—For each mandatory allocation facility involving 2 or more potentially responsible parties (including 1 or more potentially responsible parties that are qualified for an exemption under section 107 (q), (r), or (s)), the Administrator shall conduct the allocation process under this section.

"(2) REQUESTED ALLOCATIONS.—For a facility (other than a mandatory allocation facility) involving 2 or more potentially responsible parties, the Administrator shall conduct the allocation process under this section if the allocation is requested in writing by a potentially responsible party that has—

"(A) incurred response costs with respect to a response action; or

"(B) resolved any liability to the United States with respect to a response action in order to assist in allocating shares among potentially responsible parties.

"(3) PERMISSIVE ALLOCATIONS.—For any facility (other than a mandatory allocation facility or a facility with respect to which a request is made under paragraph (2)) involving 2 or more potentially responsible parties, the Administrator may conduct the allocation process under this section if the Administrator considers it to be appropriate to do so.

"(4) ORPHAN SHARE.—An allocation performed at a vessel or facility identified under subsection (b) (2) or (3) shall not require payment of an orphan share under subsection (h) or contribution under subsection (p).

"(5) EXCLUDED FACILITIES.—

"(A) IN GENERAL.—A codisposal landfill listed on the Natural Priorities List at which costs are incurred after January 1, 1997, and at which all potentially responsible persons are entitled to the liability exemption under section 107(t)(1). This section does not apply to a response action at a mandatory allocation facility for which there was in effect as of the date of enactment of this section, a settlement, decree, or order that determines the liability and allocated shares of all potentially responsible parties with respect to the response action.

"(B) AVAILABILITY OF ORPHAN SHARE.—For any mandatory allocation facility that is otherwise excluded by subparagraph (A) and for which there was not in effect as of the date of enactment of this section a final judicial order that determined the liability of all parties to the action for response costs incurred after the date of enactment of this section, an allocation shall be conducted for the sole purpose of determining the availability of orphan share funding pursuant to subsection (h)(2) for any response costs incurred after the date of enactment of this section.

"(6) SCOPE OF ALLOCATIONS.—An allocation under this section shall apply to—

"(A) response costs incurred after the date of enactment of this section, with respect to a mandatory allocation facility described in subsection (a)(4) (A), (B), or (C); and

"(B) response costs incurred at a facility that is the subject of a requested or permissive allocation under subsection (b) (2) or (3).

"(8) OTHER MATTERS.—This section shall not limit or affect—

"(A) the obligation of the Administrator to conduct the allocation process for a response action at a facility that has been the subject of a partial or expedited settlement with respect to a response action that is not within the scope of the allocation;

"(B) the ability of any person to resolve any liability at a facility to any other person at any time before initiation or completion of the allocation process, subject to subsection (h)(3);

"(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree, issued prior to the date of enactment of this section with respect to liability under this Act; or

"(D) the validity, enforceability, finality, or merits of any preexisting contract or agreement relating to any allocation of responsibility or any indemnity for, or sharing of, any response costs under this Act.

"(c) MORATORIUM ON LITIGATION AND ENFORCEMENT.—

"(1) IN GENERAL.—No person may assert a claim for recovery of a response cost or contribution toward a response cost (including a claim for insurance proceeds) under this Act or any other Federal or State law in connection with a response action—

"(A) for which an allocation is required to be performed under subsection (b)(1); or

"(B) for which the Administrator has initiated the allocation process under this section,

until the date that is 120 days after the date of issuance of a report by the allocator under subsection (f)(4) or, if a second or subsequent report is issued under subsection (m), the date of issuance of the second or subsequent report.

"(2) PENDING ACTIONS OR CLAIMS.—If a claim described in paragraph (1) is pending on the date of enactment of this section or on initiation of an allocation under this section, the portion of the claim pertaining to response costs that are the subject of the allocation shall be stayed until the date that is 120 days after the date of issuance of a report by the allocator under subsection (f)(4) or, if a second or subsequent report is issued under subsection (m), the date of issuance of the second or subsequent report, unless the court determines that a stay would result in manifest injustice.

"(3) TOLLING OF PERIOD OF LIMITATION.—

"(A) BEGINNING OF TOLLING.—Any applicable period of limitation with respect to a claim subject to paragraph (1) shall be tolled beginning on the earlier of—

"(i) the date of listing of the facility on the National Priorities List if the listing occurs after the date of enactment of this section; or

"(ii) the date of initiation of the allocation process under this section.

"(B) END OF TOLLING.—A period of limitation shall be tolled under subparagraph (A) until the date that is 180 days after the date of issuance of a report by the allocator under subsection (f)(4), or of a second or subsequent report under subsection (m).

"(4) RETAINED AUTHORITY.—Except as specifically provided in this section, this section does not affect the authority of the Administrator to—

"(A) exercise the powers conferred by section 103, 104, 105, 106, or 122;

"(B) commence an action against a party if there is a contemporaneous filing of a judicial consent decree resolving the liability of the party;

"(C) file a proof of claim or take other action in a proceeding under title 11, United States Code; or

"(D) require implementation of a response action at an allocation facility during the conduct of the allocation process.

"(d) ALLOCATION PROCESS.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Administrator shall establish by regulation a process for conduct of mandatory, requested, and permissive allocations.

"(2) REQUIREMENTS.—In developing the allocation process under paragraph (1), the Administrator shall—

"(A) ensure that parties that are eligible for an exemption from liability under section 107 (q), (r), (s), (t), (v), and (w)—

"(i) are identified by the Administrator (before selection of an allocator or by an allocator);

"(ii) at the earliest practicable opportunity, are notified of their status; and

"(iii) are provided with appropriate written assurances that they are not liable for response costs under this Act;

"(B) establish an expedited process for the selection, appointment, and retention by contract of a impartial allocator, acceptable to both potentially responsible parties and a representative of the Fund, to conduct the allocation process in a fair, efficient, and impartial manner;

"(C) permit any person to propose to name additional potentially responsible parties as allocation parties, the costs of any such nominated party's costs (including reasonable attorney's fees) to be borne by the party

that proposes the addition of the party to the allocation process if the allocator determines that there is no adequate basis in law or fact to conclude that a party is liable based on the information presented by the nominating party or otherwise available to the allocator; and

"(D) require that the allocator adopt any settlement that allocates 100 percent of the recoverable costs of a response action at a facility to the signatories to the settlement, if the settlement contains a waiver of—

"(i) a right of recovery from any other party of any response cost that is the subject of the allocation; and

"(ii) a right to contribution under this Act, with respect to any response action that is within the scope of allocation process.

"(2) TIME LIMIT.—The Administrator shall initiate the allocation process for a facility not later than the earlier of—

"(A) the date of completion of the facility evaluation or remedial investigation for the facility; or

"(B) the date that is 60 days after the date of selection of a removal action.

"(3) NO JUDICIAL REVIEW.—There shall be no judicial review of any action regarding selection of an allocator under the regulation issued under this subsection.

"(4) RECOVERY OF CONTRACT COSTS.—The costs of the Administrator in retaining an allocator shall be considered to be a response cost for all purposes of this Act.

"(e) FEDERAL, STATE, AND LOCAL AGENCIES.—

"(1) IN GENERAL.—Other than as set forth in this Act, any Federal, State, or local governmental department, agency, or instrumentality that is named as a potentially responsible party or an allocation party shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination under this section to the same extent as any other party.

"(2) ORPHAN SHARE.—The Administrator or the Attorney General shall participate in the allocation proceeding as the representative of the Fund from which any orphan share shall be paid.

"(f) ALLOCATION AUTHORITY.—

"(1) INFORMATION-GATHERING AUTHORITIES.—

"(A) IN GENERAL.—An allocator may request information from any person in order to assist in the efficient completion of the allocation process.

"(B) REQUESTS.—Any person may request that an allocator request information under this paragraph.

"(C) AUTHORITY.—An allocator may exercise the information-gathering authority of the Administrator under section 104(e), including issuing an administrative subpoena to compel the production of a document or the appearance of a witness.

"(D) DISCLOSURE.—Notwithstanding any other law, any information submitted to the allocator in response to a subpoena issued under subparagraph (C) shall be exempt from disclosure to any person under section 552 of title 5, United States Code.

"(E) ORDERS.—In a case of contumacy or failure of a person to obey a subpoena issued under subparagraph (C), an allocator may request the Attorney General to—

"(i) bring a civil action to enforce the subpoena; or

"(ii) if the person moves to quash the subpoena, to defend the motion.

"(F) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any response to the allocator within 30 days of a request for enforcement of a subpoena or information request, the allocator may retain counsel to commence a civil action to enforce the subpoena or information request.

"(2) ADDITIONAL AUTHORITY.—An allocator may—

"(A) schedule a meeting or hearing and require the attendance of allocation parties at the meeting or hearing;

"(B) sanction an allocation party for failing to cooperate with the orderly conduct of the allocation process;

"(C) require that allocation parties wishing to present similar legal or factual positions consolidate the presentation of the positions;

"(D) obtain or employ support services, including secretarial, clerical, computer support, legal, and investigative services; and

"(E) take any other action necessary to conduct a fair, efficient, and impartial allocation process.

"(3) CONDUCT OF ALLOCATION PROCESS.—

"(A) IN GENERAL.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors described in subsection (g).

"(B) OPPORTUNITY TO BE HEARD.—Each allocation party shall be afforded an opportunity to be heard (orally or in writing, at the option of an allocation party) and an opportunity to comment on a draft allocation report.

"(C) RESPONSES.—The allocator shall not be required to respond to comments.

"(D) STREAMLINING.—The allocator shall make every effort to streamline the allocation process and minimize the cost of conducting the allocation.

"(4) ALLOCATION REPORT.—The allocator shall provide a written allocation report to the Administrator and the allocation parties that specifies the allocation share of each allocation party and any orphan shares, as determined by the allocator.

"(g) EQUITABLE FACTORS FOR ALLOCATION.—The allocator shall prepare a nonbinding allocation of percentage shares of responsibility to each allocation party and to the orphan share, in accordance with this section and without regard to any theory of joint and several liability, based on—

"(1) the amount of hazardous substances contributed by each allocation party;

"(2) the degree of toxicity of hazardous substances contributed by each allocation party;

"(3) the mobility of hazardous substances contributed by each allocation party;

"(4) the degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of hazardous substances;

"(5) the degree of care exercised by each allocation party with respect to hazardous substances, taking into account the characteristics of the hazardous substances;

"(6) the cooperation of each allocation party in contributing to any response action and in providing complete and timely information to the allocator; and

"(7) such other equitable factors as the allocator determines are appropriate.

"(h) ORPHAN SHARES.—

"(1) IN GENERAL.—The allocator shall determine whether any percentage of responsibility for the response action shall be allocable to the orphan share.

"(2) MAKEUP OF ORPHAN SHARE.—The orphan share shall consist of—

"(A) any share that the allocator determines is attributable to an allocation party that is insolvent or defunct and that is not affiliated with any financially viable allocation party;

"(B) the difference between the aggregate share that the allocator determines is attributable to a person and the aggregate share actually assumed by the person in a settlement with the United States otherwise if—

"(i) the person is eligible for an expedited settlement with the United States under section 122 based on limited ability to pay response costs;

"(ii) the liability of the person is eliminated, limited, or reduced by any provision of this Act; or

"(iii) the person settled with the United States before the completion of the allocation.; and

"(C) all response costs at a codisposal landfill listed on the National Priorities incurred after the date of enactment of this section attributable to any person or group of persons entitled to an exemption or limitation under section 107 (q), (r), (s), or (t).

"(4) UNATTRIBUTABLE SHARES.—A share attributable to a hazardous substance that the allocator determines was disposed at the facility that cannot be attributed to any identifiable party shall be distributed among the allocation parties and the orphan share in accordance with the allocated share assigned to each.

"(i) INFORMATION REQUESTS.—

"(1) DUTY TO ANSWER.—Each person that receives an information request or subpoena from the allocator shall provide a full and timely response to the request.

"(2) CERTIFICATION.—An answer to an information request by an allocator shall include a certification by a representative that meets the criteria established in section 270.11(a) of title 40, Code of Federal Regulations (or any successor regulation), that—

"(A) the answer is correct to the best of the representative's knowledge;

"(B) the answer is based on a diligent good faith search of records in the possession or control of the person to whom the request was directed;

"(C) the answer is based on a reasonable inquiry of the current (as of the date of the answer) officers, directors, employees, and agents of the person to whom the request was directed;

"(D) the answer accurately reflects information obtained in the course of conducting the search and the inquiry;

"(E) the person executing the certification understands that there is a duty to supplement any answer if, during the allocation process, any significant additional, new, or different information becomes known or available to the person; and

"(F) the person executing the certification understands that there are significant penalties for submitting false information, including the possibility of a fine or imprisonment for a knowing violation.

"(j) PENALTIES.—

"(1) CIVIL.—

"(A) IN GENERAL.—A person that fails to submit a complete and timely answer to an information request, a request for the production of a document, or a summons from an allocator, submits a response that lacks the certification required under subsection (i)(2), or knowingly makes a false or misleading material statement or representation in any statement, submission, or testimony during the allocation process (including a statement or representation in connection with the nomination of another potentially responsible party) shall be subject to a civil penalty of not more than $10,000 per day of violation.

"(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

"(2) CRIMINAL.—A person that knowingly and willfully makes a false material statement or representation in the response to an information request or subpoena issued by the allocator under subsection (i) shall be considered to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.

"(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

"(1) DOCUMENT REPOSITORY.—

"(A) IN GENERAL.—The allocator shall establish and maintain a document repository containing copies of all documents and information provided by the Administrator or any allocation party under this section or generated by the allocator during the allocation process.

"(B) AVAILABILITY.—Subject to paragraph (2), the documents and information in the document repository shall be available only to an allocation party for review and copying at the expense of the allocation party.

"(2) CONFIDENTIALITY.—

"(A) IN GENERAL.—Each document or material submitted to the allocator or placed in the document repository and the record of any information generated or obtained during the allocation process shall be confidential.

"(B) MAINTENANCE.—The allocator, each allocation party, the Administrator, and the Attorney General—

"(i) shall maintain the documents, materials, and records of any depositions or testimony adduced during the allocation as confidential; and

"(ii) shall not use any such document or material or the record in any other matter or proceeding or for any purpose other than the allocation process.

"(C) DISCLOSURE.—Notwithstanding any other law, the documents and materials and the record shall not be subject to disclosure to any person under section 552 of title 5, United States Code.

"(D) DISCOVERY AND ADMISSIBILITY.—

"(i) IN GENERAL.—Subject to clause (ii), the documents and materials and the record shall not be subject to discovery or admissible in any other Federal, State, or local judicial or administrative proceeding, except—

"(I) a new allocation under subsection (m) or (r) for the same response action; or

"(II) an initial allocation under this section for a different response action at the same facility.

"(ii) OTHERWISE DISCOVERABLE OR ADMISSIBLE.—

"(I) DOCUMENT OR MATERIAL.—If the original of any document or material submitted to the allocator or placed in the document repository was otherwise discoverable or admissible from a party, the original document, if subsequently sought from the party, shall remain discoverable or admissible.

"(II) FACTS.—If a fact generated or obtained during the allocation was otherwise discoverable or admissible from a witness, testimony concerning the fact, if subsequently sought from the witness, shall remain discoverable or admissible.

"(3) NO WAIVER OF PRIVILEGE.—The submission of testimony, a document, or information under the allocation process shall not constitute a waiver of any privilege applicable to the testimony, document, or information under any Federal or State law or rule of discovery or evidence.

"(4) PROCEDURE IF DISCLOSURE SOUGHT.—

"(A) NOTICE.—A person that receives a request for a statement, document, or material submitted for the record of an allocation proceeding, shall—

"(i) promptly notify the person that originally submitted the item or testified in the allocation proceeding; and

"(ii) provide the person that originally submitted the item or testified in the allocation proceeding an opportunity to assert and defend the confidentiality of the item or testimony.

"(B) RELEASE.—No person may release or provide a copy of a statement, document, or material submitted, or the record of an allocation proceeding, to any person not a party to the allocation except—

"(i) with the written consent of the person that originally submitted the item or testified in the allocation proceeding; or

"(ii) as may be required by court order.

"(5) CIVIL PENALTY.—

"(A) IN GENERAL.—A person that fails to maintain the confidentiality of any statement, document, or material or the record generated or obtained during an allocation proceeding, or that releases any information in violation of this section, shall be subject to a civil penalty of not more than $25,000 per violation.

"(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

"(C) DEFENSES.—In any administrative or judicial proceeding, it shall be a complete defense that any statement, document, or material or the record at issue under subparagraph (A)—

"(i) was in, or subsequently became part of, the public domain, and did not become part of the public domain as a result of a violation of this subsection by the person charged with the violation;

"(ii) was already known by lawful means to the person receiving the information in connection with the allocation process; or

"(iii) became known to the person receiving the information after disclosure in connection with the allocation process and did not become known as a result of any violation of this subsection by the person charged with the violation.

"(l) REJECTION OF ALLOCATION REPORT.—

"(1) REJECTION.—The Administrator and the Attorney General may jointly reject a report issued by an allocator only if the Administrator and the Attorney General jointly publish, not later than 180 days after the Administrator receives the report, a written determination that—

"(A) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties; or

"(B) the allocation process was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

"(2) FINALITY.—A report issued by an allocator may not be rejected after the date that is 180 days after the date on which the United States accepts a settlement offer (excluding an expedited settlement under section 122) based on the allocation.

"(3) JUDICIAL REVIEW.—Any determination by the Administrator or the Attorney General under this subsection shall not be subject to judicial review unless 2 successive allocation reports relating to the same response action are rejected, in which case any allocation party may obtain judicial review of the second rejection in a United States district court under subchapter II of chapter 5 of part I of title 5, United States Code.

"(4) DELEGATION.—The authority to make a determination under this subsection may not be delegated to any officer or employee below the level of an Assistant Administrator or Acting Assistant Administrator or an Assistant Attorney General or Acting Assistant Attorney General with authority for implementing this Act.

"(m) SECOND AND SUBSEQUENT ALLOCATIONS.—

"(1) IN GENERAL.—If a report is rejected under subsection (l), the allocation parties shall select an allocator to perform, on an expedited basis, a new allocation based on the same record available to the previous allocator.

"(2) MORATORIUM AND TOLLING.—The moratorium and tolling provisions of subsection (c) shall be extended until the date that is 180 days after the date of the issuance of any second or subsequent allocation report under paragraph (1).

"(3) SAME ALLOCATOR.—The allocation parties may select the same allocator who performed 1 or more previous allocations at the facility, except that the Administrator may determine that an allocator whose previous report at the same facility has been rejected under subsection (l) is unqualified to serve.

"(n) SETTLEMENTS BASED ON ALLOCATIONS.—

"(1) DEFINITION.—In this subsection, the term 'all settlements' includes any orphan share allocated under subsection (h).

"(2) IN GENERAL.—Unless an allocation report is rejected under subsection (l), any allocation party at a mandatory allocation facility (including an allocation party whose allocated share is funded partially or fully by orphan share funding under subsection (h)) shall be entitled to resolve the liability of the party to the United States for response actions subject to allocation if, not later than 90 days after the date of issuance of a report by the allocator, the party—

"(A) offers to settle with the United States based on the allocated share specified by the allocator; and

"(B) agrees to the other terms and conditions stated in this subsection.

"(3) PROVISIONS OF SETTLEMENTS.—

"(A) IN GENERAL.—A settlement based on an allocation under this section—

"(i) may consist of a cash-out settlement or an agreement for the performance of a response action; and

"(ii) shall include—

"(I) a waiver of contribution rights against all persons that are potentially responsible parties for any response action addressed in the settlement;

"(II) a covenant not to sue that is consistent with section 122(f) and, except in the case of a cash-out settlement, provisions regarding performance or adequate assurance of performance of the response action;

"(III) a premium, calculated on a facility-specific basis and subject to the limitations on premiums stated in paragraph (5), that reflects the actual risk to the United States of not collecting unrecovered response costs for the response action, despite the diligent prosecution of litigation against any viable allocation party that has not resolved the liability of the party to the United States, except that no premium shall apply if all allocation parties participate in the settlement or if the settlement covers 100 percent of the response costs subject to the allocation;

"(IV) complete protection from all claims for contribution regarding the response action addressed in the settlement; and

"(V) provisions through which a settling party shall receive prompt contribution from the Fund under subsection (o) of any response costs incurred by the party for any response action that is the subject of the allocation in excess of the allocated share of the party, including the allocated portion of any orphan share.

"(B) RIGHT TO CONTRIBUTION.—A right to contribution under subparagraph (A)(ii)(V) shall not be contingent on recovery by the United States of any response costs from any person other than the settling party.

"(4) REPORT.—The Administrator shall report annually to Congress on the administration of the allocation process under this section, providing in the report—

"(A) information comparing allocation results with actual settlements at multiparty facilities;

"(B) a cumulative analysis of response action costs recovered through post-allocation litigation or settlements of post-allocation litigation;

"(C) a description of any impediments to achieving complete recovery; and

"(D) a complete accounting of the costs incurred in administering and participating in the allocation process.

"(5) PREMIUM.—In each settlement under this subsection, the premium authorized—

"(A) shall be determined on a case-by-case basis to reflect the actual litigation risk faced by the United States with respect to any response action addressed in the settlement; but

"(B) shall not exceed—

"(i) 5 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 80 percent and less than 100 percent of responsibility for the response action;

"(ii) 10 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 60 percent and not more than 80 percent of responsibility for the response action;

"(iii) 15 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 40 percent and not more than 60 percent of responsibility for the response action; or

"(iv) 20 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for 40 percent or less of responsibility for the response; and

"(C) shall be reduced proportionally by the percentage of the allocated share for that party paid through orphan funding under subsection (h).

"(o) FUNDING OF ORPHAN SHARES.—

"(1) CONTRIBUTION.—For each settlement agreement entered into under subsection (n), the Administrator shall promptly reimburse the allocation parties for any costs incurred that are attributable to the orphan share, as determined by the allocator.

"(2) ENTITLEMENT.—Paragraph (1) constitutes an entitlement to any allocation party eligible to receive a reimbursement.

"(3) AMOUNTS OWED.—

"(A) DELAY IF FUNDS ARE UNAVAILABLE.—If funds are unavailable in any fiscal year to reimburse all allocation parties pursuant to paragraph (1), the Administrator may delay payment until funds are available.

"(B) PRIORITY.—The priority for reimbursement shall be based on the length of time that has passed since the settlement between the United States and the allocation parties pursuant to subsection (n).

"(C) PAYMENT FROM FUNDS MADE AVAILABLE IN SUBSEQUENT FISCAL YEARS.—Any amount due and owing in excess of available appropriations in any fiscal year shall be paid from amounts made available in subsequent fiscal years, along with interest on the unpaid balances at the rate equal to that of the current average market yield on outstanding marketable obligations of the United States with a maturity of 1 year.

"(4) DOCUMENTATION AND AUDITING.—The Administrator—

"(A) shall require that any claim for contribution be supported by documentation of actual costs incurred; and

"(B) may require an independent auditing of any claim for contribution.

"(p) POST-ALLOCATION CONTRIBUTION.—

"(1) IN GENERAL.—An allocation party (including a party that is subject to an order under section 106 or a settlement decree) that incurs costs after the date of enactment of this section for implementation of a response action that is the subject of an allocation under this section to an extent that exceeds the percentage share of the allocation party, as determined by the allocator, shall be entitled to prompt payment of contribution for the excess amount, including any orphan share, from the Fund, unless the allocation report is rejected under subsection (l).

"(2) NOT CONTINGENT.—The right to contribution under paragraph (1) shall not be contingent on recovery by the United States of a response cost from any other person.

"(3) TERMS AND CONDITIONS.—

"(A) RISK PREMIUM.—A contribution payment shall be reduced by the amount of the litigation risk premium under subsection (n)(5) that would apply to a settlement by the allocation party concerning the response action, based on the total allocated shares of the parties that have not reached a settlement with the United States.

"(B) TIMING.—

"(i) IN GENERAL.—A contribution payment shall be paid out during the course of the response action that was the subject of the allocation, using reasonable progress payments at significant milestones.

"(ii) CONSTRUCTION.—Contribution for the construction portion of the work shall be paid out not later than 120 days after the date of completion of the construction.

"(C) EQUITABLE OFFSET.—A contribution payment is subject to equitable offset or recoupment by the Administrator at any time if the allocation party fails to perform the work in a proper and timely manner.

"(D) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for contribution.

"(E) WAIVER.—An allocation party seeking contribution waives the right to seek recovery of response costs in connection with the response action, or contribution toward the response costs, from any other person.

"(F) BAR.—An administrative order shall be in lieu of any action by the United States or any other person against the allocation party for recovery of response costs in connection with the response action, or for contribution toward the costs of the response action.

"(q) POST-SETTLEMENT LITIGATION.—

"(1) IN GENERAL.—Subject to subsections (m) and (n), and on the expiration of the moratorium period under subsection (c)(4), the Administrator may commence an action under section 107 against an allocation party that has not resolved the liability of the party to the United States following allocation and may seek to recover response costs not recovered through settlements with other persons.

"(2) ORPHAN SHARE.—The recoverable costs shall include any orphan share determined under subsection (h), but shall not include any share allocated to a Federal, State, or local governmental agency, department, or instrumentality.

"(3) IMPLEADER.—A defendant in an action under paragraph (1) may implead an allocation party only if the allocation party did not resolve liability to the United States.

"(4) CERTIFICATION.—In commencing or maintaining an action under section 107 against an allocation party after the expiration of the moratorium period under subsection (c)(4), the Attorney General shall certify in the complaint that the defendant failed to settle the matter based on the share that the allocation report assigned to the party.

"(5) RESPONSE COSTS.—

"(A) ALLOCATION PROCEDURE.—The cost of implementing the allocation procedure under this section, including reasonable fees and expenses of the allocator, shall be considered as a necessary response cost.

"(B) FUNDING OF ORPHAN SHARES.—The cost attributable to funding an orphan share under this section—

"(i) shall be considered as a necessary cost of response cost; and

"(ii) shall be recoverable in accordance with section 107 only from an allocation party that does not reach a settlement and does not receive an administrative order under subsection (n) or (p).

"(r) NEW INFORMATION.—

"(1) IN GENERAL.—An allocation under this section shall be final, except that any settling party, including the United States, may seek a new allocation with respect to the response action that was the subject of the settlement by presenting the Administrator with clear and convincing evidence that—

"(A) the allocator did not have information concerning—

"(i) 35 percent or more of the materials containing hazardous substances at the facility; or

"(ii) 1 or more persons not previously named as an allocation party that contributed 15 percent or more of materials containing hazardous substances at the facility; and

"(B) the information was discovered subsequent to the issuance of the report by the allocator.

"(2) NEW ALLOCATION.—Any new allocation of responsibility—

"(A) shall proceed in accordance with this section;

"(B) shall be effective only after the date of the new allocation report; and

"(C) shall not alter or affect the original allocation with respect to any response costs previously incurred.

"(s) DISCRETION OF ALLOCATOR.—A contract by which the Administrator retain an allocator shall give the allocator broad discretion to conduct the allocation process in a fair, efficient, and impartial manner, and the Administrator shall not issue any rule or order that limits the discretion of the allocator in the conduct of the allocation.

"(t) ILLEGAL ACTIVITIES.—Section 107 (o), (p), (q), (r), (s), (t), (u), (v), and (w) and section 112(g) shall not apply to any person whose liability for response costs under section 107(a)(1) is otherwise based on any act, omission, or status that is determined by a court or administrative body of competent jurisdiction, within the applicable statute of

limitation, to have been a violation of any Federal or State law pertaining to the treatment, storage, disposal, or handling of hazardous substances if the violation pertains to a hazardous substance, the release or threat of release of which caused the incurrence of response costs at the vessel or facility.''.

SEC. 504. LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF CONTRACTORS.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) is amended by adding at the end the following:

''(H) LIABILITY OF CONTRACTORS.—

''(i) IN GENERAL.—The term 'owner or operator' does not include a response action contractor (as defined in section 119(e)).

''(ii) LIABILITY LIMITATIONS.—A person described in clause (i) shall not, in the absence of negligence by the person, be considered to—

''(I) cause or contribute to any release or threatened release of a hazardous substance, pollutant, or contaminant;

''(II) arrange for disposal or treatment of a hazardous substance, pollutant, or contaminant;

''(III) arrange with a transporter for transport or disposal or treatment of a hazardous substance, pollutant, or contaminant; or

''(IV) transport a hazardous substance, pollutant, or contaminant.

''(iii) EXCEPTION.—This subparagraph does not apply to a person potentially responsible under section 106 or 107 other than a person associated solely with the provision of a response action or a service or equipment ancillary to a response action.''.

(b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—Section 119(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(a)) is amended—

(1) in paragraph (1) by striking ''title or under any other Federal law'' and inserting ''title or under any other Federal or State law''; and

(2) in paragraph (2)—

(A) by striking ''(2) NEGLIGENCE, ETC.—Paragraph (1)'' and inserting the following:

''(2) NEGLIGENCE AND INTENTIONAL MISCONDUCT; APPLICATION OF STATE LAW.—

''(A) NEGLIGENCE AND INTENTIONAL MISCONDUCT.—

''(i) IN GENERAL.—Paragraph (1)''; and

(B) by adding at the end the following:

''(ii) STANDARD.—Conduct under clause (i) shall be evaluated based on the generally accepted standards and practices in effect at the time and place at which the conduct occurred.

''(iii) PLAN.—An activity performed in accordance with a plan that was approved by the Administrator shall not be considered to constitute negligence under clause (i).

''(B) APPLICATION OF STATE LAW.—Paragraph (1) shall not apply in determining the liability of a response action contractor under the law of a State if the State has adopted by statute a law determining the liability of a response action contractor.''.

(c) EXTENSION OF INDEMNIFICATION AUTHORITY.—Section 119(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(1)) is amended by adding at the end the following: ''The agreement may apply to a claim for negligence arising under Federal or State law.''.

(d) INDEMNIFICATION DETERMINATIONS.—Section 119(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)) is amended by striking paragraph (4) and inserting the following:

''(4) DECISION TO INDEMNIFY.—

''(A) IN GENERAL.—For each response action contract for a vessel or facility, the Administrator shall make a decision whether to enter into an indemnification agreement with a response action contractor.

''(B) STANDARD.—The Administrator shall enter into an indemnification agreement to the extent that the potential liability (including the risk of harm to public health, safety, environment, and property) involved in a response action exceed or are not covered by insurance available to the contractor at the time at which the response action contract is entered into that is likely to provide adequate long-term protection to the public for the potential liability on fair and reasonable terms (including consideration of premium, policy terms, and deductibles).

''(C) DILIGENT EFFORTS.—The Administrator shall enter into an indemnification agreement only if the Administrator determines that the response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

''(D) CONTINUED DILIGENT EFFORTS.—An indemnification agreement shall require the response action contractor to continue, not more frequently than annually, to make diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

''(E) LIMITATIONS ON INDEMNIFICATION.—An indemnification agreement provided under this subsection shall include deductibles and shall place limits on the amount of indemnification made available in amounts determined by the contracting agency to be appropriate in light of the unique risk factors associated with the cleanup activity.''.

(e) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting ''or threatened release'' after ''release'' each place it appears.

(f) EXTENSION OF COVERAGE TO ALL RESPONSE ACTIONS.—Section 119(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(1)) is amended—

(1) in subparagraph (D) by striking ''carrying out an agreement under section 106 or 122''; and

(2) in the matter following subparagraph (D)—

(A) by striking ''any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act,'' and inserting ''any response action,''; and

(B) by inserting before the period at the end the following: ''or to undertake appropriate action necessary to protect and restore any natural resource damaged by the release or threatened release''.

(g) DEFINITION OF RESPONSE ACTION CONTRACTOR.—Section 119(e)(2)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking ''and is carrying out such contract'' and inserting ''covered by this section and any person (including any subcontractor) hired by a response action contractor''.

(h) SURETY BONDS.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended—

(1) in subsection (e)(2)(C) by striking '', and before January 1, 1996,''; and

(2) in subsection (g)(5) by striking '', or after December 31, 1995''.

(i) NATIONAL UNIFORM STATUTE OF REPOSE.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended by adding at the end the following:

''(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—

''(1) IN GENERAL.—No action may be brought as a result of the performance of services under a response contract against a response action contractor after the date that is 7 years after the date of completion of work at any facility under the contract to recover—

''(A) injury to property, real or personal;

''(B) personal injury or wrongful death;

''(C) other expenses or costs arising out of the performance of services under the contract; or

''(D) contribution or indemnity for damages sustained as a result of an injury described in subparagraphs (A) through (C).

''(2) EXCEPTION.—Paragraph (1) does not bar recovery for a claim caused by the conduct of the response action contractor that is grossly negligent or that constitutes intentional misconduct.

''(3) INDEMNIFICATION.—This subsection does not affect any right of indemnification that a response action contractor may have under this section or may acquire by contract with any person.

''(i) STATE STANDARDS OF REPOSE.—Subsections (a)(1) and (h) shall not apply in determining the liability of a response action contractor if the State has enacted a statute of repose determining the liability of a response action contractor.''.

SEC. 505. RELEASE OF EVIDENCE.

(a) TIMELY ACCESS TO INFORMATION FURNISHED UNDER SECTION 104(e).—Section 104(e)(7)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is amended by inserting after ''shall be available to the public'' the following: ''not later than 14 days after the records, reports, or information is obtained''.

(b) REQUIREMENT TO PROVIDE POTENTIALLY RESPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

(1) ABATEMENT ACTIONS.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended—

(A) by striking ''(a) In addition'' and inserting the following: ''(a) ORDER.—''

''(1) IN GENERAL.—In addition''; and

(B) by adding at the end the following:

''(2) CONTENTS OF ORDER.—An order under paragraph (1) shall provide information concerning the evidence that indicates that each element of liability described in section 107(a)(1) (A), (B), (C), and (D), as applicable, is present.''.

(2) SETTLEMENTS.—Section 122(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9622(e)(1)) is amended by inserting after subparagraph (C) the following:

''(D) For each potentially responsible party, the evidence that indicates that each element of liability contained in section 107(a)(1) (A), (B), (C), and (D), as applicable, is present.''.

SEC. 506. CONTRIBUTION PROTECTION.

Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sentence by inserting ''or cost recovery'' after ''contribution''.

SEC. 507. TREATMENT OF RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS AS OWNERS OR OPERATORS.

(a) DEFINITION.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) (as amended by section 502(a)) is amended by adding at the end the following:

"(I) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—The term 'owner or operator' includes an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is organized and operated exclusively for religious, charitable, scientific, or educational purposes and that holds legal or equitable title to a vessel or facility.".

(b) LIMITATION ON LIABILITY.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by section 501(b)) is amended by adding at the end the following:

"(u) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—

"(1) LIMITATION ON LIABILITY.—Subject to paragraph (2), if an organization described in section 101(20)(I) holds legal or equitable title to a vessel or facility as a result of a charitable gift that is allowable as a deduction under section 170, 2055, or 2522 of the Internal Revenue Code of 1986 (determined without regard to dollar limitations), the liability of the organization shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the organization.

"(2) CONDITIONS.—In order for an organization described in section 101(20)(I) to be eligible for the limited liability described in paragraph (1), the organization shall—

"(A) provide full cooperation, assistance, and vessel or facility access to persons authorized to conduct response actions at the vessel or facility, including the cooperation and access necessary for the installation, preservation of integrity, operation, and maintenance of any complete or partial response action at the vessel or facility;

"(B) provide full cooperation and assistance to the United States in identifying and locating persons who recently owned, operated, or otherwise controlled activities at the vessel or facility;

"(C) establish by a preponderance of the evidence that all active disposal of hazardous substances at the vessel or facility occurred before the organization acquired the vessel or facility; and

"(D) establish by a preponderance of the evidence that the organization did not cause or contribute to a release or threatened release of hazardous substances at the vessel or facility.

"(3) LIMITATION.—Nothing in this subsection affects the liability of a person other than a person described in section 101(20)(I) that meets the conditions specified in paragraph (2).".

SEC. 508. COMMON CARRIERS.

Section 107(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(b)(3)) is amended by striking "a published tariff and acceptance" and inserting "a contract".

SEC. 509. LIMITATION ON LIABILITY OF RAILROAD OWNERS.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by section 507(b)) is amended by adding at the end the following:

"(v) LIMITATION ON LIABILITY OF RAILROAD OWNERS.—Notwithstanding subsection (a)(1), a person that does not impede the performance of a response action or natural resource restoration shall not be liable under this Act to the extent that liability is based solely on the status of the person as a railroad owner or operator of a spur track, including a spur track over land subject to an easement, to a facility that is owned or operated by a person that is not affiliated with the railroad owner or operator, if—

"(1) the spur track provides access to a main line or branch line track that is owned or operated by the railroad;

"(2) the spur track is 10 miles long or less; and

"(3) the railroad owner or operator does not cause or contribute to a release or threatened release at the spur track.".

SEC. 510. LIABILITY OF RECYCLERS.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 501(a)) is amended by adding at the end the following:

"(47) RECYCLABLE MATERIAL.—The term 'recyclable material'—

"(A) means—

"(i) scrap glass, paper, plastic, rubber, or textile;

"(ii) scrap metal; and

"(iii) a spent battery; and

"(B) includes small amounts of any type of material that is incident to or adherent to material described in subparagraph (A) as a result of the normal and customary use of the material prior to the exhaustion of the useful life of the material.

"(48) SCRAP METAL.—The term 'scrap metal'—

"(A) means—

"(i) scrap metal (as that term is defined by the Administrator for purposes of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) in section 261.1(c)(6) of title 40, Code of Federal Regulations, or any successor regulation); and

"(ii) a metal byproduct (such as slag, skimming, or dross) that is not 1 of the primary products of, and is not solely or separately produced by, a production process; but

"(B) does not include—

"(i) any steel shipping container that—

"(I) has (or, when intact, had) a capacity of not less than 30 and not more than 3,000 liters; and

"(II) has any hazardous substance contained in or adherent to it (not including any small pieces of metal that may remain after a hazardous substance has been removed from the container or any alloy or other material that may be chemically or metallurgically bonded in the steel itself); or

"(ii) any material described in subparagraph (A) that the Administrator may by regulation exclude from the meaning of the term based on a finding that inclusion of the material within the meaning of the term would result in a threat to human health or the environment.".

(b) LIABILITY OF RECYCLERS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by section 509) is amended by adding at the end the following:

"(w) LIABILITY OF RECYCLERS.—

"(1) APPLICABILITY OF SUBSECTION.—Subject to paragraph (10), this subsection shall be applied to determine the liability of any person with respect to a transaction engaged in before, on, or after the date of enactment of this subsection.

"(2) RELIEF FROM LIABILITY.—Except as provided in paragraph (6), a person that arranges for the recycling of recyclable material shall not be liable under subsection (a)(1) (C) or (D).

"(3) SCRAP GLASS, PAPER, PLASTIC, RUBBER, OR TEXTILE.—For the purposes of paragraph (2), a person shall be considered to arrange for the recycling of scrap glass, paper, plastic, rubber, or textile if the person sells or otherwise arranges for the recycling of the recyclable material in a transaction in which, at the time of the transaction—

"(A) the recyclable material meets a commercial specification;

"(B) a market exists for the recyclable material;

"(C) a substantial portion of the recyclable material is made available for use as a feedstock for the manufacture of a new saleable product; and

"(D)(i) the recyclable material is a replacement or substitute for a virgin raw material; or

"(ii) the product to be made from the recyclable material is a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

"(4) SCRAP METAL.—For the purposes of paragraph (2), a person shall be considered to arrange for the recycling of scrap metal if the person sells or otherwise arranges for the recycling of the scrap metal in a transaction in which, at the time of the transaction—

"(A) the conditions stated in subparagraphs (A) through (D) of paragraph (3) are met; and

"(B) in the case of a transaction that occurs after the effective date of a standard, established by the Administrator by regulation under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), regarding the storage, transport, management, or other activity associated with the recycling of scrap metal, the person is in compliance with the standard.

"(5) SPENT BATTERIES.—

"(A) IN GENERAL.—For the purposes of paragraph (1), a person shall be considered to arrange for the recycling of a spent lead-acid battery, nickel-cadmium battery, or other battery if the person sells or otherwise arranges for the recycling of the battery in a transaction in which, at the time of the transaction—

"(i) the conditions stated in subparagraphs (A) through (D) of paragraph (3) are met;

"(ii) the person does not reclaim the valuable components of the battery; and

"(iii) in the case of a transaction that occurs after the effective date of a standard, established by the Administrator by regulation under authority of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or the Mercury-Containing and Rechargeable Battery Management Act), regarding the storage, transport, management, or other activity associated with the recycling of batteries, the person is in compliance with the standard.

"(B) TOLLING ARRANGEMENTS.—A person that, by contract, arranges for reclamation and smelting of a battery by a third party not a party to a transaction under subparagraph (A) and receives from the third party material reclaimed from the battery shall not, by reason of the receipt of the reclaimed material, be considered to reclaim the valuable components of the battery for purposes of subparagraph (A)(ii).

"(6) GROUNDS FOR ESTABLISHING LIABILITY.—

"(A) IN GENERAL.—A person that arranges for the recycling of recyclable material that would be liable under subsection (a)(1) (C) or

(D) but for paragraph (2) shall be liable notwithstanding that paragraph if—

"(i) the person has an objectively reasonable basis to believe at the time of the recycling transaction that—

"(I) the recyclable material will not be recycled;

"(II) the recyclable material will be burned as fuel, for energy recovery or incineration;

"(III) the consuming facility is not in compliance with a substantive provision (including a requirement to obtain a permit for handling, processing, reclamation, or other management activity associated with recyclable material) of any Federal, State, or local environmental law (including a regulation), or a compliance order or decree issued under such a law, applicable to the handling, processing, reclamation, or other management activity associated with the recyclable material; or

"(IV) a hazardous substance has been added to the recyclable material for purposes other than processing for recycling;

"(ii) the person fails to exercise reasonable care with respect to the management or handling of the recyclable material (for which purpose a failure to adhere to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances shall be considered to be a failure to exercise reasonable care); or

"(iii) any item of the recyclable material contains—

"(I) polychlorinated biphenyls at a concentration in excess of 50 parts per million (or any different concentration specified in any applicable standard that may be issued under other Federal law after the date of enactment of this subsection); or

"(II) in the case of a transaction involving scrap paper, any concentration of a hazardous substance that the Administrator determines by regulation, issued after the date of enactment of this subsection and before the date of the transaction, to be likely to cause significant risk to human health or the environment as a result of its inclusion in the paper recycling process.

"(B) OBJECTIVELY REASONABLE BASIS FOR BELIEF.—Whether a person has an objectively reasonable basis for belief described in subparagraph (A)(i) shall be determined using criteria that include—

"(i) the size of the person's business;

"(ii) customary industry practices (including practices designed to minimize, through source control, contamination of recyclable material by hazardous substances);

"(iii) the price paid or received in the recycling transaction; and

"(iv) the ability of the person to detect the nature of the consuming facility's operations concerning handling, processing, or reclamation of the recyclable material or other management activities associated with the recyclable material.

"(7) REGULATIONS.—The Administrator may issue a regulation that clarifies the meaning of any term used in this subsection or by any other means makes clear the application of this subsection to any person.

"(8) LIABILITY FOR ATTORNEY'S FEES FOR CERTAIN ACTIONS.—A person that, after the date of enactment of this subsection, commences a civil action in contribution against a person that is not liable by operation of this subsection shall be liable to that person for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees.

"(9) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this subsection shall affect—

"(A) liability under any other Federal, State, or local law (including a regulation); or

"(B) the authority of the Administrator to issue regulations under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or any other law.

"(10) TRANSITION RULES.—

"(A) DECREE OR ORDER ENTERED PRIOR TO JANUARY 1, 1997.—This subsection shall not affect any judicial decree or order that was entered or any administrative order that became effective prior to January 1, 1997, unless, as of the date of enactment of this subsection, the judicial decree or order remained subject to appeal or the administrative order remained subject to judicial review.

"(B) DECREE OR ORDER ENTERED ON OR AFTER JANUARY 1, 1997.—Any consent decree with the United States, administrative order, or judgment in favor of the United States that was entered, or in the case of an administrative order, became effective, on or after January 1, 1997, and before the date of enactment of this subsection shall be reopened at the request of any party to the recycling transaction for a determination of the party's liability to the United States based on this subsection.

"(C) EFFECT ON NONRECYCLERS.—

"(i) COSTS BORNE BY THE UNITED STATES.—All costs attributable to a recycling transaction that, absent this subsection, would be borne by a person that is relieved of liability (in whole or in part) by this subsection shall be borne by the United States, to the extent that the person is relieved of liability.

"(ii) NO RECOVERY FROM THE UNITED STATES.—Notwithstanding clause (i), no person shall be entitled to recover any sums paid to the United States prior to the date of enactment of this subsection in satisfaction of any liability attributable to a recycling transaction.

"(D) CONTRIBUTION AMONG PARTIES TO RECYCLING TRANSACTIONS.—Notwithstanding the other provisions of this subsection, a person that is relieved of liability by this subsection, but incurred response costs for a response action taken prior to the date of enactment of this subsection, may bring a civil action for contribution for the costs against—

"(i) any person that is liable under section 107(a)(1) (A) or (B); or

"(ii) any person that, before the date of enactment of this subsection—

"(I) received and failed to comply with an administrative order issued under section 104 or 106; or

"(II) received and did not accept a written offer from the United States to enter into a consent decree or administrative order.".

TITLE VI—FEDERAL FACILITIES

SEC. 601. TRANSFER OF AUTHORITIES.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by striking subsection (g) and inserting the following:

"(g) TRANSFER OF AUTHORITIES.—

"(1) DEFINITIONS.—In this section:

"(A) INTERAGENCY AGREEMENT.—The term 'interagency agreement' means an interagency agreement under this section.

"(B) TRANSFER AGREEMENT.—The term 'transfer agreement' means a transfer agreement under paragraph (3).

"(C) TRANSFEREE STATE.—The term 'transferee State' means a State to which authorities have been transferred under a transfer agreement.

"(2) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this Act at any facility located in the State that is—

"(A) owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government); and

"(B) listed on the National Priorities List.

"(3) TRANSFER OF AUTHORITIES.—

"(A) DETERMINATIONS.—The Administrator shall enter into a transfer agreement to transfer to a State the authorities described in paragraph (2) if the Administrator determines that—

"(i) the State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise;

"(ii) the State has demonstrated experience in exercising similar authorities;

"(iii) the State has agreed to be bound by all Federal requirements and standards under section 133 governing the design and implementation of the facility evaluation, remedial action plan, and remedial design; and

"(iv) the State has agreed to abide by the terms of any interagency agreement or agreements covering the Federal facility or facilities with respect to which authorities are being transferred in effect at the time of the transfer of authorities.

"(B) CONTENTS OF TRANSFER AGREEMENT.—A transfer agreement—

"(i) shall incorporate the determinations of the Administrator under subparagraph (A); and

"(ii) in the case of a transfer agreement covering a facility with respect to which there is no interagency agreement that specifies a dispute resolution process, shall require that within 120 days after the effective date of the transfer agreement, the State shall agree with the head of the Federal department, agency, or instrumentality that owns or operates the facility on a process for resolution of any disputes between the State and the Federal department, agency, or instrumentality regarding the selection of a remedial action for the facility; and

"(iii) shall not impose on the transferee State any term or condition other than that the State meet the requirements of subparagraph (A).

"(4) EFFECT OF TRANSFER.—

"(A) STATE AUTHORITIES.—A transferee State—

"(i) shall not be deemed to be an agent of the Administrator but shall exercise the authorities transferred under a transfer agreement in the name of the State; and

"(ii) shall have exclusive authority to exercise authorities that have been transferred.

"(B) EFFECT ON INTERAGENCY AGREEMENTS.—Nothing in this subsection shall require, authorize, or permit the modification or revision of an interagency agreement covering a facility with respect to which authorities have been transferred to a State under a transfer agreement (except for the substitution of the transferee State for the Administrator in the terms of the interagency agreement, including terms stating obligations intended to preserve the confidentiality of information) without the written consent of the Governor of the State and the head of the department, agency, or instrumentality.

"(5) SELECTED REMEDIAL ACTION.—The remedial action selected for a facility under section 133 by a transferee State shall constitute the only remedial action required to be conducted at the facility, and the transferee State shall be precluded from enforcing any other remedial action requirement under Federal or State law, except for—

"(A) any corrective action under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that was initiated prior to the date of enactment of this subsection; and

"(B) any remedial action in excess of remedial action under section 133 that the State selects in accordance with paragraph (10).

"(6) DEADLINE.—

"(A) IN GENERAL.—The Administrator shall make a determination on an application by a State under paragraph (2) not later than 120 days after the date on which the Administrator receives the application.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of an application within the time period stated in subparagraph (A), the application shall be deemed to have been granted.

"(7) RESUBMISSION OF APPLICATION.—

"(A) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the time period stated in paragraph (6)(A), the resubmitted application shall be deemed to have been granted.

"(8) JUDICIAL REVIEW.—The State (but no other person) shall be entitled to judicial review under section 113(b) of a disapproval of a resubmitted application.

"(9) WITHDRAWAL OF AUTHORITIES.—The Administrator may withdraw the authorities transferred under a transfer agreement in whole or in part if the Administrator determines that the State—

"(A) is exercising the authorities, in whole or in part, in a manner that is inconsistent with the requirements of this Act;

"(B) has violated the transfer agreement, in whole or in part; or

"(C) no longer meets one of the requirements of paragraph (3).

"(10) STATE COST RESPONSIBILITY.—The State may require a remedial action that exceeds the remedial action selection requirements of section 121 if the State pays the incremental cost of implementing that remedial action over the most cost-effective remedial action that would result from the application of section 133.

"(11) DISPUTE RESOLUTION AND ENFORCEMENT.—

"(A) DISPUTE RESOLUTION.—

"(i) FACILITIES COVERED BY BOTH A TRANSFER AGREEMENT AND AN INTERAGENCY AGREEMENTS.—In the case of a facility with respect to which there is both a transfer agreement and an interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in the dispute resolution process provided for in the interagency agreement, except that the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

"(ii) FACILITIES COVERED BY A TRANSFER AGREEMENT BUT NOT AN INTERAGENCY AGREEMENT.—In the case of a facility with respect to which there is a transfer agreement but no interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in dispute resolution as provided in paragraph (3)(B)(ii) under which the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

"(iii) FAILURE TO RESOLVE.—If no agreement is reached between the head of the Federal department, agency, or instrumentality and the Governor in a dispute resolution process under clause (i) or (ii), the Governor of the State shall make the final determination regarding selection of a remedial action. To compel implementation of the State's selected remedy, the State must bring a civil action in United States district court.

"(B) ENFORCEMENT.—

"(i) AUTHORITY; JURISDICTION.—An interagency agreement with respect to which there is a transfer agreement or an order issued by a transferee State shall be enforceable by a transferee State or by the Federal department, agency, or instrumentality that is a party to the interagency agreement only in the United States district court for the district in which the facility is located.

"(ii) REMEDIES.—The district court shall—

"(I) enforce compliance with any provision, standard, regulation, condition, requirement, order, or final determination that has become effective under the interagency agreement;

"(II) impose any appropriate civil penalty provided for any violation of an interagency agreement, not to exceed $25,000 per day;

"(III) compel implementation of the selected remedial action; and

"(IV) review a challenge by the Federal department, agency, or instrumentality to the remedial action selected by the State under this section, in accordance with section 113(j).

"(12) COMMUNITY PARTICIPATION.—If, prior to the date of enactment of this section, a Federal department, agency, or instrumentality had established for a facility covered by a transfer agreement a facility-specific advisory board or other community-based advisory group (designated as a 'site-specific advisory board', a 'restoration advisory board', or otherwise), and the Administrator determines that the board or group is willing and able to perform the responsibilities of a community response organization under section 117(e)(2), the board or group—

"(A) shall be considered to be a community response organization for the purposes of section 117 (e) (2), (3), (4), and (9), and (g) and sections 131 and 133; but

"(B) shall not be required to comply with, and shall not be considered to be a community response organization for the purposes of, section 117 (e) (1), (5), (6), (7), or (8) or (f).".

SEC. 602. LIMITATION ON CRIMINAL LIABILITY OF FEDERAL OFFICERS, EMPLOYEES, AND AGENTS.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by adding at the end the following:

"(k) CRIMINAL LIABILITY.—Notwithstanding any other provision of this Act or any other law, an officer, employee, or agent of the United States shall not be held criminally liable for a failure to comply, in any fiscal year, with a requirement to take a response action at a facility that is owned or operated by a department, agency, or instrumentality of the United States, under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or any other Federal or State law unless—

"(1) the officer, employee, or agent has not fully performed any direct responsibility or delegated responsibility that the officer, employee, or agent had under Executive Order 12088 (42 U.S.C. 4321 note) or any other delegation of authority to ensure that a request for funds sufficient to take the response action was included in the President's budget request under section 1105 of title 31, United States Code, for that fiscal year; or

"(2) appropriated funds were available to pay for the response action.".

SEC. 603. INNOVATIVE TECHNOLOGIES FOR REMEDIAL ACTION AT FEDERAL FACILITIES.

(a) IN GENERAL.—Section 311 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660) is amended by adding at the end the following:

"(h) FEDERAL FACILITIES.—

"(1) DESIGNATION.—The President may designate a facility that is owned or operated by any department, agency, or instrumentality of the United States, and that is listed or proposed for listing on the National Priorities List, to facilitate the research, development, and application of innovative technologies for remedial action at the facility.

"(2) USE OF FACILITIES.—

"(A) IN GENERAL.—A facility designated under paragraph (1) shall be made available to Federal departments and agencies, State departments and agencies, and public and private instrumentalities, to carry out activities described in paragraph (1).

"(B) COORDINATION.—The Administrator—

"(i) shall coordinate the use of the facilities with the departments, agencies, and instrumentalities of the United States; and

"(ii) may approve or deny the use of a particular innovative technology for remedial action at any such facility.

"(3) CONSIDERATIONS.—

"(A) EVALUATION OF SCHEDULES AND PENALTIES.—In considering whether to permit the application of a particular innovative technology for remedial action at a facility designated under paragraph (1), the Administrator shall evaluate the schedules and penalties applicable to the facility under any agreement or order entered into under section 120.

"(B) AMENDMENT OF AGREEMENT OR ORDER.—If, after an evaluation under subparagraph (A), the Administrator determines that there is a need to amend any agreement or order entered into pursuant to section 120, the Administrator shall comply with all provisions of the agreement or order, respectively, relating to the amendment of the agreement or order.".

(b) REPORT TO CONGRESS.—Section 311(e) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

(1) by striking "At the time" and inserting the following:

"(1) IN GENERAL.—At the time"; and

(2) by adding at the end the following:

"(2) ADDITIONAL INFORMATION.—A report under paragraph (1) shall include information on the use of facilities described in subsection (h)(1) for the research, development, and application of innovative technologies for remedial activity, as authorized under subsection (h).".

TITLE VII—NATURAL RESOURCE DAMAGES

SEC. 701. RESTORATION OF NATURAL RESOURCES.

Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended—

(1) by inserting "NATURAL RESOURCE DAMAGES.—" after "(f)";

(2) by striking "(1) NATURAL RESOURCES LIABILITY.—In the case" and inserting the following:

"(1) LIABILITY.—

"(A) IN GENERAL.—In the case"; and

(3) in paragraph (1)(A), as designated by paragraph (2)—

(A) by inserting after the fourth sentence the following: "Sums recovered by an Indian tribe as trustee under this subsection shall be available for use only for restoration, replacement, or acquisition of the equivalent of such natural resources by the Indian tribe. A restoration, replacement, or acquisition conducted by the United States, a State, or an Indian tribe shall proceed only if it is technologically feasible from an engineering perspective at a reasonable cost and consistent with all known or anticipated response actions at or near the facility."; and

(B) by striking "The measure of damages in any action" and all that follows through the end of the paragraph and inserting the following:

"(B) LIMITATIONS ON LIABILITY.—

"(i) MEASURE OF DAMAGES.—The measure of damages in any action for damages for injury to, destruction of, or loss of natural resources shall be limited to—

"(I) the reasonable costs of restoration, replacement, or acquisition of the equivalent of natural resources that suffer injury, destruction, or loss caused by a release; and

"(II) the reasonable costs of assessing damages.

"(ii) NONUSE VALUES.—There shall be no recovery under this Act for any impairment of nonuse values.

"(iii) NO DOUBLE RECOVERY.—A person that obtains a recovery of damages, response costs, assessment costs, or any other costs under this Act for the costs of restoring an injury to or destruction or loss of a natural resource (including injury assessment costs) shall not be entitled to recovery under this Act or any other Federal or State law for the same injury to or destruction or loss of the natural resource.

"(iv) RESTRICTIONS ON RECOVERY.—

"(I) LIMITATION ON LOST USE DAMAGES.—There shall be no recovery from any person under this section for the costs of a loss of use of a natural resource for a natural resource injury, destruction, or loss that occurred before December 11, 1980.

"(II) RESTORATION, REPLACEMENT, OR ACQUISITION.—There shall be no recovery from any person under this section for the costs of restoration, replacement, or acquisition of the equivalent of a natural resource if the natural resource injury, destruction, or loss for which the restoration, replacement, or acquisition is sought and the release of the hazardous substance from which the injury resulted occurred wholly before December 11, 1980.".

SEC. 702. ASSESSMENT OF INJURY TO AND RESTORATION OF NATURAL RESOURCES.

(a) NATURAL RESOURCE INJURY AND RESTORATION ASSESSMENTS.—Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking subparagraph (C) and inserting the following:

"(C) NATURAL RESOURCE INJURY AND RESTORATION ASSESSMENT.—

"(i) REGULATION.—A natural resource injury and restoration assessment conducted for the purposes of this Act made by a Federal, State, or tribal trustee shall be performed, to the extent practicable, in accordance with—

"(I) the regulation issued under section 301(c); and

"(II) generally accepted scientific and technical standards and methodologies to ensure the validity and reliability of assessment results.

"(ii) FACILITY-SPECIFIC CONDITIONS.—Injury assessment, restoration planning, and quantification of restoration costs shall, to the extent practicable, be based on facility-specific information.

"(iii) RECOVERABLE COSTS.—A trustee's claim for assessment costs—

"(I) may include only—

"(aa) costs that arise from work performed for the purpose of assessing injury to a natural resource to support a claim for restoration of the natural resource; and

"(bb) costs that arise from developing and evaluating a reasonable range of alternative restoration measures; but

"(II) may not include the costs of conducting any type of study relying on the use of contingent valuation methodology.

"(iv) PAYMENT PERIOD.—In a case in which injury to or destruction or loss of a natural resource was caused by a release that occurred over a period of years, payment of damages shall be permitted to be made over a period of years that is appropriate in view of the period of time over which the damages occurred, the amount of the damages, the financial ability of the responsible party to pay the damages, and the time period over which and the pace at which expenditures are expected to be made for restoration, replacement, and acquisition activities.

"(v) TRUSTEE RESTORATION PLANS.—

"(I) ADMINISTRATIVE RECORD.—Participating natural resource trustees may designate a lead administrative trustee or trustees. The lead administrative trustee may establish an administrative record on which the trustees will base the selection of a plan for restoration of a natural resource. The restoration plan shall include a determination of the nature and extent of the natural resource injury. The administrative record shall be made available to the public at or near the facility at which the release occurred.

"(II) PUBLIC PARTICIPATION.—The Administrator shall issue a regulation for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the trustees will base selection of a restoration plan and on which judicial review of restoration plans will be based. The procedures for participation shall include, at a minimum, each of the requirements stated in section 113(k)(2)(B).".

(b) REGULATIONS.—Section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651) is amended by striking subsection (c) and inserting the following:

"(c) REGULATIONS FOR INJURY AND RESTORATION ASSESSMENTS.—

"(1) IN GENERAL.—The President, acting through Federal officials designated by the National Contingency Plan under section 107(f)(2), shall issue a regulation for the assessment of injury to natural resources and the costs of restoration of natural resources (including the costs of assessment) for the purposes of this Act and for determination of the time periods in which payment of damages will be required.

"(2) CONTENTS.—The regulation under paragraph (1) shall—

"(A) specify protocols for conducting assessments in individual cases to determine the injury, destruction, or loss of natural resources;

"(B) identify the best available procedures to determine the reasonable costs of restoration and assessment;

"(C) take into consideration the ability of a natural resource to recover naturally and the availability of replacement or alternative resources;

"(D) provide for the designation of a single lead Federal decisionmaking trustee for each facility at which an injury to natural resources has occurred within 180 days after the date of first notice to the responsible parties that an assessment of injury and restoration alternatives will be made; and

"(E) set forth procedures under which—

"(i) all pending and potential trustees identify the injured natural resources within their respective trust responsibilities, and the authority under which such responsibilities are established, as soon as practicable after the date on which a release occurs;

"(ii) assessment of injury and restoration alternatives will be coordinated to the greatest extent practicable between the lead Federal decisionmaking trustee and any present or potential State or tribal trustees, as applicable; and

"(iii) time periods for payment of damages in accordance with section 107(f)(2)(C)(iv) shall be determined.

"(3) DEADLINE FOR ISSUANCE OF REGULATION; PERIODIC REVIEW.—The regulation under paragraph (1) shall be issued not later than 1 year after the date of enactment of the Superfund Cleanup Acceleration Act of 1997 and shall be reviewed and revised as appropriate every 5 years.".

SEC. 703. CONSISTENCY BETWEEN RESPONSE ACTIONS AND RESOURCE RESTORATION STANDARDS.

(a) RESTORATION STANDARDS AND ALTERNATIVES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended by adding at the end the following:

"(3) COMPATIBILITY WITH REMEDIAL ACTION.—Both response actions and restoration measures may be implemented at the same facility, or to address releases from the same facility. Such response actions and restoration measures shall not be inconsistent with one another and shall be implemented, to the extent practicable, in a coordinated and integrated manner.".

(b) CONSIDERATION OF NATURAL RESOURCES IN RESPONSE ACTIONS.—Section 121(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(a)) (as amended by section 402(1)) is amended by adding at the end the following:

"(6) COORDINATION.—In evaluating and selecting remedial actions, the Administrator shall take into account the potential for injury to a natural resource resulting from such actions.".

SEC. 704. CONTRIBUTION.

Subparagraph (A) of section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sentence by inserting "and natural resource damages" after "costs".

TITLE VIII—MISCELLANEOUS

SEC. 801. RESULT-ORIENTED CLEANUPS.

(a) AMENDMENT.—Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting "; and"; and

(3) by inserting after paragraph (10) the following:

"(11) procedures for conducting response actions, including facility evaluations, remedial investigations, feasibility studies, remedial action plans, remedial designs, and remedial actions, which procedures shall—

"(A) use a results-oriented approach to minimize the time required to conduct response measures and reduce the potential for exposure to the hazardous substances, pollutants, and contaminants in an efficient, timely, and cost-effective manner;

"(B) require, at a minimum, expedited facility evaluations and risk assessments, timely negotiation of response action goals, a single engineering study, streamlined oversight of response actions, and consultation with interested parties throughout the response action process;

"(C) be subject to the requirements of sections 117, 120, 121, and 133 in the same manner and to the same degree as those sections apply to response actions; and

"(D) be required to be used for each remedial action conducted under this Act unless the Administrator determines that their use would not be cost-effective or result in the selection of a response action that achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).".

(b) AMENDMENT OF NATIONAL HAZARDOUS SUBSTANCE RESPONSE PLAN.—Not later than 180 days after the date of enactment of this Act, the Administrator, after notice and opportunity for public comment, shall amend the National Hazardous Substance Response Plan under section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) to include the procedures required by the amendment made by subsection (a).

SEC. 802. NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) (as amended by section 407(a)(2)) is amended by adding at the end the following:

"(i) NATIONAL PRIORITIES LIST.—

"(1) LIMITATION.—

"(A) IN GENERAL.—After the date of the enactment of this subsection, the President may add vessels and facilities to the National Priorities List only in accordance with the following schedule:

"(i) Not more than 30 vessels and facilities in 1997.

"(ii) Not more than 25 vessels and facilities in 1998.

"(iii) Not more than 20 vessels and facilities in 1999.

"(iv) Not more than 15 vessels and facilities in 2000.

"(v) Not more than 10 vessels and facilities in any year after 2000.

"(B) RELISTING.—The relisting of a vessel or facility under section 130(d)(5)(C)(ii) shall not be considered to be an addition to the National Priorities List for purposes of this subsection.

"(2) PRIORITIZATION.—The Administrator shall prioritize the vessels and facilities added under paragraph (1) on a national basis in accordance with the threat to human health and the environment presented by each of the vessels and facilities, respectively.

"(3) STATE CONCURRENCE.—A vessel or facility may be added to the National Priorities List under paragraph (1) only with the concurrence of the Governor of the State in which the vessel or facility is located.".

SEC. 803. OBLIGATIONS FROM THE FUND FOR RESPONSE ACTIONS.

Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(1)) is amended—

(1) in subparagraph (C) by striking "consistent with the remedial action to be taken" and inserting "not inconsistent with any remedial action that has been selected or is anticipated at the time of any removal action at a facility.";

(2) by striking "$2,000,000" and inserting "$4,000,000"; and

(3) by striking "12 months" and inserting "2 years".

TITLE IX—FUNDING

Subtitle A—General Provisions

SEC. 901. AUTHORIZATION OF APPROPRIATIONS FROM THE FUND.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended in the first sentence by striking "not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994" and inserting "a total of $8,500,000,000 for fiscal years 1998, 1999, 2000, 2001, and 2002".

SEC. 902. ORPHAN SHARE FUNDING.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)), as amended by section 301(c), is amended by inserting after paragraph (8) the following:

"(9) ORPHAN SHARE FUNDING.—Payment of orphan shares under section 136.".

SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (m) and inserting the following:

"(m) HEALTH AUTHORITIES.—There are authorized to be appropriated from the Fund to the Secretary of Health and Human Services to be used for the purposes of carrying out the activities described in subsection (c)(4) and the activities described in section 104(i), $50,000,000 for each of fiscal years 1998, 1999, 2000, 2001, and 2002. Funds appropriated under this subsection for a fiscal year, but not obligated by the end of the fiscal year, shall be returned to the Fund.".

SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (n) and inserting the following:

"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

"(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

"(A) LIMITATION.—For each of fiscal years 1998, 1999, 2000, 2001, and 2002, not more than $30,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) other than basic research.

"(B) CONTINUING AVAILABILITY.—Such amounts shall remain available until expended.

"(2) HAZARDOUS SUBSTANCE RESEARCH, DEMONSTRATION, AND TRAINING.—

"(A) LIMITATION.—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a):

"(i) For fiscal year 1998, $37,000,000.

"(ii) For fiscal year 1999, $39,000,000.

"(iii) For fiscal year 2000, $41,000,000.

"(iv) For each of fiscal years 2001 and 2002, $43,000,000.

"(B) FURTHER LIMITATION.—No more than 15 percent of such amounts shall be used for training under section 311(a) for any fiscal year.

"(3) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 1998, 1999, 2000, 2001, and 2002, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d).".

SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p)) is amended by striking paragraph (1) and inserting the following:

"(1) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

"(i) for fiscal year 1998, $250,000,000;

"(ii) for fiscal year 1999, $250,000,000;

"(iii) for fiscal year 2000, $250,000,000;

"(iv) for fiscal year 2001, $250,000,000; and

"(v) for fiscal year 2002, $250,000,000.

"(B) ADDITIONAL AMOUNTS.—There is authorized to be appropriated to the Hazardous Substance Superfund for each such fiscal year an amount, in addition to the amount authorized by subparagraph (A), equal to so much of the aggregate amount authorized to be appropriated under this subsection and section 9507(b) of the Internal Revenue Code of 1986 as has not been appropriated before the beginning of the fiscal year.".

SEC. 906. ADDITIONAL LIMITATIONS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) (as amended by section 102(c)) is amended by adding at the end the following:

"(t) COMMUNITY RESPONSE ORGANIZATION.—For the period commencing January 1, 1997, and ending September 30, 2002, not more than $15,000,000 of the amounts available in the Fund may be used to make grants under section 117(f) (relating to Community Response Organizations).

"(u) RECOVERIES.—Effective beginning January 1, 1997, any response cost recoveries collected by the United States under this Act shall be credited as offsetting collections to the Superfund appropriations account.".

SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) (as amended by section 902) is amended by inserting after paragraph (9) the following:

"(10) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.—If—

"(A) a potentially responsible party and the Administrator enter into a settlement

under this Act under which the Administrator is reimbursed for the response costs of the Administrator; and

"(B) the Administrator determines, through a Federal audit of response costs, that the costs for which the Administrator is reimbursed—

"(i) are unallowable due to contractor fraud;

"(ii) are unallowable under the Federal Acquisition Regulation; or

"(iii) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures.

a potentially responsible party may be reimbursed for those costs.".

Mr. ABRAHAM. Mr. President, I would like to join the others on the Senate floor here today to congratulate Senator CHAFEE and Senator SMITH of New Hampshire on the introduction of their Superfund reform legislation. As an original cosponsor of this legislation, I support their efforts to speed the cleanup of polluted sites across this country.

And while this legislation has provisions targeting those sites currently on the national priority list, I should point out it also has provisions to speed the remediation of less seriously contaminated sites—so-called brownfields.

I am someone who is deeply concerned about brownfields and the economic and environmental damage they impose on communities.

First, Senator CHAFEE, thank you very much for agreeing to speak with me on this very important issue. As the Senator knows, last year I introduced legislation along with Senator LIEBERMAN which would provide tax incentives for the remediation of brownfields. This legislation is very important to communities across the country, and I intend to reintroduce similar legislation this Congress. It is my understanding that the bill introduced today focuses, in part, on our brownfields problem.

Mr. CHAFEE. The Senator from Michigan is correct. The focus of the Environment and Public Works Committee will extend beyond the National Priorities List to include solutions to our national brownfields problem. And while my committee does not have jurisdiction over tax measures, I recognize the leadership exerted by Senator ABRAHAM to address the problem of brownfields and I hope to work with him on a variety of solutions to the environmental problems faced by this Nation's communities.

Mr. ABRAHAM. I thank the Senator and I yield the floor.

By Mr. NICKLES (for himself, Mr. GREGG, Mr. WARNER, Mr. LOTT, Mr. ALLARD, Mr. ASHCROFT, Mr. COVERDELL, Mr. CRAIG, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mrs. HUTCHISON, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. SMITH of New Hampshire, Mr. THOMAS, Mr. THURMOND, Mr. COATS, and Mr. KEMPTHORNE):

S. 9. A bill to protect individuals from having their money involuntarily collected and used for politics by a corporation or labor organization; to the Committee on Rules and Administration.

THE PAYCHECK PROTECTION ACT

Mr. NICKLES. Madam President, this bill, the Paycheck Protection Act, sponsored by myself, Senators GREGG, LOTT, INHOFE, HUTCHISON from Texas, COCHRAN, ROBERTS, HAGEL, SMITH from New Hampshire, and KEMPTHORNE, deals with making sure that no one is compelled to contribute to political campaigns with which they disagree. Senator FORD made an eloquent speech on campaign finance reform. I don't disagree with everything he said. I just disagree with parts of it.

Campaign reform is an issue a lot of us are going to be dealing with this year. It is important, in my opinion, Madam President, that we encourage people to participate in campaigns. We want more people all across the country to participate in the electoral process. It is a sad day when only half of the people vote in a Presidential election. Madam President, it is very important that nobody be compelled to contribute to a campaign with which they disagree. You might think, well, wait a minute, how in the world in 1997, in this day and age, would anybody be compelled to contribute to a campaign with which they disagree? But it happens. Unfortunately, Madam President, every week millions of Americans are having money taken out of their paycheck to contribute to candidates that they may well disagree with, but they didn't have a voice, a choice, or an option.

Madam President, that is wrong. I will tell you that the origin of the bill we are introducing came from a town meeting that I had, where an individual—a union member—stood up in a town meeting and said, "I really resent the fact that my money is taken from me, without my vote, without my voice, without my option, and given to candidates and parties which I totally oppose." I said, "I agree with you. We will try to remedy that."

That should not happen in America. That is something that sounds like it might happen in some totalitarian state where moneys or assets are confiscated and some corrupt politician would use it against their will. It is happening today. Millions of Americans are finding part of their paychecks taken from them without their voice or choice and used for political purposes with which they disagree.

Madam President, this bill, the Paycheck Protection Act, which is sponsored by several of us, basically is very simple. It says that no individual, no employee working for a corporation, would be compelled to contribute to a political organization without their express consent. As a matter of fact, it says that no deduction from their wages would be used for political purposes unless they give prior written consent.

Consent is the big issue. If we are going to have campaign reform, I am going to tell my colleague, this is going to have to be part of the package.

This is America. No one should be compelled to contribute to political purposes for which they disagree. And that applies for an individual where maybe their company has a PAC (political action committee), and maybe the board of directors or the officers say, "We want everybody to contribute." They can say what they want, but they cannot compel. No one should be compelled to contribute to a political organization, a political action committee, or to a labor organization against their will for political purposes. It is that simple.

As Thomas Jefferson said, "To compel a man to furnish funds for the propagation of ideas he disbelieves or abhors . . . is sinful and tyrannical."

We're not talking about nickels and dimes here, but untold millions of dollars in partisan political campaigns and propaganda. Since such funds are not required to be disclosed, it is impossible to determine the exact amount of this spending. However, estimates of this under-the-radar spending is somewhere between $300 million and $1 billion for this most recent election.

The way it is now, an employee paying dues to a labor organization has no choice over whether or not that labor organization can collect the money for politics. The only choice these employees have in the matter is to ask for a refund of the portion dues which is to be used for politics. This refund process is so lengthy and burdensome that it is next to impossible for someone to get their money back. Furthermore, for an employee to exercise their right to a refund of such dues, they are required to give up their right to vote in the labor organization that they are still required to pay for representing them. This is taxation without representation.

The Supreme Court has consistently ruled that employees paying dues to a labor organization cannot be forced to also pay for the activities outside the core representational activities, such as costs associated with political activities. The Clinton administration, however, has kept employees in the dark regarding the minimal rights they do have. One of the first acts of this administration was to repeal the very regulations to carry out the Supreme Court's decision, which protected employees forced to pay for politics.

People are recognizing the wrong brought upon Americans who have been given no choice in supporting causes for which they oppose. Even the administration's own National Labor Relations Board [NLRB], which has strong labor organization sentiments, recently ruled dues-paying employees are in the least entitled to information setting forth the percentage of those dues not related to collective bargaining activities. While this is a step in the right direction, more needs to be done.

The Paycheck Protection Act protects employees from having their money involuntarily taken from them and used for politics. The act protects stockholders and employees of a corporation from having, as a condition of employment, dues, initiation fees, or other payments for politics taken from them without the separate, prior, written, voluntary authorization. Similarly, the act protects employees paying dues to a labor organization from having such dues, initiation fees, or other payments taken from them which are used for politics.

Mr. President, this act furthers the basic civil right spoken of by Thomas Jefferson. It does so by requiring that individuals not be compelled to fund or support activities outside the legitimate scope of the employer or labor organization. This bill pro-worker, pro-labor organization, and most importantly, pro-American.

I look forward to a broad bipartisan support for this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 9

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 "Paycheck Protection Act".

SEC. 2. WORKERS' POLITICAL RIGHTS.

Section 316 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b) is amended by adding the following new subsection:

"(c)(1) Except with the separate, prior, written, voluntary authorization of each individual, it shall be unlawful—

(A) for any national bank or corporation described in this section to collect from or assess its stockholders or employees any dues, initiation fee, or other payment as a condition of employment if any part of such dues, fee, or payment will be used for political activities in which the national bank or corporation, as the case may be, is engaged; and

(B) for any labor organization described in this section to collect from or assess its members or nonmembers any dues, initiation fee, or other payment if any part of such dues, fee, or payment will be used for political activities.

"(2) an authorization described in paragraph (1) shall remain in effect until revoked and may be revoked at any time.

"(3) for purposes of this subsection, the term "political activities" includes communications or other activities which involve carrying on propaganda, attempting to influence legislation, or participating or intervening in any political campaign or political party."

By Mr. HATCH (for himself, Mr. SESSIONS, Mr. ASHCROFT, Mr. DOMENICI, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. BOND, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. ENZI, Mr. FAIRCLOTH, Mr. GORTON, Mr. GRAMS, Mr. GRASSLEY, Mr. HAGEL, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SMITH of New Hampshire, Mr. THOMAS, Mr. THURMOND, and Mr. WARNER):

S. 10. A bill to reduce violent juvenile crime, promote accountability by juvenile criminals, punish and deter violent gang crime, and for other purposes; to the Committee on the Judiciary.

VIOLENT AND REPEAT JUVENILE OFFENDER ACT OF 1997

Mr. ASHCROFT. Mr. President, earlier today Senator HATCH introduced S. 10, the Violent and Repeat Offender Act of 1997. Senators LOTT, DOMENICI, SESSIONS, and I worked with him in developing the bill. While not perfect, the bill does take the initial steps in dealing with the epidemic of violent juvenile crime sweeping the Nation.

Mr. President, the face of crime in America is indeed changing. Throughout our history, one thing has been clear: Government's first responsibility is to keep the citizenry safe. John Jay wrote in The Federalist, No. 3 "Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their safety seems to be first."

The murderers, robbers, rapists, and drug dealers of yesteryear were typically adults. Now they are typically juveniles. As the age of these criminal predators becomes younger and younger with each passing year, so does the age of their victims.

Last Wednesday afternoon, 12-year-old Darryl Dayan Hall was abducted at gunpoint from the Southeast Washington area by three teenagers of a gang known as the Simple City Crew. This is the same gang that opened gunfire at a crowded community swimming pool in June 1993, wounding six children. This past Saturday, police found Darryl's frozen body. He had been shot once in the back of the head and at least once in the body.

The three teenagers who are now charged with Darryl's murder have had numerous prior brushes with the law. One of Darryl's assailants was charged as a juvenile with possession of PCP in 1995 and then was released—as is too often the case—promising not to run afoul of the law again. Another of Darryl's assailants was, and is, on probation following his juvenile conviction last spring for possession of PCP with intent to distribute. Darryl's third assailant was charged as a juvenile just last month with carrying a deadly weapon.

Mr. President, from 1984 to 1994, the number of juveniles murdered in this country increased 82 percent. In 1994, one of every five juveniles murdered were killed by another juvenile. The rate at which juveniles 14 to 17 years old were arrested for murder grew by 22 percent from 1990 to 1994 and the problem is going to get worse, much worse.

Congress, over the last three decades, has established 131 separate Federal programs—administered by 16 different departments and agencies—to serve delinquent and at-risk youth, according to a report issued by GAO last March. Conservative estimates of Federal appropriations used for these at-risk and delinquent youth programs was more than $4 billion in fiscal year 1995.

Despite this ongoing massive expenditure, the Federal Government has failed to meet its responsibility of providing public safety in this arena because it has not focused on holding juveniles accountable for their actions, it must focus on the problem of rising juvenile violence. We have a new category of offenders that deserve a new category of responses. We have criminals in our midst—young criminals.

The juvenile offenders of today will become the career offenders of tomorrow, if Government continues to fail to recognize that America has an acute social illness that cannot be cured with money spent solely on social programs. This legislation takes a commonsense approach in dealing with the epidemic of juvenile violence. It would help States restore safety in urban, suburban, and rural communities.

This legislation would provide $2.5 billion in new incentive grants for States to enact certain accountability-based reforms to their juvenile justice systems. This legislation would authorize funding for various programs, including trying violent juveniles as adults; establishing the ability of States to collect juvenile criminal records, fingerprints, and photographs, and to share that criminal history information within the State, with other States, and with the Federal Government; and establishing the Serious Habitual Offender Comprehensive Action Program [SHOCAP]. In addition, religious organizations would be permitted to participate in rehabilitative programs.

Serious, violent, and repeat juvenile offenders must be held responsible for their crimes. Today we are living with a juvenile justice system that was created around the time of the silent film. We are living with a juvenile justice system that reprimands the crime victim for being at the wrong place at the wrong time, and then turns around and hugs the juvenile terrorist, whispering

ever so softly into his ear, "Don't worry, the State will cure you."

The juvenile justice system's primary goal is to treat and rehabilitate the juvenile offender. Such a system can handle runaways, truants, and other status offenders; but it is ill-equipped to deal with those who commit serious, violent, and repeat juvenile crime.

The criminal justice system, not the juvenile justice system, can emphasize that adult criminal acts have real consequences. The purpose of the criminal justice system is to punish, that is, to hold defendants accountable.

This legislation would provide financial assistance to States to help them reform their juvenile system. A State would be eligible to receive Federal funds if the State agrees to enact legislation that would provide for the adult prosecution—as a matter of law or prosecutorial discretion—of juveniles 14 or older who commit a violent crime, such as murder, forcible rape, armed robbery and assault with a deadly weapon; an offense involving a controlled substance; or an offense involving possession of a firearm or a destructive device.

Punishment of dangerous juvenile offenders as adults is an effective tool in fighting violent juvenile crime. For example, Jacksonville, FL State Attorney Harry Shorstein instituted a program to prosecute and incarcerate such offenders in 1992. Two years later, arrests for juveniles dropped from 7,184 to 5,475. While juvenile arrests increased for the Nation, Jacksonville's arrest rate decreased by 30 percent.

States need to create and maintain juvenile criminal records. Typically, State statutes seal juvenile criminal records and expunge these records when the juvenile reaches age 18. The time has come to discard anachronistic ideas that crimes, no matter how heinous, by juveniles must be kept confidential.

Our laws view juveniles through the benevolent prism of kids gone astray. It should view them as young criminals who know that they can commit crimes, repeatedly as juveniles because their juvenile records are kept hidden under the veil of secrecy. These young criminals know that when they reach their 18th birthday, they can begin their second career as adult criminals with an unblemished record. In rhetoric we are protecting juveniles from the stigma of a record but in reality we are coddling criminals. We must separate rhetoric from reality by lifting the veil of secrecy.

Law enforcement officers need to know the prior juvenile criminal records of individuals to assist them in criminal investigations and apprehension.

Law enforcement is in desperate need of access to juvenile criminal records, according to Police Chief David G. Walchak, who is also president of the International Association of Chiefs of Police. The police chief says, "Current juvenile records (both arrest and adjudication) are inconsistent across the states, and are usually unavailable to the various programs' staff who work with youthful offenders." The police chief further states that "There are only 26 states that even allow law enforcement access to juvenile records."

In the words of Chief Walchak, "If we [law enforcement] don't know who the youthful offenders are, we can't appropriately intervene." It is that simple. As juvenile gangs spread from urban to suburban to rural areas, as they travel from State to State, the veil of secrecy draped over their criminal history records undermines law enforcement efforts.

This legislation would also provide money to States to create, maintain, and share juvenile criminal records, and to share those records with other Federal, State, and local law enforcement agencies. Strengthening law enforcement should be a top priority.

School officials need access to juvenile criminal records to assist them in providing for the best interests of all students. Students are vulnerable in unsafe school environments. The decline in school safety can be attributed to laws that protect dangerous students rather than innocent students. While visiting with school officials in Sikeston, MO, a teacher told me that a student came to school wearing an electronic monitoring ankle bracelet. The student told the teacher, "You don't know if I'm a murderer or a rapist and I ain't gonna tell you." That student was brutally honest. No one had any knowledge of what he had done and, more important, no way of finding out.

If schools know the identity of a violent juvenile, they can respond to misbehavior by imposing stricter sanctions, assigning particular teachers, or having the student's locker near a teacher's doorway entrance so that the teacher can monitor his conduct during the changing of class periods. In short, this bill would allow school officials to take measures that could prevent violence at schools.

For purposes of adult sentencing, adult courts need to know if a convicted felon has a history of criminal behavior. According to the 1991 Survey of Inmates in State Correctional Facilities, nearly 40 percent of prison inmates had a prior record as a juvenile. That is approximately 4 in 10 prison inmates. This legislation will not enable criminals to masquerade as neophytes before the criminal justice system.

The bill allows State and local governments to use Federal funds to implement the Serious Habitual Offenders Comprehensive Action Program [SHOCAP].

SHOCAP is a multiagency crime analysis and case management process for identifying and targeting the violent and hardcore juvenile offenders in a community.

SHOCAP targets these serious habitual offenders for most intensive social supervisory interventions, the most intensive accountability in school attendance and discipline, and the most investigation and prosecution when they commit a crime.

The OJJDP conducted five test pilots of SHOCAP. Oxnard, CA was one of the selected sites. SHOCAP was implemented in 1983. Oxnard found that less than 2 percent of all juveniles arrested in that community were responsible for 35 percent of felonies by juveniles. Four years later, Oxnard's violent crime dropped 38 percent. Illinois and Florida both have recently established statewide SHOCAP's. This bill would allow all jurisdictions to use Federal funds to implement SHOCAP.

Reforms are necessary at the Federal level as well. This legislation would make it easier for Federal prosecutors to try juveniles as adults. Under the bill, U.S. attorneys would have discretion to decide whether to try as adults juveniles 14 years or older who are alleged to have committed an act which if committed by an adult would be a felony. This would eliminate juvenile transfer hearings that leave the transfer decision to juvenile court judges.

Federal juvenile court proceedings would be open to the general public. When imposing a sentence, the district court would be allowed to consider the juvenile's entire prior juvenile records. In any case in which a juvenile is tried as an adult, access to the record of the offenses of the juvenile shall be made available in the same manner as is applicable to adult defendants. And in those cases in which the juvenile was adjudicated delinquent in Federal juvenile delinquency proceedings, the U.S. attorney would be allowed to release such records to law enforcement authorities of any jurisdiction and to school officials.

When the act committed by the juvenile is heinous, the punishment will be weighed accordingly. If tried and sentenced as an adult, the juvenile would be subject to the death penalty as an adult. In addition, the death penalty would be lowered from age 18 to 16.

The Government should mount a counterattack on gang violence. This legislation targets violent youth gangs, like the notorious Simple City Crew in the District. There would be new Federal penalties for offenses committed by criminal street gangs. Gangs are no longer concentrated in the big cities, they are now in rural towns. The bill would also provide $100 million to hire assistant U.S. attorneys to prosecute juvenile criminal street gangs.

We must challenge this culture of violence and restore the culture of personal responsibility. It is high time to consider hardheaded and sensible juvenile justice policies. Where possible we

must give second chances. Where necessary we must punish severely. This is a first step to restore justice to a nation that has grown weary of injustice.

In sum, this legislation would send a clear, cogent, and convincing message: serious acts have serious consequences.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 10

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Violent and Repeat Juvenile Offender Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Severability.

TITLE I—JUVENILE JUSTICE REFORM

Sec. 101. Repeal of general provision.
Sec. 102. Treatment of Federal juvenile offenders.
Sec. 103. Capital cases.
Sec. 104. Definitions.
Sec. 105. Notification after arrest.
Sec. 106. Detention prior to disposition.
Sec. 107. Speedy trial.
Sec. 108. Dispositional hearings.
Sec. 109. Use of juvenile records.
Sec. 110. Incarceration of violent offenders.
Sec. 111. Federal sentencing guidelines.

TITLE II—JUVENILE GANGS

Sec. 201. Short title.
Sec. 202. Increase in offense level for participation in crime as a gang member.
Sec. 203. Amendment of title 18 with respect to criminal street gangs.
Sec. 204. Interstate and foreign travel or transportation in aid of criminal street gangs.
Sec. 205. Solicitation or recruitment of persons in criminal gang activity.
Sec. 206. Crimes involving the recruitment of persons to participate in criminal street gangs and firearms offenses as RICO predicates.
Sec. 207. Prohibitions relating to firearms.
Sec. 208. Amendment of sentencing guidelines with respect to body armor.
Sec. 209. Additional prosecutors.

TITLE III—JUVENILE CRIME CONTROL AND ACCOUNTABILITY

Sec. 301. Findings; declaration of purpose; definitions.
Sec. 302. Youth Crime Control and Accountability Block Grants.
Sec. 303. Runaway and homeless youth.
Sec. 304. Authorization of appropriations.
Sec. 305. Repeal.
Sec. 306. Transfer of functions and savings provisions.
Sec. 307. Repeal of unnecessary and duplicative programs.
Sec. 308. Housing juvenile offenders.
Sec. 309. Civil monetary penalty surcharge.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) at the outset of the twentieth century, the States adopted 2 separate juvenile justice systems for violent and nonviolent offenders;

(2) violent crimes committed by juveniles, such as homicide, rape, and robbery, were an unknown phenomenon at that time, but the rate at which juveniles commit such crimes has escalated astronomically since that time;

(3) in 1994—

(A) the number of persons arrested overall for murder in the United States decreased by 5.8 percent, but the number of persons who are less than 15 years of age arrested for murder increased by 4 percent; and

(B) the number of persons arrested for all violent crimes increased by 1.3 percent, but the number of persons who are less than 15 years of age arrested for violent crimes increased by 9.2 percent, and the number of persons less than 18 years of age arrested for such crimes increased by 6.5 percent;

(4) from 1985 to 1996, the number of persons arrested for all violent crimes increased by 52.3 percent, but the number of persons under age 18 arrested for violent crimes rose by 75 percent;

(5) the number of juvenile offenders is expected to undergo a massive increase during the first 2 decades of the twenty-first century, culminating in an unprecedented number of violent offenders who are less than 18 years of age;

(6) the rehabilitative model of sentencing for juveniles, which Congress rejected for adult offenders when Congress enacted the Sentencing Reform Act of 1984, is inadequate and inappropriate for dealing with violent and repeat juvenile offenders;

(7) the Federal Government should encourage the States to experiment with progressive solutions to the escalating problem of juveniles who commit violent crimes and who are repeat offenders, including prosecuting all such offenders as adults, but should not impose specific strategies or programs on the States;

(8) an effective strategy for reducing violent juvenile crime requires greater collection of investigative data and other information, such as fingerprints and DNA evidence, as well as greater sharing of such information among Federal, State, and local agencies, including the courts, in the law enforcement and educational systems;

(9) data regarding violent juvenile offenders must be made available to the adult criminal justice system if recidivism by criminals is to be addressed adequately;

(10) holding juvenile proceedings in secret denies victims of crime the opportunity to attend and be heard at such proceedings, helps juvenile offenders to avoid accountability for their actions, and shields juvenile proceedings from public scrutiny and accountability;

(11) the injuries and losses suffered by the victims of violent crime are no less painful or devastating because the offender is a juvenile; and

(12) the investigation, prosecution, adjudication, and punishment of criminal offenses committed by juveniles is, and should remain, primarily the responsibility of the States, to be carried out without interference from the Federal Government.

(b) PURPOSES.—The purposes of this Act are—

(1) to reform juvenile law so that the paramount concerns of the juvenile justice system are providing for the safety of the public and holding juvenile wrongdoers accountable for their actions, while providing the wrongdoer a genuine opportunity for self reform;

(2) to revise the procedures in Federal court that are applicable to the prosecution of juvenile offenders;

(3) to address specifically the problem of violent crime and controlled substance offenses committed by youth gangs; and

(4) to encourage and promote, consistent with the ideals of federalism, adoption of policies by the States to ensure that the victims of crimes of violence committed by juveniles receive the same level of justice as do victims of violent crimes that are committed by adults.

SEC. 3. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

TITLE I—JUVENILE JUSTICE REFORM

SEC. 101. REPEAL OF GENERAL PROVISION.

(a) IN GENERAL.—Chapter 401 of title 18, United States Code, is amended—

(1) by striking section 5001; and

(2) by redesignating section 5003 as section 5001.

(b) TECHNICAL AMENDMENTS.—The chapter analysis for chapter 401 of title 18, United States Code, is amended—

(1) by striking the item relating to section 5001; and

(2) by redesignating the item relating to section 5003 as 5001.

SEC. 102. TREATMENT OF FEDERAL JUVENILE OFFENDERS.

(a) IN GENERAL.—Section 5032 of title 18, United States Code, is amended to read as follows:

"§ 5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for other criminal prosecution

"(a) IN GENERAL.—A juvenile who is not less than 14 years of age and who is alleged to have committed an act that, if committed by an adult, would be a criminal offense, shall be tried in the appropriate district court of the United States—

"(1) as an adult at the discretion of the United States Attorney in the appropriate jurisdiction, upon a finding by that United States Attorney, which finding shall not be subject to review in or by any court, trial or appellate, that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction, if the juvenile is charged with a Federal offense that—

"(A) is a crime of violence (as that term is defined in section 16); or

"(B) involves a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the penalty is a term of imprisonment of not less than 5 years; and

"(2) in all other cases, as a juvenile.

"(b) REFERRAL BY UNITED STATES ATTORNEY.—

"(1) IN GENERAL.—If the United States Attorney in the appropriate jurisdiction declines prosecution of a charged offense under subsection (a)(2), the United States Attorney may refer the matter to the appropriate legal authorities of the State or Indian tribe.

"(2) DEFINITIONS.—In this section—

"(A) the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

"(B) the term 'Indian tribe' has the same meaning as in section 4(e) of the Indian Self-

Determination and Education Assistance Act.

"(c) APPLICABLE PROCEDURES.—Any action prosecuted in a district court of the United States under this section—

"(1) shall proceed in the same manner as is required by this title and by the Federal Rules of Criminal Procedure in proceedings against an adult in the case of a juvenile who is being tried as an adult in accordance with subsection (a); and

"(2) in all other cases, shall proceed in accordance with this chapter, unless the juvenile has requested in writing, upon advice of counsel, to be proceeded against as an adult.

"(d) CAPITAL CASES.—Subject to section 3591, if a juvenile is tried and sentenced as an adult, the juvenile shall be subject to being sentenced to death on the same terms and in accordance with the same procedures as an adult.

"(e) APPLICATION OF LAWS.—In any case in which a juvenile is prosecuted in a district court of the United States as an adult, the juvenile shall be subject to the same laws, rules, and proceedings regarding sentencing that would be applicable in the case of an adult. No juvenile sentenced to a term of imprisonment shall be released from custody simply because the juvenile reaches the age of 18 years.

"(f) OPEN PROCEEDINGS.—

"(1) IN GENERAL.—Any offense tried in a district court of the United States pursuant to this section shall be open to the general public, in accordance with rules 10, 26, 31(a), and 53 of the Federal Rules of Criminal Procedure, unless good cause is established by the moving party or is otherwise found by the court, for closure.

"(2) STATUS ALONE INSUFFICIENT.—The status of the defendant as a juvenile, absent other factors, shall not constitute good cause for purposes of this subsection.

"(g) AVAILABILITY OF RECORDS.—

"(1) IN GENERAL.—In making a determination concerning the prosecution of a juvenile in a district court of the United States under this section, subject to the requirements of section 5038, the United States Attorney of the appropriate jurisdiction shall have complete access to the prior Federal juvenile records of the subject juvenile, and to the extent permitted by State law, the prior State juvenile records of the subject juvenile.

"(2) CONSIDERATION OF ENTIRE RECORD.—In any case in which a juvenile is found guilty in an action pursuant to this section, the district court responsible for imposing sentence shall have complete access to the prior juvenile records of the subject juvenile, and, to the extent permitted under State law, the prior State juvenile records of the subject juvenile. At sentencing, the district court shall consider the entire available prior juvenile record of the subject juvenile.

"(3) RELEASE OF RECORDS.—The United States Attorney may release such Federal records, and, to the extent permitted by State law, such State records, to law enforcement authorities of any jurisdiction and to officials of any school, school district, or postsecondary school at which the individual who is the subject of the juvenile record is enrolled or seeks, intends, or is instructed to enroll, if such school officials are held liable to the same standards and penalties to which law enforcement and juvenile justice system employees are held liable under Federal and State law, for the handling and disclosure of such information.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 403 of title 18, United States Code, is amended by striking the item relating to section 5032 and inserting the following:

"5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for other criminal prosecution.".

SEC. 103. CAPITAL CASES.

Section 3591 of title 18, United States Code, is amended by striking "18 years" each place that term appears and inserting "16 years".

SEC. 104. DEFINITIONS.

Section 5031 of title 18, United States Code, is amended to read as follows:

"§ 5031. Definitions

"In this chapter—

"(1) the term 'juvenile' means a person who is less than 18 years of age; and

"(2) the term 'juvenile delinquency' means the violation of a law of the United States committed by a juvenile that would be a crime if committed by an adult.".

SEC. 105. NOTIFICATION AFTER ARREST.

Section 5033 of title 18, United States Code, is amended in the first sentence by striking "Attorney General" and inserting "United States Attorney of the appropriate jurisdiction".

SEC. 106. DETENTION PRIOR TO DISPOSITION.

Section 5035 of title 18, United States Code, is amended—

(1) by striking "A juvenile" and inserting the following:

"(a) IN GENERAL.—A juvenile"; and

(2) by adding at the end the following:

"(b) DETENTION OF CERTAIN JUVENILES.—Notwithstanding subsection (a), a juvenile who is to be tried as an adult pursuant to section 5032 shall be subject to detention in accordance with chapter 203 in the same manner and to the same extent as an adult would be subject to that chapter.".

SEC. 107. SPEEDY TRIAL.

Section 5036 of title 18, United States Code, is amended—

(1) by striking "thirty" and inserting "70"; and

(2) by striking "the court," and all that follows through the end of the section and inserting "the court. The periods of exclusion under section 3161(h) shall apply to this section.".

SEC. 108. DISPOSITIONAL HEARINGS.

Section 5037 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "(a)" and all that follows through "After the" and inserting the following:

"(a) IN GENERAL.—

"(1) DISPOSITIONAL HEARING.—In any case in which a juvenile is found to be a juvenile delinquent in district court pursuant to section 5032, but is not tried as an adult under that section, not later than 20 days after the hearing in which a finding of juvenile delinquency is made, the court shall hold a disposition hearing concerning the appropriate disposition unless the court has ordered further study pursuant to subsection (d).

"(2) ACTIONS OF COURT AFTER HEARING.—After the";

(2) in subsection (b), by striking "extend—" and all that follows through "The provisions" and inserting the following: "extend, in the case of a juvenile, beyond the maximum term that would be authorized by section 3561(b), if the juvenile had been tried and convicted as an adult. The provisions";

(3) in subsection (c), by striking "extend—" and all that follows through "Section 3624" and inserting the following: "extend beyond the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult. No juvenile sentenced to a term of imprisonment shall be released from custody simply because the juvenile reaches the age of 18 years. Section 3624";

(4) by redesignating subsection (d) as subsection (e); and

(5) by inserting after subsection (c) the following:

"(d) APPLICABILITY OF RESTITUTION PROVISIONS.—If a juvenile has been tried and convicted as an adult, or adjudicated delinquent for any offense in which the juvenile is otherwise tried pursuant to section 5032, the restitution provisions contained in this title (including sections 3663, 3663A, 2248, 2259, 2264, and 2327) and title 21 shall apply to that juvenile in the same manner and to the same extent as those provisions apply to adults.".

SEC. 109. USE OF JUVENILE RECORDS.

Section 5038 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (5), by striking "and" at the end;

(B) in paragraph (6), by striking the period at the end and inserting "; and";

(C) by inserting after paragraph (6) the following:

"(7) inquiries from any school or other educational institution for the purpose of ensuring the public safety and security at such institution."; and

(D) by striking "Unless" and inserting the following:

"(c) PROHIBITION ON RELEASE OF CERTAIN INFORMATION.—Unless";

(2) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively;

(3) by inserting immediately after subsection (a) the following:

"(b) ACCESS BY UNITED STATES ATTORNEY.—Notwithstanding subsection (a), in determining the appropriate disposition of a juvenile matter under section 5032, the United States Attorney of the appropriate jurisdiction shall have complete access to the official records of the juvenile proceedings conducted under this title.";

(4) by inserting after subsection (e), as redesignated, the following:

"(f) RECORDS OF JUVENILES TRIED AS ADULTS.—In any case in which a juvenile is tried as an adult, access to the record of the offenses of the juvenile shall be made available in the same manner as is applicable to adult defendants.";

(5) by striking "(d) Whenever" and all that follows through "adult defendants." and inserting the following:

"(g) FINGERPRINTS AND PHOTOGRAPHS.—Fingerprints and photographs of a juvenile—

"(1) who is prosecuted as an adult, shall be made available in the same manner as is applicable to an adult defendant; and

"(2) who is not prosecuted as an adult, shall be made available only as provided in subsection (a).";

(6) by striking "(e) Unless," and inserting the following:

"(h) NO PUBLICATION OF NAME OR PICTURE.—Unless";

(7) by striking "(f) Whenever" and inserting the following:

"(i) INFORMATION TO FEDERAL BUREAU OF INVESTIGATION.—Whenever"; and

(8) in subsection (i), as redesignated—

(A) by striking "of committing an act" and all that follows through "5032 of this title" and inserting "by a district court of the United States pursuant to section 5032 of committing an act"; and

(B) by inserting "involved a juvenile tried as an adult or" before "were juvenile adjudications".

SEC. 110. INCARCERATION OF VIOLENT OFFENDERS.

Section 5039 of title 18, United States Code, is amended—

(1) by designating the first 3 undesignated paragraphs as subsections (a) through (c), respectively; and

(2) by adding at the end the following:

"(d) SEGREGATION OF JUVENILES CONVICTED OF VIOLENT OFFENSES.—

"(1) DEFINITION.—In this subsection, the term 'crime of violence' has the same meaning as in section 16 of title 18, United States Code.

"(2) SEGREGATION.—The Director of the Bureau of Prisons shall ensure that juveniles who are alleged to be or determined to be delinquent are not confined in any institution in which the juvenile has regular sustained physical contact with adult persons who are detained or confined.".

SEC. 111. FEDERAL SENTENCING GUIDELINES.

Section 994(h) of title 28, United States Code, is amended by inserting ", or in which the defendant is a juvenile who is tried as an adult," after "old or older".

TITLE II—JUVENILE GANGS

SEC. 201. SHORT TITLE.

This title may be cited as the "Federal Gang Violence Act".

SEC. 202. INCREASE IN OFFENSE LEVEL FOR PARTICIPATION IN CRIME AS A GANG MEMBER.

(a) DEFINITION.—In this section, the term "criminal street gang" has the same meaning as in section 521(a) of title 18, United States Code, as amended by section 203 of this title.

(b) AMENDMENT OF SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate enhancement, increasing the offense level by not less than 6 levels, for any offense, if the offense was both committed in connection with, or in furtherance of, the activities of a criminal street gang and the defendant was a member of the criminal street gang at the time of the offense.

(c) CONSTRUCTION WITH OTHER GUIDELINES.—The amendment made pursuant to subsection (b) shall provide that the increase in the offense level shall be in addition to any other adjustment under chapter 3 of the Federal sentencing guidelines.

SEC. 203. AMENDMENT OF TITLE 18 WITH RESPECT TO CRIMINAL STREET GANGS.

(a) IN GENERAL.—Section 521 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "(a) DEFINITIONS.—" and inserting the following:

"(a) DEFINITIONS.—In this section:", and

(B) by striking "'conviction" and all that follows through the end of the subsection and inserting the following:

"(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means an ongoing group, club, organization, or association of 3 or more persons, whether formal or informal—

"(A) a primary activity of which is the commission of 1 or more predicate gang crimes;

"(B) any members of which engage, or have engaged during the 5-year period preceding the date in question, in a pattern of criminal gang activity; and

"(C) the activities of which affect interstate or foreign commerce.

"(2) PATTERN OF CRIMINAL GANG ACTIVITY.—The term 'pattern of criminal gang activity' means the commission of 2 or more predicate gang crimes committed in connection with, or in furtherance of, the activities of a criminal street gang—

"(A) at least 1 of which was committed after the date of enactment of the Federal Gang Violence Act;

"(B) the first of which was committed not more than 5 years before the commission of another predicate gang crime; and

"(C) that were committed on separate occasions.

"(3) PREDICATE GANG CRIME.—The term 'predicate gang crime' means an offense, including an act of juvenile delinquency that, if committed by an adult, would be an offense that is—

"(A) a Federal offense—

"(i) that is a crime of violence (as that term is defined in section 16) including carjacking, drive-by-shooting, shooting at an unoccupied dwelling or motor vehicle, assault with a deadly weapon, and homicide;

"(ii) that involves a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the penalty is imprisonment for not less than 5 years;

"(iii) that is a violation of section 844, section 875 or 876 (relating to extortion and threats), section 1084 (relating to gambling), section 1955 (relating to gambling), chapter 44 (relating to firearms), or chapter 73 (relating to obstruction of justice);

"(iv) that is a violation of section 1956 (relating to money laundering), insofar as the violation of such section is related to a Federal or State offense involving a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

"(v) that is a violation of section 274(a)(1)(A), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A), 1327, or 1328) (relating to alien smuggling);

"(B) a State offense involving conduct that would constitute an offense under subparagraph (A) if Federal jurisdiction existed or had been exercised; or

"(C) a conspiracy, attempt, or solicitation to commit an offense described in subparagraph (A) or (B).

"(3) STATE.—The term 'State' includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory of possession of the United States."; and

(2) by striking subsections (b), (c), and (d) and inserting the following:

"(b) CRIMINAL PENALTIES.—Any person who engages in a pattern of criminal gang activity—

"(1) shall be sentenced to—

"(A) a term of imprisonment of not less than 10 years and not more than life, fined in accordance with this title, or both; and

"(B) the forfeiture prescribed in section 413 of the Controlled Substances Act (21 U.S.C. 853); and

"(2) if any person engages in such activity after 1 or more prior convictions under this section have become final, shall be sentenced to—

"(A) a term of imprisonment of not less than 20 years and not more than life, fined in accordance with this title, or both; and

"(B) the forfeiture prescribed in section 412 of the Controlled Substances Act (21 U.S.C. 853).".

(b) CONFORMING AMENDMENT.—Section 3663(c)(4) of title 18, United States Code, is amended by inserting before "chapter 46" the following: "section 521 of this title,".

SEC. 204. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF CRIMINAL STREET GANGS.

(a) TRAVEL ACT AMENDMENTS.—

(1) PROHIBITED CONDUCT AND PENALTIES.—Section 1952(a) of title 18, United States Code, is amended to read as follows:

"(a) PROHIBITED CONDUCT AND PENALTIES.—

"(1) IN GENERAL.—Any person who—

"(A) travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

"(i) distribute the proceeds of any unlawful activity; or

"(ii) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity; and

"(B) after travel or use of the mail or any facility in interstate or foreign commerce described in subparagraph (A), performs, attempts to perform, or conspires to perform an act described in clause (i) or (ii) of subparagraph (A),

shall be fined under this title, imprisoned not more than 10 years, or both.

"(2) CRIMES OF VIOLENCE.—Any person who—

"(A) travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to commit any crime of violence to further any unlawful activity; and

"(B) after travel or use of the mail or any facility in interstate or foreign commerce described in subparagraph (A), commits, attempts to commit, or conspires to commit any crime of violence to further any unlawful activity,

shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be sentenced to death or be imprisoned for any term of years or for life.".

(2) DEFINITIONS.—Section 1952(b) of title 18, United States Code, is amended to read as follows:

"(b) DEFINITIONS.—In this section:

"(1) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the same meaning as in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

"(2) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(3) UNLAWFUL ACTIVITY.—The term 'unlawful activity' means—

"(A) predicate gang crime (as that term is defined in section 521);

"(B) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances, or prostitution offenses in violation of the laws of the State in which the offense is committed or of the United States;

"(C) extortion, bribery, arson, robbery, burglary, assault with a deadly weapon, retaliation against or intimidation of witnesses, victims, jurors, or informants, assault resulting in bodily injury, possession of or trafficking in stolen property, illegally trafficking in firearms, kidnapping, alien smuggling, or shooting at an occupied dwelling or motor vehicle, in each case, in violation of the laws of the State in which the offense is committed or of the United States; or

"(D) any act that is indictable under section 1956 or 1957 of this title or under subchapter II of chapter 53 of title 31.".

(b) AMENDMENT OF SENTENCING GUIDELINES.—

(1) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend chapter 2 of the Federal sentencing guidelines so that—

(A) the base offense level for traveling in interstate or foreign commerce in aid of a criminal street gang or other unlawful activity is increased to 12; and

(B) the base offense level for the commission of a crime of violence in aid of a criminal street gang or other unlawful activity is increased to 24.

(2) DEFINITIONS.—In this subsection—

(A) the term "crime of violence" has the same meaning as in section 16 of title 18, United States Code;

(B) the term "criminal street gang" has the same meaning as in 521(a) of title 18, United States Code, as amended by section 203 of this title; and

(C) the term "unlawful activity" has the same meaning as in section 1952(b) of title 18, United States Code, as amended by this section.

SEC. 205. SOLICITATION OR RECRUITMENT OF PERSONS IN CRIMINAL GANG ACTIVITY.

(a) PROHIBITED ACTS.—Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"§ 522. Recruitment of persons to participate in criminal street gang activity

"(a) PROHIBITED ACT.—It shall be unlawful for any person to—

"(1) use any facility in, or travel in, interstate or foreign commerce, or cause another to do so, to recruit, solicit, request, induce, counsel, command, or cause another person to be a member of a criminal street gang, or conspire to do so; or

"(2) recruit, solicit, request, induce, counsel, command, or cause another person to engage in a predicate gang crime for which such person may be prosecuted in a court of the United States, or conspire to do so.

"(b) PENALTIES.—A person who violates subsection (a) shall—

"(1) if the person recruited—

"(A) is a minor, be imprisoned for a term of not less than 4 years and not more than 10 years, fined in accordance with this title, or both; or

"(B) is not a minor, be imprisoned for a term of not less than 1 year and not more than 10 years, fined in accordance with this title, or both; and

"(2) be liable for any costs incurred by the Federal Government or by any State or local government for housing, maintaining, and treating the minor until the minor reaches the age of 18.

"(c) DEFINITIONS.—In this section—

"(1) the terms 'criminal street gang' and 'predicate gang crime' have the same meanings as in section 521; and

"(2) the term 'minor' means a person who is younger than 18 years of age.".

(b) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend chapter 2 of the Federal sentencing guidelines to provide an appropriate enhancement for any offense involving the recruitment of a minor to participate in a gang activity.

(c) TECHNICAL AMENDMENT.—The chapter analysis for chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"522. Recruitment of persons to participate in criminal street gang activity.".

SEC. 206. CRIMES INVOLVING THE RECRUITMENT OF PERSONS TO PARTICIPATE IN CRIMINAL STREET GANGS AND FIREARMS OFFENSES AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(F)"; and

(2) by inserting before the semicolon at the end the following: ", (G) an offense under section 522 of this title, or (H) an act or conspiracy to commit any violation of chapter 44 of this title (relating to firearms)".

SEC. 207. PROHIBITIONS RELATING TO FIREARMS.

(a) PENALTIES.—Section 924(a)(6) of title 18, United States Code, is amended—

(1) by striking subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (A);

(3) in subparagraph (A), as redesignated—

(A) by striking "(B) A person other than a juvenile who knowingly" and inserting "(A) A person who knowingly";

(B) in clause (i), by striking "not more than 1 year" and inserting "not less than 1 year and not more than 5 years"; and

(C) in clause (ii), by inserting "not less than 1 year and" after "imprisoned"; and

(4) by adding at the end the following:

"(B) Notwithstanding subparagraph (A), no mandatory minimum sentence shall apply to a juvenile who is less than 13 years of age.".

(b) SERIOUS JUVENILE DRUG OFFENSES AS ARMED CAREER CRIMINAL PREDICATES.—Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by adding "or" at the end; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be an offense described in clause (i) or (ii);".

(c) TRANSFER OF FIREARMS TO MINORS FOR USE IN CRIME.—Section 924(h) of title 18, United States Code, is amended by striking "10 years, fined in accordance with this title, or both" and inserting "10 years, and if the transferee is a person who is under 18 years of age, imprisoned for a term of not less than 3 years, fined in accordance with this title, or both".

SEC. 208. AMENDMENT OF SENTENCING GUIDELINES WITH RESPECT TO BODY ARMOR.

(a) DEFINITIONS.—In this section—

(1) the term "body armor" means any product sold or offered for sale as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment; and

(2) the term "law enforcement officer" means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(b) SENTENCING ENHANCEMENT.—The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate sentencing enhancement, increasing the offense level not less than 2 levels, for any crime in which the defendant used body armor.

(c) APPLICABILITY.—No Federal sentencing guideline amendment made pursuant to this section shall apply if the Federal crime in which the body armor is used constitutes a violation of, attempted violation of, or conspiracy to violate the civil rights of a person by a law enforcement officer acting under color of the authority of such law enforcement officer.

SEC. 209. ADDITIONAL PROSECUTORS.

There are authorized to be appropriated $20,000,000 for each of the fiscal years 1998, 1999, 2000, 2001, and 2002 for the hiring of Assistant United States Attorneys and attorneys in the Criminal Division of the Department of Justice to prosecute juvenile criminal street gangs (as that term is defined in section 521(a) of title 18, United States Code, as amended by section 203 of this title).

TITLE III—JUVENILE CRIME CONTROL AND ACCOUNTABILITY

SEC. 301. FINDINGS; DECLARATION OF PURPOSE; DEFINITIONS.

Title I of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended to read as follows:

"TITLE I—FINDINGS AND DECLARATION OF PURPOSE

"SEC. 101. FINDINGS.

"Congress finds that—

"(1) during the past several years, the United States has experienced an alarming increase in arrests of adolescents for murder, assault, and weapons offenses;

"(2) in 1994, juveniles accounted for 1 in 5 arrests for violent crimes, including murder, robbery, aggravated assault, and rape, including 514 such arrests per 100,000 juveniles 10 through 17 years of age;

"(3) understaffed, overcrowded juvenile courts, prosecutorial and public defender offices, probation services, and correctional facilities no longer adequately address the changing nature of juvenile crime, protect the public, and correct youth offenders;

"(4) the juvenile justice system has proven inadequate to meet the needs of society, because insufficient sanctions are imposed on serious youth offenders and the needs of children, who may be at risk of becoming delinquents;

"(5) existing programs and policies have not adequately responded to the particular threat of drugs, alcohol abuse, violence, and gangs pose to the youth of the Nation;

"(6) demographic increases projected in the number of youth offenders require reexamination of the prosecution and incarceration policies for serious violent youth offenders;

"(7) State and local communities that experience directly the devastating failures of the juvenile justice system require assistance to deal comprehensively with the problems of juvenile delinquency;

"(8) Existing Federal programs have not provided the States with necessary flexibility, and have not provided coordination, resources, and leadership required to meet the crisis of youth violence.

"(9) Overlapping and uncoordinated Federal programs have created a multitude of Federal funding streams to State and local governments, that have become a barrier to effective program coordination, responsive public safety initiatives, and the provision of comprehensive services for children and youth.

"(10) Violent crime by juveniles constitutes a growing threat to the national welfare that requires an immediate and comprehensive governmental response, combining flexibility and coordinated evaluation.

"(11) Limited State and local resources are being wasted complying with the unnecessary Federal mandate that status offenders be deinstitutionalized. Some communities believe that curfews are appropriate for juveniles, and those communities should not be

prohibited by the Federal Government from using confinement for status offenses as a means of dealing with delinquent behavior before it becomes criminal conduct.

"(12) Limited State and local resources are being wasted complying with the unnecessary Federal mandate that no juvenile be detained or confined in any jail or lockup for adults, because it can be feasible to separate adults and juveniles in 1 facility. This mandate is particularly burdensome for rural communities.

"(13) The role of the Federal Government should be to encourage and empower communities to develop and implement policies to protect adequately the public from serious juvenile crime as well as comprehensive programs to reduce risk factors and prevent juvenile delinquency.

"(14) A strong partnership among law enforcement, local government, juvenile and family courts, schools, businesses, philanthropic organizations, families, and the religious community, can create a community environment that supports the youth of the Nation in reaching their highest potential and reduces the destructive trend of juvenile crime.

"SEC. 102. PURPOSE AND STATEMENT OF POLICY.

"(a) IN GENERAL.—The purposes of this Act are—

"(1) to protect the public and to hold juveniles accountable for their acts;

"(2) to empower States and communities to develop and implement comprehensive programs that support families and reduce risk factors and prevent serious youth crime and juvenile delinquency;

"(3) to provide for the thorough and ongoing evaluation of all federally funded programs addressing juvenile crime and delinquency;

"(4) to provide technical assistance to public and private nonprofit entities that protect public safety, administer justice and corrections to delinquent youth, or provide services to youth at risk of delinquency, and their families;

"(5) to establish a centralized research effort on the problems of youth crime and juvenile delinquency, including the dissemination of the findings of such research and all related data;

"(6) to establish a Federal assistance program to deal with the problems of runaway and homeless youth;

"(7) to assist State and local governments in improving the administration of justice for juveniles;

"(8) to assist the State and local governments in reducing the level of youth violence;

"(9) to assist State and local governments in promoting public safety by supporting juvenile delinquency prevention and control activities;

"(10) to encourage and promote programs designed to keep in school juvenile delinquents expelled or suspended for disciplinary reasons;

"(11) to assist State and local governments in promoting public safety by encouraging accountability through the imposition of meaningful sanctions for acts of juvenile delinquency;

"(12) to assist State and local governments in promoting public safety by improving the extent, accuracy, availability and usefulness of juvenile court and law enforcement records and the openness of the juvenile justice system;

"(13) to assist State and local governments in promoting public safety by encouraging the identification of violent and hardcore juveniles and transferring such juveniles out of the jurisdiction of the juvenile justice system and into the jurisdiction of adult criminal court;

"(14) to assist State and local governments in promoting public safety by providing resources to States to build or expand juvenile detention facilities;

"(15) to provide for the evaluation of federally assisted juvenile crime control programs, and training necessary for the establishment and operation of such programs;

"(16) to ensure the dissemination of information regarding juvenile crime control programs by providing a national clearinghouse; and

"(17) to provide technical assistance to public and private nonprofit juvenile justice and delinquency prevention programs.

"(b) STATEMENT OF POLICY.—It is the policy of Congress to provide resources, leadership, and coordination—

"(1) to combat youth violence and to prosecute and punish effectively violent juvenile offenders; and

"(2) to improve the quality of juvenile justice in the United States.

"SEC. 103. DEFINITIONS.

"In this Act:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Office of Juvenile Crime Control and Accountability.

"(2) CONSTRUCTION.—The term 'construction' means acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees but not the cost of acquisition of land for buildings).

"(3) JUVENILE POPULATION.—The term 'juvenile population' means the population of a State under 18 years of age.

"(4) OFFICE.—The term 'Office' means the Office of Juvenile Crime Control and Accountability established under section 201.

"(5) OUTCOME OBJECTIVE.—The term 'outcome objective' means an objective that relates to the impact of a program or initiative, that measures the reduction of high risk behaviors, such as incidence of arrest, the commission of criminal acts or acts of delinquency, failure in school, violence, the use of alcohol or illegal drugs, involvement of youth gangs, and teenage pregnancy, among youth in the community.

"(6) PROCESS OBJECTIVE.—The term 'process objective' means an objective that relates to the manner in which a program or initiative is carried out, including—

"(A) an objective relating to the degree to which the program or initiative is reaching the target population; and

"(B) an objective relating to the degree to which the program or initiative addresses known risk factors for youth problem behaviors and incorporates activities that inhibit the behaviors and that build on protective factors for youth.

"(7) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(8) STATE OFFICE.—The term 'State office' means an office designated by the chief executive officer of a State to carry out this title, as provided in section 507 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3757).

"(9) TREATMENT.—The term 'treatment' includes medical and other rehabilitative services designed to protect the public, including any services designed to benefit addicts and other users by—

"(A) eliminating their dependence on alcohol or other addictive or nonaddictive drugs; or

"(B) controlling their dependence and susceptibility to addiction or use.

"(10) YOUTH.—The term 'youth' means an individual who is not less than 6 years of age and not more than 17 years of age.".

SEC. 302. YOUTH CRIME CONTROL AND ACCOUNTABILITY BLOCK GRANTS.

(a) OFFICE OF JUVENILE CRIME CONTROL AND ACCOUNTABILITY.—Section 201 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611) is amended—

(1) in subsection (a), by striking "Office of Juvenile Justice and Delinquency Prevention" and inserting "Office of Juvenile Crime Control and Accountability"; and

(2) by adding at the end the following:

"(d) DELEGATION AND ASSIGNMENT.—

"(1) IN GENERAL.—Except as otherwise expressly prohibited by law or otherwise provided by this title, the Administrator may—

"(A) delegate any of the functions of the Administrator, and any function transferred or granted to the Administrator after the date of enactment of this Act, to such officers and employees of the Office as the Administrator may designate; and

"(B) authorize successive redelegations of such functions as may be necessary or appropriate.

"(2) RESPONSIBILITY.—No delegation of functions by the Administrator under this subsection or under any other provision of this title shall relieve the Administrator of responsibility for the administration of such functions.

"(e) REORGANIZATION.—The Administrator may allocate or reallocate any function transferred among the officers of the Office, and establish, consolidate, alter, or discontinue such organizational entities in that Office as may be necessary or appropriate.".

(b) NATIONAL PROGRAM.—Section 204 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614) is amended to read as follows:

"SEC. 204. NATIONAL PROGRAM.

"(a) NATIONAL JUVENILE CRIME CONTROL AND JUVENILE OFFENDER ACCOUNTABILITY PLAN.—

"(1) IN GENERAL.—The Administrator shall develop objectives, priorities, and short- and long-term plans, and shall implement overall policy and a strategy to carry out such plan, for all Federal juvenile crime control and juvenile offender accountability programs and activities relating to improving juvenile crime control and the enhancement of accountability by offenders within the juvenile justice system in the United States.

"(2) CONTENTS OF PLANS.—

"(A) IN GENERAL.—Each plan described in paragraph (1) shall—

"(i) contain specific, measurable goals and criteria for reducing the incidence of crime and delinquency among juveniles, improving juvenile crime control, and ensuring accountability by offenders within the juvenile justice system in the United States, and shall include criteria for any discretionary grants and contracts, for conducting research, and for carrying out other activities under this title;

"(ii) provide for coordinating the administration of programs and activities under this title with the administration of all other Federal juvenile crime control and juvenile offender accountability programs and activities, including proposals for joint funding to be coordinated by the Administrator;

"(iii) provide a detailed summary and analysis of the most recent data available regarding the number of juveniles taken into custody, the rate at which juveniles are taken into custody, and the trends demonstrated by such data.

"(iv) provide a description of the activities for which amounts are expended under this title;

"(v) provide specific information relating to the attainment of goals set forth in the plan, including specific, measurable standards for assessing progress toward national juvenile crime reduction and juvenile offender accountability goals; and

"(vi) provide for the coordination of Federal, State, and local initiatives for the reduction of youth crime and ensuring accountability for juvenile offenders.

"(B) SUMMARY AND ANALYSIS.—Each summary and analysis under subparagraph (A)(iii) shall set out the information required by clauses (i), (ii), and (iii) of this subparagraph separately for juvenile nonoffenders, juvenile status offenders, and other juvenile offenders. Such summary and analysis shall separately address with respect to each category of juveniles specified in the preceding sentence—

"(i) the types of offenses with which the juveniles are charged;

"(ii) the ages of the juveniles;

"(iii) the types of facilities used to hold the juveniles (including juveniles treated as adults for purposes of prosecution) in custody, including secure detention facilities, secure correctional facilities, jails, and lockups; and

"(iv) the number of juveniles who died while in custody and the circumstances under which each juvenile died.

"(3) ANNUAL REVIEW.—The Administrator shall annually—

"(A) review each plan submitted under this subsection;

"(B) revise the plans, as the Administrator considers appropriate; and

"(C) not later than March 1 of each year, present the plans to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) DUTIES OF ADMINISTRATOR.—In carrying out this title, the Administrator shall—

"(1) advise the President through the Attorney General as to all matters relating to federally assisted juvenile crime control and juvenile offender accountability programs, and Federal policies regarding juvenile crime and justice, including policies relating to juveniles prosecuted or adjudicated in the Federal courts;

"(2) implement and coordinate Federal juvenile crime control and juvenile offender accountability programs and activities among Federal departments and agencies and between such programs and activities and other Federal programs and activities that the Administrator determines may have an important bearing on the success of the entire national juvenile crime control and juvenile offender accountability effort;

"(3) provide for the auditing of grants provided pursuant to this title;

"(4) collect, prepare, and disseminate useful data regarding the prevention, correction, and control of juvenile crime and delinquency, and issue, not less frequently than once each calendar year, a report on successful programs and juvenile crime reduction methods utilized by States, localities, and private entities;

"(5) ensure the performance of comprehensive rigorous independent scientific evaluations, each of which shall—

"(A) be independent in nature, and shall employ rigorous and scientifically valid standards and methodologies; and

"(B) include measures of outcome and process objectives, such as reductions in juvenile crime, youth gang activity, youth substance abuse, and other high risk factors, as well as increases in protective factors that reduce the likelihood of delinquency and criminal behavior;

"(6) involve consultation with appropriate authorities in the States and with appropriate private entities in the development, review, and revision of the plans required by subsection (a) and in the development of policies relating to juveniles prosecuted or adjudicated in the Federal courts; and

"(7) provide technical assistance to the States, units of local government, and private entities in implementing programs funded by grants under this title.

"(c) NATIONAL JUVENILE CRIME CONTROL AND JUVENILE OFFENDER ACCOUNTABILITY BUDGET.—

"(1) IN GENERAL.—The Administrator shall—

"(A) develop for each fiscal year, with the advice of the program managers of departments and agencies with responsibilities for any Federal juvenile crime control or juvenile offender accountability program, a consolidated National Juvenile Crime Control and Juvenile Offender Accountability Plan budget proposal to implement the National Juvenile Crime Control and Juvenile Offender Accountability Plan; and

"(B) transmit such budget proposal to the President and to Congress.

"(2) SUBMISSION OF JUVENILE OFFENDER ACCOUNTABILITY BUDGET REQUEST.—

"(A) IN GENERAL.—Each Federal Government program manager, agency head, and department head with responsibility for any Federal juvenile crime control or juvenile offender accountability program shall submit the juvenile crime control and juvenile offender accountability budget request of the program, agency, or department to the Administrator at the same time as such request is submitted to their superiors (and before submission to the Office of Management and Budget) in the preparation of the budget of the President submitted to Congress under section 1105(a) of title 31, United States Code.

"(B) TIMELY DEVELOPMENT AND SUBMISSION.—The head of each department or agency with responsibility for a Federal juvenile crime control or juvenile offender accountability program shall ensure timely development and submission to the Administrator of juvenile crime control and juvenile offender accountability budget requests transmitted pursuant to this subsection, in such format as may be designated by the Administrator with the concurrence of the Administrator of the Office of Management and Budget.

"(3) REVIEW AND CERTIFICATION.—The Administrator shall—

"(A) review each juvenile crime control and juvenile offender accountability budget request transmitted to the Administrator under paragraph (2);

"(B) certify in writing as to the adequacy of such request in whole or in part to implement the objectives of the National Juvenile Crime Control and Juvenile Offender Accountability Plan for the year for which the request is submitted and, with respect to a request that is not certified as adequate to implement the objectives of the National Juvenile Crime Control and Juvenile Offender Accountability Plan, include in the certification an initiative or funding level that would make the request adequate; and

"(C) notify the program manager, agency head, or department head, as applicable, regarding the certification of the Administrator under subparagraph (B).

"(4) RECORDKEEPING REQUIREMENT.—The Administrator shall maintain records regarding certifications under paragraph (3)(B).

"(5) FUNDING REQUESTS.—The Administrator shall request the head of a department or agency to include in the budget submission of the department or agency to the Office of Management and Budget, funding requests for specific initiatives that are consistent with the priorities of the President for the National Juvenile Crime Control and Juvenile Offender Accountability Plan and certifications made pursuant to paragraph (3), and the head of the department or agency shall comply with such a request.

"(6) REPROGRAMMING AND TRANSFER REQUESTS.—

"(A) IN GENERAL.—No department or agency with responsibility for a Federal juvenile crime control or juvenile offender accountability program shall submit to Congress a reprogramming or transfer request with respect to any amount of appropriated amounts greater than $5,000,000 that is included in the National Juvenile Crime Control and Juvenile Offender Accountability Plan budget unless such request has been approved by the Administrator.

"(B) The head of any department or agency with responsibility for a Federal juvenile crime control or juvenile offender accountability program may appeal to the President any disapproval by the Administrator of a reprogramming or transfer request.

"(7) QUARTERLY REPORTS.—The Administrator shall report to Congress on a quarterly basis regarding the need for any reprogramming or transfer of appropriated amounts for National Juvenile Crime Control and Juvenile Offender Accountability Plan activities.

"(d) INFORMATION, REPORTS, STUDIES, AND SURVEYS FROM OTHER AGENCIES.—The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile crime control and juvenile offender accountability program to provide the Administrator with such information and reports, and to conduct such studies and surveys, as the Administrator determines to be necessary to carry out the purposes of this title.

"(e) UTILIZATION OF SERVICES AND FACILITIES OF OTHER AGENCIES; REIMBURSEMENT.—The Administrator may utilize the services and facilities of any agency of the Federal Government and of any other public agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement as may be agreed upon.

"(f) COORDINATION OF FUNCTIONS OF ADMINISTRATOR AND SECRETARY OF HEALTH AND HUMAN SERVICES.—All functions of the Administrator under title shall be coordinated as appropriate with the functions of the Secretary of Health and Human Services under title III.

"(g) ANNUAL JUVENILE DELINQUENCY DEVELOPMENT STATEMENTS.—

"(1) IN GENERAL.—The Administrator shall require through appropriate authority each Federal agency that administers a Federal juvenile crime control and juvenile offender accountability program to submit annually to the Office a juvenile crime control and juvenile offender accountability development statement. Such statement shall be in addition to any information, report, study, or

survey that the Administrator may require under subsection (d).

"(2) CONTENTS.—Each development statement submitted to the Administrator under paragraph (1) shall contain such information, data, and analyses as the Administrator may require. Such analyses shall include an analysis of the extent to which the program of the Federal agency submitting such development statement conforms with and furthers Federal juvenile crime control and juvenile offender accountability prevention and treatment goals and policies.

"(3) REVIEW AND COMMENT.—

"(A) IN GENERAL.—The Administrator shall review and comment upon each juvenile crime control and juvenile offender accountability development statement transmitted to the Administrator under paragraph (1).

"(B) INCLUSION IN OTHER DOCUMENTATION.—Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation that significantly affects juvenile crime control and juvenile offender accountability.

"(h) JUVENILE CRIME CONTROL AND JUVENILE OFFENDER ACCOUNTABILITY INCENTIVE BLOCK GRANTS.—

"(1) IN GENERAL.—The Administrator shall make, subject to the availability of appropriations, grants to States to assist them in planning, establishing, operating, coordinating, and evaluating projects, directly or through grants and contracts with public and private agencies, for the development of more effective investigation, prosecution, and punishment (including the imposition of graduated sanctions) of crimes or acts of delinquency committed by juveniles, programs to improve the administration of justice for and ensure accountability by juvenile offenders, and programs to reduce the risk factors (such as truancy, drug or alcohol use, and gang involvement) associated with juvenile crime or delinquency.

"(2) USE OF GRANTS.—Grants under this title may be used—

"(A) for programs to enhance the identification, investigation, prosecution, and punishment of juvenile offenders, such as—

"(i) the utilization of graduated sanctions;

"(ii) the utilization of short-term confinement of juveniles who are charged with or who are convicted of—

"(I) a crime of violence (as that term is defined in section 16 of title 18, United States Code);

"(II) an offense involving a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

"(III) an offense involving possession of a firearm (as that term is defined in section 921(a) of title 18, United States Code); or

"(IV) an offense involving possession of a destructive device (as that term is defined in section 921(a) of title 18, United States Code);

"(iii) the hiring of prosecutors, judges, and probation officers to implement policies to control juvenile crime and ensure accountability of juvenile offenders; and

"(iv) the incarceration of violent juvenile offenders for extended periods of time (including up to the length of adult sentences);

"(B) for programs that provide restitution to the victims of crimes committed by juveniles;

"(C) for programs that require juvenile offenders to attend and successfully complete school or vocational training;

"(D) for programs that require juvenile offenders who are parents to demonstrate parental responsibility by working and paying child support;

"(E) for programs that seek to curb or punish truancy;

"(F) for programs designed to collect, record, and disseminate information useful in the identification, prosecution, and sentencing of offenders, such as criminal history information, fingerprints, and DNA tests;

"(G) for programs that provide that, whenever a juvenile who is not less than 14 years of age is adjudicated delinquent, as defined by Federal or State law in a juvenile delinquency proceeding for conduct that, if committed by an adult, would constitute a felony under Federal or State law, the State shall ensure that a record is kept relating to the adjudication that is—

"(i) equivalent to the record that would be kept of an adult conviction for such an offense;

"(ii) retained for a period of time that is equal to the period of time that records are kept for adult convictions;

"(iii) made available to law enforcement agencies of any jurisdiction; and

"(iv) made available to officials of a school, school district, or postsecondary school where the individual who is the subject of the juvenile record seeks, intends, or is instructed to enroll, and that such officials are held liable to the same standards and penalties that law enforcement and juvenile justice system employees are held liable to, under Federal and State law, for handling and disclosing such information;

"(H) for juvenile crime control and prevention programs (such as curfews, youth organizations, antidrug programs, antigang programs, and after school activities) that include a rigorous, comprehensive evaluation component that measures the decrease in risk factors associated with the juvenile crime and delinquency and employs scientifically valid standards and methodologies;

"(I) for the development and implementation of coordinated multijurisdictional or multiagency programs for the identification, control, supervision, prevention, investigation, and treatment of the most serious juvenile offenses and offenders, sometimes known as a 'SHOCAP Program' (Serious Habitual Offenders Comprehensive Action Program); or

"(J) for the development and implementation of coordinated multijurisdictional or multiagency programs for the identification, control, supervision, prevention, investigation, and disruption of youth gangs.

"(3) REQUIREMENTS.—To be eligible to receive a grant under this title, a State shall make reasonable efforts, as certified by the Governor, to ensure that, not later than July 1, 2000—

"(A) juveniles age 14 and older can be prosecuted under State law as adults, as a matter of law or prosecutorial discretion for a crime of violence (as that term is defined in section 16 of title 18, United States Code) such as murder or armed robbery, an offense involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or the unlawful possession of a firearm (as that term is defined in section 921(a) of title 18, United States Code) or a destructive device (as that term is defined in section 921(a) of title 18, United States Code);

"(B) the State has in place a system of graduated sanctions for juvenile offenders;

"(C) the State has in place a juvenile court system that treats juvenile offenders uniformly throughout the State;

"(D) the State collects, records, and disseminates information useful in the identification, prosecution, and sentencing of offenders, such as criminal history information, fingerprints, and DNA tests (if taken), to other Federal, State, and local law enforcement agencies;

"(E) the State ensures that religious organizations can participate in rehabilitative programs designed to purposes authorized by this title; and

"(F) the State shall not detain or confine juveniles who are alleged to be or determined to be delinquent in any institution in which the juvenile has regular sustained physical contact with adult persons who are detained or confined.

"(j) DISTRIBUTION BY STATE OFFICES TO ELIGIBLE APPLICANTS.—

"(1) IN GENERAL.—Of amounts made available to the State, not more than 20 percent shall be used for programs pursuant to paragraph (2)(ii).

"(2) ELIGIBLE APPLICANTS.—Entities eligible to receive amounts distributed by the State office under this title are—

"(A) a unit of local government;

"(B) local police or sheriff's departments;

"(C) State or local prosecutor's offices;

"(D) State or local courts responsible for the administration of justice in cases involving juvenile offenders;

"(E) schools;

"(F) nonprofit, educational, religious, or community groups active in crime prevention or drug use prevention and treatment; or

"(G) any combination of the entities described in subparagraphs (A) through (F).

"(k) APPLICATION TO STATE OFFICE.—

"(1) IN GENERAL.—To be eligible to receive amounts from the State office, the applicant shall prepare and submit to the State office an application in written form that—

"(A) describes the types of activities and services for which the amount will be provided;

"(B) includes information indicating the extent to which the activities and services achieve the purposes of the title;

"(C) provide for the evaluation component required by subsection (b)(2), which evaluation shall be conducted by an independent entity; and

"(D) provides any other information that the State office may require.

"(2) PRIORITY.—In approving applications under this subsection, the State office should give priority to those applicants demonstrating coordination with, consolidation of, or expansion of existing State or local juvenile crime control and juvenile offender accountability programs.

"(l) FUNDING PERIOD.—The State office may award such a grant for a period of not more than 3 years.

"(m) RENEWAL OF GRANTS.—The State office may renew grants made under this title. After the initial grant period, in determining whether to renew a grant to an entity to carry out activities, the State office shall give substantial weight to the effectiveness of the activities in achieving reductions in crimes committed by juveniles and in improving the administration of justice to juvenile offenders.

"(n) SPECIAL GRANTS.—Of amounts made available under this title in any fiscal year, the Administrator may use—

"(1) not more than 7 percent for grants for research and evaluation;

"(2) not more than 3 percent for grants to Indian tribes for purposes authorized by this title; and

"(3) not more than 5 percent for salaries and expenses of the Office related to administering this title.".

(c) REPEALS; ADMINISTRATIVE PROVISIONS.—Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended—

(1) by striking sections 206 and 207 and inserting the following:

"SEC. 206. ALLOCATION OF GRANTS AND AUTHORIZATION OF APPROPRIATIONS.—

"(a) ALLOCATION OF GRANT AMOUNTS.—

"(1) IN GENERAL.—Amounts made available under section 204(h) or part B shall be allocated to the States as follows:

"(A) 0.25 percent shall be allocated to each State; and

"(B) of the total amount remaining after the allocation under subparagraph (A), there shall be allocated to each State an amount that bears the same ratio to the amount of remaining funds described in this paragraph as the juvenile population of such State bears to the juvenile population of all the States.

"(2) EXCEPTIONS.—The amount allocated to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $75,000 and not more than $100,000.

"(3) REALLOCATION PROHIBITED.—Any amounts appropriated but not allocated due to the ineligibility or nonparticipation of any State shall not be reallocated, but shall revert to the Treasury at the end of the fiscal year for which they were appropriated.

"(4) RESTRICTIONS ON THE USE OF AMOUNTS.—

"(A) EXPERIMENTATION ON INDIVIDUALS.—

"(i) IN GENERAL.—No amounts made available to carry out this title may be used for any biomedical or behavior control experimentation on individuals or any research involving such experimentation.

"(ii) DEFINITION OF 'BEHAVIOR CONTROL'.—In this subparagraph, the term 'behavior control'—

"(I) means any experimentation or research employing methods that—

"(aa) involve a substantial risk of physical or psychological harm to the individual subject; and

"(bb) are intended to modify or alter criminal and other antisocial behavior, including aversive conditioning therapy, drug therapy, chemotherapy (except as part of routine clinical care), physical therapy of mental disorders, electroconvulsive therapy, or physical punishment; and

"(II) does not include a limited class of programs generally recognized as involving no such risk, including methadone maintenance and certain alcohol treatment programs, psychological counseling, parent training, behavior contracting, survival skills training, restitution, or community service, if safeguards are established for the informed consent of subjects (including parents or guardians of minors).

"(B) PROHIBITION AGAINST USE OF AMOUNTS IN CONSTRUCTION.—No amount made available to any public or private agency, or institution or to any individual under this title (either directly or through a State office) may be used for construction, except for minor renovations or additions to an existing structure.

"(C) JOB TRAINING.—No amount made available under this title may be used to carry out a youth employment program to provide subsidized employment opportunities, job training activities, or school-to-work activities for participants.

"(D) LOBBYING.—

"(i) IN GENERAL.—Except as provided in clause (ii), no amount made available under this title to any public or private agency, organization, or institution or to any individual shall be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a Member of Congress or any other Federal, State, or local elected official to favor or oppose any Act, bill, resolution, or other legislation, or any referendum, initiative, constitutional amendment, or any other procedure of Congress, any State legislature, any local council, or any similar governing body.

"(ii) EXCEPTION.—This subparagraph does not preclude the use of amounts made available under this title in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved.

"(E) LEGAL ACTION.—No amounts made available under this title to any public or private agency, organization, institution, or to any individual, shall be used in any way directly or indirectly to file an action or otherwise take any legal action against any Federal, State, or local agency, institution, or employee.

"(F) RELIGIOUS ORGANIZATIONS.—

"(i) IN GENERAL.—The purpose of this subparagraph is to allow State and local governments to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in this title, on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

"(ii) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS.—If a State or local government exercises its authority under religious organizations are eligible, on the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in this title, so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in clause (x), neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

"(iii) RELIGIOUS CHARACTER AND FREEDOM.—

"(I) RELIGIOUS ORGANIZATIONS.—A religious organization that participates in a program authorized by this title shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

"(II) ADDITIONAL SAFEGUARDS.—Neither the Federal Government nor a State shall require a religious organization to—

"(aa) alter its form of internal governance; or

"(bb) remove religious art, icons, scripture, or other symbols;

in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursements, funded under a program described in this title.

"(iv) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—If juvenile offender has an objection to the religious character of the organization or institution from which the juvenile offender receives, or would receive, assistance funded under any program described in this title, the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider.

"(v) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1a) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in this title.

"(vi) NONDISCRIMINATION AGAINST BENEFICIARIES.—Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in this title on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

"(vii) FISCAL ACCOUNTABILITY.—

"(I) IN GENERAL.—Subject to subclause (II), any religious organization contracting to provide assistance funded under any program described in clause (i)(II) shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

"(II) LIMITED AUDIT.—If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.

"(viii) COMPLIANCE.—Any party which seeks to enforce its rights under this subparagraph may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

"(ix) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.—No funds provided directly to institutions or organizations to provide services and administer programs under this title shall be expended for sectarian worship, instruction, or proselytization.

"(x) PREEMPTION.—Nothing in this subparagraph shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

"(5) PENALTIES.—

"(A) IN GENERAL.—If any amounts are used for the purposes prohibited in either subparagraph (D) or (E) of paragraph (4)—

"(i) all funding for the agency, organization, institution, or individual at issue shall be immediately discontinued;

"(ii) the agency, organization, institution, or individual using amounts for the purpose prohibited in subparagraph (D) or (E) of paragraph (4) shall be liable for reimbursement of all amounts granted to the individual or entity for the fiscal year for which the amounts were granted.

"(B) LIABILITY FOR EXPENSES AND DAMAGES.—In relation to a violation of paragraph (4)(D), the individual filing the lawsuit or responsible for taking the legal action against the Federal, State, or local agency or institution, or individual working for the Government, shall be individually liable for all

legal expenses and any other expenses of the government agency, institution, or individual working for the Government, including damages assessed by the jury against the Government agency, institution, or individual working for the government, and any punitive damages.

"(b) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this title—

"(A) $650,000,000 for fiscal year 1998;

"(B) $650,000,000 for fiscal year 1999;

"(C) $650,000,000 for fiscal year 2000;

"(D) $650,000,000 for fiscal year 2001; and

"(E) $650,000,000 for fiscal year 2002.

"(2) ALLOCATION OF APPROPRIATIONS.—Of amounts authorized to be appropriated under paragraph (1) in each fiscal year—

"(A) $500,000,000 shall be for programs under section 204(h); and

"(B) $150,000,000 shall be for programs under part B.

"(3) AVAILABILITY OF FUNDS.—Amounts made available pursuant to this subsection, and allocated pursuant to paragraph (1) in any fiscal year shall remain available until expended.

"SEC. 207. ADMINISTRATIVE PROVISIONS.

"(a) AUTHORITY OF ADMINISTRATOR.—The Office shall be administered by the Administrator under the general authority of the Attorney General.

"(b) APPLICABILITY OF CERTAIN CRIME CONTROL PROVISIONS.—Sections 809(c), 811(a), 811(b), 811(c), 812(a), 812(b), and 812(d) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d(c), 3789f(a), 3789f(b), 3789f(c), 3789g(a), 3789g(b), 3789g(d)) shall apply with respect to the administration of and compliance with this Act, except that for purposes of this Act—

"(1) any reference to the Office of Justice Programs in such sections shall be considered to be a reference to the Assistant Attorney General who heads the Office of Justice Programs; and

"(2) the term 'this title' as it appears in such sections shall be considered to be a reference to this Act.

"(c) APPLICABILITY OF CERTAIN OTHER CRIME CONTROL PROVISIONS.—Sections 801(a), 801(c), and 806 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711(a), 3711(c), and 3787) shall apply with respect to the administration of and compliance with this Act, except that, for purposes of this Act—

"(1) any reference to the Attorney General, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, or the Director of the Bureau of Justice Assistance shall be considered to be a reference to the Administrator;

"(2) any reference to the Office of Justice Programs, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics shall be considered to be a reference to the Office of Juvenile Justice and Delinquency Prevention; and

"(3) the term 'this title' as it appears in such sections shall be considered to be a reference to this Act.

"(d) RULES, REGULATIONS, AND PROCEDURES.—The Administrator may, after appropriate consultation with representatives of States and units of local government, establish such rules, regulations, and procedures as are necessary for the exercise of the functions of the Office and as are consistent with the purpose of this Act.

"(e) WITHHOLDING.—The Administrator shall initiate such proceedings as the Administrator determines to be appropriate if the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this title, finds that—

"(1) the program or activity for which the grant or contract involved was made has been so changed that the program or activity no longer complies with this title; or

"(2) in the operation of such program or activity there is failure to comply substantially with any provision of this title.";

(2) in part B—

(A) in section 221(b)—

(i) in paragraph (1)—

(I) by striking "section 223" and inserting "section 222"; and

(II) by striking "section 223(c)" and inserting "section 222(c)"; and

(ii) in paragraph (2), by striking "section 299(c)(1)" and inserting "section 222(a)(1)"; and

(B) by striking sections 222 and 223 and inserting the following:

"SEC. 222. STATE PLANS.

"(a) IN GENERAL.—In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. The State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

"(1) designate a State agency as the sole agency for supervising the preparation and administration of the plan;

"(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

"(3) provide for the active consultation with and participation of units of general local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of local governments, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies, including religious organizations;

"(4) provide that the chief executive officer of the unit of general local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and administration of the local government's part of the State plan, to that agency within the local government's structure or to a regional planning agency (in this part referred to as the 'local agency') which can most effectively carry out the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;

"(5)(A) provide for—

"(i) an analysis of juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) within the relevant jurisdiction (including any geographical area in which an Indian tribe performs law enforcement functions), a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) of the jurisdiction;

"(ii) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and

"(iii) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;

"(B) contain—

"(i) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services; and

"(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

"(C) contain—

"(i) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particular placements of juveniles in order to receive such services) and of barriers to access to such services; and

"(ii) a plan for providing needed mental health services to juveniles in the juvenile justice system;

"(6) provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, special education, recreation, health, and welfare within the State;

"(7) provide for the development of an adequate research, training, and evaluation capacity within the State;

"(8) provide that not less than 75 percent of the funds made available to the State pursuant to grants under section 221, whether expended directly by the State, by the unit of general local government, or by a combination thereof, or through grants and contracts with public or private nonprofit agencies, shall be used for—

"(A) community-based alternatives (including home-based alternatives) to incarceration and institutionalization, specifically—

"(i) for youth who can remain at home with assistance, home probation and programs providing professional supervised group activities or individualized mentoring relationships with adults that involve the family and provide counseling and other supportive services;

"(ii) for youth who need temporary placement, crisis intervention, shelter, and aftercare; and

"(iii) for youth who need residential placement, a continuum of foster care or group home alternatives that provide access to a comprehensive array of services;

"(B) community-based programs and services to work with—

"(i) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

"(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the families; and

"(iii) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability;

"(C) comprehensive juvenile justice and delinquency prevention programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services;

"(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth affected by the juvenile justice system;

"(E) educational programs or supportive services for delinquent or other juveniles, provided equitably regardless of sex, race, or family income, designed to—

"(i) encourage juveniles to remain in elementary and secondary schools or in alternative learning situations, including—

"(I) education in settings that promote experiential, individualized learning and exploration of academic and career options;

"(II) assistance in making the transition to the world of work and self-sufficiency;

"(III) alternatives to suspension and expulsion; and

"(IV) programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and

"(ii) enhance coordination with the local schools that such juveniles would otherwise attend, to ensure that—

"(I) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and

"(II) information regarding any learning problems identified in such alternative learning situations are communicated to the schools;

"(F) expanded use of home probation and recruitment and training of home probation officers, other professional and paraprofessional personnel, and volunteers to work effectively to allow youth to remain at home with their families as an alternative to incarceration or institutionalization;

"(G) youth-initiated outreach programs designed to assist youth (including youth with limited proficiency in English) who otherwise would not be reached by traditional youth assistance programs;

"(H) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped youth;

"(I) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth;

"(J) programs and projects designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or nonaddictive drugs;

"(K) law-related education programs (and projects) for delinquent and at-risk youth designed to prevent juvenile delinquency;

"(L) programs for positive youth development that assist delinquent and other at-risk youth in obtaining—

"(i) a sense of safety and structure;

"(ii) a sense of belonging and membership;

"(iii) a sense of self-worth and social contribution;

"(iv) a sense of independence and control over one's life;

"(v) a sense of closeness in interpersonal relationships; and

"(vi) a sense of competence and mastery including health and physical competence, personal and social competence, cognitive and creative competence, vocational competence, and citizenship competence, including ethics and participation;

"(M) programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

"(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

"(ii) assist in the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

"(N) programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration; and

"(O) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and cultural barriers that may prevent the complete treatment of such juveniles and the preservation of their families;

"(9) provide for the development of an adequate research, training, and evaluation capacity within the State;

"(10) provide that the State shall not detain or confine juveniles who are alleged to be or determined to be delinquent in any institution in which the juvenile has regular sustained physical contact with adult persons who are detained or confined;

"(11) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (10) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (10), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;

"(12) provide assurance that youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and mentally, emotionally, or physically handicapping conditions;

"(13) provide assurance that consideration will be given to and that assistance will be available for approaches designed to strengthen the families of delinquent and other youth to prevent juvenile delinquency (which approaches should include the involvement of grandparents or other extended family members when possible and appropriate and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible);

"(14) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

"(15) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this title;

"(16) provide reasonable assurances that Federal funds made available under this part for any period shall be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and shall in no event replace such State, local, and other non-Federal funds; and

"(17) provide that the State agency designated under paragraph (1) will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary.

"(b) APPROVAL BY STATE AGENCY.—The State agency designated under subsection (a)(1) shall approve the State plan and any modification thereof prior to submission to the Administrator.

"(c) APPROVAL BY ADMINISTRATOR; COMPLIANCE WITH STATUTORY REQUIREMENTS.—

"(1) IN GENERAL.—The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section.

"(2) REDUCED ALLOCATIONS.—If a State fails to comply with any requirement of subsection (a)(8) in any fiscal year beginning after January 1, 1998, the State shall be ineligible to receive any allocation under that section for such fiscal year unless—

"(A) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with subsection (a)(4)(C)) for that fiscal year only to achieve compliance with such paragraph; or

"(B) the Administrator determines, in the discretion of the Administrator, that the State—

"(i) has achieved substantial compliance with such paragraph; and

"(ii) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time.''; and

(3) by striking parts C, D, E, F, G, and H, and each part designated as part I.

SEC. 303. RUNAWAY AND HOMELESS YOUTH.

Section 385 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5751) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996" and inserting "1998 and such sums as may be necessary for fiscal years 1999, 2000, 2001, and 2002"; and

(B) by striking paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively;

(2) in subsection (b), by striking "1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996" and inserting "1998 and such sums as may be necessary for fiscal years 1999, 2000, 2001, and 2002"; and

(3) in subsection (c), by striking "1993, 1994, 1995, and 1996" and inserting "1998, 1999, 2000, 2001, and 2002".

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5771 et seq.) is amended—

(1) in section 403, by striking paragraph (2) and inserting the following:

"(2) the term 'Administrator' means the Administrator of the Office of Juvenile Crime Control and Accountability.";

(2) by striking section 404; and

(3) in section 408, by striking "1993, 1994, 1995, and 1996" and inserting "1998, 1999, 2000, 2001, and 2002".

SEC. 305. REPEAL.

Title V of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5781 et seq.) is repealed.

SEC. 306. TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS.

(a) DEFINITIONS.—In this section, unless otherwise provided or indicated by the context—

(1) the term "Administrator of the Office" means the Administrator of the Office of Juvenile Justice and Delinquency Prevention;

(2) the term "Bureau of Justice Assistance" means the bureau established under section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968;

(3) the term "Administrator" means the Administrator of the Office of Juvenile Crime Control and Accountability established by operation of subsection (b);

(4) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, United States Code;

(5) the term "function" means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program;

(6) the term "Office of Juvenile Crime Control and Accountability" means the office established by operation of subsection (b);

(7) the term "Office of Juvenile Justice and Delinquency Prevention" means the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice, established by section 201 of the Juvenile Justice and Delinquency Prevention Act of 1974, as in effect on the day before the date of enactment of this Act; and

(8) the term "office" includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Juvenile Crime Control and Accountability all functions that the Administrator of the Office exercised before the date of enactment of this Act (including all related functions of any officer or employee of the Office of Juvenile Justice and Delinquency Prevention), and authorized after the enactment of this Act, relating to carrying out the Juvenile Justice and Delinquency Prevention Act of 1974.

(c) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—

(1) IN GENERAL.—Except as otherwise provided in this section and in section 101(a) (relating to Juvenile Justice Programs) of the Omnibus Consolidated Appropriations Act, 1997, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other amounts employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office of Juvenile Crime Control and Accountability.

(2) UNEXPENDED AMOUNTS.—Any unexpended amounts transferred pursuant to this subsection shall be used only for the purposes for which the amounts were originally authorized and appropriated.

(d) INCIDENTAL TRANSFERS.—

(1) IN GENERAL.—The Director of the Office of Management and Budget, at such time or times as the Director of that Office shall provide, may make such determinations as may be necessary with regard to the functions transferred by this section, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other amounts held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out this section.

(2) TERMINATION OF AFFAIRS.—The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this section and for such further measures and dispositions as may be necessary to effectuate the purposes of this section.

(e) EFFECT ON PERSONNEL.—

(1) IN GENERAL.—Except as otherwise provided by this section, the transfer pursuant to this section of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer of such employee under this section.

(2) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this section, any person who, on the day before the date of enactment of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Office of Juvenile Crime Control and Accountability to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(3) TRANSITION RULE.—

(A) IN GENERAL.—The incumbent Administrator of the Office as of the date immediately preceding the date of enactment of this Act shall continue to serve as Administrator after the enactment of this Act until such time as the incumbent resigns, is relieved of duty by the President, or an Administrator is appointed by the President, by and with the advice and consent of the Senate.

(B) NOMINEE.—Not later than 6 months after the date of enactment of this Act, the President shall submit to the Senate for consideration the name of the individual nominated to be appointed as the Administrator.

(f) SAVINGS PROVISIONS.—

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions that are transferred under this section; and

(B) that are in effect at the time this section takes effect, or were final before the date of enactment of this Act and are to become effective on or after the date of enactment of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Administrator, or other authorized official, a court of competent jurisdiction, or by operation of law.

(2) PROCEEDINGS NOT AFFECTED.—

(A) IN GENERAL.—This section shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Office of Juvenile Justice and Delinquency Prevention on the date on which this section takes effect, with respect to functions transferred by this section but such proceedings and applications shall be continued.

(B) ORDERS; APPEALS; PAYMENTS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(C) DISCONTINUANCE OR MODIFICATION.—Nothing in this paragraph shall be construed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this paragraph had not been enacted.

(3) SUITS NOT AFFECTED.—This section shall not affect suits commenced before the date of enactment of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(4) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Office of Juvenile Justice and Delinquency Prevention, or by or against any individual in the official capacity of such individual as an officer of the Office of Juvenile Justice and Delinquency Prevention, shall abate by reason of the enactment of this section.

(5) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Office of Juvenile Justice and Delinquency Prevention relating to a function transferred under this section may be continued, to the extent authorized by this section, by the Office of Juvenile Crime Control and Accountability with the same effect as if this section had not been enacted.

(g) TRANSITION.—The Administrator may utilize—

(1) the services of such officers, employees, and other personnel of the Office of Juvenile Justice and Delinquency Prevention with respect to functions transferred to the Office of Juvenile Crime Control and Accountability by this section; and

(2) amounts appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(h) REFERENCES.—Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

(1) the Administrator of the Office of Juvenile Justice and Delinquency Prevention with regard to functions transferred by operation of subsection (b), shall be considered to refer to the Administrator of the Office of Juvenile Crime Control and Accountability; and

(2) the Office of Juvenile Justice and Delinquency Prevention with regard to functions transferred by operation of subsection (b), shall be considered to refer to the Office of Juvenile Crime Control and Accountability.

(i) TECHNICAL AND CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code, is amended by striking "Administrator, Office of Juvenile Crime Control and Accountability".

SEC. 307. REPEAL OF UNNECESSARY AND DUPLICATIVE PROGRAMS.

(a) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—

(1) TITLE III.—Title III of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13741 et seq.) is amended by striking subtitles A through S, subtitle U, and subtitle X.

(2) TITLE V.—Title V of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 3797 et seq.) is repealed.

(3) TITLE XXVII.—Title XXVII of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14191 et seq.) is repealed.

(b) ELEMENTARY AND SECONDARY EDUCATION ACT.—

(1) TITLE IV.—Title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7101) is repealed.

(2) TITLE V.—Part C of title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7261 et seq.) is repealed.

(d) PUBLIC HEALTH SERVICE ACT.—Section 517 of the Public Health Service Act (42 U.S.C. 290bb–23) is repealed.

(e) HUMAN SERVICES REAUTHORIZATION ACT.—Section 408 of the Human Services Reauthorization Act is repealed.

(f) COMMUNITY SERVICES BLOCK GRANTS ACT.—Section 682 of the Community Services Block Grants Act (42 U.S.C. 9901) is repealed.

(g) ANTI-DRUG ABUSE ACT.—Subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801 et seq.) is amended by striking chapters 1 and 2.

SEC. 308. HOUSING JUVENILE OFFENDERS.

Section 20105(a)(1) of subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(a)(1)) is amended by striking "15" and inserting "30".

SEC. 309. CIVIL MONETARY PENALTY SURCHARGE.

(a) IMPOSITION.—Subject to subsection (b) and notwithstanding any other provision of law, a surcharge of 40 percent of the principal amount of a civil monetary penalty shall be added to each civil monetary penalty assessed by the United States or any agency thereof at the time the penalty is assessed.

(b) LIMITATION.—This section does not apply to any monetary penalty assessed under the Internal Revenue Code of 1986.

(c) USE OF SURCHARGES.—Amounts collected from the surcharge imposed under this section shall be used for Federal programs to combat youth violence.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—A surcharge under subsection (b) shall be added to each civil monetary penalty assessed on or after the later of October 1, 1997 and the date of enactment of this Act.

(2) EXPIRATION OF AUTHORITY.—The authority to add a surcharge under this subsection shall terminate at the close of September 30, 2002.

By Mr. DASCHLE (for himself, Mr. FORD, Mr. GLENN, Mr. LEVIN, Ms. MIKULSKI, Mr. REID, Ms. MOSELEY-BRAUN, Mr. DURBIN, Mr. WELLSTONE, Mr. KERRY, and Mr. LAUTENBERG):

S. 11. A bill to reform the Federal election campaign laws applicable to Congress; to the Committee on Rules and Administration.

CONGRESSIONAL ELECTION CAMPAIGN SPENDING LIMIT AND REFORM ACT OF 1997

Mr. LEVIN. Mr. President, this Congress faces no more important task in these first few months than passing legislation to reform the campaign finance system. We just witnessed the most expensive campaign in the history of our country. According to the Washington Post, both major political party committees raised over $880 million in 1995 and 1996. That is estimated to be a 73 percent increase since the last Presidential election cycle.

The increase in "soft" money raised by the parties during that same period was threefold—a 300 percent increase in "soft" money raised by the parties. The Washington Post again estimates that "soft" money contributions for 1995 and 1996 for Democrats was about $122 million, "soft" money contributions for Republicans was about $141 million. For a system that was supposed to eliminate contributions from corporations and unions, we have seen corporations and unions contribute or spend millions of dollars to aid in the election or defeat of congressional and Presidential candidates.

For a system that was supposed to cap contributions from individuals at no more than $25,000 a year to national political parties and individual campaigns combined, we have seen hundreds of contributions from individuals to both parties that equal or exceed $100,000. For a system that was supposed to require that campaign advertisements be paid for with money subject to the contribution restrictions of our campaign finance laws, we have seen probably hundreds of commercials, many of which had a significant impact on the outcome of elections in which they were run, hundreds of commercials paid for with unregulated, unrestricted, undisclosed, so-called "soft" money.

For the vast majority of these ads, the public does not know the basic facts of who contributed to the payments for these ads or how much was spent to air them. For years, we have pretended that we actually have had somewhat meaningful restrictions on campaign contributions. But with this past election cycle, the facade has fallen and we are faced with the naked truth that this system is wide open.

That is why I am joining with Senator DASCHLE today in sponsoring his proposal for campaign finance reform which would eliminate or rein in many of the worst loopholes in the current system including the raising and spending of unregulated or "soft" money, independent expenditures by national parties, and campaign ads which masquerade as so-called issue ads.

Senator DASCHLE's bill is a comprehensive response to the problem and on balance it is an achievable and meaningful reform proposal. Senator DASCHLE has incorporated in his bill several provisions that I authored dealing with issue ads and independent expenditures by parties. The approach that my provision in this bill takes with respect to so-called issue ads is to redefine "express advocacy" to include any advertising broadcast on radio or television 90 days before a primary or general election which specifically mentions a candidate.

The Supreme Court has tried to draw a bright line in defining "express advocacy" by applying it only to those ads which include certain magic phrases like "Vote for Mrs. X" or "Defeat Mr. Y." Such a test though leaves out ads which target a specific candidate and do not use the magic words that deliver the same message—for example, an ad that says, "Write to candidate Z and let him know how you feel" about an issue, which the ad has just strongly advocated or attacked.

Now, my approach would treat any broadcast ad, any broadcast ad that appears within 90 days of an election in which a candidate is explicitly mentioned as "express advocacy" and payable therefore out of regulated funds. The approach which my provision takes with respect to independent expenditures by a party is to require a party to choose between making coordinated expenditures on behalf of a candidate or making independent expenditures. A party would not be allowed to have it both ways. And that is because it is impossible, practically speaking, for a national party to be truly independent from a candidate if it is also engaged in coordinated expenditures on that candidate's behalf. To argue otherwise defies common sense. It is one way or the other. If there is a coordinated campaign on the candidate's behalf, it is kind of hard to argue that that same national party can engage in coordinated expenditures relative to that campaign.

We should not delay the consideration of campaign finance reform legislation, but we can always find a reason not to do it. This year there is a new reason. I have heard the suggestion that we should put off consideration of campaign finance reform until the hearings before the Governmental Affairs Committee on campaign finance irregularities are finished, but the argument for delay has been used in one

form or another for many, many Congresses and our job now is to show the American people that we can do it and we can do it now.

The typical sophisticated analysis of the likelihood of campaign finance reform is that any reform is virtually impossible. "It will not happen," you hear among those so-called well-informed folks. "The gap simply cannot be bridged," some people say.

We witnessed the end of the cold war 5 years ago. No one ever thought that was going to end. If we can achieve the end of the nuclear arms race, we surely can achieve the end of the money race in the American campaign system. I think most of us—and I, surely—want to be part of that effort. I want to do whatever it takes to facilitate action now. That is why I will be introducing in the next few days a more limited form of campaign finance reform to address certain limited, specific, but extensive abuses. Then, if we come to loggerheads over a comprehensive approach with more limited bills being offered as backups, there will be no excuse to not tackle at least some of the more pressing problems.

Let me take a minute, Mr. President, to show you how out of kilter this system has become. There's an article in today's Roll Call about the treatment of the Business Roundtable by the Republican Party. Now the Business Roundtable, which is an organization of the biggest and most influential corporations in America, doesn't need me or anybody else, probably, to stand up for it. I am sure it can handle itself quite adequately when it is picked on. But when you have the Republican Party calling in 24 CEO's of companies who are members of the Business Roundtable to begin the "process of behavior modification" according to the persons who spoke to Roll Call, you've got a serious problem.

According to Roll Call,

Still angry that big business failed to adequately bankroll their campaigns and counter the AFL–CIO's onslaught of attack ads last fall, the Republicans want the BRT (Business Roundtable) to purge Democrats from its staff of nine directors.

"You have to fix the problem. You have to fix the Business Roundtable," one Republican source said, according to Roll Call, "explaining that the GOP leadership is urging the prestigious organization of corporate bigwigs to purge its staff."

The article goes on.

The lawmakers are also urging the CEOs of some 200 corporations that comprise the BRT to dump their Democratic lobbyists, hire Republicans, and significantly increase the percentage of PAC contributions that go to GOP candidates.

Later on, the article says,

If the Republicans can get the BRT to change its ways the payoff could be big. Just as Willie Sutton robbed banks because "that's where the money is," the GOP Congressional leaders realize that BRT members could handily boost Republican election efforts if the BRT would agree to fund issue-advocacy campaigns in future elections.

What a sad state of affairs, Mr. President. Congressional leaders, according to this article, are trying to pressure a private organization as to whom its members should employ to lobby their offices, the amount of support these corporations should give to their party activities and how they should spend their money to influence elections on issue ads. And it is all done with what seems to be a threat—a "do this or else" attitude.

The Wall Street Journal, reporting on this CEO meeting, suggests that the threat is more explicit than implied. The Wall Street Journal of January 9, 1997, reported:

Companies that want to have it both ways, vows one top GOP strategist, no longer will be involved in Republican decision-making "or invited to our cocktail parties."

And this action is not because the Business Roundtable did not contribute to Republican candidates. No, according to the Wall Street Journal, the BRT gave twice as much to Republicans as they did to Democrats—$25 million to Republicans and only $11 million to Democrats. It is not enough that the BRT members already give to Republicans, they "should give a bigger percentage to the Republicans" than they are now giving, according to Haley Barbour, the Republican Party Chairman.

This is punishment, Mr. President, to be imposed on an organization by party and Congressional leaders. That is the message behind this action—no money, no access—and it looks awful. That is how far we have come in this scramble for campaign money, and that is why we have to make the effort now to get going on campaign finance reform.

Mr. President, I ask unanimous consent the two articles I referred to be printed in the RECORD.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 11

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This title may be cited as the "Congressional Election Campaign Spending Limit and Reform Act of 1997".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title.
TITLE I—CONTROL OF CONGRESSIONAL CAMPAIGN SPENDING
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Sec. 101. Senate spending limits and benefits.
Sec. 102. Ban on activities of political action committees in senate elections.
Sec. 103. Reporting requirements.
Sec. 104. Disclosure by candidates other than eligible senate candidates.
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Subtitle A—Personal Funds; Credit
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Sec. 302. Extensions of credit.
Subtitle B—Soft Money of Political Parties
Sec. 311. Preparation and distribution by volunteers of materials in connection with State and local political party voter registration and get-out-the-vote activities so as not to be considered a contribution or expenditure.
Sec. 312. Contributions to political party committees.
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Sec. 314. Restrictions on fundraising by candidates and officeholders.
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Sec. 321. Soft money of persons other than political parties.
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Sec. 401. Prohibition of certain contributions by lobbyists.
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Sec. 405. Prohibition of acceptance by a candidate of cash contributions from any one person aggregating more than $100.
TITLE V—AUTHORITIES AND DUTIES OF THE FEDERAL ELECTION COMMISSION
Sec. 501. Filing of reports using computers and facsimile machines.
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Sec. 503. Audits.
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Sec. 506. Independent litigating authority.
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Sec. 601. Prohibition of leadership committees.
Sec. 602. Telephone voting by persons with disabilities.

Sec. 603. Certain tax-exempt organizations not subject to corporate limits.
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Sec. 605. Campaign advertising that refers to an opponent.
Sec. 606. Limit on congressional use of the franking privilege.
Sec. 607. Participation by foreign nationals in political activities.
Sec. 608. Certification of compliance with foreign contribution and solicitation limitations.

TITLE VII—EFFECTIVE DATES; AUTHORIZATIONS

Sec. 701. Effective date.
Sec. 702. Budget neutrality.
Sec. 703. Severability.
Sec. 704. Expedited review of constitutional issues.
Sec. 705. Regulations.

TITLE I—CONTROL OF CONGRESSIONAL CAMPAIGN SPENDING

Subtitle A—Senate Election Campaign Spending Limits and Benefits

SEC. 101. SENATE SPENDING LIMITS AND BENEFITS.

(a) IN GENERAL.—The Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

"TITLE V—SPENDING LIMITS AND BENEFITS FOR SENATE ELECTION CAMPAIGNS

"SEC. 501. DEFINITIONS.

"In this title:

"(1) ELIGIBLE SENATE CANDIDATE.—The term 'eligible Senate candidate' means a candidate who is certified under section 505 as being eligible to receive benefits under this title.

"(2) EXCESS EXPENDITURE AMOUNT.—The term 'excess expenditure amount', with respect to an eligible Senate candidate, means the amount applicable to the eligible Senate candidate under section 504(b).

"(3) EXPENDITURE.—The term 'expenditure' has the meaning given in paragraph (9) of section 301, excluding subparagraph (B)(ii) of that paragraph.

"(4) GENERAL ELECTION EXPENDITURE LIMIT.—The term 'general election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 503(b).

"(5) PERSONAL FUNDS EXPENDITURE LIMIT.—The term 'personal funds expenditure limit' means the limit stated in section 503(a).

"(6) PRIMARY ELECTION EXPENDITURE LIMIT.—The term 'primary election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 502(d)(1)(A).

"(7) RUNOFF ELECTION EXPENDITURE LIMIT.—The term 'runoff election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 502(d)(1)(B).

"SEC. 502. ELIGIBLE SENATE CANDIDATES.

"(a) IN GENERAL.—For purposes of this title, a candidate is an eligible Senate candidate if the candidate—

"(1) files a primary election eligibility declaration under subsection (b) and is in compliance with the representations made in the declaration;

"(2) files a general election eligibility certification and declaration under subsection (c) and is in compliance with the representations made in the certification and declaration; and

"(3) meets the threshold contribution requirements of subsection (e).

"(b) PRIMARY ELECTION ELIGIBILITY DECLARATION.—

"(1) IN GENERAL.—The requirements of this subsection are met if the candidate files with the Secretary of the Senate a declaration that—

"(A) the candidate and the candidate's authorized committees—

"(i) will meet the primary and runoff election expenditure limits of subsection (d); and

"(ii) will accept only an amount of contributions for the primary and runoff elections that does not exceed those limits;

"(B) the candidate and the candidate's authorized committees will meet the personal funds expenditure limit;

"(C) the candidate and the candidate's authorized committees will meet the general election expenditure limit; and

"(D) the candidate and the candidate's authorized committees will meet the closed captioning requirements of section 510.

"(2) DEADLINE FOR FILING DECLARATION.—The declaration under paragraph (1) shall be filed not later than the date on which the candidate files as a candidate for the primary election.

"(c) GENERAL ELECTION ELIGIBILITY CERTIFICATION AND DECLARATION.—

"(1) IN GENERAL.—The requirements of this subsection are met if the candidate files with the Secretary of the Senate—

"(A) a certification, under penalty of perjury, that—

"(i) the candidate and the candidate's authorized committees—

"(I) met the primary and runoff election expenditure limits under subsection (d); and

"(II) did not accept contributions for the primary or runoff election in excess of the primary or runoff expenditure limit under subsection (d), whichever is applicable, reduced by any amounts transferred to the current election cycle from a preceding election cycle;

"(ii) the candidate met the threshold contribution requirement under subsection (e), and that only allowable contributions were taken into account in meeting such requirement; and

"(iii) at least 1 other candidate has qualified for the same general election ballot under the law of the candidate's State; and

"(B) a declaration that the candidate and the authorized committees of the candidate—

"(i) except as otherwise provided by this title, will not make expenditures that exceed the general election expenditure limit;

"(ii) will not accept any contributions in violation of section 315;

"(iii) except as otherwise provided by this title, will not accept any contribution for the general election to the extent that the contribution would cause the aggregate amount of contributions to exceed the sum of the amount of the general election expenditure limit and the amounts described in subsections (c), (d), and (e) of section 503, reduced by any amounts transferred to the current election cycle from a previous election cycle and not taken into account under subparagraph (A)(ii)(II);

"(iv) will deposit all payments received under this title in an account insured by the Federal Deposit Insurance Corporation from which funds may be withdrawn by check or similar means of payment to third parties;

"(v) will furnish campaign records, evidence of contributions, and other appropriate information to the Commission;

"(vi) will cooperate in the case of any audit and examination by the Commission under section 506 and will pay any amounts required to be paid under that section; and

"(vii) will meet the closed captioning requirements of section 510.

"(2) DEADLINE FOR FILING CERTIFICATION.—The certification under paragraph (1) shall be filed not later than 7 days after the earlier of—

"(A) the date on which the candidate qualifies for the general election ballot under State law; or

"(B) if, under State law, a primary or runoff election to qualify for the general election ballot occurs after September 1, the date on which the candidate wins the primary or runoff election.

"(d) PRIMARY AND RUNOFF EXPENDITURE LIMITS.—

"(1) IN GENERAL.—The requirements of this subsection are met if—

"(A) the candidate or the candidate's authorized committees did not make expenditures for the primary election in excess of the lesser of—

"(i) 67 percent of the general election expenditure limit; or

"(ii) $2,750,000; and

"(B) the candidate and the candidate's authorized committees did not make expenditures for any runoff election in excess of 20 percent of the general election expenditure limit.

"(2) INDEXING.—The $2,750,000 amount under paragraph (1)(A)(ii) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c), except that the base period shall be calendar year 1996.

"(3) INCREASE.—The limitations under subparagraphs (A) and (B) of paragraph (1) with respect to any candidate shall be increased by the aggregate amount of independent expenditures in opposition to, or on behalf of any opponent of, the candidate during the primary or runoff election period, whichever is applicable, that are required to be reported to the Secretary of the Senate or to the Commission with respect to that period under section 304.

"(4) EXCESS AMOUNT OF CONTRIBUTIONS.—

"(A) IN GENERAL.—If the contributions received by a candidate or the candidate's authorized committees for the primary election or runoff election exceed the expenditures for either election—

"(i) the excess amount of contributions shall be treated as contributions for the general election; and

"(ii) expenditures for the general election may be made from the excess amount of contributions.

"(B) LIMITATION.—Subparagraph (A) shall not apply to the extent that treatment of excess contributions in accordance with subparagraph (A)—

"(i) would result in the violation of any limitation under section 315; or

"(ii) would cause the aggregate amount of contributions received for the general election to exceed the limits under subsection (c)(1)(D)(iii).

"(e) THRESHOLD CONTRIBUTION REQUIREMENTS.—

"(1) IN GENERAL.—The requirements of this subsection are met if the candidate and the candidate's authorized committees have received allowable contributions during the applicable period in an amount at least equal to 5 percent of the general election expenditure limit.

"(2) DEFINITIONS.—In this section and subsections (b) and (c) of section 504:

"(A) ALLOWABLE CONTRIBUTION.—The term 'allowable contribution' means a contribution that is made as a gift of money by an individual pursuant to a written instrument identifying the individual as the contributor.

"(B) APPLICABLE PERIOD.—The term 'applicable period' means—

"(i) the period beginning on January 1 of the calendar year preceding the calendar year of a general election and ending on—

"(I) the date on which the certification under subsection (c) is filed by the candidate; or

"(II) for purposes of subsections (b) and (c) of section 504, the date of the general election; or

"(ii) in the case of a special election for the office of United States Senator, the period beginning on the date on which the vacancy in the office occurs and ending on the date of the general election.

"SEC. 503. LIMIT ON EXPENDITURES.

"(a) PERSONAL FUNDS EXPENDITURE LIMIT.—

"(1) IN GENERAL.—The aggregate amount of expenditures that may be made during an election cycle by an eligible Senate candidate or the candidate's authorized committees from the sources described in paragraph (2) shall not exceed $25,000.

"(2) SOURCES.—A source is described in this paragraph if it is—

"(A) personal funds of the candidate or a member of the candidate's immediate family; or

"(B) proceeds of indebtedness incurred by the candidate or a member of the candidate's immediate family.

"(b) GENERAL ELECTION EXPENDITURE LIMIT.—

"(1) IN GENERAL.—Except as otherwise provided in this title, the aggregate amount of expenditures for a general election by an eligible Senate candidate and the candidate's authorized committees shall not exceed the lesser of—

"(A) $5,500,000; or

"(B) the greater of—

"(i) $1,200,000; or

"(ii) $400,000; plus

"(I) 30 cents multiplied by the voting age population not in excess of 4,000,000; and

"(II) 25 cents multiplied by the voting age population in excess of 4,000,000.

"(2) EXCEPTION.—In the case of an eligible Senate candidate in a State that has not more than 1 transmitter for a commercial Very High Frequency (VHF) television station licensed to operate in that State, paragraph (1)(B)(ii) shall be applied by substituting—

"(A) '92 cents' for '30 cents' in subclause (I); and

"(B) '90 cents' for '25 cents' in subclause (II).

"(3) INDEXING.—The amount otherwise determined under paragraph (1) for any calendar year shall be increased by the same percentage as the percentage increase for the calendar year under section 502(d)(2).

"(c) LEGAL AND ACCOUNTING COMPLIANCE FUND.—

"(1) IN GENERAL.—The general election expenditure limit, shall not apply to qualified legal or accounting expenditures made by a candidate or the candidate's authorized committees or a Federal officeholder from a legal and accounting compliance fund meeting the requirements of paragraph (2).

"(2) REQUIREMENTS.—A legal and accounting compliance fund meets the requirements of this paragraph if—

"(A) the fund is established with respect to qualified legal or accounting expenditures incurred with respect to a particular election;

"(B) the only amounts transferred to the fund are amounts received in accordance with the limitations, prohibitions, and reporting requirements of this Act;

"(C) the aggregate amounts transferred to, and expenditures made from, the fund do not exceed the sum of—

"(i) the lesser of—

"(I) 15 percent of the general election expenditure limit for the election for which the fund was established; or

"(II) $300,000; plus

"(ii) the amount determined under paragraph (4); and

"(D) no funds received by the candidate under section 504(a)(3) are transferred to the fund.

"(3) DEFINITION OF QUALIFIED LEGAL OR ACCOUNTING EXPENDITURE.—For purposes of this subsection, the term 'qualified legal or accounting expenditure' means—

"(A) an expenditure for costs of legal or accounting services provided in connection with—

"(i) an administrative or court proceeding initiated under this Act for the election for which the legal and accounting fund was established; or

"(ii) the preparation of a document or report required by this Act or by the Commission;

"(B) an expenditure for legal or accounting service provided in connection with the election cycle for which the legal and accounting compliance fund was established to ensure compliance with this Act with respect to the election cycle.

"(4) INCREASE.—

"(A) PETITION.—If, after a general election, primary election, or runoff election, a candidate determines that qualified legal or accounting expenditures will exceed the limit under paragraph (2)(C)(i), the candidate may petition the Commission for an increase in the limit by filing the petition with the Secretary of the Senate.

"(B) DETERMINATION.—The Commission shall authorize an increase in the limit under paragraph (2)(C)(i) in the amount (if any) by which the Commission determines the qualified legal or accounting expenditures exceed the limit.

"(C) JUDICIAL REVIEW.—A determination under subparagraph (B) shall be subject to judicial review under section 507.

"(D) CONTRIBUTIONS AND EXPENDITURES NOT COUNTED.—Except as provided in section 315, a contribution received or expenditure made under this paragraph shall not be counted against any contribution or expenditure limit applicable to the candidate under this title.

"(5) TREATMENT.—Funds in a legal and accounting compliance fund shall be treated for purposes of this Act as a separate segregated fund, except that any portion of the fund not used to pay qualified legal or accounting expenditures, and not transferred to a legal and accounting compliance fund for the election cycle for the next general election, shall be treated in the same manner as other campaign funds for purposes of section 313(b).

"(d) PAYMENT OF TAXES ON EARNINGS.—The limitation under subsection (b) shall not apply to any expenditure for Federal, State, or local income taxes on the earnings of a candidate's authorized committees.

"(e) CERTAIN EXPENSES.—In the case of an eligible Senate candidate who holds a Federal office, the limitation under subsection (b) shall not apply to ordinary and necessary expenses of travel of the candidate and the candidate's spouse and children between Washington, District of Columbia, and the candidate's State in connection with the candidate's activities as a holder of Federal office.

"SEC. 504. BENEFITS FOR ELIGIBLE SENATE CANDIDATES.

"(a) IN GENERAL.—An eligible Senate candidate shall be entitled to—

"(1) the broadcast media rates provided under section 315(b) of the Communications Act of 1934; and

"(2) payments in an amount equal to—

"(A) the excess expenditure amount determined under subsection (b); and

"(B) the independent expenditure amount determined under subsection (c).

"(b) EXCESS EXPENDITURE AMOUNT.—

"(1) DETERMINATION.—The excess expenditure amount is—

"(A) in the case of a major party candidate, an amount equal to the sum of—

"(i) if the opponent's excess is less than 33⅓ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; plus

"(ii) if the opponent's excess equals or exceeds 33⅓ percent but is less than 66⅔ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; plus

"(iii) if the opponent's excess equals or exceeds 66⅔ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; and

"(B) in the case of an eligible Senate candidate who is not a major party candidate, an amount equal to the least of—

"(i) the amount of allowable contributions accepted by the eligible Senate candidate during the applicable period in excess of the threshold contribution requirement under section 502(e);

"(ii) 50 percent of the general election expenditure limit; or

"(iii) the opponent's excess.

"(2) DEFINITION OF OPPONENT'S EXCESS.—In this subsection, the term 'opponent's excess' means the amount by which an opponent of an eligible Senate candidate in the general election accepts contributions or makes (or obligates to make) expenditures for the election in excess of the general election expenditure limit.

"(c) INDEPENDENT EXPENDITURE AMOUNT.—The independent expenditure amount is the total amount of independent expenditures made, or obligated to be made, during the general election period by 1 or more persons in opposition to, or on behalf of an opponent of, an eligible Senate candidate that are required to be reported by the persons under section 304(d) with respect to the general election period and are certified by the Commission under section 304(d).

"(d) WAIVER OF EXPENDITURE AND CONTRIBUTION LIMITS.—

"(1) RECIPIENTS OF EXCESS EXPENDITURE AMOUNT PAYMENTS AND INDEPENDENT EXPENDITURE AMOUNT PAYMENTS.—

"(A) IN GENERAL.—An eligible Senate candidate who receives payments under subsection (a)(2) may make expenditures from the payments for the general election without regard to the general election expenditure limit.

"(B) NONMAJOR PARTY CANDIDATES.—In the case of an eligible Senate candidate who is not a major party candidate, the general election expenditure limit shall be increased by the amount (if any) by which the opponent's excess expenditure amount exceeds

the amount determined under subsection (b)(2)(B) with respect to the candidate.

"(2) ALL BENEFIT RECIPIENTS.—

"(A) IN GENERAL.—An eligible Senate candidate who receives benefits under this section may make expenditures for the general election without regard to the personal funds expenditure limit or general election expenditure limit if any 1 of the eligible Senate candidate's opponents who is not an eligible Senate candidate raises an amount of contributions or makes or becomes obligated to make an amount of expenditures for the general election that exceeds 200 percent of the general election expenditure limit.

"(B) LIMITATION.—The amount of the expenditures that may be made by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit.

"(3) ACCEPTANCE OF CONTRIBUTION WITHOUT REGARD TO SECTION 502(c)(1)(D)(iii).—

"(A) A candidate who receives benefits under this section may accept a contribution for the general election without regard to section 502(c)(1)(D)(iii) if—

"(i) a major party candidate in the same general election is not an eligible Senate candidate; or

"(ii) any other candidate in the same general election who is not an eligible Senate candidate raises an amount of contributions or makes or becomes obligated to make an amount of expenditures for the general election that exceeds 75 percent of the general election expenditure limit applicable to such other candidate.

"(B) LIMITATION.—The amount of contributions that may be received by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit.

"(e) USE OF PAYMENTS.—

"(1) PERMITTED USE.—Payments received by an eligible Senate candidate under subsection (a)(2) shall be used to make expenditures with respect to the general election period for the candidate.

"(2) PROHIBITED USE.—Payments received by an eligible Senate candidate under subsection (a)(2) shall not be used—

"(A) except as provided in paragraph (4), to make any payments, directly or indirectly, to the candidate or to any member of the immediate family of the candidate;

"(B) to make any expenditure other than an expenditure to further the general election of the candidate;

"(C) to make an expenditure the making of which constitutes a violation of any law of the United States or of the State in which the expenditure is made; or

"(D) subject to section 315(i), to repay any loan to any person except to the extent that proceeds of the loan were used to further the general election of the candidate.

"SEC. 505. CERTIFICATION BY THE COMMISSION.

"(a) CERTIFICATION OF STATUS AS ELIGIBLE SENATE CANDIDATE.—

"(1) IN GENERAL.—The Commission shall certify to any candidate meeting the requirements of section 502 that the candidate is an eligible Senate candidate entitled to benefits under this title.

"(2) REVOCATION.—The Commission shall revoke a certification under paragraph (1) if the Commission determines that a candidate fails to continue to meet the requirements of section 502.

"(b) CERTIFICATION OF ELIGIBILITY TO RECEIVE BENEFITS.—

"(1) IN GENERAL.—Not later than 48 hours after an eligible Senate candidate files a request with the Secretary of the Senate to receive benefits under section 504, the Commission shall issue a certification stating whether the candidate is eligible for payments under this title and the amount of such payments to which such candidate is entitled.

"(2) CONTENTS OF REQUEST.—A request under paragraph (1) shall—

"(A) contain such information and be made in accordance with such procedures as the Commission may provide by regulation; and

"(B) contain a verification signed by the candidate and the treasurer of the principal campaign committee of the candidate stating that the information furnished in support of the request, to the best of their knowledge, is correct and fully satisfies the requirements of this title.

"(c) DETERMINATIONS BY THE COMMISSION.—All determinations made by the Commission under this title (including certifications under subsections (a) and (b)) shall be final and conclusive, except to the extent that a determination is subject to examination and audit by the Commission under section 506 and judicial review under section 507.

"SEC. 506. EXAMINATIONS AND AUDITS; REPAYMENTS; CIVIL PENALTIES.

"(a) EXAMINATIONS AND AUDITS.—

"(1) AFTER A GENERAL ELECTION.—After each general election, the Commission shall conduct an examination and audit of the campaign accounts of all candidates in 5 percent of the elections to the Senate in which there was an eligible Senate candidate on the ballot, as designated by the Commission through the use of an appropriate statistical method of random selection, to determine whether the candidates have complied with the conditions of eligibility and other requirements of this title.

"(2) AFTER A SPECIAL ELECTION.—After each special election in which an eligible Senate candidate was on the ballot, the Commission shall conduct an examination and audit of the campaign accounts of all candidates in the election to determine whether the candidates have complied with the conditions of eligibility and other requirements of this title.

"(3) WITH REASON TO BELIEVE THERE MAY HAVE BEEN A VIOLATION.—The Commission may conduct an examination and audit of the campaign accounts of any eligible Senate candidate in a general election if the Commission determines that there exists reason to believe that the eligible Senate candidate failed to comply with this title.

"(b) EXCESS PAYMENT.—If the Commission determines any payment was made to an eligible Senate candidate under this title in excess of the aggregate amounts to which the eligible Senate candidate was entitled, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the excess.

"(c) REVOCATION OF STATUS.—If the Commission revokes the certification of an eligible Senate candidate as an eligible Senate candidate under section 505(a)(1), the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the payments received under this title.

"(d) MISUSE OF BENEFIT.—If the Commission determines that any amount of any benefit made available to an eligible Senate candidate under this title was not used as provided for in this title, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay the amount of that amount.

"(e) EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate who received benefits under this title made expenditures that in the aggregate exceed the primary election expenditure, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the amount of the excess expenditures.

"(f) CIVIL PENALTIES.—

"(1) MISUSE OF BENEFIT.—If the Commission determines that an eligible Senate candidate has committed a violation described in subsection (d), the Commission may assess a civil penalty against the eligible Senate candidate in an amount not greater than 200 percent of the amount of the benefit that was misused.

"(2) EXCESS EXPENDITURES.—

"(A) LOW AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by 2.5 percent or less the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to the amount of the excess expenditures.

"(B) MEDIUM AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by more than 2.5 percent and less than 5 percent the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to 3 times the amount of the excess expenditures.

"(C) LARGE AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by 5 percent or more the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to the amount of the excess expenditures an amount equal to the sum of—

"(i) 3 times the amount of the excess expenditures plus an additional amount determined by the Commission; plus

"(ii) if the Commission determines that the exceeding of the expenditure limit was willful, an amount equal to the amount of benefits that the eligible Senate candidate received under this title.

"(g) UNEXPENDED FUNDS.—

"(1) REPAYMENT.—Subject to paragraph (2), any amount received by an eligible Senate candidate under this title and not expended on or before the date of the general election shall be repaid not later than 30 days after the date of the general election.

"(2) RETENTION FOR PURPOSES OF LIQUIDATION OF OBLIGATIONS.—An eligible Senate candidate may retain for a period not exceeding 120 days after the date of a general election a reasonable portion of unexpended funds received under this title for the liquidation of all obligations to pay expenditures for the general election incurred during the general election period. At the end of the 120-day period, any unexpended funds received under this title shall be promptly repaid.

"(h) PAYMENTS RETURNED TO SOURCE.—Any payment, repayment, or civil penalty under this section shall be paid to the entity that afforded benefits under this title to the eligible Senate candidate.

"(i) LIMIT ON PERIOD FOR NOTIFICATION.—No notification shall be made by the Commission under this section with respect to an

election more than 3 years after the date of the election.

"SEC. 507. JUDICIAL REVIEW.

"(a) JUDICIAL REVIEW.—Any agency action by the Commission under this title shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in that court within 30 days after the date of the agency action.

"(b) APPLICATION OF TITLE 5, UNITED STATES CODE.—Chapter 7 of title 5, United States Code, shall apply to judicial review of any agency action by the Commission under this title.

"(c) AGENCY ACTION.—For purposes of this section, the term 'agency action' has the meaning given the term in section 551(13) of title 5, United States Code.

"SEC. 508. PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS.

"(a) APPEARANCES.—The Commission may appear in and defend against any action instituted under this section and under section 507 by attorneys employed in the office of the Commission or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to chapter 51 and subchapter III of chapter 53 of that title.

"(b) ACTIONS FOR RECOVERY OF AMOUNT OF BENEFITS.—The Commission, by attorneys and counsel described in subsection (a), may bring an action in United States district court to recover any amounts determined under this title to be payable to any entity that afforded a benefit to an eligible Senate candidate under this title.

"(c) ACTION FOR INJUNCTIVE RELIEF.—The Commission, by attorneys and counsel described in subsection (a), may petition the courts of the United States for such injunctive relief as is appropriate in order to implement any provision of this title.

"(d) APPEALS.—The Commission, on behalf of the United States, may appeal from, and may petition the Supreme Court for certiorari to review, any judgment or decree entered with respect to actions in which the Commission under this section.

"SEC. 509. REPORTS TO CONGRESS; REGULATIONS.

"(a) REPORTS.—

"(1) IN GENERAL.—As soon as practicable after each general election, the Commission shall submit a full report to the Senate setting forth—

"(A) the expenditures (shown in such detail as the Commission determines to be appropriate) made by each eligible Senate candidate and the authorized committees of the candidate;

"(B) the amounts certified by the Commission under section 505 as benefits available to each eligible Senate candidate; and

"(C) the amount of repayments, if any, required under section 506 and the reason why each repayment was required.

"(2) PRINTING.—Each report under paragraph (1) shall be printed as a Senate document.

"(b) REGULATIONS.—

"(1) IN GENERAL.—The Commission may issue such regulations, conduct such examinations and investigations, and require the keeping and submission of such books, records, and information, as the Commission considers necessary to carry out the functions and duties of the Commission under this title.

"(2) STATEMENT TO SENATE.—Not less than 30 days before issuing a regulation under paragraph (1), the Commission shall submit to the Senate a statement setting forth the proposed regulation and containing a detailed explanation and justification for the regulation.

"SEC. 510. CLOSED CAPTIONING IN TELEVISION BROADCASTS.

"Any television broadcast prepared or distributed by an eligible Senate candidate shall be prepared in a manner that contains, is accompanied by, or otherwise readily permits closed captioning of the oral content of the broadcast to be broadcast by way of line 21 of the vertical blanking interval or by way of a comparable successor technology.

"SEC. 511. LIMITATIONS ON PAYMENTS.

"(a) PAYMENTS ON CERTIFICATION.—On receipt of a certification from the Commission under section 505, except as provided in subsection (b), the Secretary shall, subject to the availability of appropriations, promptly pay the amount certified by the Commission to the candidate.

"(b) INSUFFICIENT FUNDS.—

"(1) WITHHOLDING.—If, at the time of a certification by the Commission under section 505 for payment to an eligible Senate candidate, the Secretary determines that there are not, or may not be, sufficient funds to satisfy the full entitlement of all eligible Senate candidates, the Secretary shall withhold from the amount of the payment such amount as the Secretary determines to be necessary to ensure that each eligible Senate candidate will receive the same pro rata share of the candidate's full entitlement.

"(2) SUBSEQUENT PAYMENT.—Amounts withheld under paragraph (1) shall be paid when the Secretary determines that there are sufficient funds to pay all or a portion of the funds withheld from all eligible Senate candidates, but, if only a portion is to be paid, the portion shall be paid in such a manner that each eligible Senate candidate receives an equal pro rata share.

"(3) NOTIFICATION OF ESTIMATED WITHHOLDING.—

"(A) ADVANCE ESTIMATE OF AVAILABLE FUNDS AND PROJECTED COSTS.—Not later than December 31 of any calendar year preceding a calendar year in which there is a regularly scheduled general election, the Secretary, after consultation with the Commission, shall make an estimate of—

"(i) the amount of funds that will be available to make payments under this title in the general election year; and

"(ii) the costs of implementing this title in the general election year.

"(B) NOTIFICATION.—If the Secretary determines under subparagraph (A) that there will be insufficient funds for any calendar year, the Secretary shall notify by registered mail each candidate for the Senate on January 1 of that year (or, if later, the date on which an individual becomes such a candidate) of the amount that the Secretary estimates will be the pro rata withholding from each eligible Senate candidate's payments under this subsection.

"(C) INCREASE IN CONTRIBUTION LIMIT.—The amount of an eligible candidate's contribution limit under section 502(c)(1)(D)(iii) shall be increased by the amount of the estimated pro rata withholding under subparagraph (B).

"(4) NOTIFICATION OF ACTUAL WITHHOLDING.—

"(A) IN GENERAL.—The Secretary shall notify the Commission and each eligible Senate candidate by registered mail of any actual reduction in the amount of any payment by reason of this subsection.

"(B) GREATER AMOUNT OF WITHHOLDING.—If the amount of a withholding exceeds the amount estimated under paragraph (3), an eligible Senate candidate's contribution limit under section 502(c)(1)(D)(iii) shall be increased by the amount of the excess.".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) shall apply to elections occurring after December 31, 1996.

(2) APPLICABILITY TO CONTRIBUTIONS AND EXPENDITURES.—For purposes of any expenditure or contribution limit imposed by the amendment made by subsection (a)—

(A) no expenditure made before January 1, 1997, shall be taken into account, except that there shall be taken into account any such expenditure for goods or services to be provided after that date; and

(B) all cash, cash items, and Government securities on hand as of January 1, 1997, shall be taken into account in determining whether the contribution limit is met, except that there shall not be taken into account amounts used during the 60-day period beginning on January 1, 1997, to pay for expenditures that were incurred (but unpaid) before that date.

(c) EFFECT OF INVALIDITY ON OTHER PROVISIONS OF TITLE.—If section 502, 503, or 504 of the Federal Election Campaign Act of 1971 (as added by subsection (a)) or any part of those sections is held to be invalid, this Act and all amendments made by this Act shall be treated as invalid.

SEC. 102. BAN ON ACTIVITIES OF POLITICAL ACTION COMMITTEES IN SENATE ELECTIONS.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

"SEC. 324. BAN ON SENATE ELECTION ACTIVITIES BY POLITICAL ACTION COMMITTEES.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, no person other than an individual or a political committee may make contributions, solicit or receive contributions, or make expenditures for the purpose of influencing an election, or nomination for election, to the office of United States Senator.

"(b) EXECUTIVE OFFICERS AND ADMINISTRATIVE EMPLOYEES.—In the case of an individual who is an executive officer or administrative employee of an employer—

"(1) the individual shall not make a contribution—

"(A) to any political committee established and maintained by any political party for use in an election, or nomination for election, to the office of United States Senator; or

"(B) to any candidate for nomination for election, or election, to the office of United States Senator or the candidate's authorized committees;

if the contribution is made at the direction of, or is otherwise controlled or influenced by, the employer; and

"(2) the individual shall not make any such contribution if the making of the contribution would cause the aggregate amount of contributions made by all executive officers and administrative employees of the employer in any calendar year to exceed—

"(A) $20,000 in the case of such political committees; and

"(B) $5,000 in the case of any such candidate and the candidate's authorized committees.".

(b) CANDIDATE'S COMMITTEES.—Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is amended by adding at the end the following:

"(9) For the purposes of the limitations under paragraphs (1) and (2), any political committee that is established or financed or maintained or controlled by any candidate or Federal officeholder shall be considered to be an authorized committee of the candidate or officeholder. Nothing in this paragraph shall be construed to permit the establishment, financing, maintenance, or control of any committee that is prohibited by paragraph (3) or (6) of section 302(e).".

(c) RULES APPLICABLE WHEN BAN NOT IN EFFECT.—For purposes of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), during any period beginning after the effective date in which the limitation under section 324 of that Act (as added by subsection (a)) is not in effect, the amendments made by subsections (a) and (b) shall not be in effect.

(d) RULE ENSURING PROHIBITION OF DIRECT CORPORATE AND LABOR ORGANIZATION SPENDING.—If section 316(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(a)) is held to be invalid by reason of the amendments made by this section, the amendments made by subsections (a) and (b) shall not apply to contributions by any political committee that is directly or indirectly established, administered, or supported by a connected organization that is a bank, corporation, or other organization described in section 316(a) of that Act.

(e) RESTRICTIONS ON CONTRIBUTIONS TO POLITICAL COMMITTEES.—Paragraphs (1)(D) and (2)(D) of section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)), as redesignated by section 312, are amended by striking "$5,000" and inserting "$1,000".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elections (and the election cycles relating thereto) occurring after December 31, 1996.

(2) APPLICABILITY.—In applying the amendments made by this section, there shall not be taken into account—

(A) a contribution made or received before January 1, 1997; or

(B) a contribution made to, or received by, a candidate on or after January 1, 1997, to the extent that the aggregate amount of such contributions made to or received by the candidate is not greater than the excess (if any) of—

(i) the aggregate amount of such contributions made to or received by any opponent of the candidate before January 1, 1997; over

(ii) the aggregate amount of such contributions made to or received by the candidate before January 1, 1997.

SEC. 103. REPORTING REQUIREMENTS.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 304 the following:

"SEC. 304A. REPORTING REQUIREMENTS FOR SENATE CANDIDATES.

"(a) MEANINGS OF TERMS.—Any term used in this section that is used in title V shall have the same meaning as when used in title V.

"(b) CANDIDATE OTHER THAN ELIGIBLE SENATE CANDIDATE.—

"(1) DECLARATION OF INTENT.—A candidate for the office of Senator who does not file a certification with the Secretary of the Senate under section 502(c) shall, at the time provided in section 501(c)(2), file with the Secretary of the Senate a declaration as to whether the candidate intends to make expenditures for the general election in excess of the general election expenditure limit.

"(2) REPORTS.—

"(A) INITIAL REPORT.—A candidate for the Senate who qualifies for the ballot for a general election—

"(i) who is not an eligible Senate candidate under section 502; and

"(ii) who receives contributions in an aggregate amount or makes or obligates to make expenditures in an aggregate amount for the general election that exceeds 75 percent of the general election expenditure limit;

shall file a report with the Secretary of the Senate within 2 business days after aggregate contributions have been received or aggregate expenditures have been made or obligated to be made in that amount (or, if later, within 2 business days after the date of qualification for the general election ballot), setting forth the candidate's aggregate amount of contributions received and aggregate amount of expenditures made or obligated to be made for the election as of the date of the report.

"(B) ADDITIONAL REPORTS.—After an initial report is filed under subparagraph (A), the candidate shall file additional reports (until the amount of such contributions or expenditures exceeds 200 percent of the general election expenditure limit) with the Secretary of the Senate within 2 business days after each time additional contributions are received, or expenditures are made or are obligated to be made, that in the aggregate exceed an amount equal to 10 percent of the general election expenditure limit and after the aggregate amount of contributions or expenditures exceeds 100, 133⅓, 166⅔, and 200 percent of the general election expenditure limit.

"(3) NOTIFICATION OF OTHER CANDIDATES.—The Commission—

"(A) shall, within 2 business days after receipt of a declaration or report under paragraph (1) or (2), notify each eligible Senate candidate of the filing of the declaration or report; and

"(B) if an opposing candidate has received aggregate contributions, or made or obligated to make aggregate expenditures, in excess of the general election expenditure limit, shall certify, under subsection (e), the eligibility for payment of any amount to which an eligible Senate candidate in the general election is entitled under section 504(a).

"(4) ACTION BY THE COMMISSION ABSENT REPORT.—

"(A) IN GENERAL.—Notwithstanding the reporting requirements under this subsection, the Commission may make its own determination that a candidate in a general election who is not an eligible Senate candidate has raised aggregate contributions, or made or has obligated to make aggregate expenditures, in the amounts that would require a report under paragraph (2).

"(B) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—The Commission shall—

"(i) within 2 business days after making a determination under subparagraph (A), notify each eligible Senate candidate in the general election of the making of the determination; and

"(ii) when the aggregate amount of contributions or expenditures exceeds the general election expenditure limit, certify under subsection (e) an eligible Senate candidate's eligibility for payment of any amount under section 504(a).

"(c) REPORTS ON PERSONAL FUNDS.—

"(1) FILING.—A candidate for the Senate who, during an election cycle, expends more than the personal funds expenditure limit during the election cycle shall file a report with the Secretary of the Senate within 2 business days after expenditures have been made or loans incurred in excess of the personal funds expenditure limit.

"(2) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—Within 2 business days after a report has been filed under paragraph (1), the Commission shall notify each eligible Senate candidate in the general election of the filing of the report.

"(3) ACTION BY THE COMMISSION ABSENT REPORT.—

"(A) IN GENERAL.—Notwithstanding the reporting requirements under this subsection, the Commission may make its own determination that a candidate for the Senate has made expenditures in excess of the amount under paragraph (1).

"(B) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—Within 2 business days after making a determination under subparagraph (A), the Commission shall notify each eligible Senate candidate in the general election of the making of the determination.

"(d) CANDIDATES FOR OTHER OFFICES.—

"(1) FILING.—Each individual—

"(A) who becomes a candidate for the office of United States Senator;

"(B) who, during the election cycle for that office, held any other Federal, State, or local office or was a candidate for any such office; and

"(C) who expended any amount during the election cycle before becoming a candidate for the office of United States Senator that would have been treated as an expenditure if the individual had been such a candidate (including amounts for activities to promote the image or name recognition of the individual);

shall, within 7 days after becoming a candidate for the office of United States Senator, report to the Secretary of the Senate the amount and nature of such expenditures.

"(2) APPLICABILITY.—Paragraph (1) shall not apply to any expenditures in connection with a Federal, State, or local election that has been held before the individual becomes a candidate for the office of United States Senator.

"(3) DETERMINATION.—The Commission shall, as soon as practicable, make a determination as to whether any amounts reported under paragraph (1) were made for purposes of influencing the election of the individual to the office of Senator.

"(4) CERTIFICATION.—The Commission shall certify to the individual and the individual's opponents the amounts the Commission determines to be described in paragraph (3), and such amounts shall be treated as expenditures for purposes of this Act.

"(e) BASIS OF CERTIFICATIONS.—Notwithstanding section 505(a), the certification required by this section shall be made by the Commission on the basis of reports filed in accordance with this Act or on the basis of the Commission's own investigation or determination.

"(f) SHORTER PERIODS FOR REPORTS AND NOTICES DURING ELECTION WEEK.—Any report, determination, or notice required by reason of an event occurring during the 7-day period ending on the date of the general election shall be made within 24 hours (rather than 2 business days) of the event.

"(g) COPIES OF REPORTS AND PUBLIC INSPECTION.—The Secretary of the Senate shall—

"(1) transmit a copy of any report or filing received under this section or under title V as soon as possible (but not later than 4 working hours of the Commission) after receipt of the report or filing;

"(2) make the report or filing available for public inspection and copying in the same

manner as the Commission under section 311(a)(4); and

"(3) preserve the reports and filings in the same manner as the Commission under section 311(a)(5).".

SEC. 104. DISCLOSURE BY CANDIDATES OTHER THAN ELIGIBLE SENATE CANDIDATES.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) (as amended by section 113) is amended by adding at the end the following:

"(e) DISCLOSURE BY CANDIDATES OTHER THAN ELIGIBLE SENATE CANDIDATES.—A broadcast, cablecast, or other communication that is paid for or authorized by a candidate in the general election for the office of United States Senator who is not an eligible Senate candidate, or the authorized committee of such a candidate, shall contain the following sentence: 'This candidate has not agreed to voluntary campaign spending limits.'.".

SEC. 105. EXCESS CAMPAIGN FUNDS OF SENATE CANDIDATES.

Section 313 of the Federal Election Campaign Act of 1971 (2 U.S.C. 439a) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Amounts" and adjusting the margin appropriately; and

(2) by adding at the end the following:

"(b) DISPOSITION OF EXCESS CAMPAIGN FUNDS.—

"(1) Except as provided in paragraph (2), and notwithstanding subsection (a), a candidate for the Senate who has amounts in excess of amounts necessary to defray expenditures for an election cycle, including any fines or penalties relating thereto, shall, not later than 1 year after the date of the general election for the election cycle—

"(A) expend the excess in the manner described in subsection (a); or

"(B) pay the excess to the general fund of the Treasury of the United States.

"(2) APPLICABILITY.—Paragraph (1) shall not apply to any amount—

"(A) that is transferred to a legal and accounting compliance fund under section 503(c); or

"(B) that is transferred for use in the next election cycle, to the extent that the amount transferred does not exceed 20 percent of the sum of the primary election expenditure limit under section 501(d)(1)(A) and the general election expenditure limit for the election cycle from which the amounts are transferred.".

SEC. 106. CONTRIBUTION LIMIT FOR ELIGIBLE SENATE CANDIDATES.

Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)) is amended—

(1) in subparagraph (A), by inserting "except as provided in subparagraph (B)," before "to";

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(3) by inserting after subparagraph (A) the following:

"(B) to an eligible Senate candidate (as defined in section 501) and the authorized political committees of the candidate which, in the aggregate, exceed $2,000, if an opponent of the eligible Senate candidate fails to comply with the expenditure limits contained in this Act and has received contributions in excess of 10 percent of the general election limits contained in this Act or has expended personal funds in excess of 10 percent of the general election limits contained in this Act;".

Subtitle B—General Provisions

SEC. 111. BROADCAST RATES AND PREEMPTION.

(a) BROADCAST RATES.—Section 315(b) of the Communications Act of 1934 (47 U.S.C. 315(b)) is amended—

(1) by striking "(b) The charges" and inserting the following:

"(b) BROADCAST MEDIA RATES.—

"(1) IN GENERAL.—The charges";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margins accordingly;

(3) in paragraph (1)(A) (as redesignated by paragraph (2))—

(A) by striking "forty-five" and inserting "30"; and

(B) by striking "lowest unit charge of the station for the same class and amount of time for the same period" and inserting "lowest charge of the station for the same amount of time for the same period on the same date"; and

(4) by adding at the end the following:

"(2) ELIGIBLE SENATE CANDIDATES.—

"(A) IN GENERAL.—In the case of an eligible Senate candidate (as described in section 501 of the Federal Election Campaign Act), the charges for the use of a television broadcasting station during the 30-day period and 60-day period referred to in paragraph (1)(A) shall not exceed 50 percent of the lowest charge described in paragraph (1)(A).

"(B) APPLICABILITY.—Subparagraph (A) shall not apply to broadcasts that are to be paid from amounts received under section 504(a)(2)(B) of the Federal Election Campaign Act of 1971.".

(b) PREEMPTION; ACCESS.—Section 315 of the Communications Act of 1947 (47 U.S.C. 315) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

"(c) PREEMPTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased and paid for such use pursuant to subsection (b)(1).

"(2) CIRCUMSTANCES BEYOND CONTROL OF LICENSEE.—If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the broadcasting station, any candidate advertising spot scheduled to be broadcast during that program may also be preempted.".

(c) REVOCATION OF LICENSE FOR FAILURE TO PERMIT ACCESS.—Section 312(a)(7) of the Communications Act of 1947 (47 U.S.C. 312(a)(7)) is amended—

(1) by striking "or repeated";

(2) by inserting "or cable system" after "broadcasting station"; and

(3) by striking "his candidacy" and inserting "his or her candidacy, under the same terms, conditions, and business practices as apply to the broadcasting station's most favored advertiser".

SEC. 112. REPORTING REQUIREMENTS FOR CERTAIN INDEPENDENT EXPENDITURES.

(a) IN GENERAL.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (as amended by section 608) is amended by adding at the end the following:

"(e) TIME FOR REPORTING CERTAIN EXPENDITURES.—

"(1) EXPENDITURES AGGREGATING $1,000.—A person that makes independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before an election shall file a report describing the expenditures within 24 hours after that amount of independent expenditures has been made.

"(2) EXPENDITURES AGGREGATING $10,000.—

"(A) INITIAL REPORT.—A person that makes independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before an election shall file a report describing the expenditures within 48 hours that amount of independent expenditures has been made.

"(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person filing the report shall file an additional report each time that independent expenditures aggregating an additional $10,000 are made with respect to the same election as that to which the initial report relates.

"(3) PLACE OF FILING; CONTENTS; TRANSMITTAL.—

"(A) PLACE OF FILING; CONTENTS.—A report under this subsection—

"(i) shall be filed with the Secretary of the Senate or the Commission, and the Secretary of State of the candidate's State; and

"(ii) shall contain the information required by subsection (b)(6)(B)(iii), including whether each independent expenditure was made in support of, or in opposition to, a candidate.

"(B) TRANSMITTAL.—

"(i) TO THE COMMISSION.—As soon as possible (but not later than 4 working hours of the Commission) after receipt of a report under this subsection, the Secretary of the Senate shall transmit the report to the Commission.

"(ii) TO CANDIDATES.—Not later than 48 hours after receipt of a report under this subsection, the Commission shall transmit a copy of the report to each candidate seeking nomination for election to, or election to, the office in question.

"(4) OBLIGATION TO MAKE EXPENDITURE.—For purposes of this subsection, an expenditure shall be treated as being made when it is made or obligated to be made.

"(5) ADVANCE NOTICE OF INTENTION TO MAKE INDEPENDENT EXPENDITURES.—

"(A) IN GENERAL.—A person that intends to make independent expenditures totaling $5,000 or more during the 20 days before an election shall file a notice of that intention not later than the 20th day before the election.

"(B) PLACE OF FILING; CONTENTS; TRANSMITTAL.—

"(i) PLACE OF FILING; CONTENTS.—A statement under subparagraph (A)—

"(I) shall be filed with the Secretary of the Senate or the Commission, and the Secretary of State of the candidate's State; and

"(II) shall identify each candidate whom the expenditure will support or oppose.

"(ii) TRANSMITTAL.—

"(I) TO THE COMMISSION.—As soon as possible (but not later than 4 working hours of the Commission) after receipt of a notice of intention under this paragraph, the Commission shall transmit the notice to the Commission.

"(II) TO CANDIDATES.—Not later than 48 hours after the receipt of a notice of intention under this paragraph, the Commission shall transmit a copy of the notice to each candidate identified in the notice.

"(6) DETERMINATIONS BY THE COMMISSION.—

"(A) IN GENERAL.—The Commission may make its own determination that a person has made, or has incurred obligations to make, independent expenditures with respect to any Federal election that in the aggregate exceed the applicable amounts under paragraph (1) or (2).

"(B) NOTIFICATION.—The Commission shall notify each candidate in the election of the

making of the determination within 24 hours after making the determination.

"(7) CERTIFICATION OF ELIGIBILITY TO RECEIVE BENEFITS.—At the same time as a candidate is notified under paragraph (3), (5), or (6) with respect to expenditures during a general election period, the Commission shall certify eligibility to receive benefits under section 504(a).

"(8) PUBLIC AVAILABILITY; PRESERVATION.—The Secretary of the Senate shall make any report or notice of intention received under this subsection available for public inspection and copying in the same manner as under section 311(a)(4), and shall preserve the reports and notices in the same manner as under section 311(a)(5).".

(b) CONFORMING AMENDMENT.—Section 304(c)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(c)(2)) is amended by striking the undesignated matter after subparagraph (C).

SEC. 113. CAMPAIGN ADVERTISING AMENDMENTS.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) is amended—

(1) in subsection (a)—

(A) by striking "Whenever" and inserting the following:

"(a) DISCLOSURE.—When a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or when";

(B) by striking "an expenditure" and inserting "a disbursement";

(C) by striking "direct"; and

(D) in paragraph (3), by inserting "and permanent street address" after "name";

(2) in subsection (b), by inserting "SAME CHARGE AS CHARGE FOR COMPARABLE USE.—" before "No"; and

(3) by adding at the end the following:

"(c) REQUIREMENTS FOR PRINTED COMMUNICATIONS.—A printed communication described in subsection (a) shall be—

"(1) of sufficient type size to be clearly readable by the recipient of the communication;

"(2) contained in a printed box set apart from the other contents of the communication; and

"(3) consist of a reasonable degree of color contrast between the background and the printed statement.

"(d) REQUIREMENTS FOR BROADCAST AND CABLECAST COMMUNICATIONS.—

"(1) PAID FOR OR AUTHORIZED BY THE CANDIDATE.—

"(A) IN GENERAL.—A broadcast or cablecast communication described in paragraph (1) or (2) of subsection (a) shall include, in addition to the requirements of those paragraphs, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

"(B) TELEVISED COMMUNICATIONS.—A broadcast or cablecast communication described in paragraph (1) that is broadcast or cablecast by means of television shall include, in addition to the audio statement under subparagraph (A), a written statement—

"(i) that states: 'I [name of candidate] am a candidate for [the office the candidate is seeking], and I have approved this message';

"(ii) that appears at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds; and

"(iii) that is accompanied by a clearly identifiable photographic or similar image of the candidate.

"(2) NOT PAID FOR OR AUTHORIZED BY THE CANDIDATE.—A broadcast or cablecast communication described in subsection (a)(3) shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the statement—

'_____ is responsible for the content of this advertisement.';

with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor; and, if the communication is broadcast or cablecast by means of television, the statement shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.".

SEC. 114. DEFINITIONS.

(a) IN GENERAL.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by striking paragraph (19) and inserting the following:

"(19) The term 'general election'—

"(A) means an election that will directly result in the election of a person to a Federal office; and

"(B) includes a primary election that may result in the election of a person to a Federal office.

"(20) The term 'general election period' means, with respect to a candidate, the period beginning on the day after the date of the primary or runoff election for the specific office that the candidate is seeking, whichever is later, and ending on the earlier of—

"(A) the date of the general election; or

"(B) the date on which the candidate withdraws from the campaign or otherwise ceases actively to seek election.

"(21) The term 'immediate family' means—

"(A) a candidate's spouse;

"(B) a child, stepchild, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate or the candidate's spouse; and

"(C) the spouse of any person described in subparagraph (B).

"(22) The term 'major party' has the meaning given the term in section 9002(6) of the Internal Revenue Code of 1986, except that if a candidate qualified for the ballot in a general election in an open primary in which all the candidates for the office participated and which resulted in the candidate and at least 1 other candidate's qualifying for the ballot in the general election, the candidate shall be treated as a candidate of a major party for purposes of title V.

"(23) The term 'primary election' means an election that may result in the selection of a candidate for the ballot in a general election for a Federal office.

"(24) The term 'primary election period' means, with respect to a candidate, the period beginning on the day following the date of the last election for the specific office that the candidate is seeking and ending on the earlier of—

"(A) the date of the first primary election for that office following the last general election for that office; or

"(B) the date on which the candidate withdraws from the election or otherwise ceases actively to seek election.

"(25) The term 'runoff election' means an election held after a primary election that is prescribed by applicable State law as the means for deciding which candidate will be on the ballot in the general election for a Federal office.

"(26) The term 'runoff election period' means, with respect to any candidate, the period beginning on the day following the date of the last primary election for the specific office that the candidate is seeking and ending on the date of the runoff election for that office.

"(27) The term 'voting age population' means the number of residents of a State who are 18 years of age or older, as certified under section 315(e).

"(28) The term 'election cycle' means—

"(A) in the case of a candidate or the authorized committees of a candidate, the period beginning on the day after the date of the most recent general election for the specific office or seat that the candidate is seeking and ending on the date of the next general election for that office or seat; and

"(B) in the case of all other persons, the period beginning on the first day following the date of the last general election and ending on the date of the next general election.".

(b) IDENTIFICATION.—Section 301(13) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(13)) is amended by striking "mailing address" and inserting "permanent residence address".

SEC. 115. PROVISIONS RELATING TO FRANKED MASS MAILINGS.

Section 3210(a)(6)(C) of title 39, United States Code, is amended—

(1) by striking "if the mass mailing is postmarked fewer than 60 days immediately before the date" and inserting "if the mass mailing is postmarked during the calendar year"; and

(2) by inserting "or reelection" before the period.

TITLE II—INDEPENDENT EXPENDITURES

SEC. 201. DEFINITION OF INDEPENDENT EXPENDITURE.

Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by striking paragraph (17) and inserting the following:

"(17) INDEPENDENT EXPENDITURE.—

"(A) IN GENERAL.—The term "independent expenditure" means an expenditure by a person other than a candidate or candidate's authorized committee—

"(i) that is made for a communication that contains express advocacy; and

"(ii) is made without the participation or cooperation of and without coordination with a candidate.

"(B) EXPRESS ADVOCACY.—The term 'express advocacy' means a communication advocating the election or defeat of a clearly identified candidate and includes any communication that—

"(i)(I) contains a phrase such as 'vote for', 're-elect', 'support', 'cast your ballot for', '(name of candidate) for Congress', '(name of candidate) in 1997', 'vote against', 'defeat', 'reject';

"(II) recommends a position on an issue and clearly identifies 1 or more candidates as supporting or opposing that position; or

"(III) contains campaign slogans or individual words that in context can have no reasonable meaning other than to recommend the election or defeat of 1 or more clearly identified candidates;

"(ii) clearly identifies 1 or more candidates and is broadcast by a radio broadcast station or a television broadcast station (including a cable system) within 60 calendar days preceding the date of an election (or with respect to a candidate for the office of Vice President or President in a general election, within 90 calendar days preceding the date of the general election); or

"(iii) taken as a whole and with limited reference to external events, such as proximity to an election, expresses unmistakable

support for or opposition to 1 or more clearly identified candidates.

"(C) WITHOUT THE PARTICIPATION OR COOPERATION OF AND WITHOUT COORDINATION WITH A CANDIDATE.—The term 'without the participation or cooperation of and without coordination with a candidate', with respect to an expenditure, means an expenditure that is made—

"(i) without any request or suggestion from or any involvement of a candidate or candidate's representative;

"(ii) without the involvement of any person who, during the election cycle in which the expenditure is made, has raised funds on behalf of the candidate, counseled or advised the candidate or the candidate's representative regarding the election (other than to provide legal and accounting services to ensure compliance with this Act), engaged in campaign-related research or polling analysis with respect to the election, or communicated with or received information from the candidate or the candidate's representative about the candidate's plans, resources, expenditures, or needs regarding the election; and

"(iii) without the involvement of any person who received compensation, during the election cycle in which the expenditure is made, from the candidate or candidate's representative and from the person making the independent expenditure.".

SEC. 202. INDEPENDENT VERSUS COORDINATED EXPENDITURES BY POLITICAL PARTY COMMITTEES.

(a) DEFINITION OF COORDINATED EXPENDITURE.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by adding at the end the following:

"(19) COORDINATED EXPENDITURE.—The term 'coordinated expenditure' means an expenditure that is made by a person other than the candidate and that is not an independent expenditure.".

(b) INDEPENDENT VERSUS COORDINATED EXPENDITURES BY POLITICAL PARTY COMMITTEES.—Section 315(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(d)) is amended—

(1) in paragraph (1) by striking "and (3)" and inserting ", (3) and (4)"; and

(2) by adding at the end the following:

"(4) PROHIBITION AGAINST MAKING BOTH COORDINATED EXPENDITURES AND INDEPENDENT EXPENDITURES.—

"(A) IN GENERAL.—A committee of a political party shall not make both a coordinated expenditure and an independent expenditure with respect to the same candidate during a single election cycle.

"(B) CERTIFICATION.—Before making a coordinated expenditure or an independent expenditure with respect to a candidate, a committee of a political party that is subject to this subsection shall file with the Commission a certification, signed by the treasurer, stating whether the committee will make coordinated expenditures or independent expenditures with respect to the candidate.

"(C) TRANSFERS.—A party committee that certifies under this paragraph that the committee will make coordinated expenditures with respect to a candidate shall not, in the same election cycle, make a transfer of funds to, or receive a transfer of funds from, any other party committee that has certified under this paragraph that it will make independent expenditures with respect to the candidate.".

SEC. 203. TREATMENT OF QUALIFIED NONPROFIT CORPORATIONS.

Section 316 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b) is amended by adding at the end the following:

"(c) EXCEPTION FOR CERTAIN TAX-EXEMPT CORPORATIONS.—

"(1) IN GENERAL.—Notwithstanding the prohibitions of this section, a qualified nonprofit corporation may make an independent expenditure.

"(2) DEFINITION OF QUALIFIED NONPROFIT CORPORATION.—For purposes of this Act, the term 'qualified nonprofit corporation' means a corporation that meets the following requirements:

"(A) TAX-EXEMPT STATUS.—The corporation is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 and is described in section 501(c)(4) of the Code.

"(B) PURPOSES.—The corporation is organized exclusively to promote specific political ideas.

"(C) NO TRADE OR BUSINESS.—The corporation does not engage in any activity that constitutes a trade or business.

"(D) ESTABLISHMENT.—The corporation was not established by—

"(i) a corporation that is carrying on a trade or business;

"(ii) a labor organization; or

"(iii) a business league or other organization described in section 501(c)(6) of the Internal Revenue Code of 1986.

"(E) CONTRIBUTIONS.—The corporation does not accept, directly or indirectly, donations of anything of value from any corporation, labor organization or organization described in subparagraph (D)(iii), and does not serve, directly or indirectly, as a conduit for expenditures by such entities.

"(F) CLAIMS AND INCENTIVES.—The corporation—

"(i) has no shareholder or other person, other than an employee or creditor without an ownership interest, whose affiliation could allow a claim on the assets or earnings of such corporation; and

"(ii) offers no incentives or disincentives for persons to associate or not to associate with the corporation other than the positions of the corporation on political issues.

"(3) STATUS AS POLITICAL COMMITTEE.—If a qualified nonprofit corporation meets the qualifications of section 301(4), the corporation shall be treated as a political committee.

"(4) DISCLOSURE TO DONORS.—All solicitations of donations by the qualified nonprofit corporation shall inform potential donors that donations may be used by the corporation for political purposes, such as supporting or opposing candidates for public office.".

SEC. 204. EQUAL BROADCAST TIME.

Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended by striking subsection (a) and inserting the following:

"(a) EQUAL OPPORTUNITY TO USE BROADCASTING STATION.—

"(1) IN GENERAL.—A licensee that permits any person who is a legally qualified candidate for public office to use a broadcasting station (other than any use required to be provided under paragraph (2)) shall afford equal opportunities to all other such candidates for that office in the use of the broadcasting station.

"(2) INDEPENDENT EXPENDITURES.—

"(A) INFORMATION TO BE PROVIDED TO LICENSEE BY PERSON RESERVING BROADCAST TIME.—A person that reserves broadcast time the payment for which would constitute an independent expenditure (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) shall—

"(i) inform the licensee that payment for the broadcast time will constitute an independent expenditure;

"(ii) inform the licensee of the names of all candidates for the office to which the proposed broadcast relates and state whether the message to be broadcast is intended to be made in support of or in opposition to each such candidate; and

"(iii) provide the licensee a copy of the statement described in section 304(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(d)).

"(B) RESPONSE BY LICENSEE.—A licensee that is informed as described in subparagraph (A) shall—

"(i) if any of the candidates described in subparagraph (A)(ii) has provided the licensee the name and address of a person to whom notification under this subparagraph is to be given—

"(I) notify the person of the proposed making of the independent expenditure; and

"(II) allow any such candidate (other than a candidate for whose benefit the independent expenditure is made) to purchase the same amount of broadcast time immediately after the broadcast time paid for by the independent expenditure; and

"(ii) in the case of an opponent of a candidate for whose benefit the independent expenditure is made who certifies to the licensee that the opponent is eligible to have the cost of response broadcast time paid using funds derived from a payment made under section 504(a)(2)(B) of the Federal Election Campaign Act of 1971, afford the opponent such broadcast time without requiring payment in advance and at the cost specified in subsection (b).

"(3) NO CENSORSHIP.—A licensee shall have no power of censorship over the material broadcast under this section.

"(4) NO OBLIGATION.—Except as provided in paragraph (2), no obligation is imposed under this subsection on any licensee to allow the use of its station by any candidate.

"(5) CERTAIN APPEARANCES NOT CONSIDERED USE OF BROADCASTING STATION.—

"(A) IN GENERAL.—An appearance by a legally qualified candidate on a—

"(i) bona fide newscast;

"(ii) bona fide news interview;

"(iii) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

"(iv) on-the-spot coverage of bona fide news events (including political conventions and activities incidental thereto);

shall not be considered to be use of a broadcasting station within the meaning of this subsection.

"(B) NO RELIEF FROM OTHER OBLIGATIONS.—Nothing in subparagraph (A) relieves a licensee, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

"(6) ENDORSEMENT OF CANDIDATE BY LICENSEE.—

"(A) IN GENERAL.—A licensee that endorses a candidate for Federal office in an editorial shall, within the time stated in subparagraph (B), provide to all other candidates for election to the same office—

"(i) notice of the date and time of broadcast of the editorial;

"(ii) a taped or printed copy of the editorial; and

"(iii) a reasonable opportunity to broadcast a response using the licensee's facilities.

"(B) TIME FOR RESPONSE.—

"(i) 72 HOURS OR MORE BEFORE ELECTION.—In the case of an editorial described in subparagraph (A) that is first broadcast 72 hours or more before the date of a primary, runoff, or general election, the notice and copy described in subparagraph (A) (i) and (ii) shall be provided not later than 24 hours after the time of the first broadcast of the editorial.

"(ii) LESS THAN 72 HOURS BEFORE ELECTION.—In the case of an editorial described in subparagraph (A) that is first broadcast less than 72 hours before the date of an election, the notice and copy shall be provided at a time prior to the first broadcast that will be sufficient to enable candidates a reasonable opportunity to prepare and broadcast a response.".

TITLE III—EXPENDITURES

Subtitle A—Personal Funds; Credit

SEC. 301. CONTRIBUTIONS AND LOANS FROM PERSONAL FUNDS.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following:

"(i) LIMITATIONS ON REPAYMENT OF LOANS AND RETURN OF CONTRIBUTIONS FROM PERSONAL FUNDS.—

"(1) REPAYMENT OF LOANS.—If a candidate or a member of the candidate's immediate family made a loan to the candidate or to the candidate's authorized committees during an election cycle, no contribution received after the date of the general election for the election cycle may be used to repay the loan.

"(2) RETURN OF CONTRIBUTIONS.—No contribution by a candidate or member of the candidate's immediate family may be returned to the candidate or member other than as part of a pro rata distribution of excess contributions to all contributors.".

SEC. 302. EXTENSIONS OF CREDIT.

Section 301(8)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(A)) (as amended by section 201(b)), is amended—

(1) by striking "or" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; or"; and

(3) by inserting at the end the following:

"(iv) with respect to a candidate and the candidate's authorized committees, any extension of credit for goods or services relating to advertising on a broadcasting station, in a newspaper or magazine, or by a mailing, or relating to other similar types of general public political advertising, if the extension of credit is—

"(I) in an amount greater than $1,000; and

"(II) for a period greater than the period, not in excess of 60 days, for which credit is generally extended in the normal course of business after the date on which the goods or services are furnished or the date of a mailing.".

Subtitle B—Soft Money of Political Parties

SEC. 311. PREPARATION AND DISTRIBUTION BY VOLUNTEERS OF MATERIALS IN CONNECTION WITH STATE AND LOCAL POLITICAL PARTY VOTER REGISTRATION AND GET-OUT-THE-VOTE ACTIVITIES SO AS NOT TO BE CONSIDERED A CONTRIBUTION OR EXPENDITURE.

(a) CONTRIBUTION.—Section 301(8)(B)(xii) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(B)(xii)) is amended—

(1) by striking "such committee" and inserting "the committee in connection with volunteer activities";

(2) by striking ": *Provided*, That" and inserting "if";

(3) by redesignating the items designated as items "(1)", "(2)", and "(3)", respectively, as subclauses (I), (II), and (III);

(4) by striking "and" at the end of subclause (II) (as redesignated);

(5) by inserting "and" at the end of subclause (III) (as redesignated); and

(6) by adding at the end the following:

"(IV) the activities are conducted solely by, and any materials are distributed solely by, volunteers;".

(b) EXPENDITURE.—Section 301(9)(B)(ix) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(9)(B)(ix)) is amended—

(1) by striking "such committee" and inserting "the committee in connection with volunteer activities";

(2) by striking ": *Provided*, That" and inserting "if";

(3) by redesignating the items designated as items "(1)", "(2)", and "(3)", respectively, as subclauses (I), (II), and (III);

(4) by striking "and" at the end of subclause (II) (as redesignated);

(5) by inserting "and" at the end of subclause (III) (as redesignated); and

(6) by adding at the end the following:

"(IV) any materials in connection with the activities are prepared for distribution (and are distributed) solely by volunteers; and".

SEC. 312. CONTRIBUTIONS TO POLITICAL PARTY COMMITTEES.

(a) INDIVIDUAL CONTRIBUTIONS TO STATE PARTY.—Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)) (as amended by section 106) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

"(D) to—

"(i) a State Party Grassroots Fund established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed $20,000; or

"(ii) any other political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed $5,000;

except that the aggregate contributions described in this subparagraph that may be made by a person to the State Party Grassroots Fund and all committees of a State Committee of a political party in any State in any calendar year shall not exceed $20,000; or".

(b) MULTICANDIDATE COMMITTEE CONTRIBUTIONS TO STATE PARTY.—Section 315(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following:

"(C) to—

"(i) a State Party Grassroots Fund established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed $15,000; or

"(ii) to any other political committee established and maintained by a State committee of a political party that, in the aggregate, exceed $5,000;

except that the aggregate contributions described in this subparagraph that may be made by a multicandidate political committee to the State Party Grassroots Fund and all committees of a State Committee of a political party in any State in any calendar year shall not exceed $15,000; or".

(c) OVERALL LIMIT.—Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is amended by striking paragraph (3) and inserting the following:

"(3) OVERALL LIMIT.—

"(A) ELECTION CYCLE.—No individual shall make contributions during any election cycle (as defined in section 301(28)(B)) that, in the aggregate, exceed $60,000.

"(B) CALENDAR YEAR.—

"(i) IN GENERAL.—No individual shall make contributions during any calendar year—

"(I) to all candidates and their authorized political committees that, in the aggregate, exceed $25,000; or

"(II) to all political committees established and maintained by State committees of a political party that, in the aggregate, exceed $20,000.

"(ii) NONELECTION YEAR.—For purposes of clause (i), a contribution made to a candidate or the candidate's authorized political committees in a year other than the calendar year in which the election is held with respect to which the contribution is made shall be treated as being made during the calendar year in which the election is held.

(d) PRESIDENTIAL CANDIDATE COMMITTEE TRANSFERS.—

(1) AMENDMENT OF FECA.—Section 315(b)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(b)(1)) is amended by striking subparagraph (B) and inserting the following:

"(B) in the case of a campaign for election to that office, an amount equal to the sum of—

"(i) $20,000,000; plus

"(ii) the lesser of—

"(I) 2 cents multiplied by the voting age population of the United States (as certified under subsection (e); or

"(II) the amounts transferred by the candidate and the authorized committees of the candidate to the national committee of the candidate's political party for distribution to State Party Grassroots Funds.".

(2) AMENDMENT OF INTERNAL REVENUE CODE.—Subparagraph (A) of section 9002(11) of the Internal Revenue Code of 1986 (defining qualified campaign expense) is amended—

(A) by striking "or" at the end of clause (ii);

(B) by inserting "or" at the end of clause (iii); and

(C) by adding at the end the following:

"(iv) any transfers to the national committee of the candidate's political party for distribution to State Party Grassroots Funds (as defined in section 301(30) of the Federal Election Campaign Act of 1971) to the extent that such transfers do not exceed the amount determined under section 315(b)(1)(B)(ii) of that Act;".

SEC. 313. PROVISIONS RELATING TO NATIONAL, STATE, AND LOCAL PARTY COMMITTEES.

(a) SOFT MONEY OF COMMITTEES OF POLITICAL PARTIES.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) (as amended by section 102(a)) is amended by adding at the end the following:

"SEC. 325. POLITICAL PARTY COMMITTEES.

"(a) LIMITATIONS ON NATIONAL COMMITTEES.—

"(1) IN GENERAL.—A national committee of a political party and the congressional campaign committees of a political party shall not solicit or accept any amount, or solicit or accept a transfer from another political committee, that is not subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) EXCLUSIONS.—Paragraph (1) shall not apply to any amount received—

"(A) that—

"(i) is to be transferred to a State committee of a political party and is used solely for an activity described in clause (xi), (xii), (xiii), (xiv), (xv), (xvi), or (xvii) of section 301(9)(B); or

"(ii) is described in section 301(8)(B)(viii); and

"(B) with respect to which a contributor has been notified that the amount will be used solely for the purposes described in subparagraph (A).

"(b) TRANSFERS TO TAX-EXEMPT ORGANIZATIONS.—A national committee or a State committee of a political party shall not transfer any funds to an organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 and is described in section 501(c)(3) of the Code.

"(c) ACTIVITIES SUBJECT TO THIS ACT.—

"(1) IN GENERAL.—Any amount solicited, received, expended, or disbursed directly or indirectly by a national, State, district, or local committee of a political party (including any subordinate committee) with respect to any of the following activities shall be treated as a contribution subject to the limitations, prohibitions, and reporting requirements of this Act:

"(A)(i) Any get-out-the-vote activity conducted during a calendar year in which an election for the office of President is held.

"(ii) Any other get-out-the-vote activity unless subsection (c)(2) applies to the activity.

"(B) Any generic campaign activity.

"(C) Any activity that identifies or promotes a Federal candidate, regardless of whether—

"(i) a State or local candidate is also identified or promoted; or

"(ii) any portion of the funds disbursed constitutes a contribution or expenditure under this Act.

"(D) Voter registration.

"(E) Development and maintenance of voter files during an even-numbered calendar year.

"(F) Any other activity that—

"(i) significantly affects a Federal election; or

"(ii) is not described in section 301(8)(B)(xvii).

"(2) FUNDRAISING COSTS.—Any amount spent to raise funds that are used, in whole or in part, in connection with an activity described in paragraph (1) shall be treated as an expenditure subject to the limitations, prohibitions, and reporting requirements of this Act.

"(d) GET-OUT-THE-VOTE ACTIVITIES BY STATE, DISTRICT, AND LOCAL COMMITTEES OF A POLITICAL PARTY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any get-out-the-vote activity for a State or local candidate, or for a ballot measure, that is conducted by a State, district, or local committee of a political party (including any subordinate committee) shall be treated as an expenditure subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) EXCLUSIONS.—Paragraph (1) shall not apply to any activity that the State committee of a political party certifies to the Commission is an activity that—

"(A) is conducted during a calendar year other than a calendar year in which an election for the office of President is held;

"(B) is exclusively on behalf of (and specifically identifies only) 1 or more State or local candidates or ballot measures; and

"(C) does not include any effort or means used to identify or turn out those identified to be supporters of any Federal candidate (including any activity that is undertaken in coordination with, or on behalf of, a candidate for Federal office).

"(e) STATE PARTY GRASSROOTS FUNDS.—

"(1) IN GENERAL.—A State committee of a political party may make disbursements and expenditures from its State Party Grassroots Fund only for—

"(A) a generic campaign activity;

"(B) the making of a payment described in clause (v), (x), or (xii) of paragraph (8)(B) or clause (iv), (viii), or (ix) of paragraph (9)(B) of section 301;

"(C) subject to the limitations of section 315(d), the making of a payment described in paragraph (8)(B)(xii) or (9)(B)(ix) of section 301 on behalf of a candidate other than a candidate for President or Vice President;

"(D) voter registration; and

"(E) development and maintenance of voter files during an even-numbered calendar year.

"(2) TRANSFERS.—

"(A) IN GENERAL.—Notwithstanding section 315(a)(4) and except as provided in subparagraph (B), no funds may be transferred by a State committee of a political party from its State Party Grassroots Fund to any other State Party Grassroots Fund or to any other political committee.

"(B) TRANSFER TO SEPARATE SEGREGATED FUND OF DISTRICT OR LOCAL COMMITTEE.—A transfer may be made from a State Party Grassroots Fund to a district or local committee of the same political party in the same State if the district or local committee—

"(i) has established a separate fund for the purposes described in paragraph (1); and

"(ii) uses the transferred funds solely for those purposes.

"(f) AMOUNTS RECEIVED BY STATE PARTY GRASSROOTS FUND FROM NON-FEDERAL CANDIDATE COMMITTEES.—

"(1) IN GENERAL.—Any amount received by a State Party Grassroots Fund from a non-Federal candidate committee for expenditures described in subsection (b) that are for the benefit of that candidate shall be treated as meeting the requirements of subsection (b) and section 304(f) if—

"(A) the amount is derived from funds that meet the requirements of this Act with respect to any limitation or prohibition as to source or dollar amount specified in paragraphs (1)(A) and (2)(A) of section 315(a); and

"(B) the non-Federal candidate committee—

"(i) maintains, in the account from which payment is made, records of the sources and amounts of funds for purposes of determining whether those requirements are met; and

"(ii) certifies that the requirements were met.

"(2) DETERMINATION OF COMPLIANCE.—For purposes of paragraph (1)(A), in determining whether the funds transferred meet the requirements of this Act referred to in paragraph (1)(A)—

"(A) a non-Federal candidate committee's cash on hand shall be treated as consisting of the funds most recently received by the committee; and

"(B) the committee must be able to demonstrate that its cash on hand contains sufficient funds meeting those requirements as are necessary to cover the transferred funds.

"(3) REPORTING.—Notwithstanding paragraph (1), a State Party Grassroots Fund that receives a transfer described in paragraph (1) from a non-Federal candidate committee—

"(A) shall meet the reporting requirements of this Act; and

"(B) shall submit to the Commission all certifications received with respect to receipt of the transfer from the candidate committee.".

(b) DEFINITIONS.—

(1) CONTRIBUTION.—Section 301(8)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(B)) is amended—

(A) by striking "and" at the end of clause (xiii);

(B) by striking the period at the end of clause (xiv) and inserting a semicolon; and

(C) by adding at the end the following:

"(xv) any amount contributed to a candidate for other than Federal office;

"(xvi) any amount received or expended to pay the costs of a State or local political convention;

"(xvii) any payment for campaign activities that are exclusively on behalf of (and specifically identify only) State or local candidates and do not identify any Federal candidate, and that are not activities described in section 325(c) (without regard to paragraph (6)(B)) or section 325(d)(1);

"(xviii) any payment for administrative expenses of a State or local committee of a political party, including expenses for—

"(I) overhead, including party meetings;

"(II) staff (other than individuals devoting a significant amount of their time to elections for Federal office and individuals engaged in conducting get-out-the-vote activities for a Federal election); and

"(III) party elections or caucuses;

"(xix) any payment for research pertaining solely to State and local candidates and issues;

"(xx) any payment for development and maintenance of voter files other than during the 1-year period ending on the date during an even-numbered calendar year on which regularly scheduled general elections for Federal office occur; and

"(xxi) any payment for any other activity that is solely for the purpose of influencing, and that solely affects, an election for non-Federal office and that is not an activity described in section 325(c) (without regard to paragraph (6)(B)) or section 325(d)(1).".

(2) EXPENDITURE.—Section 301(9)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(9)(B)) is amended—

(A) by striking "and" at the end of clause (ix);

(B) by striking the period at the end of clause (x) and inserting a semicolon; and

(C) by adding at the end the following:

"(xi) any amount contributed to a candidate for other than Federal office;

"(xii) any amount received or expended to pay the costs of a State or local political convention;

"(xiii) any payment for campaign activities that are exclusively on behalf of (and specifically identify only) State or local candidates and do not identify any Federal candidate, and that are not activities described in section 325(c) (without regard to paragraph (6)(B)) or section 325(d)(1);

"(xiv) any payment for administrative expenses of a State or local committee of a political party, including expenses for—

"(I) overhead, including party meetings;

"(II) staff (other than individuals devoting a significant amount of their time to elections for Federal office and individuals engaged in conducting get-out-the-vote activities for a Federal election); and

"(III) conducting party elections or caucuses;

"(xv) any payment for research pertaining solely to State and local candidates and issues;

"(xvi) any payment for development and maintenance of voter files other than during the 1-year period ending on the date during an even-numbered calendar year on which regularly scheduled general elections for Federal office occur; and

"(xvii) any payment for any other activity that is solely for the purpose of influencing, and that solely affects, an election for non-Federal office and that is not an activity described in section 325(c) (without regard to paragraph (6)(B)) or section 325(d)(1).".

(3) OTHER TERMS.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) (as amended by section 114(a)) is amended by adding at the end the following:

"(29) GENERIC CAMPAIGN ACTIVITY.—The term 'generic campaign activity' means a campaign activity that promotes a political party rather than a particular candidate or non-Federal candidate.

"(30) STATE PARTY GRASSROOTS FUND.—The term 'State Party Grassroots Fund' means a separate fund established and maintained by a State committee of a political party solely for purposes of making expenditures and other disbursements described in section 325(d).

"(31) NON-FEDERAL CANDIDATE.—The term 'non-Federal candidate' means a candidate for State or local office.

"(32) NON-FEDERAL CANDIDATE COMMITTEE.—For purposes of this subsection, the term 'non-Federal candidate committee' means a committee established, financed, maintained, or controlled by a non-Federal candidate.".

(c) LIMITATION APPLIED AT NATIONAL LEVEL.—Section 315(d)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(d)(3)) is amended—

(1) by striking "(3) The national" and inserting the following:

"(3) CANDIDATES FOR THE SENATE AND THE HOUSE OF REPRESENTATIVES.—

"(A) IN GENERAL.—The national";

(2) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and adjusting the margins as appropriate; and

(3) by adding at the end the following:

"(2) EXPENDITURES BY CONGRESSIONAL CAMPAIGN COMMITTEES.—Notwithstanding paragraph (1), a congressional campaign committee of a political party shall make the expenditures described in paragraph (1) that are authorized to be made by a national or State committee with respect to a candidate in any State unless the congressional campaign committee allocates all or a portion of the expenditures to either or both of those committees.".

(d) APPLICATION OF LIMITATIONS TO ENTIRE ELECTION CYCLE.—Section 315(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(d)) is amended—

(1) in paragraph (1) by striking "general"; and

(2) in the first sentence of paragraph (2) and in paragraph (3)—

(A) by striking "general"; and

(B) by striking "which" and inserting "that, during an election cycle,".

SEC. 314. RESTRICTIONS ON FUNDRAISING BY CANDIDATES AND OFFICEHOLDERS.

(a) STATE FUNDRAISING ACTIVITIES.—Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) (as amended by section 301) is amended by adding at the end the following:

"(j) LIMITATIONS ON FUNDRAISING ACTIVITIES OF FEDERAL CANDIDATES AND OFFICEHOLDERS AND CERTAIN POLITICAL COMMITTEES.—

"(1) IN GENERAL.—For purposes of this Act, a candidate, an individual holding Federal office, or any agent of the candidate or individual may not solicit funds to, or receive funds on behalf of, any person—

"(A) that are to be expended in connection with any election for Federal office unless the funds are subject to the limitations, prohibitions, and requirements of this Act; or

"(B) that are to be expended in connection with any election for other than Federal office unless the funds are not in excess of amounts permitted with respect to Federal candidates and political committees under paragraphs (1) and (2) of subsection (a), and are not from sources prohibited by those paragraphs with respect to elections to Federal office.

"(2) LIMITATION ON SOLICITATIONS.—

"(A) IN GENERAL.—The aggregate amount that a person described in subparagraph (B) may solicit from a multicandidate political committee for State committees described in subsection (a)(1)(C) (including subordinate committees) for any calendar year shall not exceed the dollar amount in effect under subsection (a)(2)(B) for the calendar year.

"(B) APPLICABILITY.—A person is described in this subparagraph if the person is a candidate, an individual holding Federal office, an agent of such a candidate or individual, or a national, State, district, or local committee of a political party (including a subordinate committee) or an agent of such a committee.

"(3) APPEARANCE OR PARTICIPATION IN A FUNDRAISING EVENT.—The appearance or participation by a candidate or individual holding Federal office in a fundraising event conducted by a committee of a political party or a non-Federal candidate shall not be treated as a solicitation for purposes of paragraph (1) if the candidate or individual does not solicit or receive, or make disbursements from, any funds resulting from the activity.

"(4) STATE LAW.—Paragraph (1) shall not apply to the solicitation or receipt of funds, or disbursements, by an individual who is a non-Federal candidate if the activity is permitted under State law.

"(5) DEFINITION.—For purposes of this subsection, an individual shall be treated as holding Federal office if the individual—

"(A) holds a Federal office; or

"(B) holds a position described in level I of the Executive Schedule under section 5312 of title 5, United States Code.".

(b) TAX-EXEMPT ORGANIZATIONS.—Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) (as amended by subsection (a)) is amended by adding at the end the following:

"(k) TAX-EXEMPT ORGANIZATIONS.—

"(1) IN GENERAL.—If an individual is a candidate for, or holds, Federal office during any period, the individual shall not during that period solicit contributions to, or on behalf of, any organization that is described in section 501(c) of the Internal Revenue Code of 1986 if a significant portion of the activities of the organization include voter registration or get-out-the-vote campaigns.

"(2) DEFINITION.—For purposes of this section, an individual shall be treated as holding Federal office if the individual—

"(A) holds a Federal office; or

"(B) holds a position described in level I of the Executive Schedule under section 5312 of title 5, United States Code.".

SEC. 315. REPORTING REQUIREMENTS.

(a) REPORTING REQUIREMENTS.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (as amended by section 112(a)) is amended by adding at the end the following:

"(f) POLITICAL COMMITTEES.—

"(1) NATIONAL AND CONGRESSIONAL POLITICAL COMMITTEES.—The national committee of a political party, a congressional campaign committee of a political party, and any subordinate committee of a national committee or congressional campaign committee of a political party, shall report all receipts and disbursements during the reporting period, whether or not in connection with an election for Federal office.

"(2) OTHER POLITICAL COMMITTEES TO WHICH SECTION 325 APPLIES.—A political committee (not described in paragraph (1)) to which section 325 applies shall report all receipts and disbursements, including separate schedules for receipts and disbursements for a State Grassroots Fund.

"(3) TRANSFERS.—A political committee to which section 325 applies shall—

"(A) include in a report under paragraph (1) or (2) the amount of any transfer described in section 325(d)(2); and

"(B) itemize those amounts to the extent required by section 304(b)(3)(A).

"(4) OTHER POLITICAL COMMITTEES.—Any political committee to which paragraph (1) or (2) does not apply shall report any receipts or disbursements that are used in connection with a Federal election.

"(5) ITEMIZATION.—If a political committee has receipts or disbursements to which this subsection applies from any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for the person in the same manner as under paragraphs (3)(A), (5), and (6) of subsection (b).

"(6) REPORTING PERIODS.—Reports required to be filed by this subsection shall be filed for the same time periods as reports are required for political committees under subsection (a).".

(b) REPORT OF EXEMPT CONTRIBUTIONS.—Section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)) is amended by adding at the end the following:

"(C) REPORTING REQUIREMENT.—The exclusion provided in subparagraph (B)(viii) shall not apply for purposes of any requirement to report contributions under this Act, and all such contributions aggregating in excess of $200 shall be reported.".

(c) REPORTS BY STATE COMMITTEES.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434 (as amended by subsection (a)) is amended by adding at the end the following:

"(g) FILING OF STATE REPORTS.—In lieu of any report required to be filed under this Act, the Commission may allow a State committee of a political party to file with the Commission a report required to be filed under State law if the Commission determines that such a report contains substantially the same information as a report required under this Act.".

(d) OTHER REPORTING REQUIREMENTS.—

(1) AUTHORIZED COMMITTEES.—Section 304(b)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(4)) is amended—

(A) by striking "and" at the end of subparagraph (H);

(B) by inserting "and" at the end of subparagraph (I); and

(C) by adding at the end the following:

"(J) in the case of an authorized committee, disbursements for the primary election, the general election, and any other election in which the candidate participates;".

(2) NAMES AND ADDRESSES.—Section 304(b)(5)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(5)(A)) is amended—

(A) by striking "within the calendar year"; and

(B) by striking "such operating expenditure" and inserting "operating expense, and the election to which the operating expense relates".

Subtitle C—Soft Money of Persons Other Than Political Parties

SEC. 321. SOFT MONEY OF PERSONS OTHER THAN POLITICAL PARTIES.

Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (as amended by section 315(c)) is amended by adding at the end the following:

"(h) ELECTION ACTIVITY OF PERSONS OTHER THAN POLITICAL PARTIES.—

"(1) INITIAL STATEMENT.—A person to which section 325 does not apply that makes (or obligates to make) aggregate disbursements totaling in excess of $2,000 for activities described in section 325(c) shall file a statement with the Commission—

"(A) within 48 hours after the disbursements or obligations in excess of $2,000 are made; or

"(B) in the case of disbursements or obligations that are made within 14 days of an election, on or before the 14th day before the election.

"(2) ADDITIONAL STATEMENTS.—An additional statement shall be filed each time additional disbursements aggregating $2,000 are made by a person described in paragraph (1).

"(4) APPLICABILITY.—This subsection does not apply to—

"(A) a candidate or a candidate's authorized committees; or

"(B) an independent expenditure.

"(5) CONTENTS.—A statement under this section shall contain such information about the disbursements as the Commission shall prescribe, including if applicable, whether the disbursement was in support of, or in opposition to, a candidate or a political party.

"(6) PLACE OF FILING.—A statement under this section shall be filed with the Secretary of the Senate or the Clerk of the House of Representatives, and the Secretary of State (or equivalent official) of the candidate's State. The Secretary of the Senate or Clerk of the House of Representatives shall, as soon as possible (but not later than 24 hours after receipt), transmit a copy of the statement to the Commission.

"(7) TRANSMITTAL.—Not later than 48 hours after receipt, the Commission shall transmit a statement filed under this subsection—

"(A) to the candidates or political parties involved in the election in question; or

"(B) if the disbursement is not in support of, or in opposition to, a candidate or political party, to the State committees of each political party in the State in question.

"(8) DETERMINATIONS BY THE COMMISSION.—The Commission may make its own determination that disbursements described in paragraph (1) have been made or are obligated to be made. The Commission shall notify the candidates or political parties described in paragraph (2) not later than 24 hours after its determination.".

TITLE IV—CONTRIBUTIONS

SEC. 401. PROHIBITION OF CERTAIN CONTRIBUTIONS BY LOBBYISTS.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) (as amended by section 314(b)) is amended by adding at the end the following:

"(m) PROHIBITION OF CERTAIN CONTRIBUTIONS BY LOBBYISTS.—

"(1) IN GENERAL.—A lobbyist, or a political committee controlled by a lobbyist, shall not make a contribution to—

"(A) a Federal officeholder or candidate for Federal office if, during the preceding 12 months, the lobbyist has made a lobbying contact with the officeholder or candidate; or

"(B) any authorized committee of the President or Vice President of the United States if, during the preceding 12 months, the lobbyist has made a lobbying contact with a covered executive branch official.

"(2) CONTRIBUTIONS TO MEMBER OF CONGRESS OR CANDIDATE FOR CONGRESS.—A lobbyist who, or a lobbyist whose political committee, has made a contribution to a member of Congress or candidate for Congress (or any authorized committee of the President) shall not, during the 12 months following such contribution, make a lobbying contact with the member or candidate who becomes a member of Congress or with a covered executive branch official.

"(3) DEFINITIONS.—In this subsection the terms 'covered executive branch official', 'lobbying contact', and 'lobbyist' have the meanings given those terms in section 3 of the Federal Lobbying Disclosure Act of 1995 (2 U.S.C. 1602) except that—

"(A) the term 'lobbyist' includes a person required to register under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.); and

"(B) for purposes of this subsection, a lobbyist shall be considered to make a lobbying contact or communication with a member of Congress if the lobbyist makes a lobbying contact or communication with—

"(i) the member of Congress;

"(ii) any person employed in the office of the member of Congress; or

"(iii) any person employed by a committee, joint committee, or leadership office who, to the knowledge of the lobbyist, was employed at the request of or is employed at the pleasure of, reports primarily to, represents, or acts as the agent of the member of Congress.".

SEC. 402. CONTRIBUTIONS BY DEPENDENTS NOT OF VOTING AGE.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) (as amended by section 401(a)) is amended by adding at the end the following:

"(n) DEPENDENTS NOT OF VOTING AGE.—

"(1) IN GENERAL.—For purposes of this section, any contribution by an individual who—

"(A) is a dependent of another individual; and

"(B) has not, as of the time of the making of the contribution, attained the legal age for voting in an election to Federal office in the State in which the individual resides;

shall be treated as having been made by the other individual.

"(2) ALLOCATION BETWEEN SPOUSES.—If an individual described in paragraph (1) is the dependent of another individual and the other individual's spouse, a contribution described in paragraph (1) shall be allocated among those individuals in a manner determined by the individuals.".

SEC. 403. CONTRIBUTIONS TO CANDIDATES FROM STATE AND LOCAL COMMITTEES OF POLITICAL PARTIES TO BE AGGREGATED.

Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) (as amended by section 102(b)) is amended by adding at the end the following:

"(10) AGGREGATION OF CONTRIBUTIONS FROM STATE AND LOCAL COMMITTEES OF POLITICAL PARTIES.—Notwithstanding paragraph (5)(B), a candidate may not accept, with respect to an election, any contribution from a State or local committee of a political party (including any subordinate committee of such a committee), if the contribution, when added to the total of contributions previously accepted from all such committees of that political party, would cause the total amount of contributions to exceed a limitation on contributions to a candidate under this section.".

SEC. 404. CONTRIBUTIONS AND EXPENDITURES USING MONEY SECURED BY PHYSICAL FORCE OR OTHER INTIMIDATION.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) (as amended by section 313) is amended by adding at the end the following:

"SEC. 326. USE OF PHYSICAL FORCE OR INTIMIDATION TO OBTAIN A CONTRIBUTION OR EXPENDITURE OR DETER THE FILING OF A COMPLAINT.

"It shall be unlawful for any person to—

"(1) cause another person to make a contribution or expenditure by using physical force, job discrimination, a financial reprisal, a threat of physical force, job discrimination, or financial reprisal, or taking or threatening to take other adverse action;

"(2) make a contribution or expenditure utilizing money or anything of value secured in the manner described in paragraph (1)."or

"(3) use physical force, job discrimination, or financial reprisal, a threat of physical force, job discrimination, or financial reprisal, or take or threaten to take other adverse action, against an employee, union member, or other person—

"(A) to deter or prevent any person from filing a complaint, providing testimony, or otherwise cooperating with enforcement efforts under this Act; or

"(B) to retaliate against any person who has filed a complaint, provided testimony, or otherwise cooperated with enforcement efforts under this Act.".

SEC. 405. PROHIBITION OF ACCEPTANCE BY A CANDIDATE OF CASH CONTRIBUTIONS FROM ANY ONE PERSON AGGREGATING MORE THAN $100.

Section 321 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441g) is amended by inserting ", and no candidate or authorized committee of a candidate shall accept from any 1 person," after "make".

TITLE V—AUTHORITIES AND DUTIES OF THE FEDERAL ELECTION COMMISSION

SEC. 501. FILING OF REPORTS USING COMPUTERS AND FACSIMILE MACHINES.

Section 302(g) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(g)) is amended by adding at the end the following:

"(6) FILING OF REPORTS USING COMPUTERS AND FACSIMILE MACHINES.—

"(A) COMPUTERS.—The Commission, in consultation with the Secretary of the Senate and the Clerk of the House of Representatives, may issue a regulation under a person required to file a designation, statement, or report under this Act—

"(i) are required to maintain and file the designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and

"(ii) may maintain and file the designation, statement, or report in that manner if not required to do so under a regulation under clause (i).

"(B) FACSIMILE MACHINES.—The Commission, in consultation with the Secretary of the Senate and the Clerk of the House of Representatives, shall prescribe a regulation

that allows a person to file a designation, statement, or report required by this Act through the use of a facsimile machine.

"(C) VERIFICATION.—In a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying a designation, statement, or report. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

"(D) COMPATIBILITY OF SYSTEMS.—The Secretary of the Senate and the Clerk of the House of Representatives shall ensure that any computer or other system that the Secretary or the Clerk may develop and maintain to receive designations, statements, and reports in the forms required or permitted under this paragraph is compatible with any system that the Commission may develop and maintain.".

SEC. 502. INCREASE IN THRESHOLD FOR REPORTING REQUIREMENTS.

(a) IDENTIFICATION OF CONTRIBUTORS.—Section 302(c)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(c)(3)) is amended by striking "$200" and inserting "$50".

(b) IDENTIFICATION OF DISBURSEMENTS.—Section 302(c)(5) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(c)(5)) is amended by striking "$200" and inserting "$50".

SEC. 503. AUDITS.

(a) RANDOM AUDITS.—Section 311(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(b)) is amended—

(1) by inserting "(1)" before "The Commission"; and

(2) by adding at the end the following:

"(2) RANDOM AUDITS.—Notwithstanding paragraph (1), the Commission may from time to time conduct random audits and investigations to ensure voluntary compliance with this Act. The subjects of such audits and investigations shall be selected on the basis of criteria established by vote of at least 4 members of the Commission to ensure impartiality in the selection process. This paragraph does not apply to an authorized committee of a candidate for President or Vice President subject to audit under title VI or to an authorized committee of an eligible Senate candidate or an eligible House candidate subject to audit under section 522(a).".

(b) EXTENSION OF PERIOD DURING WHICH CAMPAIGN AUDITS MAY BE BEGUN.—Section 311(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(b)), as redesignated by subsection (a), is amended by striking "6 months" and inserting "12 months".

SEC. 504. AUTHORITY TO SEEK INJUNCTION.

Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended—

(1) by adding at the end the following:

"(13)(A) If, at any time in a proceeding described in paragraph (1), (2), (3), or (4), the Commission believes that—

"(i) there is a substantial likelihood that a violation of this Act is occurring or is about to occur;

"(ii) the failure to act expeditiously will result in irreparable harm to a party affected by the potential violation;

"(iii) expeditious action will not cause undue harm or prejudice to the interests of others; and

"(iv) the public interest would be best served by the issuance of an injunction;

the Commission may initiate a civil action for a temporary restraining order or a temporary injunction pending the outcome of the proceedings described in paragraphs (1), (2), (3), and (4).

"(B) An action under subparagraph (A) shall be brought in the United States district court for the district in which the defendant resides, transacts business, or may be found or in which the violation is occurring, has occurred, or is about to occur.";

(2) in paragraph (7), by striking "(5) or (6)" and inserting "(5), (6), or (13)"; and

(3) in paragraph (11), by striking "(6)" and inserting "(6) or (13)".

SEC. 505. PENALTIES.

(a) INCREASED PENALTIES.—Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended—

(1) in paragraphs (5)(A), (6)(A), and (6)(B) by striking "$5,000" and inserting "$10,000";

(2) in paragraph (5)(B) by striking "the greater of $10,000 or an amount equal to 200 percent" and inserting "the greater of $20,000 or 300 percent"; and

(3) in paragraph (6)(C) by striking "the greater of $10,000 or an amount equal to 200 percent" and inserting "the greater of $20,000 or 300 percent".

(b) EQUITABLE REMEDIES.—Section 309(a)(5)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(5)) is amended by striking the period and inserting ", and, if authorized by the agreement, may include equitable remedies or penalties including disgorgement of funds to the United States Treasury, community service requirements, suspension or disbarment of treasurers, or public education requirements.".

(c) AUTOMATIC PENALTY FOR LATE FILING.—Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended—

(1) by adding at the end the following:

"(13) PENALTY FOR LATE FILING.—

"(A) IN GENERAL.—The Commission shall establish a schedule of mandatory monetary penalties that shall be imposed by the staff director of the Commission for any failure to meet the time requirements for filing under section 304.

"(B) REQUIRED FILING OF LATE REPORT.—The Commission may require a report that has not been filed within the time requirements of section 304 to be filed by a specific date.

"(C) PROCEDURE FOR ASSESSING PENALTIES AND FILING DEADLINES.—Penalties and filing requirements imposed under this paragraph shall not be subject to paragraph (1), (2), (3), (4), (5) or (12).

"(D) APPEALS.—

"(i) IN GENERAL.—A political committee shall have 30 days after the imposition of penalty or filing requirement under this paragraph to file an exception with the Commission.

"(ii) COMMISSION DETERMINATION.—Within 30 days after receiving the exception, the Commission shall make a determination that is a final agency action subject to exclusive review by the United States Court of Appeals for the District of Columbia Circuit under section 706 of title 5, United States Code, upon petition filed in the court by the political committee that is the subject of the agency action, if the petition is filed within 30 days of the Commission action for which review is sought.";

(2) in paragraph (5)(D)—

(A) by inserting after the first sentence the following: "In any case in which a penalty or filing requirement imposed on a political committee or treasurer under paragraph (13) has not been satisfied, the Commission may institute a civil action for enforcement under paragraph 6(A)."; and

(B) by inserting before the period in the last sentence "or has failed to pay a penalty or meet a filing requirement imposed under paragraph (13)"; and

(3) in paragraph (6)(A), by striking "paragraph (4)(A)" and inserting "paragraph (4)(A) or (13)".

SEC. 506. INDEPENDENT LITIGATING AUTHORITY.

(a) LITIGATING AUTHORITY.—Section 306(f) of Federal Election Campaign Act of 1971 (2 U.S.C. 437c(f)) is amended by striking paragraph (4) and inserting the following:

"(4) INDEPENDENT LITIGATING AUTHORITY.—

"(A) IN GENERAL.—Notwithstanding paragraph (2) or any other provision of law, the Commission is authorized to appear on its own behalf in any action related to the exercise of its statutory duties or powers in any court as a party or amicus curiae, either—

"(i) by attorneys employed in the office of the Commission, or

"(ii) by counsel whom the Commission may appoint, on a temporary basis, as may be necessary for such purpose, without regard to the provisions of title 5, United States Code, and whose compensation the Commission may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title.

"(B) APPEALS.—The authority granted under subparagraph (A) includes the power of the Commission to appeal from, and petition the Supreme Court for certiorari to review, judgments, or decrees entered with respect to actions in which the Commission appears pursuant to the authority provided by this Act.".

(b) POWER OF COMMISSION TO PETITION THE SUPREME COURT.—Section 307(a)(6) of Federal Election Campaign Act of 1971 (2 U.S.C. 437d(a)(6)) is amended by striking "or appeal any civil action" and inserting ", appeal any civil action or petition the Supreme Court for certiorari to review judgments or decrees entered with respect to actions in which the Commission appears".

SEC. 507. REFERENCE OF SUSPECTED VIOLATION TO THE ATTORNEY GENERAL.

Section 309(a)(5) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended by striking subparagraph (C) and inserting the following:

"(C) REFERRAL TO THE ATTORNEY GENERAL.—The Commission may at any time, by an affirmative vote of 4 of its members, refer a possible violation of this Act or chapter 95 or chapter 96 of the Internal Revenue Code of 1986 to the Attorney General of the United States, without regard to any limitations set forth in this section.".

SEC. 508. POWERS OF THE COMMISSION.

(a) INITIATION OF ENFORCEMENT PROCEEDING.—Section 309(a)(2) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(2)) is amended by striking "reason to believe that" and inserting "reason to investigate whether".

(b) SERVICE OF PROCESS.—Section 306(f) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437c(f)) is amended by inserting at the end the following:

"(5) SERVICE OF PROCESS.—In any matter under this Act or under chapter 95 or chapter 96 of the Internal Revenue Code of 1986, the Commission may at its discretion, without court order and with or without reimbursement, require the United States Marshal Service to serve process on behalf of the Commission, including serving a summons, subpoena, or complaint, upon any person.".

(c) VENUE FOR VIOLATIONS ADJUDICATED IN COURT.—Section 309(a)(6)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(6)(A)) is amended by striking "for the

district in which the person against whom such action is brought is found, resides, or transacts business" and inserting "in which the defendant resides, transacts business, or is found or in which the violation occurred".

(d) FILING OF REPORTS WITH COMMISSION INSTEAD OF THE SECRETARY OF THE SENATE.—

(1) SECTION 302.—Section 302(g) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(g)) is amended—

(A) by striking "(g)(1)" and all that follows through "(3) All" and inserting "(g) FILING.—";

(B) by striking paragraph (4); and

(C) by striking ", except designations, statements, and reports filed in accordance with paragraph (1),".

(2) SECTION 304.—Section 304 of Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended—

(A) in the first sentence of subsection (a)(6), by striking "the Secretary, or the Commission," and inserting "the Commission"; and

(B) in the third sentence of subsection (c)(2), by striking "the Secretary, or".

(3) SECTION 311.—Section 311(a)(4) of Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)(4)) is amended by striking "Secretary, or the".

(e) AUTHORIZATION TO ACCEPT GIFTS.—Section 306(f) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437c(f)) is amended by adding at the end the following:

"(6) AUTHORIZATION TO ACCEPT GIFTS.—

"(A) IN GENERAL.—To carry out the purposes of this Act, the Commission may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, if the acceptance and use of the gifts, devises, or bequests does not create a conflict of interest.

"(B) DEPOSIT OF GIFTS.—Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Commission.

"(C) USE OF GIFTS.—Property accepted pursuant to this section, and the proceeds from the property, shall be used as closely as practicable in accordance with the terms of the gifts, devises, or bequests.".

TITLE VI—MISCELLANEOUS

SEC. 601. PROHIBITION OF LEADERSHIP COMMITTEES.

Section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)) is amended—

(1) by striking paragraph (3) and inserting the following:

"(3) LIMITATIONS.—A political committee that supports or has supported more than 1 candidate shall not be designated as an authorized committee, except that—

"(A) a candidate for the office of President nominated by a political party may designate the national committee of the political party as the candidate's principal campaign committee if the national committee maintains separate books of account with respect to its functions as a principal campaign committee; and

"(B) a candidate may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee."; and

(2) by adding at the end the following:

"(6) PROHIBITION OF LEADERSHIP COMMITTEES.—

"(A) IN GENERAL.—

"(i) PROHIBITION.—A candidate or an individual holding Federal office shall not establish, finance, maintain, or control any political committee or non-Federal political committee other than a principal campaign committee of the candidate, authorized committee, party committee, or other political committee designated in accordance with paragraph (3).

"(ii) CANDIDATE FOR MORE THAN 1 OFFICE.—A candidate for more than 1 Federal office may designate a separate principal campaign committee for the campaign for election to each Federal office.

"(iii) CANDIDATES FOR STATE OR LOCAL OFFICE.—This paragraph does not preclude a Federal officeholder who is a candidate for State or local office from establishing, financing, maintaining, or controlling a political committee for election of the individual to the State or local office.

"(B) TRANSITION.—

"(i) CONTINUATION FOR 12 MONTHS.—For a period of 12 months after the effective date of this paragraph, any political committee established before that date but that is prohibited under subparagraph (A) may continue to make contributions.

"(ii) DISBURSEMENT AT THE END OF 12 MONTHS.—At the end of the 12-month period, the political committee shall disburse all funds by 1 or more of the following means:

"(I) Making contributions to a person described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of the Code.

"(II) Making a contribution to the Treasury of the United States.

"(III) Contributing to the national, State, or local committee of a political party.

"(IV) Making a contribution of not to exceed $1,000 each to 1 or more candidates or non-Federal candidates.".

SEC. 602. TELEPHONE VOTING BY PERSONS WITH DISABILITIES.

(a) STUDY OF SYSTEMS TO PERMIT PERSONS WITH DISABILITIES TO VOTE BY TELEPHONE.—

(1) IN GENERAL.—The Federal Election Commission shall conduct a study to determine the feasibility of developing a system or systems by which persons with disabilities may be permitted to vote by telephone.

(2) CONSULTATION.—The Federal Election Commission shall conduct the study described in paragraph (1) in consultation with State and local election officials, representatives of the telecommunications industry, representatives of persons with disabilities, and other concerned members of the public.

(3) CRITERIA.—The system or systems developed pursuant to paragraph (1) shall—

(A) propose a description of the kinds of disabilities that impose such difficulty in travel to polling places that a person with a disability who may desire to vote is discouraged from undertaking such travel;

(B) propose procedures to identify persons who are so disabled; and

(C) describe procedures and equipment that may be used to ensure that—

(i) only persons who are entitled to use the system are permitted to use it;

(ii) the votes of persons who use the system are recorded accurately and remain secret;

(iii) the system minimizes the possibility of vote fraud; and

(iv) the system minimizes the financial costs that State and local governments would incur in establishing and operating the system.

(4) REQUESTS FOR PROPOSALS.—In developing a system described in paragraph (1), the Federal Election Commission may request proposals from private contractors for the design of procedures and equipment to be used in the system.

(5) PHYSICAL ACCESS.—Nothing in this section is intended to supersede or supplant efforts by State and local governments to make polling places physically accessible to persons with disabilities.

(6) DEADLINE.—The Federal Election Commission shall submit to Congress the study required by this section not later than 1 year after the effective date of this Act.

SEC. 603. CERTAIN TAX-EXEMPT ORGANIZATIONS NOT SUBJECT TO CORPORATE LIMITS.

Section 316 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b) is amended by adding at the end the following:

"(c) PROHIBITIONS NOT TO APPLY TO INDEPENDENT EXPENDITURES OF CERTAIN TAX-EXEMPT ORGANIZATIONS.—

"(1) IN GENERAL.—Nothing in this section shall preclude a qualified nonprofit corporation from making an independent expenditure.

"(2) DEFINITION OF QUALIFIED NONPROFIT CORPORATION.—In this subsection, the term 'qualified nonprofit corporation' means a corporation described in section 501(c)(4) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Code and that meets the following requirements:

"(A) PURPOSE.—The only express purpose of the corporation is the promotion of political ideas.

"(B) NO TRADE OR BUSINESS.—The corporation cannot and does not engage in any activities that constitute a trade or business.

"(C) GROSS RECEIPTS.—The gross receipts of the corporation for the calendar year have not (and will not) exceed $100,000, and the net value of the total assets at any time during the calendar year do not exceed $250,000.

"(D) ESTABLISHMENT.—The corporation—

"(i) was not established by—

"(I) a person described in section 501(c)(6) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Code;

"(II) a corporation engaged in carrying out a trade or business; or

"(III) a labor organization; and

"(ii) cannot and does not directly or indirectly accept donations of anything of value from any such person, corporation, or labor organization.

"(E) ASSETS AND EARNINGS.—The corporation—

"(i) has no shareholder or other person affiliated with it that could make a claim on its assets or earnings; and

"(ii) offers no incentives or disincentives for associating or not associating with it other than on the basis of its position on any political issue.

"(3) QUALIFIED NONPROFIT CORPORATION TREATED AS POLITICAL COMMITTEE.—If a major purpose of a qualified nonprofit corporation is the making of independent expenditures, and the requirements of section 301(4) are met with respect to the corporation, the corporation shall be treated as a political committee.

"(4) NOTICE REQUIREMENT.—All solicitations by a qualified nonprofit corporation shall include a notice informing contributors that donations may be used by the corporation to make independent expenditures.

"(5) REPORTS.—A qualified nonprofit corporation shall file reports as required by subsections (d) and (e) of section 304.

SEC. 604. AIDING AND ABETTING VIOLATIONS OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971.

Title III of the Federal Election Campaign Act of 1971 (as amended by section 404) is amended by adding at the end the following:

"SEC. 327. AIDING AND ABETTING VIOLATIONS.

"With reference to any provision of this Act that places a requirement or prohibition on any person acting in a particular capacity, any person who knowingly aids or abets the person in that capacity in violating that provision may be proceeded against as a principal in the violation.".

SEC. 605. CAMPAIGN ADVERTISING THAT REFERS TO AN OPPONENT.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) (as amended by section 505) is amended by adding at the end the following:

"SEC. 328. CAMPAIGN ADVERTISING THAT REFERS TO AN OPPONENT.

"(a) CANDIDATES.—A candidate or candidate's authorized committee that places in the mail a campaign advertisement or any other communication to the general public that directly or indirectly refers to an opponent or the opponents of the candidate in an election, with or without identifying any opponent in particular, shall file an exact copy of the communication with the Commission and with the Secretary of State of the candidate's State by not later than 12:00 p.m. on the day on which the communication is first placed in the mail to the general public.

"(b) PERSONS OTHER THAN CANDIDATES.—

"(1) IN GENERAL.—A person other than a candidate or candidate's authorized committee that places in the mail a campaign advertisement or any other communication described in paragraph (2) shall file an exact copy of the communication with the Commission and with the Secretary of State of the candidate's State by not later than 12:00 p.m. on the day on which the communication is first placed in the mail to the general public.

"(2) ADVOCACY OR REFERENCE TO OPPONENT.—A communication is described in this paragraph if it is a communication to the general public that—

"(A) advocates the election of a particular candidate in an election; and

"(B) directly or indirectly refers to an opponent or the opponents of the candidate in the election, with or without identifying any opponent in particular.".

SEC. 606. LIMIT ON CONGRESSIONAL USE OF THE FRANKING PRIVILEGE.

Section 3210(a)(6) of title 39, United States Code, is amended by striking subparagraph (A) and inserting the following:

"(A) A Member of Congress may not mail any mass mailing as franked mail during a year in which there will be an election for the seat held by the Member during the period between January 1 of that year and the date of the general election for that office, unless the Member has made a public announcement that the Member will not be a candidate for reelection to that seat or for election to any other Federal office.".

SEC. 607. PARTICIPATION BY FOREIGN NATIONALS IN POLITICAL ACTIVITIES.

(a) PROHIBITION.—Section 319 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e) is amended—

(1) by striking the heading and inserting "PARTICIPATION BY FOREIGN NATIONALS IN POLITICAL ACTIVITIES";

(2) by striking subsection (a) and inserting the following:

"(a) PROHIBITED CONTRIBUTIONS AND EXPENDITURES.—

"(1) It shall be unlawful for a foreign national directly or through any other person to make any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any contribution or expenditure, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or

"(2) for any person to solicit, receive, or accept a contribution from a foreign national.";

(3) by redesignating subsection (b) as subsection (c); and

(4) by inserting after subsection (a) the following:

"(b) PROHIBITED ACTIVITIES.—It shall be unlawful for a foreign national or an individual lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20), to direct, dictate, control, or directly or indirectly participate in the decisionmaking process of any other person, (as defined in 301(11)), with regard to the person's Federal or non-Federal election-related activities, such as a decision concerning the making of a contribution or expenditure in connection with an election for any Federal office or a decision concerning the administration of a political committee.".

(b) AFFIRMATION OF ELIGIBILITY TO MAKE CONTRIBUTION.—Section 319 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e) (as amended by subsection (a)) is amended by adding at the end the following:

"(d) AFFIRMATION OF ELIGIBILITY TO MAKE CONTRIBUTION.—A candidate or authorized committee of a candidate shall not accept a contribution in excess of $500 unless the contribution is accompanied by a statement, signed by the person making the contribution, affirming that the person is not a person prohibited by this section from making the contribution.".

SEC. 608. CERTIFICATION OF COMPLIANCE WITH FOREIGN CONTRIBUTION AND SOLICITATION LIMITATIONS.

Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

"(c) CERTIFICATION OF COMPLIANCE WITH FOREIGN CONTRIBUTION AND SOLICITATION LIMITATIONS.—Each report required under this section shall include a certification under penalty of perjury that the political committee has not knowingly solicited or accepted contributions prohibited by section 319.".

TITLE VII—EFFECTIVE DATES; AUTHORIZATIONS

SEC. 701. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

SEC. 702. BUDGET NEUTRALITY.

(a) DELAYED EFFECTIVENESS.—This Act (other than this section) and the amendments made by this Act shall not be effective until the Director of the Office of Management and Budget certifies that the estimated costs under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) have been offset by the enactment of legislation effectuating this Act.

(b) FUNDING.—Legislation effectuating this Act shall not provide for general revenue increases, reduce expenditures for any existing Federal program, or increase the Federal budget deficit.

SEC. 703. SEVERABILITY.

Except as provided in section 101(c), if any provision of this Act (including any amendment made by this Act), or the application of any such provision to any person or circumstance is held invalid, the validity of any other provision of this Act, or the application of the provision to other persons and circumstances shall not be affected thereby.

SEC. 704. EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.

(a) DIRECT APPEAL TO SUPREME COURT.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory order or final judgment, decree, or order issued by any court ruling on the constitutionality of any provision of this Act or amendment made by this Act.

(b) ACCEPTANCE AND EXPEDITION.—The Supreme Court shall, if the Court has not previously ruled on the question addressed in the ruling below, accept jurisdiction over, advance on the docket, and expedite the appeal to the greatest extent possible.

SEC. 705. REGULATIONS.

The Federal Election Commission shall prescribe any regulations required to carry out this Act and the amendments made by this Act not later than 270 days after the effective date of this Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

[From the Wall Street Journal Jan. 9, 1997]

GOP TO REBUKE COMPANIES FOR BIPARTISAN DONATIONS

(By Helene Cooper)

WASHINGTON—Republican leaders are adopting a tough post-election strategy: "Don't get mad, get even." And the foe this time isn't the Democrats or organized labor.

It's Corporate America.

Annoyed that big business has been hedging its bets by giving lots of money to the Democrats as well as to the Republicans, the GOP says the Business Roundtable, a group of 200 chief executives from the nation's biggest companies, is about to receive an ultimatum: Stop donating so much to the Democrats and become more involved in partisan politics, or be denied access to Republicans in Congress.

GOP House leaders are expected to deliver the message tonight at a dinner meeting with some 20 chief executives of Business Roundtable companies. Scheduled to attend are Speaker Newt Gingrich, Majority Leader Dick Armey, Rep. Tom DeLay of Texas and Rep. John Boehner of Ohio, among others. Corporate bigwigs expected at the meeting include Don Fites, chief executive officer of Caterpillar Inc. who is chairman of the Business Roundtable, and John Snow, chief executive of CSX Corp.

Republican Party Chairman Haley Barbour, who is spearheading the drive, accuses the business group of "sitting on its hands" during the past election campaign; he calls America's big CEOs ineffectual in the battle against Democrats and organized labor. "If their view is going to be neutral when the left tries to undo their agenda," Mr. Barbour says in an interview, "they need to paint up a big billboard that says, 'We don't fight.'"

Companies that want to have it both ways, vows one top GOP strategist, no longer will be involved in Republican decision-making "or invited to our cocktail parties."

The GOP strategy is a high-risk one. While Business Roundtable companies gave more than $11.04 million to the Democrats during the 1996 election cycle, as of figures from

Dec. 2 they gave more than double that amount—$25.76 million—to Republicans, according to the Center for Responsive Politics, a Washington-based public-interest group that monitors campaign spending.

Republican leaders insist they aren't selling access. But their strategy comes at a time when the GOP is gearing up to investigate Democratic fund raising and has criticized the Clinton administration for cozying up to wealthy Asians and Asian-Americans who have donated heavily to the Democratic Party.

But Mr. Barbour isn't worried about alienating the GOP's longtime corporate backers. "The best way to be friends is to be upfront with them." he says. Roundtable companies, he adds, "should give a bigger percentage to the Republicans" than they now are giving.

Mr. Barbour has been sounding the anti-Business Roundtable drumbeat with increasing ferocity, calling the group inefficient and incompetent in numerous interviews. And Business Roundtable members say he has suddenly become unavailable when they call to talk about the problem.

"I've been unable to connect with Haley," Caterpillar's Mr. Fites said in a letter to Roundtable members two weeks ago. "When I do reach him, I want to explain" that the Business Roundtable, as a group, doesn't give money to political candidates, Mr. Fites said.

But Business Roundtable companies do, and therein lies the problem for Republicans, who have long thought of Corporate America as their own private money machine. Lately though, big companies have been hedging their bets more than before, and giving substantial money to the Democrats as well. With a Democratic administration, that is expected to continue.

Telecommunication giants AT&T Corp., MCI Communications Corp. and Sprint Corp., along with their political-action groups, for example, rewarded the Democrats in Congress and the Clinton administration for being sympathetic to their cause during the telecommunication-legislation fight. They spread out their huge contributions almost equally, giving $1.74 million to the Democrats and $1.98 million to Republicans. Eastman Kodak Co., which is counting on the Clinton administration to push its trade complaint against Fuji Photo film Co. of Japan, gave the Democrats $40,711 in the 1996 cycle, and $39,000 to the Republicans.

Adding to the GOP's corporate-money complaints was the huge, albeit losing, $35 million campaign by organized labor to elect a Democratic Congress. When GOP strategists tried to counter the attack, forming a group called the Coalition, the business-led group raised just $5 million. In addition, the Business Roundtable declined to join. "We do not solicit or spend money on behalf of candidates for political office," the group's spokeswoman, Johanna Schneider, said.

"We've got the labor unions giving 99% to Democrats, and then the Business Roundtable turns around and says they're neutral?" says one top GOP strategist. "If they're neutral, then they should pack up their belongings and move out of town. Washington is a partisan town."

Republicans say they are drawing up a list of corporations that will be warned to shape up or ship out of the GOP decisionmaking circle. Those in the GOP doghouse include Anheuser-Busch Cos., which isn't a member of the Business Roundtable, but which, along with its PAC, gave $442,057 to the Democrats while giving $395,700 to the Republicans; and UAL Corp.'s United Airlines, which, along with its PAC, gave $265,007 to Democrats and $148,145 to Republicans.

While clearly concerned, corporate CEOs are also annoyed. "Quite frankly, I'm puzzled by this entire situation," the Business Roundtable's Mr. Fites says in his letter to fellow top dogs. "It is counterproductive to the large number of mutual goals that the roundtable shares with the Republican congressional leadership. I'm also concerned that these unfounded attacks could drive a wedge between roundtable members and congressional Republicans that will not serve either side well."

* * * * *

[From Roll Call, Jan. 20, 1997]

GOP PRESSURES BUSINESS GROUP TO DUMP THEIR DEM LOBBYISTS

(By Amy Keller)

Republican leaders are calling it "behavior modification." One source described the plan as "shooting elephants."

Either way, the Congressional GOP is turning up the heat on one of its key allies: the Business Roundtable.

Still angry that big business failed to adequately bankroll their campaigns and counter the AFL–CIO's onslaught of attack ads last fall, the Republicans want the BRT to purge Democrats from its staff of nine directors.

"You have to fix the problem. You have to fix the Business Roundtable," one Republican source said, explaining that the GOP leadership is urging the prestigious organization of corporate bigwigs to purge its staff.

The lawmakers are also urging the CEOs of some 200 corporations that comprise the BRT to dump their Democratic lobbyists, hire Republicans, and significantly increase the percentage of PAC contributions that go to GOP candidates.

Outgoing Republican National Committee Chairman Haley Barbour has been scolding corporate America for weeks for "not [lifting] a finger in that battle" against labor and other liberal groups, and on Jan. 9, Republican lawmakers hosted a dinner meeting with two dozen BRT Members to begin the "process of behavior modification," sources told Roll Call.

The CEO summit was run by top GOP leaders, including Senate Majority Leader Trent Lott (Miss), Republic Conference Chairman John Boehner (Ohio), and others. The BRT selected 24 CEOs—"friends of the Republican side," like Caterpillar Inc. CEO Donald Fites and BRT chairman and Allied Signal Inc. CEO Lawrence Bossidy—to attend the closed-door meeting.

One top GOP leadership aid described the CEO summit as a "good conversation," and said both sides walked out "with a better understanding" and a "commitment" to work together.

But other Republican sources say the business group remains under intense scrutiny. One sore spot, sources said, is BRT president Sam Maury, whom Republicans are attacking as a Democratic operative.

As one senior GOP staffer put it: "We don't feel Sam Maury fits our definition of" someone who would "work well on the Republican team."

Maury is a lawyer and former US Steel executive who joined the BRT in 1982, becoming its number-two man the following year and moving up to executive director of the entire organization in 1993.

Maury did not return calls seeking comment, and a spokeswoman for the BRT also declined to comment on the matter.

But Maury's not the only one who should be sent packing, Republicans say.

It's the view of GOP House and Senate leaders that the CEOs of America's big companies have delegated too much decision-making authority to Washington operatives with Democratic loyalties. According to the GOP leadership, corporations that want to maintain their ties with GOP leaders, and be players in policy debates, need to hire Republican lobbyists. One aide said the leaders are encouraging businesses to call them if they need help in this move—and that they'll be happy to make hiring "suggestions."

It's their choice if they want to be part of our team," he added.

Other incidents have also soured the GOP's relationship with the BRT, Republicans say. For example, lawmakers are still sore over the way the BRT handled an ad campaign promoting the GOP budget in 1995.

The BRT's $10 million ad campaign, which funded the commercials on MTV and other networks to build public support for the budget reconciliation bill, was viewed by Republicans as "tepid" at best, and GOP sources said they have reason to believe that Maury was coordinating the campaign with the White House.

Johanna Schneider, spokeswoman for the BRT, defended her organization's reputation.

The BRT was founded in 1972 by CEOs who were "committed to improving public policy," and that's the role of the BRT, not funding campaigns, she told Roll Call.

The BRT "does not have a PAC," she said, and therefore does not contribute to campaigns. And, she said, individual companies that have PACs make those decisions on an individual basis.

"I think we've been successful in adding to the public dialogue," said Schneider. But Schneider insists that the BRT doesn't, and won't have anything to do with funding campaigns.

So why are they being targeted?

The behemoth corporations are, in some ways, easier to go after. As one GOP supporter pointed out: "It's much easier to go out and shoot elephants than to shoot ants."

If the Republicans can get the BRT to change its ways the payoff could be big. Just as Willie Sutton robbed banks because "that's where the money is," the GOP Congressional leaders realize that BRT members could handily boost Republican election efforts if the BRT would agree to fund issue-advocacy campaigns in future elections.

And while no one expects to see 100 percent, or even 90 percent, of corporate PAC money go exclusively to Republicans—60 or 70 percent would be nice, they say.

While some in the business community say they are angered by the GOP's tactics, others are downplaying the tongue-lashing.

Said one corporate source: "They wanted businesses to stop and review what they did in light of what labor did * * *. Just a reminder that things have changed. A reminder to take a look. . . take a good look at what you did. Look at it collectively, and look at what other people on the other side of the issues did."

Steve Stockmeyer, spokesman for the National Association of Business PAC, wasn't at the recent meeting of CEOs and Congressional leaders, but he told Roll Call that he has sympathies on both sides.

"The Republican leadership is wise to seek out allies and ask them to be more consistent allies," said Stockmeyer, though he did say that the GOP approach has been rather "hamhanded."

"Republicans haven't had 40 years to learn how to be subtle," Stockmeyer said. He also

noted that it would be native for Republicans to expect the business community to consistently support Republicans, though he admitted businesses should do more.

"It will never be monolithic to the degree that labor was * * *. Business is too pragmatic," he observed.

As for the push to hire Republican lobbyists, Wright Andrews, the former president of the American League of Lobbyists, told Roll Call that he believes it is "wrong, wrong, wrong for either Democrats or Republicans to say, "We only want to work with our former staffers.'"

"It's not their job to decide," he said.

As Republicans strive to become a permanent majority on Capitol Hill, many say they expect an influx of GOP lobbyists to be a natural progression. They simply hope that the increased pressure will "speed up the process" of that turnover, one source said.

Still, another source with solid GOP connections expressed reservations about just how far Republican lawmakers can push their argument.

"You don't start a game of this nature if you don't have a game plan that takes you to the end of the game," he said, remarking that GOP leaders must remember that in the end, they need corporate America as much as it needs them.

Mr. LEVIN. Mr. President, I could not agree more with something Senator DASCHLE said earlier today, when he urged us to enact campaign finance reform within the first 100 days of this Congress. The public is looking at us with greater scrutiny in this area than they have ever looked before. We have been down this road before, and I have walked down this road with colleagues, often on a bipartisan basis.

The likelihood is we cannot get anything done in this area unless we act on a bipartisan basis. But act we must. That is what the public is telling us, and I believe the mood they are in will hold us accountable if we fail that charge.

I thank the Chair and yield the floor.

By Mr. DASCHLE (for himself, Mr. KENNEDY, Ms. MOSELEY-BRAUN, Ms. MIKULSKI, Mr. DODD, Mr. REID, Mr. DORGAN, Mrs. MURRAY, Mr. FORD, Mr. ROCKEFELLER, Mr. INOUYE, Mr. KERRY, Mr. LEVIN, Mr. CLELAND, Mr. JOHNSON, Mr. BREAUX, Mr. TORRICELLI, Mr. DURBIN, Mr. GLENN, Mrs. BOXER, Mr. WELLSTONE, and Mr. BRYAN):

S. 12. A bill to improve education for the 21st century; to the Committee on Finance.

EDUCATION FOR THE 21ST CENTURY ACT

Mr. KENNEDY. Mr. President, I give my strong support to the "Education for the 21st Century Act" introduced today by Senator DASCHLE on one of our principle democratic leadership initiatives.

Education must continue to be a top priority in this Congress. We need to do more to make college accessible and affordable for all students, to modernize school classrooms, to help communities build new school facilities and repair old ones, and to help all children learn to read so that they can read to learn.

It is not enough to maintain current spending levels for education. Modest increases are essential to meet rising enrollments and inflation.

Too often, college is priced out of reach for many families. From 1980 to 1990, the cost of college rose by 126 percent, while family income increased by only 73 percent. To meet that rising cost, students are going deeper and deeper into debt. In the 1990s, students have borrowed more in student loans than in the three preceding decades combined.

In 1996 alone, students borrowed $30 billion—a 65-percent increase since 1993. Since 1988, borrowing in the Federal student loan program has increased by more than 100 percent, while starting salaries for college graduates failed to increase at all. Eighty percent of young adults with student loans make under $20,000 in their first year of repayment, barely enough to support the average repayment.

Communities are struggling to repair decrepit facilities, let alone build modern classrooms. Fourteen million children in a third of the Nation's schools are learning in sub-standard classrooms. Half the schools have unsatisfactory conditions. Forty-six percent of schools report insufficient electrical wiring for computers and communications equipment. The repair bill alone is estimated at $112 billion.

And while all this is happening, enrollments are at an all-time high of 52 million students, and thus are continuing to rise.

Forty percent of all children are now reading below their basic grade level. Many parents do not read to their children and with their children, even though we know that when parent involvement is high, student reading scores are also high.

Technology is a powerful tool for improving schools and encouraging economic growth. Computers enable teachers to spend more time with students and teach more effective lessons. By the year 2000, 60 percent of all jobs in the Nation will require skills in computer and network use. According to a recent GAO study, one in every four schools does not have sufficient computers to meet its needs. Only 9 percent of classrooms are connected to the Internet.

Clearly, we are not prepared to meet the challenges of the next century. We have to do better, and the Education for the 21st Century Act will help us to meet the pressing needs of communities, schools, and families.

The Act includes four separate titles: The Higher Education Affordability Act, which includes President Clinton's $1,500 Hope Tuition Tax Credit, the $10,000 tuition tax deduction, and the restoration of the tax deduction for student loan interest; The Educational Facilities Improvement Act; The America Reads Challenge Act, which includes The Parents as First Teachers Act and The Challenging America's Young Readers Act; and The Investing in Technology in the Classroom Act.

The Hope Tax Credit will make at least 2 years of community college affordable for every student. The bill provides a $1,500 a year refundable tax credit for net tuition payments during the first 2 years of college after high school for full-time students. Part-time students may receive $750 per year. The tax benefit is phased out for single persons between $50,000 and $70,000 in adjusted gross income, and phased out for couples between $80,000 and $100,000. Only students who have a cumulative "B" average from high school, or its equivalent, qualify for the credit. Pell grants and the tax credit are additive, up to the value of the net tuition paid.

The $10,000 tax deduction will be available to all families with incomes below $100,000. The bill provides an above-the-line deduction of up to $10,000 per taxpayer per year for net tuition expenses. The deduction is available for all college and graduate schools, and the income limits are the same as those provided under the Hope Tax Credit.

The bill also restores the deduction for interest on student loans that was available before the Tax Reform Act of 1986. Unlike the previous deduction, this bill provides an above-the-line deduction. The income limits are the same as those provided under the Hope Tax Credit.

The Educational Facilities Improvement Act instructs the Federal Government to pay up to 50 percent of the interest costs on State and local bonds to finance school repair, renovation, modernization and construction. Twenty percent of the funds will go directly from the Secretary of Education to the 100 poorest school districts under a formula based on the number of poor children. The remainder of the funds will be awarded to States to provide assistance to State or local bond authorities.

The America Reads Challenge Act includes two components: The Parents as First Teachers Act and the Challenge America's Young Readers Act. The Parents as First Teachers Act—recognizing that parents are the best first teachers—will support national and regional parent networks that disseminate information on helping parents help their children to read. It will also fund programs to expand successful programs and activities that help parents increase the reading skills of their children.

The Challenging America's Young Readers Act will help State and local organizations help children learn to read by the third grade. Programs

funded by this act will provide 30,000 reading specialists and volunteer coordinators to run tutoring assistance programs outside regular school hours to more than 3 million children.

My hope is that these proposals will receive the bipartisan support they deserve, so they can be in place for the beginning of the next academic year this fall. Improving education or opportunities for education is clearly one of our highest national priorities. Few things which this Congress does will matter more to the country's future. Investing in education is investing in a stronger America here at home and around the world, and I look forward to working with my colleagues on both sides of the aisle to enact these important measures.

Mr. BREAUX. Mr. President, I would like to make a few remarks about S. 12, the Education for the 21st Century Act, and our efforts to improve elementary and secondary educational opportunities for our Nation's children, as well as make higher education more accessible for adults.

Quality education is necessary not only for the future of our children and our families, but for the future of our Nation. A better educated workforce is essential to compete in the global economy and to maintain a strong democracy. Every Member of this body knows that a high school diploma is worth far less in today's marketplace than a generation ago. According to the U.S. Bureau of Labor Statistics, 60 percent of all jobs created between 1992 and 2005 will require education beyond high school. Modern society has little room for those who cannot read, write, and compute effectively; solve problems; and continually learn new technologies and skills.

The Education for the 21st Century Act includes a number of important initiatives that, if enacted, will make educational opportunities more accessible for Americans: The HOPE Scholarship, the tax deduction for higher education expenses, the student loan interest deduction, and the technology literacy and America Reads initiatives. Another area of concern that S. 12 addresses is the declining physical condition of our Nation's schools.

According to a June 1996 report by the U.S. General Accounting Office, nationwide, about a third of public elementary and secondary schools have at least one building needing extensive repair, and about 60 percent need extensive repair, overhaul, or replacement of at least one major building feature. Nationwide, about 58 percent of schools have at least one unsatisfactory environmental condition (i.e., lighting, heating, ventilation, indoor air quality, acoustics for noise control, and physical security). Nationwide, 21 percent of schools need to spend over the national average ($1.7 million) to bring their facilities into "good condition."

Although a national problem, it is mirrored in every State. In my own State of Louisiana, about 38 percent of public elementary and secondary schools have at least one building needing extensive repair. Fifty-six percent of Louisiana schools have at least one unsatisfactory environmental condition. Twenty-three percent of Louisiana schools need to spend over the national average to bring their facilities into "good condition." Sixty-five percent of Louisiana schools lack telephone lines for computer modems.

It is important that we help schools, libraries, and local governments bring advanced telecommunications to millions who otherwise cannot participate in the new information age. Computer services like the Internet give young people in the most poor and remote communities access to the same information available in the best libraries and institutions in the country and the world. Unfortunately, many States and local governments have had to cut back on investment in education because of budget problems and limits on debt capacity.

Some have argued that the proper role of Government is to try to solve everyone's problems from cradle to grave—to create programs to protect citizens from everything, even themselves, because, as they say, "Government knows best." Others argue that Government has no role at all in helping people, other than getting out of the way and offer only a survival of the fittest solution. My colleagues let me suggest that the better role for Government to play is one that equips the American people with the means to solve their own problems.

Some want to abandon the public schools, not make them better—as if removing the most motivated students and parents will somehow increase the drive to improve schools for everyone else. Others say education reform is a question of more resources and better management. Still others say an education system for the 21st century should be defined by its results and schools exist only if they attract students and satisfy parents; they serve everyone; and they operate on the premise that all students can succeed.

Whatever your point of view, the task of making education work falls to all of us. If we have learned anything over the past decades, it is there is no quick fix. This proposal will not transform our schools overnight. However, over time, it will be a meaningful step toward improving the lives and futures of families in Louisiana and throughout this Nation. I believe we should explore, and I am exploring, other ideas and options to help State and local governments address their infrastructure needs.

Mr. President, I hope my colleagues will favorably consider this legislation. As we move through the 105th Congress and consider all of the various proposals to produce a balanced federal budget, we must be mindful that our intent is to provide, not deny, American families the means and the opportunity to take part in our global economy.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 12

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 "Education for the 21st Century Act".

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Quality public education is necessary not only for the future of our children and our families, but for the future of America. A better educated citizenry and workforce are essential to compete in the global economy and to maintain a strong democracy.

(2) The investment America makes today in the education of its people will determine the future of the Nation. In order to promote growth and prosperity in our economy, and ensure individual opportunity, America must maintain education as a national priority.

(3) Strong leadership in education is needed more than ever. Schools are facing the challenge of educating more highly skilled workers to meet the demands of a modern economy. The Bureau of Labor Statistics estimates that 60 percent of all jobs created between 1992 and 2005 will require more than a high school education.

(4) Mounting evidence suggests that far more rigorous levels of academic achievement will be required to equip American students for the 21st century workplace. Employers will demand increasingly sophisticated levels of literacy, communication, mathematical, and technological skills. Sixty percent of all jobs will require computer skills.

(5) Literacy is a crucial element of academic success. However, in 1994, 40 percent of 4th grade students failed to attain the basic level of reading on the National Assessment of Educational Progress. Seventy percent did not attain the proficient level. Students who are not reading at grade-level are very unlikely to graduate from high school. One-on-one tutoring is a key component of bringing students up to reading grade-level.

(6) Students are learning in decrepit school buildings. According to 2 recent Government Accounting Office reports, 14,000,000 children in a third of the Nation's schools are learning in substandard classrooms. Half of the schools have at least 1 unsatisfactory environmental condition, such as poor air quality.

(7) College costs are rising. College tuition has risen in private colleges and universities and in State institutions as State appropriations have eroded. From 1985 to 1994, the average cost of attending college rose by 30 percent after adjusting for inflation. During the same period, the median income increased by only 1 percent.

(8) Meeting the challenge of the next century will require the involvement of all Americans, including public officials, educators, parents, business and community leaders, and students. Encouraging active

participation by all segments of communities is essential for the success of students in the 21st century.

TITLE I—TAX INCENTIVES FOR HIGHER EDUCATION

SEC. 101. REFUNDABLE CREDIT FOR HIGHER EDUCATION EXPENSES.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

"SEC. 35. HIGHER EDUCATION TUITION AND FEES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year the amount of qualified higher education expenses paid by the taxpayer during such taxable year.

"(b) CREDIT LIMITED TO $1,500 PER ACADEMIC YEAR.—

"(1) IN GENERAL.—The amount allowed as a credit under subsection (a) for any taxable year with respect to an eligible student shall not exceed the sum of the credit amounts for qualified academic periods beginning during such taxable year or the 1st 3 months of the next taxable year. A qualified academic period may not be taken into account under the preceding sentence more than once.

"(2) CREDIT ALLOWED ONLY FOR FIRST 2 ACADEMIC YEARS OF POST-SECONDARY EDUCATION.—For purposes of paragraph (1), the term 'qualified academic period' means, with respect to any student, any academic period for which such student is an eligible student if such period, when added to prior periods that such student was an eligible student, does not exceed 2 full-time academic years (or the equivalent thereof).

"(3) CREDIT AMOUNT.—For purposes of paragraph (1), except as otherwise provided in regulations prescribed by the Secretary, the credit amount for any academic period is the amount equal to—

"(A) $1,500, divided by

"(B) the number of such academic periods during the academic year.

In the case of an eligible student who is not a full-time student for an academic period, the credit amount for such period shall be ½ the amount determined under the preceding sentence.

"(4) INFLATION ADJUSTMENT OF CREDIT LIMITATION FOR ACADEMIC YEAR.—

"(A) IN GENERAL.—In the case of a taxable year beginning after 1998, the $1,500 amount in paragraph (3)(A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

"(c) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

"(A) the excess of—

"(i) the taxpayer's modified adjusted gross income for such taxable year, over

"(ii) $50,000 ($80,000 in the case of a joint return), bears to

"(B) $20,000.

"(3) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year—

"(A) determined without regard to section 221, and

"(B) increased by any amount excluded from gross income under section 911, 931, or 933.

"(4) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of a taxable year beginning after 2000, the $50,000 and $80,000 amounts in paragraph (2), section 221(b)(2)(B)(i)(II), and section 222(b)(2)(A)(ii) shall each be increased by an amount equal to—

"(i) such dollar amounts, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

"(d) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of this section—

"(1) QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

as an eligible student at an institution of higher education.

"(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the student's degree program.

"(C) EXCEPTION FOR NONACADEMIC FEES.—Such term does not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to a student's academic course of instruction.

"(D) ELIGIBLE STUDENT.—

"(i) IN GENERAL.—The term 'eligible student' means, with respect to any academic period, a student who—

"(I) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

"(II) is carrying at least ½ the normal full-time work load for the course of study the student is pursuing, as reasonably determined by the institution of higher education.

"(ii) GRADE-POINT REQUIREMENT.—A student shall not be treated as an eligible student if the student did not have a grade-point average of at least 2.75 on a 4-point scale (or met a substantially similar measure of achievement) for the students' high school education (or equivalent).

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution—

"(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

"(B) which is eligible to participate in programs under title IV of such Act.

"(3) FULL-TIME STUDENT.—The term 'full-time student' means any student who is carrying at least the normal full-time work load for the course of study the student is pursuing, as reasonably determined by the institution of higher education.

"(e) SPECIAL RULES.—

"(1) DENIAL OF CREDIT IF STUDENT CONVICTED OF DRUG OFFENSE.—No credit shall be allowed under subsection (a) for qualified higher education expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.

"(2) NO DOUBLE BENEFIT.—

"(A) IN GENERAL.—No credit shall be allowed under subsection (a) for qualified higher education expenses for the enrollment or attendance of a student for any academic period if any such expense for the enrollment or attendance of such student for such period is allowed as a deduction to the taxpayer under any other provision of this chapter.

"(B) DEPENDENTS.—No credit shall be allowed under subsection (a) to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(3) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under subsection (a) to a taxpayer with respect to an eligible student other than the taxpayer unless the taxpayer includes the name and taxpayer identification number of such eligible student on the return of tax for the taxable year.

"(4) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS.—The amount of qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual for an academic period shall be reduced (before the application of subsections (b) and (c)) by the sum of—

"(A) the amounts received with respect to such individual which are allocable to such period as—

"(i) a qualified scholarship which under section 117 is not includable in gross income,

"(ii) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or

"(iii) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for educational expenses, or attributable to enrollment at an eligible educational institution, which is exempt from income taxation by any law of the United States, and

"(B) the amount excludable from gross income under section 135 which is allocable to such expenses with respect to such individual for such period.

"(5) NO CREDIT FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

"(6) NONRESIDENT ALIENS.—If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

"(7) REGULATIONS.—The Secretary may, in consultation with the Secretary of Education, prescribe such regulations as may be

necessary or appropriate to carry out this section, including—

"(A) regulations requiring recordkeeping and information reporting by the taxpayer and any other person the Secretary determines appropriate, and

"(B) regulations providing for a recapture of credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit."

(b) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Paragraph (2) of section 6213(g) of such Code (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting a comma, and by inserting after subparagraph (H) the following new subparagraph:

"(I) an omission of a correct TIN required under section 35(e)(3) or under section 220(d)(3)(B) (relating to higher education tuition and fees) to be included on a return."

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period "or from section 35 of such Code".

(2) The table of sections for subpart C of part IV of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

"Sec. 35. Higher education tuition and fees.
"Sec. 36. Overpayments of tax."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

(2) PERIODS BEFORE 1998 TAKEN INTO ACCOUNT.—For purposes of applying section 35(b)(2)(A) of the Internal Revenue Code of 1986 (as added by this section), periods before January 1, 1998, that the student was an eligible student shall be taken into account.

SEC. 102. DEDUCTION FOR HIGHER EDUCATION EXPENSES.

(a) DEDUCTION ALLOWED.— Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. HIGHER EDUCATION TUITION AND FEES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction the amount of qualified higher education expenses paid by the taxpayer during the taxable year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The amount allowed as a deduction under subsection (a) for any taxable year shall not exceed $10,000.

"(B) PHASE-IN.—In the case of taxable years beginning in 1998 or 1999, subparagraph (A) shall be applied by substituting '$5,000' for '$10,000'.

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The amount allowed as a deduction under subsection (a) (after application of paragraph (1)) shall be reduced (but not below zero) by the amount determined under subparagraph (B).

"(B) AMOUNT OF REDUCTION.—The amount determined under this subparagraph equals the amount which bears the same ratio to the deduction (determined without regard to this paragraph) as—

"(i) the excess of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $50,000 ($80,000 in the case of a joint return), bears to

"(ii) $20,000.

"(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (B), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year determined—

"(i) without regard to this section and sections 911, 931, and 933, and

"(ii) after the application of sections 86, 135, 137, 219, and 469.

For purposes of sections 86, 135, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

"(D) CROSS REFERENCE.—

"For inflation adjustment of $50,000 and $80,000 amounts, see section 35(c)(4).

"(c) DEFINITIONS.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), terms used in this section which are also used in section 35 have the respective meanings given such terms in section 35.

"(2) DEDUCTION AVAILABLE FOR EDUCATION TO ACQUIRE OR IMPROVE JOB SKILLS.—For purposes of applying this section, the requirement of section 35(d)(1)(D)(ii) shall be treated as met if the student is enrolled in a course which enables the student to improve the student's job skills or to acquire new job skills.

"(d) SPECIAL RULES.—

"(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under subsection (a) for qualified higher education expenses with respect to which a deduction is allowable to the taxpayer under any other provision of this chapter unless the taxpayer irrevocably waives his right to the deduction of such expenses under such other provision.

"(2) LIMITATION ON TAXABLE YEAR OF DEDUCTION.—

"(A) IN GENERAL.—A deduction shall be allowed under subsection (a) for any taxable year only to the extent the qualified higher education expenses are in connection with enrollment at an institution of higher education during the taxable year.

"(B) CERTAIN PREPAYMENTS ALLOWED.—Subparagraph (A) shall not apply to qualified higher education expenses paid during a taxable year if such expenses are in connection with an academic term beginning during such taxable year or during the 1st 3 months of the next taxable year.

"(3) CERTAIN RULES TO APPLY.—Rules similar to the following rules of section 35(e) shall apply for purposes of this section:

"(A) Paragraph (2)(B) (relating to denial of double benefit for dependents).

"(B) Paragraph (3) (relating to identification requirement).

"(C) Paragraph (4) (relating to adjustment for certain scholarships).

"(D) Paragraph (5) (relating to no benefit for married individuals filing separate returns).

"(E) Paragraph (6) (relating to nonresident aliens).

"(4) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting."

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) of such Code is amended by inserting after paragraph (16) the following new paragraph:

"(17) HIGHER EDUCATION TUITION AND FEES.—The deduction allowed by section 221."

(c) CONFORMING AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 221 and inserting:

"Sec. 221. Higher education tuition and fees.
"Sec. 222. Cross reference."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 103. DEDUCTION FOR INTEREST ON EDUCATION LOANS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals), as amended by section 102, is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

"SEC. 222. INTEREST ON EDUCATION LOANS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

"(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount allowed as a deduction under subsection (a) shall be reduced (but not below zero) by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—The amount determined under this paragraph equals the amount which bears the same ratio to the deduction (determined without regard to this subsection) as—

"(A) the excess of—

"(i) the taxpayer's modified adjusted gross income for such taxable year, over

"(ii) $50,000 ($80,000 in the case of a joint return), bears to

"(B) $20,000.

"(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of paragraph (2), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year determined—

"(A) without regard to this section and sections 911, 931, and 933, and

"(B) after the application of sections 86, 135, 137, 219, 221, and 469.

For purposes of sections 86, 135, 219, 221, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

"(4) CROSS REFERENCE.—

"For inflation adjustment of $50,000 and $80,000 amounts, see section 35(c)(4).

"(c) DEPENDENTS NOT ELIGIBLE FOR DEDUCTION.—No deduction shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EDUCATION LOAN.—The term 'qualified education loan' means any indebtedness incurred to pay qualified higher education expenses—

"(A) which are incurred on behalf of the taxpayer or the taxpayer's spouse,

"(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

"(C) which are attributable to education furnished during a period during which the recipient was at least a half-time student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a

qualified education loan. The term 'qualified education loan' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

"(2) QUALIFIED HIGHER EDUCATION EXPENSES.—The term 'qualified higher education expenses' has the meaning given such term by section 35(d) (without regard to paragraph (1)(D)(ii)), reduced by the sum of—

"(A) the amount excluded from gross income under section 135 by reason of such expenses, and

"(B) the amount of the reduction described in section 135(d)(1).

For purposes of applying section 35(d) under the preceding sentence, the term 'eligible educational institution' shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

"(3) HALF-TIME STUDENT.—The term 'half-time student' means any individual who would be a student as defined in section 151(c)(4) if 'half-time' were substituted for 'full-time' each place it appears in such section.

"(4) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152.

"(e) SPECIAL RULES.—

"(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

"(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

"(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703."

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 of such Code, as amended by section 102, is amended by inserting after paragraph (17) the following new paragraph:

"(18) INTEREST ON EDUCATION LOANS.—The deduction allowed by section 222."

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by inserting after section 6050R the following new section:

"SEC. 6050S. RETURNS RELATING TO EDUCATION LOAN INTEREST RECEIVED IN TRADE OR BUSINESS FROM INDIVIDUALS.

"(a) EDUCATION LOAN INTEREST OF $600 OR MORE.—Any person—

"(1) who is engaged in a trade or business, and

"(2) who, in the course of such trade or business, receives from any individual interest aggregating $600 or more for any calendar year on 1 or more qualified education loans, shall make the return described in subsection (b) with respect to each individual from whom such interest was received at such time as the Secretary may by regulations prescribe.

"(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name, address, and TIN of the individual from whom the interest described in subsection (a)(2) was received,

"(B) the amount of such interest received for the calendar year, and

"(C) such other information as the Secretary may prescribe.

"(c) APPLICATION TO GOVERNMENTAL UNITS.—For purposes of subsection (a)—

"(1) TREATED AS PERSONS.—The term 'person' includes any governmental unit (and any agency or instrumentality thereof).

"(2) SPECIAL RULES.—In the case of a governmental unit or any agency or instrumentality thereof—

"(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

"(B) any return required under subsection (a) shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of interest described in subsection (a)(2) received by the person required to make such return from the individual to whom the statement is required to be furnished.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

"(e) QUALIFIED EDUCATION LOAN DEFINED.—For purposes of this section, except as provided in regulations prescribed by the Secretary, the term 'qualified education loan' has the meaning given such term by section 222(d)(1).

"(f) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of interest received by any person on behalf of another person, only the person first receiving such interest shall be required to make the return under subsection (a)."

(2) ASSESSABLE PENALTIES.—Section 6724(d) (relating to definitions) is amended—

(A) by redesignating clauses (x) through (xv) as clauses (xi) through (xvi), respectively, in paragraph (1)(B) and by inserting after clause (ix) of such paragraph the following new clause:

"(x) section 6050S (relating to returns relating to education loan interest received in trade or business from individuals),", and

(B) by striking "or" at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting ", or", and by adding at the end the following new subparagraph:

"(Z) section 6050R (relating to returns relating to education loan interest received in trade or business from individuals)."

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

"Sec. 222. Interest on education loans.
"Sec. 223. Cross reference."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any qualified education loan (as defined in section 222(d)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act, but only with respect to any loan interest payment due after December 31, 1997.

TITLE II—EDUCATIONAL FACILITIES IMPROVEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the "Educational Facilities Improvement Act".

SEC. 202. PROVISION OF ASSISTANCE FOR CONSTRUCTION AND RENOVATION OF EDUCATIONAL FACILITIES.

Title XII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8501 et seq.) is amended—

(1) by repealing sections 12002 and 12003;

(2) by redesignating sections 12001 and 12004 through 12013, as sections 12101 and 12102 through 12111, respectively;

(3) by inserting after the title heading the following:

"SEC. 12001. FINDINGS.

"The Congress finds the following:

"(1) The General Accounting Office performed a comprehensive survey of the Nation's public elementary and secondary school facilities, and found severe levels of disrepair in all areas of the United States.

"(2) The General Accounting Office concluded more than 14,000,000 children attend schools in need of extensive repair or replacement. Seven million children attend schools with life safety code violations. Twelve million children attend schools with leaky roofs.

"(3) The General Accounting Office found the problem of crumbling schools transcends demographic and geographic boundaries. At 38 percent of urban schools, 30 percent of rural schools, and 29 percent of suburban schools, at least 1 building is in need of extensive repair or should be completely replaced.

"(4) The condition of school facilities has a direct affect on the safety of students and teachers, and on the ability of students to learn.

"(5) Academic research has proven a direct correlation between the condition of school facilities and student achievement. At Georgetown University, researchers found students assigned to schools in poor condition can be expected to fall 10.9 percentage points below those in buildings in excellent condition. Similar studies have demonstrated up to a 20 percent improvement in test scores when students were moved from a poor facility to a new facility.

"(6) The General Accounting Office found most schools are not prepared to incorporate modern technology into the classroom. Forty-six percent of schools lack adequate electrical wiring to support the full-scale use of technology. More than a third of schools lack the requisite electrical power. Fifty-six percent of schools have insufficient phone lines for modems.

"(7) The Department of Education reported that elementary and secondary school enrollment, already at a record high level, will continue to grow during the period between 1996 and 2000, and that in order to accommodate this growth, the United States will need to build an additional 6,000 schools over this time period.

"(8) The General Accounting Office found it will cost $112,000,000,000 just to bring schools up to good, overall condition, not including the cost of modernizing schools so the schools can utilize 21st century technology, nor including the cost of expansion to meet record enrollment levels.

"(9) State and local financing mechanisms have proven inadequate to meet the challenges facing today's aging school facilities. Large numbers of local educational agencies have difficulties securing financing for school facility improvement.

"(10) The Federal Government can support elementary and secondary school facilities, and can leverage additional funds for the improvement of elementary and secondary school facilities.

"SEC. 12002. PURPOSE.

"The purpose of this title is to help State and local authorities improve the quality of education at their public schools through the provision of Federal funds to enable the State and local authorities to meet the cost associated with the improvement of school facilities within their jurisdictions.

"PART A—GENERAL INFRASTRUCTURE IMPROVEMENT GRANT PROGRAM";

and

(4) by adding at the end the following:

"PART B—CONSTRUCTION AND RENOVATION BOND SUBSIDY PROGRAM

"SEC. 12201. DEFINITIONS.

"As used in this part:

"(1) EDUCATIONAL FACILITY.—The term educational facility" has the meaning given the term 'school' in section 12110.

"(2) LOCAL AREA.—The term 'local area' means the geographic area served by a local educational agency.

"(3) LOCAL BOND AUTHORITY.—The term 'local bond authority' means—

"(A) a local educational agency with authority to issue a bond for construction or renovation of educational facilities in a local area; and

"(B) a political subdivision of a State with authority to issue such a bond for an area including a local area.

"(4) POVERTY LINE.—The term 'poverty line' means the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))) applicable to a family of the size involved.

"(5) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"SEC. 12202. AUTHORIZATION OF PROGRAM.

"(a) PROGRAM AUTHORITY.—Of the amount appropriated under section 12210 for a fiscal year and not reserved under subsection (b), the Secretary shall use—

"(1) 20 percent of such amount to award grants to local bond authorities for not more than 125 eligible local areas as provided for under section 12203; and

"(2) 80 percent of such amount to award grants to States as provided for under section 12204.

"(b) SPECIAL RULE.—The Secretary may reserve—

"(1) not more than 1 percent of the amount appropriated under section 12210 to provide assistance to Indian schools in accordance with the purpose of this title;

"(2) not more than 0.5 percent of the amount appropriated under section 12210 to provide assistance to Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau to carry out the purpose of this title; and

"(3) not more than 0.1 percent of the amount appropriated under section 12210 to carry out section 12209.

"SEC. 12203. DIRECT GRANTS TO LOCAL BOND AUTHORITIES.

"(a) IN GENERAL.—The Secretary shall award a grant under section 12202(a)(1) to eligible local bond authorities to provide assistance for construction or renovation of educational facilities in a local area.

"(b) USE OF FUNDS.—The local bond authority shall use amounts received through a grant made under section 12202(a)(1) to pay a portion of the interest costs applicable to any local bond issued to finance an activity described in section 12205 with respect to the local area.

"(c) ELIGIBILITY AND DETERMINATION.—

"(1) ELIGIBILITY.—To be eligible to receive a grant under section 12202(a)(1) for a local area, a local bond authority shall demonstrate the capacity to issue a bond for an area that includes 1 of the 125 local areas for which the Secretary has made a determination under paragraph (2).

"(2) DETERMINATION.—

"(A) MANDATORY.—The Secretary shall make a determination of the 100 local areas that have the highest numbers of children who are—

"(i) aged 5 to 17, inclusive; and

"(ii) members of families with incomes that do not exceed 100 percent of the poverty line.

"(B) DISCRETIONARY.—The Secretary may make a determination of 25 local areas, for which the Secretary has not made a determination under subparagraph (A), that have extraordinary needs for construction or renovation of educational facilities that the local bond authority serving the local area is unable to meet.

"(d) APPLICATION.—To be eligible to receive a grant under section 12202(a)(1), a local bond authority shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

"(1) an assurance that the application was developed in consultation with parents and classroom teachers;

"(2) information sufficient to enable the Secretary to make a determination under subsection (c)(2) with respect to such local authority;

"(3) a description of the architectural, civil, structural, mechanical, or electrical construction or renovation to be supported with the assistance provided under this part;

"(4) a cost estimate of the proposed construction or renovation;

"(5) an identification of other resources, such as unused bonding capacity, that are available to carry out the activities for which assistance is requested under this part;

"(6) a description of how activities supported with funds provided under this part will promote energy conservation; and

"(7) such other information and assurances as the Secretary may require.

"(e) AWARD OF GRANTS.—

"(1) IN GENERAL.—In awarding grants under section 12202(a)(1), the Secretary shall give preference to a local bond authority based on—

"(A) the extent to which the local educational agency serving the local area involved or the educational facility for which the authority seeks a grant (as appropriate) meets the criteria described in section 12103(a);

"(B) the extent to which the educational facility is overcrowded; and

"(C) the extent to which assistance provided through the grant will be used to fund construction or renovation that, but for receipt of the grant, would not otherwise be possible to undertake.

"(2) AMOUNT OF ASSISTANCE.—

"(A) IN GENERAL.—In determining the amount of assistance for which local bond authorities are eligible under section 12202(a)(1), the Secretary shall—

"(i) give preference to a local bond authority based on the criteria specified in paragraph (1); and

"(ii) consider—

"(I) the amount of the cost estimate contained in the application of the local bond authority under subsection (d)(4);

"(II) the relative size of the local area several by the local bond authority; and

"(III) any other factors determined to be appropriate by the Secretary.

"(B) MAXIMUM AMOUNT OF ASSISTANCE.—A local bond authority shall be eligible for assistance under section 12202(a)(1) in an amount that does not exceed the appropriate percentage under section 12204(f)(3) of the interest costs applicable to any local bond issued to finance an activity described in section 12205 with respect to the local area involved.

"SEC. 12204. GRANTS TO STATES.

"(a) IN GENERAL.—The Secretary shall award a grant under section 12202(a)(2) to each eligible State to provide assistance to the State, or local bond authorities in the State, for construction and renovation of educational facilities in local areas.

"(b) USE OF FUNDS.—The State shall use amounts received through a grant made under section 12202(a)(2)—

"(1) to pay a portion of the interest costs applicable to any State bond issued to finance an activity described in section 12205 with respect to the local areas; or

"(2) to provide assistance to local bond authorities in the State to pay a portion of the interest costs applicable to any local bond issued to finance an activity described in section 12205 with respect to the local areas.

"(c) AMOUNT OF GRANT TO STATE.—

"(1) IN GENERAL.—From the amount available for grants under section 12202(a)(2), the Secretary shall award a grant to each eligible State that is equal to the total of—

"(A) a sum that bears the same relationship to 50 percent of such amount as the total amount of funds made available for all eligible local educational agencies in the State under part A of title I for such year bears to the total amount of funds made available for all eligible local educational agencies in all States under such part for such year; and

"(B) a sum that bears the same relationship to 50 percent of such amount as the total amount of funds made available for all eligible local educational agencies in the State under title VI for such year bears to the total amount of funds made available for all eligible local educational agencies in all States under such title for such year.

"(2) ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—For the purpose of paragraph (1) the term 'eligible local educational agency' means a local educational agency that does not serve a local area for which an eligible local bond authority received a grant under section 12203

"(d) STATE APPLICATIONS REQUIRED.—To be eligible to receive a grant under section 12202(a)(2), a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require. Such application shall contain—

"(1) a description of the process the State will use to determine which local bond authorities will receive assistance under subsection (b)(2).

"(2) an assurance that grant funds under this section will be used to increase the amount of school construction or renovation in the State for a fiscal year compared to such amount in the State for the preceding fiscal years.

"(e) ADMINISTERING AGENCY.—

"(1) IN GENERAL.—The State agency with authority to issue bonds for the construction or renovation of educational facilities, or with the authority to otherwise finance such construction or renovation, shall administer the amount received through the grant.

"(2) SPECIAL RULE.—If no agency described in paragraph (1) exits, or if there is more than one such agency, then the chief executive officer of the State and the chief State school officer shall designate a State entity or individual to administer the amounts received through the grant.

"(f) ASSISTANCE TO LOCAL BOND AUTHORITIES.—

"(1) IN GENERAL.—To be eligible to receive assistance from a State under this section, a local bond authority shall prepare and submit to the State agency designated under subsection (e) an application at such time, in such manner, and containing such information as the State agency may require, including the information described in section 12203(d).

"(2) CRITERIA.—In awarding grants under this section, the State agency shall give preference to a local bond authority based on—

"(A) the extent to which the local educational agency serving the local area involved or the educational facility for which the authority seeks the grant (as appropriate) meets the criteria described in section 12103(a);

"(B) the extent to which the educational facility is overcrowded; and

"(C) the extent to which assistance provided through the grant will be used to fund construction or renovation that, but for receipt of the grant, would not otherwise be possible to undertake.

"(3) AMOUNT OF ASSISTANCE.—A local bond authority seeking assistance for a local area served by a local educational agency described in—

"(A) clause (i)(I) or clause (ii)(I) of section 1125(c)(2)(A), shall be eligible for assistance in an amount that does not exceed 10 percent;

"(B) clause (i)(II) or clause (ii)(II) of section 1125(c)(2)(A), shall be eligible for assistance in an amount that does not exceed 20 percent;

"(C) clause (i)(III) or clause (ii)(III) of section 1125(c)(2)(A), shall be eligible for assistance in an amount that does not exceed 30 percent;

"(D) clause (i)(IV) or clause (ii)(IV) of section 1125(c)(2)(A), shall be eligible for assistance in an amount that does not exceed 40 percent; and

"(E) clause (i)(V) or clause (ii)(V) of section 1125(c)(2)(A), shall be eligible for assistance in an amount that does not exceed 50 percent;

of the interest costs applicable to any local bond issued to finance an activity described in section 12205 with respect to the local area.

"(g) ASSISTANCE TO STATE.—

"(1) IN GENERAL.—If a State issues a bond to finance an activity described in section 12205 with respect to local areas, the State shall be eligible for assistance in an amount that does not exceed the percentage calculated under the formula described in paragraph (2) of the interest costs applicable to the State bond with respect to the local areas.

"(2) FORMULA.—The Secretary shall develop a formula for determining the percentage referred to in paragraph (1). The formula shall specify that the percentage shall consist of a weighted average of the percentages referred to in subparagraphs (A) through (E) of subsection (f)(3) for the local areas involved.

"SEC. 12205. AUTHORIZED ACTIVITIES.

"An activity described in this section is a project of significant size and scope that consists of—

"(1) the repair or upgrading of classrooms or structures related to academic learning, including the repair of leaking roofs, crumbling walls, inadequate plumbing, poor ventilation equipment, and inadequate heating or light equipment;

"(2) an activity to increase physical safety at the educational facility involved;

"(3) an activity to enhance the educational facility involved to provide access for students, teachers, and other individuals with disabilities;

"(4) an activity to improve the energy efficiency of the educational facility involved;

"(5) an activity to address environmental hazards at the educational facility involved, such as poor ventilation, indoor air quality, or lighting;

"(6) the provision of basic infrastructure that facilitates educational technology, such as communications outlets, electrical systems, power outlets, or a communication closet;

"(7) the construction of new schools to meet the needs imposed by enrollment growth; and

"(8) any other activity the Secretary determines achieves the purpose of this title.

"SEC. 12206. STATE GRANT WAIVERS.

"(a) WAIVER FOR STATE ISSUANCE OF BOND.—

"(1) IN GENERAL.—A State that issues a bond described in section 12204(b)(1) with respect to a local area may request that the Secretary waive the limits described in section 12204(f)(3) for the local area, in calculating the amount of assistance the State may receive under section 12204(g). The State may request the waiver only if no local entity is able, for one of the reasons described in subparagraphs (A) through (F) of paragraph (2), to issue bonds on behalf of the local area. Under such a waiver, the Secretary may permit the State to use amounts received through a grant made under section 12202(a)(2) to pay for not more than 80 percent of the interest costs applicable to the State bond with respect to the local area.

"(2) DEMONSTRATION BY STATE.—To be eligible to receive a waiver under this subsection, a State shall demonstrate to the satisfaction of the Secretary that—

"(A) the local bond authority serving the local area has reached a limit on its borrowing authority as a result of a debt ceiling or property tax cap;

"(B) the local area has a high percentage of low-income residents, or an unusually high property tax rate;

"(C) the demographic composition of the local area will not support additional school spending;

"(D) the local bond authority has a history of failed attempts to pass bond referenda;

"(E) the local area contains a significant percentage of Federally-owned land that is not subject to local taxation; or

"(F) for another reason, no local entity is able to issue bonds on behalf of the local area.

"(b) WAIVER FOR OTHER FINANCING SOURCES.—

"(1) IN GENERAL.—A State may request that the Secretary waive the use requirements of section 12204(b) for a local bond authority to permit the State to provide assistance to the local bond authority to finance construction or renovation by means other than through the issuance of bonds.

"(2) USE OF FUNDS.—A State that receives a waiver granted under this subsection may provide assistance to a local bond authority in accordance with the criteria described in section 12204(f)(2) to enable the local bond authority to repay the costs incurred by the local bond authority in financing an activity described in section 12205. The local bond authority shall be eligible to receive the amount of such assistance that the Secretary estimates the local bond authority would be eligible to receive under section 12204(f)(3) if the construction or renovation were financed through the issuance of a bond.

"(3) MATCHING REQUIREMENT.—The State shall make available to the local bond authority (directly or through donations from public or private entities) non-Federal contributions in an amount equal to not less than $1 for every $1 of Federal funds provided to the local bond authority through the grant.

"(c) WAIVER FOR OTHER USES.—

"(1) IN GENERAL.—A State may request that the Secretary waive the use requirements of section 12204(b) for a State to permit the State to carry out activities that achieve the purpose of this title.

"(2) DEMONSTRATION BY STATE.—To be eligible to receive a waiver under this subsection, a State shall demonstrate to the satisfaction of the Secretary that the use of assistance provided under the waiver—

"(A) will result in an equal or greater amount of construction or renovation of educational facilities than the provision of assistance to defray the interest costs applicable to a bond for such construction or renovation; and

"(B) will be used to fund activities that are effective in carrying out the activities described in section 12205, such as—

"(i) the capitalization of a revolving loan fund for such construction or renovation;

"(ii) the use of funds for reinsurance or guarantees with respect to the financing of such construction or renovation;

"(iii) the creation of a mechanism to leverage private sector resources for such construction or renovation;

"(iv) the capitalization of authorities similar to State Infrastructure Banks to leverage additional funds for such construction or renovation; or

"(v) any other activity the Secretary determines achieves the purpose of this title.

"(d) LOCAL BOND AUTHORITY WAIVER.—

"(1) IN GENERAL.—A local bond authority may request the Secretary waive the use requirements of section 12203(b) for a local head authority to permit the authority to finance construction or renovation of educational facilities by means other than through use of bonds.

"(2) DEMONSTRATION.—To be eligible to receive a waiver under this subsection, a local bond authority shall demonstrate that the amounts made available through a grant

under the waiver will result in an equal or greater amount of construction or renovation of educational facilities than the provision of assistance to defray the interest costs applicable to a bond for such construction or renovation.

"(e) REQUEST FOR WAIVER.—A State or local bond authority that desires a waiver under this section shall submit a waiver request to the Secretary that—

"(1) identifies the type of waiver requested;

"(2) with respect to a waiver described in subsections (a), (c), or (d), makes the demonstration described in subsections (a)(2), (c)(2), or (d)(2), respectively;

"(3) describes the manner in which the waiver will further the purpose of this title; and

"(4) describes the use of assistance provided under such waiver.

"(f) ACTION BY SECRETARY.—The Secretary shall make a determination with respect to a request submitted under subsection (d) not later than 90 days after the date on which such request was submitted.

"(g) GENERAL REQUIREMENTS.—

"(1) STATES.—In the case of a waiver request submitted by a State under this section, the State shall—

"(A) provide all interested local educational agencies in the State with notice and a reasonable opportunity to comment on the request;

"(B) submit the comments to the Secretary; and

"(C) provide notice and information to the public regarding the waiver request in the manner that the applying State customarily provides similar notices and information to the public.

"(2) LOCAL BOND AUTHORITIES.—In the case of a waiver request submitted by a local bond authority under this section, the local bond authority shall—

"(A) provide the affected local educational agency with notice and a reasonable opportunity to comment on the request;

"(B) submit the comments to the Secretary; and

"(C) provide notice and information to the public regarding the waiver request in the manner that the applying local bond authority customarily provides similar notices and information to the public.

"SEC. 12207. GENERAL PROVISIONS.

"(a) FAILURE TO ISSUE BONDS.—

"(1) STATES.—If a State that receives assistance under this part fails to issue a bond for which the assistance is provided, the amount of such assistance shall be made available to the State as provided for under section 12204, during the first fiscal year following the date of repayment.

"(2) LOCAL BOND AUTHORITIES AND LOCAL AREAS.—If a local bond authority that receives assistance under this part fails to issue a bond, or a local area that receives such assistance fails to become the beneficiary of a bond, for which the assistance is provided, the amount of such assistance—

"(A) in the case of assistance received under section 12202(a)(1), shall be repaid to the Secretary and made available as provided for under section 12203; and

"(B) in the case of assistance received under section 12202(a)(2), shall be repaid to the State and made available as provided for under section 12204.

"(b) LIABILITY OF THE FEDERAL GOVERNMENT.—The Secretary shall not be liable for any debt incurred by a State or local bond authority for which assistance is provided under this part. If such assistance is used by a local educational agency to subsidize a debt other than the issuance of a bond, the Secretary shall have no obligation to repay the lending institution to whom the debt is owed if the local educational agency defaults.

"SEC. 12208. FAIR WAGES.

"The provisions of section 12107 shall apply with respect to all laborers and mechanics employed by contractors or subcontractors in the performance of any contract and subcontract for the repair, renovation, alteration, or construction, including painting and decorating, of any building or work that is financed in whole or in part using assistance provided under this part.

"SEC. 12209. REPORT.

"From amounts reserved under section 12202(b)(3) for each fiscal year the Secretary shall—

"(1) collect such data as the Secretary determines necessary at the school, local, and State levels;

"(2) conduct studies and evaluations, including national studies and evaluations, in order to—

"(A) monitor the progress of activities supported with funds provided under this part; and

"(B) evaluate the state of United States educational facilities; and

"(3) report to the appropriate committees of Congress regarding the findings of the studies and evaluations described in paragraph (2).

"SEC. 12210. FUNDING.

"(a) IN GENERAL.—There are appropriated $5,000,000,000 for fiscal year 1998 to carry out this part.

"(b) ENTITLEMENT.—Subject to subsection (a), each State or local bond authority awarded a grant under this part shall be entitled to payments under the grant.

"(c) AVAILABILITY.—Any amounts appropriated pursuant to the authority of subsection (a) shall remain available until expended.".

SEC. 203. FUNDING.

Section 12111 of the Educated Infrastructure Act of 1994 (as redesignated by section 202(2)) (20 U.S.C. 8513) is amended to read as follows:

"SEC. 12111. FUNDING.

"(a) AUTHORIZATION.—There are authorized to be appropriated to carry out this part $200,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

"(b) APPROPRIATION.—There are appropriated to carry out this part $150,000,000 for each of the fiscal years 1998 through 2002.

"(c) ENTITLEMENT.—Subject to subsection (b), each State or local bond authority awarded a grant under this part shall be entitled to payments under the grant.".

SEC. 204. CONFORMING AMENDMENTS.

(a) CROSS REFERENCES.—Part A of title XII of the Elementary and Secondary Education Act of 1965 (as redesignated by section 202(3)) is amended—

(1) in section 12102(a) (as redesignated by section 202(2))—

(A) in paragraph (1)—

(i) by striking "12013" and inserting "12111";

(ii) by striking "12005" and inserting "12103"; and

(iii) by striking "12007" and inserting "12105"; and

(B) in paragraph (2), by striking "12013" and inserting "12111"; and

(2) in section 12110(3)(C) (as redesignated by section 202(2)), by striking "12006" and inserting "12104".

(b) CONFORMING AMENDMENTS.—Part A of title XII of the Elementary and Secondary Education Act of 1965 (as redesignated by section 202(3)) (20 U.S.C. 8501 et seq.) is further amended—

(1) in section 12101 (as redesignated by section 202(2)), by striking "This title" and inserting "This part"; and

(2) in sections 12102(a)(2), 12102(b)(1), 12103(a), 12103(b), 12103(b)(2), 12103(c), 12103(d), 12104(a), 12104(b)(2), 12104(b)(3), 12104(b)(4), 12104(b)(6), 12104(b)(7), 12105(a), 12105(b), 12106(a), 12106(b), 12106(c), 12106(c)(1), 12106(c)(7), 12106(e), 12107, 12108(a)(1), 12108(a)(2), 12108(b)(1), 12108(b)(2), 12108(b)(3), 12108(b)(4), 12109(2)(A), and 12110 (as redesignated by section 202(2)), by striking "this title" each place it appears and inserting "this part".

TITLE III—AMERICA READS CHALLENGE

SEC. 301. FINDINGS.

Congress finds as follows:

(1) With the proper support and teaching, all children can learn to read at grade-level by the end of the 3d grade.

(2) Students who are not reading at grade-level are very unlikely to graduate from high school.

(3) Reading is a fundamental skill for learning, but in 1994, 40 percent of 4th grade students failed to attain the basic level of reading on the National Assessment of Education Progress. Seventy percent of 4th graders did not attain the proficient level of reading.

(4) Parents are the best first teachers. Parents can help to increase their children's reading levels, for example, by reading with their child 30 minutes a day. Evidence shows that greater parental support of children's literacy success makes a significant difference.

(5) One-on-one tutoring is a key component of bringing students up to reading at grade-level.

(6) Pre-school preparation and family involvement is widely recognized to improve student performance. Preparing children to learn, both through parent involvement and through pre-school preparation, plays a crucial role in preventing students from falling behind.

Subtitle A—Parents As First Teachers Challenge Grants

SEC. 311. SHORT TITLE.

This subtitle may be cited as the "Parents as First Teachers Challenge Grant Act of 1997".

SEC. 312. FINDING AND PURPOSE.

(a) FINDING.—Congress finds that parents are the best first teachers.

(b) PURPOSE.—The purpose of this subtitle is to support effective, proven efforts that provide assistance to parents who want to help their children become successful readers by the end of the 3d grade.

SEC. 313. DEFINITIONS.

In this subtitle:

(1) ELIGIBLE CHILD.—The term "eligible child" means an individual eligible to attend preschool, kindergarten, or 1st, 2d, or 3d grade.

(2) SECRETARY.—The term "Secretary" means the Secretary of Education.

SEC. 314. GRANTS AUTHORIZED.

(a) GRANTS FOR NATIONAL OR REGIONAL NETWORKS.—The Secretary is authorized to award at least 2 grants to public or private agencies or institutions to enable the agencies or institutions to support national or regional networks that share information on helping eligible children read.

(b) GRANTS FOR SUCCESSFUL PROGRAMS OR ACTIVITIES.—The Secretary is authorized to award at least 2 grants to State or local government agencies, nonprofit community groups or organizations, or consortia thereof, to enable such agencies, groups, organizations, or consortia to expand or replicate successful programs or activities that helps a parent—

(1) be a good teacher to the parent's eligible child; and

(2) assist the parent's eligible child in attaining reading skills while assisting the eligible child to learn to read.

SEC. 315. RECIPIENT CRITERIA.

(a) GRANTS FOR NATIONAL OR REGIONAL NETWORKS.—In order to receive a grant under section 312(a), a public or private agency or institution shall have a proven record of working with parents of eligible children.

(b) GRANTS FOR SUCCESSFUL PROGRAMS OR ACTIVITIES.—In order to receive a grant under section 314(b), an agency, group, organization, or consortium shall have a proven record of working with parents to improve their eligible children's reading.

SEC. 316. APPLICATIONS.

(a) IN GENERAL.—Each entity desiring a grant under this subtitle shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(b) APPLICATIONS FOR GRANTS FOR NATIONAL OR REGIONAL NETWORKS.—Each application submitted under subsection (a) for a grant under section 314(a) shall—

(1) demonstrate the likelihood that the proposed program or activity will have a substantial regional or national impact;

(2) demonstrate the cost-effectiveness of the proposed program or activity; and

(3) describe how the proposed program or activity will be coordinated with private sector programs and activities, and State and local programs and activities that provide support for parents of eligible children.

(c) APPLICATIONS FOR GRANTS FOR SUCCESSFUL PROGRAMS OR ACTIVITIES.—Each application submitted under subsection (a) for a grant under section ___04(b) shall—

(1) describe a program or activity that is capable of successful expansion or replication;

(2) contain evidence of community support for the proposed program or activity from the private sector, a school, and another entity;

(3) contain information demonstrating the cost-effectiveness of the proposed program or activity; and

(4) provide an assurance that the applicant will coordinate the proposed program or activity with State and local programs and activities that provide support for parents of eligible children.

SEC. 317. AUTHORIZATION OF APPROPRIATIONS.

(a) APPROPRIATIONS.—There are appropriated to carry out this subtitle $45,000,000 for fiscal year 1998, $50,000,000 for fiscal year 1999, $60,000,000 for fiscal year 2000, $70,000,000 for fiscal year 2001, and $75,000,000 for fiscal year 2002.

(b) ENTITLEMENT.—Subject to subsection (a), each entity receiving a grant under this title for a fiscal year shall be entitled to payments for such year under the grant.

Subtitle B—Challenging America's Young Readers

SEC. 321. SHORT TITLE.

This subtitle may be cited as the "Challenging America's Young Readers Act of 1997".

SEC. 322. PURPOSE.

The purpose of this subtitle is to raise reading levels by providing tutoring assistance outside regular school hours to children eligible to attend preschool, kindergarten, or 1st, 2d, or 3d grade.

SEC. 323. DEFINITIONS.

In this subtitle:

(1) ADMINISTRATORS.—The term "Administrators" means the Secretary of Education and the Chief Executive Officer of the Corporation for National and Community Service acting pursuant to the agreement entered into under section 324(c).

(2) ELIGIBLE CHILD.—The term "eligible child" means an individual eligible to attend preschool, kindergarten, or 1st, 2d, or 3d grade.

(3) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) STATE EDUCATIONAL AGENCY.—The term "State educational agency" has the meaning given the term by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

SEC. 324. PROGRAM AUTHORIZED.

(a) ALLOTMENT AND RESERVATIONS.—

(1) ALLOTMENT.—From the sum made available under section 330(b) and not reserved under paragraph (5) for a fiscal year, the Administrators shall make an allotment to each State educational agency for the fiscal year in an amount that bears the same relation to the sum as the amount such State received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal year bears to the amount all States received under such part for the previous fiscal year.

(2) RESERVATIONS.—

(A) IN GENERAL.—From the sum made available under section 330(b) for a fiscal year, the Administrators—

(i) shall reserve 10 percent of such sum to carry out local reading programs under section 326;

(ii) shall reserve not more than 1.5 percent of such sum to carry out national leadership and evaluation activities under section 327;

(iii) shall reserve the percentage described in subparagraph (B) of such sum to make a payment to the Secretary of the Interior to enable the Secretary of the Interior to carry out the purpose of this subtitle for Indian children; and

(iv) shall reserve 0.25 percent of such sum to make payments to the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau on the basis of their respective need for assistance according to such criteria as the Secretary determines will best carry out the purpose of this subtitle.

(B) PERCENTAGE.—The percentage referred to in subparagraph (A)(iii) for a fiscal year is the percentage of funds reserved under section 1121(a)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331(a)(2)) for the Secretary of the Interior for such previous year.

(b) GRANTS.—

(1) IN GENERAL.—Each State educational agency receiving an allotment under subsection (a)(1) shall use such allotment to award grants, on a competitive basis, to organizations in the State to enable the organizations—

(A) to employ reading specialists to supervise tutoring programs that teach eligible children to read;

(B) to recruit and train tutors for tutoring programs that teach eligible children to read; and

(C) to carry out tutoring programs that teach eligible children to read.

(2) SPECIAL RULE.—Each tutoring program assisted through a grant awarded under paragraph (1) shall be conducted before or after regular school hours, or during the weekend or the summer.

(c) COMMUNITY AND NATIONAL SERVICE FUNDS.—The Administrators shall use amounts reserved under section 330(a) for a fiscal year to carry out the activities described in subparagraphs (A) through (C) of subsection (b)(1) during the periods described in subsection (b)(2) in accordance with the National and Community Service Act of 1990 (42 U.S.C. 12501).

(d) JOINT ADMINISTRATION.—

(1) IN GENERAL.—The Secretary of Education and the Chief Executive Officer of the Corporation for National and Community Service shall administer this subtitle jointly pursuant to an agreement between the Secretary and the Chief Executive Officer.

(2) AGREEMENT.—The agreement described in paragraph (1) shall establish the responsibilities of the Secretary of Education and the Chief Executive Officer of the Corporation for National and Community Service for administering this subtitle. Such agreement shall—

(A) not require more than one application from any one State educational agency or local applicant;

(B) encourage, but not require, the use of volunteers assisted through funding made available under section 330(a) to serve as volunteer recruiters and coordinators; and

(C) include only one application review process.

SEC. 325. APPLICATIONS.

(a) STATE.—Each State educational agency desiring an allotment under this subtitle shall submit an application to the Administrators at such time, in such manner, and containing such information as the Administrators may require. Each such application shall—

(1) describe how the State educational agency will award grants under this subtitle; and

(2) describe how the State educational agency will encourage use of activities assisted under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(b) LOCAL.—Each organization desiring a grant under section 324(b) shall submit an application to the State educational agency at such time, in such manner, and accompanied by such information as the State educational agency may reasonably require. Each such application shall—

(1) describe how the proposed program or activity will be linked with the curriculum of the appropriate local educational agency, school, or classroom, and other reading enhancement activities of the school and the eligible children;

(2) contain a description of how the applicant will use the grant funds to provide assistance to economically disadvantaged communities, and schools, in which eligible children have the greatest need for reading assistance;

(3) contain an assurance that the proposed program or activity will focus on providing individualized tutoring in reading that involves trained and supervised volunteers who have been approved by the applicant; and

(4) describe the strategies that will be undertaken through the program or activity to ensure that eligible children will make progress in reading;

(5) describe how the applicant will evaluate the program or activity, including measuring progress toward improving the reading performance of eligible children, and improve the program or activity if eligible children do not make progress in improving reading performance; and

(6) demonstrate how the program or activity—

(A) will be coordinated with activities of local school personnel, and activities assisted under the Head Start Act (42 U.S.C. 9831 et seq.), Even Start, other provisions of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), and the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), particularly with respect to referral of eligible children; and

(B) will be developed and carried out with strong parent, community, and private sector involvement.

SEC. 326. LOCAL READING PROGRAMS.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From amounts reserved under section 324(a)(2)(A)(i) for a fiscal year, the Administrators shall award grants to local entities for the planning, implementation, or expansion of local reading programs that serve economically disadvantaged communities.

(2) SPECIAL RULE.—In awarding grants under paragraph (1) for a fiscal year, the Administrators shall ensure that at least 1 such grant is awarded to serve an urban economically disadvantaged community and at least 1 such grant is awarded to serve a rural economically disadvantaged community.

(b) APPLICATION.—Each local entity desiring a grant under subsection (a) shall submit an application to the Administrators at such time, in such manner, and accompanied by such information as the Administrators may require. Each such application shall include the information and assurances described in section 325(b) with respect to such local entity.

SEC. 327. NATIONAL LEADERSHIP AND EVALUATION.

(a) NATIONAL LEADERSHIP.—From a portion of amounts reserved under section 324(a)(2)(A)(ii) for a fiscal year, the Administrators may carry out national leadership activities, including dissemination of information on effective practices, providing technical assistance materials, and other activities, to increase the performance of eligible children in the States.

(b) EVALUATION.—

(1) IN GENERAL.—From a portion of the amounts reserved under section 324(a)(2)(A)(ii) for a fiscal year, the Administrators, through a grant, contract, or cooperative agreement, shall evaluate, and submit reports to Congress regarding, the effectiveness of programs and activities assisted under this subtitle.

(2) REPORT DATES.—The reports described in paragraph (1) shall be submitted to Congress on September 1, 2000, and every 2 years thereafter.

SEC. 328. ADJUSTMENT OR TERMINATION OF FUNDING.

Notwithstanding any other provision of this subtitle, the Administrators may decrease or terminate any funding provided under this subtitle if the Administrators determine that a recipient of such funding does not—

(1) improve reading performance with respect to eligible children; or

(2) implement the recipient's strategies to improve reading performance with respect to eligible children.

SEC. 329. NONDUPLICATION AND NONDISPLACEMENT.

(a) NONDUPLICATION.—Assistance provided under this subtitle shall be used only for a program or activity that does not duplicate, and is in addition to, an activity otherwise available in the locality of such program or activity.

(b) NONDISPLACEMENT.—An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program or activity receiving assistance under this subtitle.

SEC. 330. FUNDING.

(a) RESERVATION.—From amounts made available to carry out the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) for each of the fiscal years 1998 through 2002, the Chief Executive Officer of the Corporation for National and Community Service shall make available $200,000,000 to carry out this subtitle.

(b) APPROPRIATION.—There are appropriated to the Secretary of Education to carry out this subtitle $200,000,000 for fiscal year 1998, $250,000,000 for fiscal year 1999, $300,000,000 for fiscal year 2000, $350,000,000 for fiscal year 2001, and $350,000,000 for fiscal year 2002.

(c) ENTITLEMENT.—Subject to subsections (a) and (b), each entity receiving an allotment, awarded a grant, or entering into a contract or cooperative agreement, under this subtitle for a fiscal year shall be entitled to payments for such year under the allotment, grant, contract, or cooperative agreement.

TITLE IV—INVESTING IN TECHNOLOGY FOR THE CLASSROOMS

Subtitle A—Sense of the Senate

SEC. 401. FINDINGS.

Congress finds as follows:

(1) Technology in the schools is a central component of preparing students for the 21st century.

(2) Equipping schools with technology is no longer a luxury. It is a necessity. By the year 2000, 60 percent of all jobs in the Nation will require skills in computer and network use.

(3) Technology in the classroom improves students' mastery of basic skills, test scores, writing, and engagement in school. With these gains come decreases in dropout rates and decreases in attendance and discipline problems.

(4) Not enough students have access to computers, distance learning, and telecommunications technologies. A 1995 Government Accounting Report report estimates that 10,000,000 students, and 1 school in every 4 schools, do not have sufficient computers to meet their needs.

(5) Of the 5,800,000 computers in United States schools, many are older models that do not have the power to perform advanced functions such as those involving video and the Internet.

(6) Only 9 percent of all instructional rooms including classrooms, laboratories, and library media, have connections to the Internet.

(7) The Federal Government began a new commitment to funding education technology by investing an additional $200,000,000 in subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6841 et seq.) in fiscal year 1997. Although such investment is an important investment, it is not sufficient to meet the technology needs of schools and school children in the 21st century.

SEC. 402. SENSE OF THE SENATE.

It is the Sense of the Senate that it is in the Nation's best interest for the Federal Government to invest at least $1,800,000,000 in additional funding for education technology programs between fiscal years 1998 and 2002.

Subtitle B—Educational Technology Clearinghouses

SEC. 421. PURPOSE.

It is the purpose of this subtitle to authorize a program to support regional educational technology clearinghouses that facilitate the donation of surplus equipment and technology to schools and libraries from Federal or State governmental agencies, businesses, and other private entities.

SEC. 422. AUTHORITY.

(a) IN GENERAL.—The Secretary of Education shall make grants to or enter into contracts with regional public or private nonprofit entities for the purpose of supporting a system of regional educational technology clearinghouses. In awarding the grants or contracts, the Secretary shall ensure that each geographic region of the United States is served by such an entity.

(b) DURATION.—The Secretary shall award grants and contracts under this subtitle for a period of 5 years.

SEC. 423. REQUIREMENTS.

Each entity receiving a grant or contract under this subtitle shall—

(1) in cooperation with State educational agencies and local educational agencies, develop a regional program to support a clearinghouse that facilitates the transfer of surplus equipment and technology to schools and libraries from Federal or State governmental agencies, businesses, and other private entities;

(2) disseminate information to State educational agencies and local educational agencies about the availability and procurement of the equipment and technology through the clearinghouse;

(3) disseminate information to the public about activities assisted under this subtitle, including information about the donations being accepted by the clearinghouse;

(4) have in place a process for ensuring that surplus equipment and technology is distributed in a fair and equitable manner, with school districts with the greatest need for such equipment and technology receiving priority for donations under this subtitle;

(5) provide technical assistance to a school or library to ensure that the equipment and technology being donated is consistent with the short- and long-term educational technology plans of the school or library, respectively;

(6) use funds under this subtitle to upgrade equipment or technology only if the entity determines such upgrading meets the short- and long-term educational plan of the school or library receiving the equipment or technology; and

(7) ensure that the transfer of equipment and technology does not violate copyright, patent, or trademark laws.

SEC. 424. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle $5,000,000 for fiscal year 1998 and such sums as may be necessary for each of the 4 succeeding fiscal years.

By Mr. DASCHLE (for himself, Ms. MIKULSKI, Mr. KENNEDY, Mr. BREAUX, Mr. DODD, Mrs. MURRAY, Mr. INOUYE, Mr. JOHNSON, Ms. MOSELEY-BRAUN, Mr.

ROCKEFELLER, Mr. DURBIN, Mr. KERRY, and Mr. GLENN):

S. 13. A bill to provide access to health insurance coverage for uninsured children and pregnant women; to the Committee on Finance.

CHILDREN'S HEALTH COVERAGE ACT OF 1997

Mr. BREAUX. Mr. President, I rise today in support of the Children's Health Coverage Act of 1997, a bill designed to expand health insurance for an estimated 10 million American children who have no health insurance. Last year, when Congress passed the Kassebaum/Kennedy bill, it took a big step toward increasing the availability of private health insurance coverage for certain children. While the Kassebaum/Kennedy legislation will increase access to the health insurance market for many people, there are still too many low-income working families in this country who are unable to afford coverage even though it may be more readily available to them.

According to a 1994 GAO report, 14.2 percent of all children are uninsured, the highest rate in any industrialized country. In Louisiana alone there are 254,952 children without health insurance. Nine out of ten of these children live in families with working parents. These parents go to work every day to earn a living and provide for their families. Some might say that providing for one's family should include health insurance but when you've got food to buy and rent to pay, health insurance to many parents is an unaffordable luxury. Perhaps even more troubling is that the number of uninsured children is expected to grow as employers continue to cut back on dependant coverage, leaving many working parents unable to afford insurance for their families. While Medicaid has picked up some of these children and will continue to do so, these expansions won't be enough to completely offset the loss in private coverage in this country.

Mr. President, an important lesson we have learned in recent years is that big government mandates won't work. But I believe expanding coverage of children is a necessary next step to follow up on the significant progress we made last year. We should build on the momentum from Kassebaum/Kennedy bill to help low-income working families buy health insurance they need for their children. Basic primary and preventive care services that insurance provides are critical to a child's healthy development, and like all kinds of preventive care, it's cheaper than treating a child once he or she gets sick. As we all know, uninsured children are more likely to get care in an emergency room at later stages in their illness and are more likely to require an expensive hospital stay.

This bill is a market-based plan that will provide tax credits to help working families buy the health insurance they need. Our goal is to stimulate a competitive market for children's health plans which are relatively inexpensive but have a big economic payoff. I am hopeful that Democrats and Republicans will be able to work together on this issue because it's in everyone's interest that our Nation's children have the health care and health insurance they need since they are the future of this country. For the future of a healthy America, we need healthy kids now.

Ms. MIKULSKI. Mr. President, I am honored to join the Senate Minority Leader in cosponsoring the Children's Health Coverage Act of 1997. This bill will help uninsured working families purchase health insurance for their children and will build on the success of last year's Kassebaum-Kennedy health care reform legislation. It makes the health of all America's children a national priority. It takes the Democratic health care agenda one more step.

Our country has failed to meet the health care needs of America's children. The United States has the highest rate of uninsured children of any industrialized country. In my home State of Maryland, nearly 1 in 5 children is uninsured. That's almost 200,000 kids in Maryland alone. This is a disgrace for a country as bountiful as ours is. We say children are our priority. We need to put in the lawbooks the values we hold in our hearts. That makes good policy and good sense.

These are the children of working families. Their parents may both be working 40-hour a week jobs. Jobs that put them over the poverty level but offer no benefits. This problem is pervasive. Nine out of ten children without insurance live in families with working parents. Two thirds of uninsured children live in families with incomes above the poverty line. The problem cuts across class and race.

As I travel through my own State, working parents tell me how they worry about their children not having health insurance. They are afraid that they won't be able to take them to the doctor when they get really sick. With this bill, American parents won't have to fear for their children. This legislation meets the peace of mind test.

I want to make sure children's health care needs are met comprehensively and equitably. This bill stands up and challenges what is wrong with our health care system. It affirms our need to develop human capital as well as economic capital. It's about getting our priorities straight and putting families first. I salute the Minority Leader for moving this important issue forward.

Ms. MOSELEY-BRAUN. Mr. President, I rise today to offer my support as an original cosponsor of the Children's Health Coverage Act of 1997—S. 13. Vice President Hubert Humphrey may have summed it up best when he concluded that "the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life—the sick, the needy, and the handicapped."

Well, Mr. President, the Children's Health Coverage Act is our test for the 105th Congress and how this Congress will respond to the need to care for our children, who are in the dawn of their life; 10.5 million children have no health insurance coverage. The GAO conclusion that children without insurance are less likely to grow up to be healthy, and productive adults may be the most telling fact. If we know the effect being uninsured has on our children's ability to contribute to society, how can we not respond?

The ultimate guarantee of our children's health would be to make comprehensive health insurance coverage more readily available either through a private or public source. In the interim however, the Children's Health Coverage Act will make a number of important steps to improve the health of our children. First, enhancing health coverage for pregnant women will make our children healthy on the front-end through enhanced prenatal care. In 1993, almost 200,000 children were born to women who received either no prenatal care or prenatal care after the first trimester of their pregnancy. Good prenatal care can reduce rates of low-weight births and infant mortality, thus preventing avoidable disabilities.

Next, the Children's Health Coverage Act will not erode existing health coverage for children. Children are losing private health insurance coverage faster than any other group. In many cases, Medicaid has been the safety-net preventing children from becoming uninsured. S. 13 will stimulate the market for private children's health coverage and deter employers from dropping their contributions toward the coverage of their employees.

Finally, the Children's Health Coverage Act makes the next logical step from the improvements made in the Kennedy-Kassebaum health care bill, by tackling the issue of insurance affordability. The right to buy insurance that you cannot afford really is not access at all. Millions of Americans were given more flexibility by making insurance more portable and ending "job lock." However, if the ability to pay your premiums severely restricts the options, have we truly ended "job lock."

Mr. President, caring for our children is critical to the success and the survival of this Nation. However, we must not be content with only meeting the physiological needs of our children. We must also adopt a holistic approach to meeting the needs of our children. A significant number of our children have

special health care needs. There are also many children who have special educational, financial, and social needs.

During the "Stand for Children" rally in June of last year, five core principles were espoused that are essential to safeguarding our children. These principles are to give our children a head start, a fair start, a safe start, a moral start, and a healthy start. These are fundamental principles that should govern our nation's agenda towards children. The Children's Health Coverage Act is a very good step toward ensuring a healthy start for our children. I hope that my colleagues can join me in supporting this important legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 13

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Children's Health Coverage Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—HEALTH INSURANCE COVERAGE FOR ELIGIBLE CHILDREN

Sec. 101. Establishment of program to provide eligible children with access to health insurance coverage.
Sec. 102. Procedure for obtaining coverage under certified health plans.
Sec. 103. Subsidy adjustment.
Sec. 104. Limitation on preexisting condition exclusion period and -prohibition on discrimination.
Sec. 105. Maintenance of effort.
Sec. 106. Oversight by Secretary.
Sec. 107. Rules of construction.

TITLE II—HEALTH INSURANCE COVERAGE FOR PREGNANT WOMEN

Sec. 201. Expanding health insurance coverage for pregnant women.
Sec. 202. Grants for innovative outreach.

TITLE III—CHILDREN'S HEALTH COVERAGE SUBSIDY CREDITS

Sec. 301. Health coverage provided to premium subsidy eligible children through a tax credit for insurers.
Sec. 302. Health coverage provided to premium subsidy eligible children through a refundable income tax credit.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) CERTIFIED HEALTH PLAN.—The term "certified health plan" means a health plan that—

(A) is not an employer sponsored health plan;

(B) provides family coverage or child only coverage options; and

(C) is certified by a State under section 101(b)(1).

(2) ELIGIBLE CHILD.—The term "eligible child" means an individual who has not attained the age of 19.

(3) HEALTH INSURANCE ISSUER.—The term "health insurance issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (3)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974).

(4) HEALTH MAINTENANCE ORGANIZATION.—The term "health maintenance organization" means—

(A) a Federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (42 U.S.C. 300e(a))),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(5) POVERTY LINE.—The term "poverty line" means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(6) PREMIUM SUBSIDY ELIGIBLE CHILD.—The term "premium subsidy eligible child" means any individual who—

(A) is an eligible child who was born after December 31, 1984;

(B) is a citizen or qualified alien (as defined in section 431(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(b));

(C) has a family income determined under section 102(b) which does not exceed 300 percent of the poverty line or has a family income within the limits described in section 103(b)(2);

(D) is not eligible for assistance under a program under title XIX of the Social Security Act or, except as provided in section 102(e), under a similar State program providing health insurance or other health care coverage; and

(E)(i) except as provided in section 101(e) or clause (ii), has not been covered, during the 12-month period ending on the date on which the individual applies for subsidy-eligible health coverage under this title, under a health plan offered by a health insurance issuer (unless such plan was funded under title IX of the Social Security Act (42 U.S.C. 1101 et seq.)) and—

(I) such individual does not have access to employer sponsored health coverage; or

(II) the employer of the individual or family involved offers employer sponsored health coverage and the employer contribution for such 12-month period does not exceed—

(aa) in the case of an individual (or family) described in section 103(a)(2)(A), 80 percent or more of the costs of enrollment in the plan; or

(bb) in the case of an individual (or family) described in section 103(a)(2)(B), 50 percent or more of the costs of enrollment in the plan; or

(ii) is, as of the date of enactment of this Act, covered under a health plan that is not a group health plan (as defined in section 2791 of the Public Health Service Act), and the family of such individual is not eligible to claim a deduction under section 162(l) of the Internal Revenue Code of 1986.

(7) SECRETARY.—The term "Secretary" means the Secretary of Heálth and Human Services.

(8) SUBSIDY ELIGIBLE HEALTH COVERAGE.—The term "subsidy eligible health coverage" means health insurance coverage under—

(A) a certified health plan; or

(B) an employer sponsored health plan providing family coverage or child-only coverage options;

for which a subsidy is available under this title.

TITLE I—HEALTH INSURANCE COVERAGE FOR ELIGIBLE CHILDREN

SEC. 101. ESTABLISHMENT OF PROGRAM TO PROVIDE ELIGIBLE CHILDREN WITH ACCESS TO HEALTH INSURANCE COVERAGE.

(a) ESTABLISHMENT.—The Secretary shall establish a program under which a premium subsidy eligible child, and the family of such child, may receive a subsidy to be used to pay a portion of the premium associated with the enrollment of the child for subsidy eligible health coverage under a certified health plan or employer sponsored health plan.

(b) STATE RESPONSIBILITIES.—Under the program established under subsection (a)—

(1) the insurance commissioner of a State may certify a health plan if the commissioner determines that—

(A) the health plan—

(i) provides family or child-only coverage;

(ii) meets general coverage guidelines that are established by the Secretary and designed to ensure that the plan provides comprehensive coverage, including preventive, basic, and catastrophic benefits that meet the health care needs of children (either as part of a family plan or a child-only plan);

(B) the average premium for the enrollment of a child under such plan is reasonable when taking into consideration the demographic and health status related factors of the population for which the plan will be marketed;

(C) each premium subsidy eligible child that is enrolled under the plan will be assessed the same premium;

(D) the plan provides for guaranteed issue with respect to premium subsidy eligible children;

(E) complies with the provisions of section 104 regarding preexisting condition exclusions;

(F) the health insurance issuer involved is participating in any applicable reinsurance program that has been established by the State to defray the costs of unevenly distributed risk among issuers; and

(G) the plan meets any other criteria established by the State;

(2) the insurance commissioner of the State shall provide information on the availability of certified health plans and the availability of subsidies in accordance with this title;

(3) the appropriate State entity (as determined by the Chief Executive Officer of the State) shall conduct income verification and reconciliation activities with respect to eligible children and families desiring to participate in the program in the State and issue certificates in accordance with section 102;

(4) the appropriate State entity (as determined under paragraph (4)) shall be responsible for the collection of premiums from premium subsidy eligible children and the forwarding of such premiums to the appropriate certified health plans;

(5) the State (through its own authority or acting in conjunction with the Secretary under subsection (f)(3)) shall ensure that each eligible child in the State has a reasonable choice of health insurance issuers that

offer child-only coverage consistent with the standards developed by the Secretary under this title;

(6) the State will establish any other requirements and procedures necessary to carry out this title within the State; and

(7) the State shall comply with any other requirements established by the Secretary.

(c) PARTICIPATION OF ISSUERS.—

(1) IN GENERAL.—Any health plan may submit an application with the appropriate State insurance commissioner for certification under this section and such plan shall be certified if it meets the requirements of subsection (b)(1). Employer-sponsored health plans shall not be required to be certified under this title.

(2) REQUIREMENT FOR FEDERAL CONTRACTORS.—

(A) IN GENERAL.—Each health insurance issuer that provides health coverage under contract with any Federal program and that offers 1 or more health plans that provide family coverage options shall submit an application, with the appropriate State insurance commissioner, for the certification of 1 or more health plans that provide the children's only coverage described in subsection (b)(1)(A). Such an issuer shall apply for the certification of at least 1 health plan that provides child-only coverage, and may apply for the certification of 1 or more health plans that provide family coverage if such plans provides coverage for children as described in subsection (b)(1)(A).

(B) PENALTY.—A health insurance issuer shall be ineligible to provide benefits under a Federal contract described in subparagraph (A) if—

(i) the issuer fails, in good faith, to submit an application as required under subparagraph (A);

(ii) the State insurance commissioner fails to certify a health plan of the issuer as meeting the requirements of this title; or

(iii) the issuer fails to make any modifications to the application or to a health plan as requested by the State insurance commissioner for the certification of a health plan.

(C) PARTICIPATION IN INDIVIDUAL MARKET.—Notwithstanding subparagraph (A), a health insurance issuer described in such subparagraph shall not be required to offer coverage in the individual market (as defined in section 2791(e)(1)) unless the issuer is otherwise participating in such market. Such an issuer shall be required to offer coverage to eligible children under this title through the participation of the issuer in all group purchasing arrangements operating in the area served by the issuer, except that with respect to employer-sponsored health plans, the obligation of an issuer to offer child-only coverage shall be limited to employers to which such issuers are otherwise offering coverage.

(3) EXPEDITED PROCEDURES.—The State insurance commissioner of a State shall establish expedited procedures for the certification of health plans that have been offered in the insurance market in the State during the 1-year period preceding the date on which a certification is sought.

(4) OFFERING OF COVERAGE.—A health insurance issuer shall offer certified health plans to each eligible child residing in the area served by the issuer regardless of the family income of such child. Coverage provided under such plans may vary in accordance with this Act depending on whether the enrollee is an eligible child or a premium subsidy eligible child. Such coverage may be offered through insurance agents or brokers.

(d) AVERAGE COVERAGE AMOUNT.—

(1) DETERMINATION.—The Secretary, in consultation with State insurance commissioners and other experts in the field of health insurance, shall determine the average coverage amount with respect to certified health plans. The amount shall be based on the average costs of comprehensive health insurance coverage for children as determined using data derived from existing State initiatives that have been established to provide health care coverage for uninsured children and data on the average market rates for health plans offering coverage reasonably similar to that of the coverage offered under certified health plans.

(2) ADJUSTMENTS.—The Secretary shall annually adjust the average coverage amount determined under paragraph (1) to ensure that such amount accurately reflects the reasonable costs associated with the purchase of coverage under a certified health plan and regional variations in health care costs.

(3) APPLICATION OF AMOUNT TO CHILD PORTION OF PLAN.—In establishing and applying the average coverage amount under paragraph (1), the Secretary shall ensure that the amount relates solely to the comprehensive coverage applicable to the premium subsidy eligible child. If coverage of a premium subsidy eligible child is under a certified family plan, the average coverage amount shall relate solely to that portion of the plan that provides the coverage for the eligible child.

(e) WAIVER OF PREVIOUS COVERAGE LIMITATION.—

(1) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process to waive the limitation described in section 2(6)(D) with respect to an individual if the Secretary determines that the individual was covered under a health plan during the period referred to in such section as a dependent of another individual and that the coverage was terminated involuntarily or the loss of coverage results from a change in employment.

(2) LIMITATION.—The process established under paragraph (1) shall not permit a waiver with respect to previous coverage that was terminated by an employer (or with respect to which the contribution of the employer toward such coverage was reduced) unless the Secretary determines that such coverage was terminated because the employer ceased its operations or because of other circumstances clearly unrelated to the availability of subsidies under this title.

(f) PROVISION OF TECHNICAL ASSISTANCE BY SECRETARY.—

(1) ALTERNATIVE PROCEDURES.—The Secretary, at the request of and in conjunction with the insurance commissioner of a State, shall assist the State in establishing alternative rate review and approval procedures that apply to the health plans seeking certification under this section. Any procedures established under this paragraph shall be consistent with the goals and requirements of this title.

(2) STRATEGIES TO IMPROVE INSURANCE MARKET.—

(A) IN GENERAL.—The Secretary, at the request of and in conjunction with a State, shall develop and pursue strategies to encourage competition, prevent fraudulent practices, ensure the adequacy of rates to prevent access barriers, and achieve goals consistent with this title with respect to the health insurance market in the State. Such strategies may include the establishment of commercial insurance pooling arrangements that may be used by small businesses and integrated with other purchasing pools, the implementation of competitive bidding mechanisms, and the coordination of insurance delivery systems with delivery systems under title XIX of the Social Security Act.

(B) TERMINATION.—The Secretary may require that a State terminate or revise a strategy implemented by the State under paragraph (1) if the Secretary determines that the strategy conflicts with a provision of this title.

(3) CHOICE OF ISSUERS.—The Secretary, at the request of and in conjunction with a State, shall assist the State in identifying and implementing strategies to ensure that choice is provided to eligible children in accordance with subsection (b)(5). Such strategies may include the strategies described in paragraph (2)(A).

(g) PROCEDURES TO IDENTIFY THOSE ELIGIBLE FOR MEDICAID.—In carrying out the program under this title, the Secretary shall establish procedures to identify premium subsidy eligible children whose enrollment in a certified health plan is subsidized under this title and who subsequently become eligible for assistance under a State plan under title XIX of the Social Security Act as a result of disability, the amount of health care costs, or similar factors. Such procedures, while ensuring the continuity and coordination of care, shall ensure that assistance under such title XIX is the primary payer for children eligible for such assistance.

SEC. 102. PROCEDURE FOR OBTAINING COVERAGE UNDER CERTIFIED HEALTH PLANS.

(a) APPLICATION.—

(1) IN GENERAL.—To be eligible to receive a subsidy for the purchase of coverage under a certified health plan under this title, a family on behalf of a premium subsidy eligible child shall submit to the State entity designated under section 101(b)(4) an application that shall contain such income and employment information as the State determines necessary to make a determination with respect to the eligibility of such applicant for a subsidy under this title.

(2) TIME FOR FILING.—A family on behalf of a premium subsidy eligible child may file an application for a subsidy under this title at any time in accordance with this subsection.

(3) USE OF SIMPLE FORM.—For purposes of this subsection, the State entity shall use an application that shall be as simple in form as possible and understandable to the average individual. The application may require attachment of such documentation as deemed necessary by the State in order to ensure eligibility for a subsidy.

(4) AVAILABILITY OF FORMS.—The State entity shall make an application form available through health care providers and participating issuers, public assistance offices, public libraries, and at other locations (including post offices) accessible to a broad cross-section of families.

(b) ISSUANCE OF CERTIFICATE.—

(1) IN GENERAL.—

(A) NOTIFICATION OF APPLICANT.—If the State entity described in subsection (a) determines that an applicant is eligible for a subsidy under this title, the entity shall notify the applicant of such eligibility and request that the applicant designate a certified health plan that the applicant desires to enroll in.

(B) NOTIFICATION OF PLAN.—Upon a designation under subparagraph (A), the entity shall forward a certificate of eligibility on behalf of the applicant to the designated plan. Such certificate shall contain identifying information concerning the applicant and the eligible child involved and the amount of the subsidy for which the applicant is eligible.

(2) DETERMINATION BY STATE.—As elected by a family at the time of the submission of

an application under subsection (a), the State entity shall make a determination concerning family income either—

(A) by multiplying by a factor of 4 the income of the family for the 3-month period immediately preceding the month in which the application is made, or

(B) based upon estimated income for the entire year in which the application is submitted.

(3) TERM.—A certificate under paragraph (1) shall remain in effect for the 6-month period beginning on the date of the issuance of the certificate. To continue to be eligible for a subsidy, a family must apply to renew the certificate at the end of each 6-month period.

(c) ENROLLMENT.—Upon receipt of a certificate of eligibility under subsection (b), a certified health plan shall ensure that the eligible child involved is appropriately enrolled and that a copy of the enrollment and coverage materials are provided to the enrollee. With respect to the certified health plan involved, the plan shall use the certificate in accordance with section 103 to compute the amount of the premiums that are owed by the family involved.

(d) PAYMENT OF PREMIUMS.—

(1) IN GENERAL.—Upon receipt of the appropriate enrollment materials from a certified health plan under subsection (c), a premium subsidy eligible child, the family income of which does not exceed the limit described in section 103(a)(2)(B)(i), shall be responsible for remitting to the State entity described in subsection (a) the amount of the subsidy adjusted premium owed under such plan.

(2) SUBSIDY ADJUSTED PREMIUM.—As used in paragraph (1), the term "subsidy adjusted premium" means the total amount of the premium assessed for the coverage of a premium subsidy eligible child under a certified health plan less the amount of the subsidy adjustment for which the child is eligible under section 103.

(3) PAYMENT OF ISSUER.—A State shall, under section 101(b)(4), establish procedures for the collection of premiums under this subsection and the payment of such premiums to the appropriate certified health plans.

(e) COVERAGE UNDER CERTAIN STATE PROGRAMS.—

(1) COORDINATION OF PROGRAMS.—The Secretary, in conjunction with States, shall provide for the coordination of the program established under this title with State programs that provide health insurance or other health care coverage for children. Such coordination may include the use of subsidies made available under this title to obtain coverage that supplements any partial coverage provided through such a State program or other coordinated arrangement.

(2) ELIGIBILITY.—With respect to an eligible child who is participating in a State program described in paragraph (1), a State may, notwithstanding section 2(6)(D), determine that such child is a premium subsidy eligible child.

(3) ADJUSTMENT OF AVERAGE COVERAGE AMOUNT.—The Secretary shall adjust the average coverage amount under section 101(d) with respect to an eligible child who is determined to be a premium subsidy eligible child under paragraph (2) to reflect the cost of enrolling the child in any plan providing supplemental coverage as described in paragraph (1).

SEC. 103. SUBSIDY ADJUSTMENT.

(a) PREMIUM SUBSIDY ELIGIBLE CHILDREN.—

(1) ELIGIBILITY.—An eligible child who has been determined by a State entity under section 102(b) to be a premium subsidy eligible child shall be eligible for a premium subsidy adjustment in the amount determined under paragraph (2) to be applied by the certified plan involved when computing the amount of the premium owed by such child.

(2) AMOUNT.—

(A) FULL SUBSIDY.—

(i) IN GENERAL.—With respect to a family, the family income of which does not exceed 200 percent of the poverty line for a family of the size involved, the amount of a premium subsidy adjustment specified in this paragraph for a premium subsidy eligible child shall, subject to clause (ii), be equal to 90 percent of the annual premium for the child for such year for coverage of the child under a certified health plan.

(ii) LIMITATION.—The amount of a subsidy adjustment for which a premium subsidy eligible child is eligible under clause (i) may not exceed the average coverage amount for the child as determined under section 101(d) with respect to the region in which the plan is offered.

(B) GRADUATED SUBSIDY.—

(i) IN GENERAL.—With respect to a family, the family income of which exceeds 200, but does not exceed 300, percent of the poverty line for a family of the size involved, the amount of a premium subsidy adjustment specified in this paragraph for a premium subsidy eligible child shall be determined by substituting "the applicable percentage" for "90 percent" in subparagraph (A).

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the term "applicable percentage" shall be determined using the following table:

"If the family income:	The applicable percentage shall be:
Exceeds 200, but does not exceed 225, percent of poverty	80
Exceeds 225, but does not exceed 250, percent of poverty	60
Exceeds 250, but does not exceed 275, percent of poverty	40
Exceeds 275, but does not exceed 300, percent of poverty	20
Exceeds 300 percent of poverty (subject to subsection (b)(2))	10

(b) OTHER ELIGIBLE CHILDREN.—

(1) IN GENERAL.—A premium subsidy eligible child who is determined by the State to be a child described in paragraph (2), shall be eligible for a premium subsidy adjustment in the amount determined under paragraph (3) to be obtained through a refundable tax credit determined under section 34A of the Internal Revenue Code of 1986.

(2) INCOME LIMITATION.—A premium subsidy eligible child described in this paragraph is a premium subsidy eligible child the family income of which exceeds 300 percent of the poverty line for a family of the size involved, but the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) of which is less than $75,000.

(3) AMOUNT.—

(A) IN GENERAL.—A premium subsidy eligible child described in paragraph (2) shall be eligible for a premium subsidy adjustment which shall, subject to subparagraph (B), be equal to 10 percent of the annual premium for the child for such year for coverage of the child under a certified health plan.

(B) LIMITATION.—The amount of a subsidy adjustment for which a premium subsidy eligible child is eligible under subparagraph (A) may not exceed the average coverage amount for the child as determined under section 101(d) with respect to the region in which the plan is offered.

(4) PURCHASE OF COVERAGE BY THOSE NOT ELIGIBLE FOR SUBSIDY.—An eligible child who is not a premium subsidy eligible child and who enrolls in a certified health plan shall be responsible for the payment of the entire premium amount for coverage under the plan. Such certified plan shall comply with the applicable State insurance requirements and if such requirements permit, may elect not to comply with the provisions of subparagraphs (D) (relating to guaranteed issue) and (E) (relating to preexisting condition exclusion) of section 101(b)(1).

(c) DETERMINATIONS OF INCOME.—For purposes of this section and section 102(b):

(1) IN GENERAL.—The term "income" means adjusted gross income (as defined in section 62(a) of the Internal Revenue Code of 1986)—

(A) determined without regard to sections 135, 162(l), 911, 931, and 933 of such Code; and

(B) increased by—

(i) the amount of interest received or accrued which is exempt from tax, plus

(ii) the amount of social security benefits (described in section 86(d) of such Code) which is not includible in gross income under section 86 of such Code.

(2) FAMILY INCOME.—The term "family income" means, with respect to a family, the sum of the income for all members of the family, not including the income of a dependent child with respect to which no return is required under the Internal Revenue Code of 1986.

(d) PROHIBITION ON REMITTING FUNDS.—A health insurance issuer may not in any manner remit any portion of the premium that a family is responsible for under this title.

SEC. 104. LIMITATION ON PREEXISTING CONDITION EXCLUSION PERIOD AND -PROHIBITION ON DISCRIMINATION.

(a) PREEXISTING CONDITIONS.—

(1) IN GENERAL.—No preexisting condition exclusion shall be imposed by a certified health plan or an employer-sponsored health plan, with respect to the enrollment and coverage of any premium subsidy eligible child.

(2) DEFINITION.—As used in this subsection, the term "preexisting condition exclusion" shall have the meaning given such term by section 2701(b)(1) of the Public Health Service Act (as added by section 102 of the Health Insurance Portability and Accountability Act of 1996).

(b) PROHIBITION OF DISCRIMINATION ON BASIS OF HEALTH STATUS.—

(1) IN ELIGIBILITY TO ENROLL.—

(A) IN GENERAL.—Subject to subparagraph (B), a health insurance issuer may not establish rules for eligibility (including continued eligibility) of any premium subsidy eligible child to enroll in a certified health plan or employer-sponsored health plan based on any of the following factors in relation to the premium subsidy eligible child:

(i) Health status.

(ii) Medical condition (including both physical and mental illnesses).

(iii) Claims experience.

(iv) Receipt of health care.

(v) Medical history.

(vi) Genetic information.

(vii) Evidence of insurability (including conditions arising out of acts of domestic violence).

(viii) Disability.

(B) NO APPLICATION TO BENEFITS OR EXCLUSIONS.—Subparagraph (A) shall not be construed—

(i) to require a certified health plan or employer-sponsored health plan to provide particular benefits other than those provided under the terms of the coverage, or

(ii) to prevent such plan from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated children enrolled in the plan.

(2) IN PREMIUM CONTRIBUTIONS.—

(A) IN GENERAL.—With respect to a certified health plan or employer-sponsored health plan, a health insurance issuer may not require that any premium subsidy eligible child (as a condition of enrollment or continued enrollment under the certified or employer-sponsored health plan involved) to pay a premium or contribution that is greater than such premium or contribution for a similarly situated child enrolled in the plan on the basis of any factor described in paragraph (1)(A) in relation to the child.

(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed—

(i) to restrict the amount that an employer may be charged for coverage under a plan; or

(ii) to prevent a health insurance issuer from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(c) EMPLOYER MAY NOT DISCRIMINATE AGAINST INDIVIDUALS ELIGIBLE FOR A SUBSIDY.—

(1) GENERAL RULE.—An employer that elects to make employer contributions on behalf of an individual who is an employee of such employer, or who is a dependent of such employee, for health insurance coverage of the type described in section 101(b)(1)(A) shall not condition, or vary such contributions with respect to any such individual by reason of such individual's or dependent's status as an child eligible for a premium subsidy under this title.

(2) ELIMINATION OF CONTRIBUTIONS.—An employer shall not be treated as failing to meet the requirements of paragraph (1) if the employer ceases to make employer contributions for health insurance coverage for all its employees.

SEC. 105. MAINTENANCE OF EFFORT.

A State may not modify the eligibility requirements for children under the State program under title XIX of the Social Security Act, as in effect on July 1, 1996, in any manner that would have the effect of reducing the eligibility of children for coverage under such program.

SEC. 106. OVERSIGHT BY SECRETARY.

In the case of a determination by the Secretary that a State has failed to carry out or substantially enforce a provision (or provisions) of this title, the Secretary shall carry out or enforce such provision (or provisions) with respect to the coverage of eligible children in such State.

SEC. 107. RULES OF CONSTRUCTION.

Nothing in this title shall be construed—

(1) as establishing premiums for health plans or otherwise limiting the competitive health insurance market within a State;

(2) as limiting the ability of a State to establish health insurance purchasing pools, initiate a competitive bidding process with respect to certified health plans, or pursue other innovative strategies aimed at maximizing the potential of market forces to achieve quality and cost effectiveness; or

(3) as superseding any provision of State law which—

(A) provides for the application of criteria, in addition to those described in section 101(b)(1), for the certification of health plans so long as such criteria do not directly conflict with the goals of the criteria described in such section; or

(B) establishes, implements, or continues in effect any standard or requirement relating solely to health insurance issuers in connection with certified health plans or the coverage of eligible children, except to the extent that such standard or requirement prevents the application of a requirement of this title.

SEC. 108. MISCELLANEOUS PROVISIONS.

(a) TRANSITION RULE.—With respect to the 12-month period described in section 2(6)(E), such period shall be reduced as follows:

(1) For premium subsidy eligible children desiring to enroll in a certified plan during the first full month after the date on which this Act becomes effective, the period shall be 6 months.

(2) For premium subsidy eligible children desiring to enroll in a certified plan during the second full month after the date on which this Act becomes effective, the period shall be 7 months.

(3) For premium subsidy eligible children desiring to enroll in a certified plan during the third full month after the date on which this Act becomes effective, the period shall be 8 months.

(4) For premium subsidy eligible children desiring to enroll in a certified plan during the fourth full month after the date on which this Act becomes effective, the period shall be 9 months.

(5) For premium subsidy eligible children desiring to enroll in a certified plan during the fifth full month after the day on which this Act becomes effective, the period shall be 10 months.

(6) For premium subsidy eligible children desiring to enroll in a certified plan during the sixth full month after the day on which this Act becomes effective, the period shall be 11 months.

TITLE II—HEALTH INSURANCE COVERAGE FOR PREGNANT WOMEN

SEC. 201. EXPANDING HEALTH INSURANCE COVERAGE FOR PREGNANT WOMEN.

(a) ESTABLISHMENT OF GRANT PROGRAM.—The Secretary shall establish a program to provide grants to States to enable such States to assist pregnant women in obtaining appropriate prenatal, perinatal and postnatal care.

(b) APPLICATION.—To be eligible to receive a grant under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amount available for grants under subsection (e) for a fiscal year, the Secretary shall award a grant to each State in an amount that is equal to an amount which bears the same relationship to such amount as the pregnancy coverage amount of the State as determined under paragraph (2) bears to the pregnancy coverage amount for all States.

(2) PREGNANCY COVERAGE AMOUNT.—For purposes of paragraph (1), the pregnancy coverage amount of a State shall be equal to—

(A) the number of estimated uninsured pregnant women in the State the family income of which does not exceed 300 percent of the poverty line for a family of the size involved; and

(B) the average per capita cost of providing pregnancy benefits to such women.

(3) GUIDELINES.—The Secretary, in consultation with the National Association of Insurance Commissioners and the American Academy of Actuaries, shall establish guidelines for the determination of the amounts described in subparagraphs (A) and (B) of paragraph (2).

(d) USE OF AMOUNTS.—A State shall use amounts received under a grant provided under this section to assist pregnant women in obtaining appropriate prenatal, perinatal and postnatal care as approved by the Secretary.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 202. GRANTS FOR INNOVATIVE OUTREACH.

(a) ESTABLISHMENT OF GRANT PROGRAM.—The Secretary shall establish a program to provide categorical grants to States to assist children and pregnant women in obtaining health care services and coverage for which they are eligible.

(b) APPLICATION.—To be eligible to receive a grant under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) AMOUNT OF GRANT.—The Secretary shall determine the amount of a grant provided under this section.

(d) USE OF AMOUNTS.—A State shall use amounts received under a grant provided under this section to carry out innovative outreach activities to promote the timely enrollment of pregnant women and children in health plans or other programs that provide prenatal care and other pregnancy-related services or comprehensive care for children.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE III—CHILDREN'S HEALTH COVERAGE SUBSIDY CREDITS

SEC. 301. HEALTH COVERAGE PROVIDED TO PREMIUM SUBSIDY ELIGIBLE CHILDREN THROUGH A TAX CREDIT FOR INSURERS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to other credits) is amended by adding at the end the following:

"SEC. 30B. CHILDREN'S HEALTH COVERAGE SUBSIDY CREDIT FOR INSURERS.

"(a) DETERMINATION OF AMOUNT.—There shall be allowed as a credit against the applicable tax for the taxable year an amount equal to the eligible premium subsidies provided by a health insurance issuer for coverage under 1 or more certified health plans during the taxable year under the Children's Health Coverage Act.

"(b) APPLICABLE TAX.—For purposes of this section, the term 'applicable tax' means the excess (if any) of—

"(1) the sum of—

"(A) the tax imposed under this chapter (other than the taxes imposed under the provisions described in subparagraphs (C) through (O) of section 26(b)(1)), plus

"(B) the tax imposed under chapter 21, over

"(2) the credits allowable under subparts B and D of this part.

"(c) ELIGIBLE PREMIUM SUBSIDIES.—The term "eligible premium subsidies' means premium subsidies for premium subsidy eligible children (as defined in section 2(6) of the Children's Health Coverage Act.

"(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'health insurance issuer' and 'certified health plan' have the

meaning given those terms by section 2 of the Children's Health Coverage Act.".

(b) TRANSFER TO TRUST FUNDS.—The Secretary of the Treasury shall transfer from the general fund to the Old-Age, Survivors, and Disability Insurance Trust Fund and to the Hospital Insurance Trust Fund amounts equivalent to the amount of the reduction in taxes imposed by section 3111 of the Internal Revenue Code of 1986 by reason of the credit determined under section 30B (relating to the children's health coverage subsidy credit for insurers). Any such transfer shall be made at the same time the reduced taxes would have been deposited in either such Trust Fund.

(c) CONFORMING AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"Sec. 30B. Children's health coverage subsidy credit for insurers.".

(e) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1997.

SEC. 302. HEALTH COVERAGE PROVIDED TO PREMIUM SUBSIDY ELIGIBLE CHILDREN THROUGH A REFUNDABLE INCOME TAX CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable personal credits) is amended by inserting after section 34 the following:

"SEC. 34A. CHILDREN'S HEALTH COVERAGE.

"(a) ALLOWANCE OF CREDIT.—In the case of a premium subsidy eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the premium subsidy determined under section 103(b)(3) of the Children's Health Coverage Act for such individual for the taxable year.

"(b) PREMIUM SUBSIDY ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'premium subsidy eligible individual' means, with respect to any period, an individual who has as a dependent for the taxable year 1 or more premium subsidy eligible children described in section 103(b)(2) of the Children's Health Coverage Act.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.".

(b) COORDINATION WITH DEDUCTIONS FOR HEALTH INSURANCE EXPENSES.—

(1) SELF-EMPLOYED INDIVIDUALS.—Section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by adding after paragraph (5) the following:

"(6) COORDINATION WITH CHILDREN'S HEALTH COVERAGE CREDIT.—Paragraph (1) shall not apply to any amount taken into account in computing the amount of the credit allowed under section 34A.".

(2) MEDICAL, DENTAL, ETC., EXPENSES.—Section 213(e) of such Code (relating to exclusion of amounts allowed for care of certain dependents) is amended by inserting "or section 34A" after "section 21".

(c) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 34 the following:

"Sec. 34A. Children's health coverage.".

(d) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1997.

By Mr. DASCHLE (for himself, Mrs. BOXER, Mr. KENNEDY, Mr. BINGAMAN, Ms. MOSELEY-BRAUN, Mr. ROCKEFELLER, Mr. GRAHAM, Ms. MIKULSKI, Mr. KERRY, Mr. REID, Mr. DURBIN, Mr. INOUYE, Mr. TORRICELLI, and Mr. BREAUX):

S. 14. A bill to provide for retirement savings and security, and for other purposes; to the Committee on Finance.

RETIREMENT SECURITY ACT OF 1997

Mr. KENNEDY. Mr. President, today I join with the distinguished Minority Leader, Senator DASCHLE, in co-sponsoring legislation important for the future of working families in this country. One of this Congress's highest priorities should be pension reform.

The Treasury now spends $66 billion a year in tax subsidies to encourage pension coverage, but working families are not getting full value for this money. 56 percent of the workforce is not currently covered by any private pension plan. The situation is worse for employees of small businesses. Eighty-five percent of those employed by firms with fewer than 25 workers have no pension coverage. For low-wage workers, the situation is worst of all. More than 26 million employees—80 percent—who earn under $15,000 a year are not covered by a pension plan. Forty-one million employees who earn less than $30,000 a year do not participate in a retirement plan—60 percent.

Women make up an excessive portion of the working population that is not covered by a pension plan. Employees covered by union agreements are nearly twice as likely to have a pension, but women are half as likely to hold these jobs. More than eight million women who work for small firms have no access to pension coverage.

Low-wage women are especially hard-hit. Sixty percent of those earning under $15,000 a year are women. Nearly sixteen million women who earn less than $15,000 a year are not participating in a pension plan—80 percent. Twenty-three million women earning less than $30,000 a year don't participate in a retirement plan—nearly 60 percent.

Women are more than twice as likely as men to hold part-time jobs, with no pension coverage. Women make up more than half the workforce in industries with the lowest rates of pension coverage—such as the service and retail industries. In those industries with higher rates of access to pensions—mining, durable manufacturing, and communications—women make up just one-fourth of the workforce.

We must change these figures. I am proud to join in sponsoring the Retirement Security Act that Senator DASCHLE is introducing today to deal with these serious problems.

This bill will make real progress in expanding access to pensions for all working families. It will facilitate retirement savings by millions of Americans, by enabling workers to ask their employers to set aside savings from paychecks and deposit the savings directly into retirement accounts. This "pension checkoff" is a simple, practical step to make the private pension system more accessible to all workers.

The bill will also provide tax incentives for low-wage employees to set aside money for retirement. Families on the lower rungs of the economic ladder deserve a secure income when they retire. This bill will reform the tax laws to make them more beneficial to low-income workers. No one who works for a living should have to retire in poverty.

The bill advances other important goals as well. It strengthens the security of the pension system, so that the benefits families rely on will be there when they retire. It will stop employers from forcing employees to invest their retirement contributions in the employer's stock, against the workers' wishes. It will provide closer monitoring of pension plan terminations, to prevent companies from raiding employee pensions.

The bill also promotes pension portability. The checkoff system will allow employees to continue saving for retirement even if they change jobs or leave the labor market for a time. Wherever they go, they can take their pension plan with them. In addition, the bill makes it easier for employees to roll over their retirement accounts to a new employer's plan.

The bill will remove the most significant obstacles to pension coverage for women. It builds on the efforts of Senator MOSELEY-BRAUN and Senator BOXER in the last Congress to improve pension benefits for surviving spouses. It will also enable spouses to contribute to IRAs. The pension checkoff system will benefit millions of working women whose employers do not provide pension plans.

I commend Senator DASCHLE for the leadership he has shown in introducing this important bill. At a time when Social Security is facing tremendous budget pressure, it is essential that the private pension system be accessible and affordable to every working family. I look forward to working with colleagues on both sides of the aisle to pass this necessary legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 14

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 "Retirement Security Act of 1997".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
TITLE I—PENSION ACCESS AND COVERAGE
Sec. 100. Amendment of 1986 Code.
Subtitle A—Improved Access to Individual Retirement Savings
CHAPTER 1—CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS THROUGH PAYROLL DEDUCTIONS
Sec. 101. Definitions.
Sec. 102. Establishment of payroll deduction and investment system.
Sec. 103. Contributions to individual retirement plans.
Sec. 104. Investment options.
Sec. 105. Accounting and information.
Sec. 106. Administrative costs.
Sec. 107. Fiduciary responsibilities; liability and penalties; bonding; investigative authority.
Sec. 108. Selection of contractor.
CHAPTER 2—NONREFUNDABLE TAX CREDIT FOR CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS
Sec. 111. Nonrefundable tax credit for contributions to individual retirement plans.
CHAPTER 3—EXPANDED INDIVIDUAL RETIREMENT ACCOUNTS TO INCREASE COVERAGE AND PORTABILITY
SUBCHAPTER A—IRA DEDUCTION
Sec. 121. Increase in income limitations.
Sec. 122. Inflation adjustment for deductible amount and income limitations.
SUBCHAPTER B—DISTRIBUTIONS AND INVESTMENTS
Sec. 131. Distributions from IRAs may be used without additional tax to purchase first homes, to pay higher education, or to pay financially devastating medical expenses.
Sec. 132. Contributions must be held at least 5 years in certain cases.
CHAPTER 4—PERIODIC PENSION BENEFITS STATEMENTS
Sec. 141. Periodic pension benefits statements.
Subtitle B—Improved Fairness in Retirement Plan Benefits
Sec. 151. Amendments to simple retirement accounts.
Sec. 152. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.
Sec. 153. Definition of highly compensated employees.
Subtitle C—Improving Retirement Plan Coverage
Sec. 161. Credit for pension plan start-up costs of small employers.
Sec. 162. Treatment of multiemployer plans under section 415.
Sec. 163. Exemption of mirror plans from section 457 limits.
Sec. 164. Special rules for self-employed individuals.
Sec. 165. Immediate participation in the thrift savings plan for Federal employees.
Sec. 166. Modification of 10 percent tax for nondeductible contributions.
Subtitle D—Simplifying Plan Requirements
Sec. 171. Full funding limitation for multiemployer plans.
Sec. 172. Elimination of partial termination rules for multiemployer plans.
Sec. 173. Modifications to nondiscrimination and minimum participation rules with respect to governmental plans.
Sec. 174. Elimination of requirement for plan descriptions and the filing requirement for summary plan descriptions and descriptions of material modifications to a plan; technical corrections.
Sec. 175. New technologies in retirement plans.
TITLE II—SECURITY
Sec. 200. Amendment of ERISA.
Subtitle A—General Provisions
Sec. 201. Section 401(k) investment protection.
Sec. 202. Requirement of annual, detailed investment reports applied to certain 401(k) plans.
Sec. 203. Study on investments in collectibles.
Sec. 204. Qualified employer plans prohibited from making loans through credit cards and other intermediaries.
Sec. 205. Multiemployer plan benefits guaranteed.
Sec. 206. Prohibited transactions.
Sec. 207. Substantial owner benefits.
Sec. 208. Reversion report.
Sec. 209. Development of additional remedies.
Subtitle B—ERISA Enforcement
Sec. 211. Repeal of limited scope audit.
Sec. 212. Additional requirements for qualified public accountants.
Sec. 213. Clarification of fiduciary penalties.
Sec. 214. Conforming amendments relating to ERISA enforcement.
TITLE III—PORTABILITY
Sec. 301. Faster vesting of employer matching contributions.
Sec. 302. Rationalize the restrictions on distributions from 401(k) plans.
Sec. 303. Treatment of transfers between defined contribution plans.
Sec. 304. Missing participants.
TITLE IV—TOWARD EQUITY FOR WOMEN
Sec. 401. Individual's participation in plan not treated as participation by spouse.
Sec. 402. Modifications of joint and survivor annuity requirements.
Sec. 403. Division of pension benefits upon divorce.
Sec. 404. Deferred annuities for surviving spouses of Federal employees.
Sec. 405. Payment of lump-sum credit for former spouses of Federal employees.
Sec. 406. Women's pension toll-free phone number.
TITLE V—DATE FOR ADOPTION OF PLAN AMENDMENTS
Sec. 501. Date for adoption of plan amendments.

TITLE I—PENSION ACCESS AND COVERAGE

SEC. 100. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—Improved Access to Individual Retirement Savings

CHAPTER 1—CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS THROUGH PAYROLL DEDUCTIONS

SEC. 101. DEFINITIONS.

For purposes of this chapter:

(1) CONTRACTOR.—The term "contractor" means the private entity awarded a contract by the Secretary of Labor under section 108.

(2) CONTRIBUTION CERTIFICATE.—The term "contribution certificate" means a certificate submitted by an eligible employee to the employee's employer and the contractor which—

(A) identifies the employee by name, address, and social security number,

(B) includes a certification by the employee that the employee is an eligible employee, and

(C) identifies the amount of the contribution to an individual retirement plan the employee wishes to make for the taxable year through a payroll deduction, not to exceed the amount allowed under section 408 of the Internal Revenue Code of 1986 to an individual retirement plan for such year.

(2) ELIGIBLE EMPLOYEE.—

(A) IN GENERAL.—The term "eligible employee" means, with respect to any taxable year, an employee whose employer does not sponsor a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986.

(B) EMPLOYEE.—The term "employee" does not include an employee as defined in section 401(c)(1) of such Code.

(3) INDIVIDUAL RETIREMENT PLANS.—

(A) IN GENERAL.—The term "individual retirement plan" has the meaning given the term by section 7701(a)(37) of the Internal Revenue Code of 1986).

(B) APPLICATION OF RULES.—Rules applicable to an individual retirement plan under the Internal Revenue Code of 1986 are applicable to an individual retirement plan referred to in this chapter.

SEC. 102. ESTABLISHMENT OF PAYROLL DEDUCTION AND INVESTMENT SYSTEM.

The contractor shall establish a system under which—

(1) eligible employees, through employer payroll deductions, may make contributions to individual retirement plans, and

(2) amounts in the individual retirement plans are invested as provided in section 104.

SEC. 103. CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—The system established under section 102 shall provide that contributions made to an individual retirement plan for any taxable year are—

(1) contributions under an employer payroll deduction system, and

(2) additional contributions which, when added to contributions under paragraph (1), do not exceed the amount allowed under section 408 of the Internal Revenue Code of 1986 for the taxable year.

(b) EMPLOYER PAYROLL DEDUCTION SYSTEMS.—

(1) IN GENERAL.—The system established under section 102 shall provide to the maximum extent feasible that contributions under employer payroll deduction systems are made in such a manner as provides all employers with a simple, cost-effective way of making such contributions.

(2) SIMPLIFIED EMPLOYEE ENROLLMENT AND PARTICIPATION.—

(A) ESTABLISHMENT.—An eligible employee may establish and maintain an individual retirement plan simply by—

(i) completing a contribution certificate, and

(ii) submitting such certificate to the eligible employee's employer and the contractor in the manner provided under paragraph (3).

(B) EASE OF ADMINISTRATION.—An eligible employee establishing and maintaining an individual retirement plan under subparagraph (A) may change the amount of an employer payroll deduction, request employer payroll deductions by new employers to an existing plan, and make changes in elections made under section 104(d) in the same manner as under subparagraph (A).

(C) SIMPLIFIED FORMS.—

(i) CONTRIBUTION CERTIFICATE.—The contractor shall develop a contribution certificate for purposes of subparagraph (A)—

(I) which is written in a clear and easily understandable manner, and

(II) the completion of which by an eligible employee will constitute the establishment of an individual retirement plan and the request for employer payroll deductions.

(ii) OTHER FORMS.—The contractor shall develop such model forms for purposes of subparagraph (B) as are necessary to enable the contractor and an employer to easily administer an individual retirement plan on behalf of an eligible employee.

(iii) AVAILABILITY.—The contractor shall make available to all eligible employees and employers the forms developed under this subparagraph, and shall include with such forms easy to understand explanatory materials.

(3) USE OF CERTIFICATE.—Each employer upon receipt of a contribution certificate from an eligible employee shall deduct the appropriate contribution as determined by such certificate from the employee's wages in equal amounts during the remaining payroll periods for the taxable year and shall remit such amounts to the contractor for investment in the employee's individual retirement plan.

(4) FAILURE TO REMIT PAYROLL DEDUCTIONS.—For purposes of the Internal Revenue Code of 1986, any amount which an employer fails to remit to the contractor on behalf of an eligible employee pursuant to a contribution certificate of such employee shall not be allowed as a deduction to the employer under such Code.

SEC. 104. INVESTMENT OPTIONS.

(a) IN GENERAL.—The contractor shall, pursuant to the system established under section 102, enter into arrangements, on a competitive basis, with qualified professional asset managers to provide individuals with the opportunity to invest sums in an individual retirement plan in each of the funds described in subsection (b).

(b) TYPE OF FUNDS.—The funds described in the subsection are the following:

(1) A government securities investment fund.

(2) A fixed income investment fund.

(3) A common stock index investment fund.

(c) ASSET MANAGERS.—

(1) IN GENERAL.—The contractor may select more than 1 qualified professional asset manager for each type of fund described in subsection (b).

(2) ASSET ALLOCATION.—The contractor may place limits on the amount which may be allocated by the contractor to any qualified professional asset manager to the extent the contractor determines necessary to prevent undue impact on any financial market or undue risk to participants.

(3) DEFINITION.—For purposes of this section, the term "qualified professional asset manager" has the meaning given the term by section 8438(a)(7) of title 5, United States Code.

(d) PARTICIPANT ELECTIONS.—

(1) IN GENERAL.—The system established under section 102 shall provide that an individual on whose behalf an individual retirement plan is established may—

(A) elect the investment funds into which contributions to the plan are to be invested, and

(B) elect to transfer contributions (and earnings) from one fund to another.

(2) METHOD.—Any election shall be made in the manner provided by the system, except that the contractor shall seek to ensure elections may be made in a simple, timely manner.

(3) LIMITATION.—Any election under this subsection shall be subject to the asset allocation limitation under subsection (c)(2).

(e) INVESTMENT POLICIES.—The system established under section 102 shall provide that any investment policies adopted by the contractor shall provide for—

(1) prudent investments suitable for accumulating funds for payment of retirement income, and

(2) low administrative costs.

SEC. 105. ACCOUNTING AND INFORMATION.

(a) ESTABLISHMENT OF PLANS.—

(1) IN GENERAL.—The system established under section 102 shall provide for the establishment and maintenance of an individual retirement plan for each individual—

(A) for whom contributions are made to the contractor under an employer payroll deduction system pursuant to a contribution certificate, and

(B) who makes any additional contributions allowed under section 408 of the Internal Revenue Code of 1986 for the taxable year.

(2) ALLOCATIONS AND REDUCTIONS TO PLAN.—Such system shall provide for—

(A) the allocation to each plan of an amount equal to a pro rata share of the net earnings and net losses from each investment of sums in such plan, and

(B) a reduction in each such plan for the plan's appropriate share of the administrative expenses to be paid out.

(3) EXAMINATION OF PLANS.—

(A) IN GENERAL.—The contractor shall annually engage, on behalf of all individuals for whom an individual retirement plan is maintained, an independent qualified public accountant (within the meaning of section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)) who shall conduct an examination of all plans and other books and records maintained in the administration of this chapter as the accountant considers necessary to make the determination under subparagraph (B). The examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the plans, books, and records as the public accountant considers necessary.

(B) DETERMINATION OF COMPLIANCE.—The public accountant conducting an examination under subparagraph (A) shall determine whether the plans, books, and records referred to in such subparagraph have been maintained in conformity with generally accepted accounting principles. The public accountant shall transmit to the contractor and the Secretary of Labor a report on such examination and determination.

(C) RELIANCE.—In making a determination under subparagraph (B), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant states a reliance in the report to the contractor.

(b) ADDITIONAL INFORMATION.—

(1) IN GENERAL.—The system established under section 102 shall provide for the furnishing of information to employees and employers of the opportunity of establishing individual retirement plans and of transferring amounts to such plans.

(2) PLAN PARTICIPANTS.—

(A) IN GENERAL.—Such system shall provide that each individual for whom an individual retirement plan is maintained shall be periodically furnished with—

(i) a statement relating to the individual's plan, and

(ii) a summary description of the investment options under the plan and a history of the investment performance of such options during the 5-year period preceding the evaluation.

(B) PLAN VALUATION.—Such system shall also provide that each individual for whom an individual retirement plan is established shall be entitled, upon request, to a periodic valuation of amounts in each fund described in section 104(b) in order to enable the individual to make an election to transfer such amounts between funds.

(3) INVESTMENT INFORMATION.—The contractor shall also make available to employees information on how to make informed investment decisions and how to achieve retirement objectives.

(4) INFORMATION NOT INVESTMENT ADVICE.—Information provided under this subsection shall not be treated as investment advice for purposes of any Federal or State law.

SEC. 106. ADMINISTRATIVE COSTS.

(a) IN GENERAL.—Except as provided from amounts described in section 108(c), any expense incurred by the contractor in carrying out its functions under this chapter shall be paid first from the earnings of the funds in individual retirement plans and then from balances in such plans.

(b) ALLOCATION.—Expenses under subsection (a) shall be allocated to each individual retirement plan in the manner provided under section 105.

SEC. 107. FIDUCIARY RESPONSIBILITIES; LIABILITY AND PENALTIES; BONDING; INVESTIGATIVE AUTHORITY.

Except as modified by the Secretary of Labor in regulations to correspond to the structure and responsibilities of the contractor, the provisions of sections 8477, 8478, 8478a, and 8479(a) of title 5, United States Code, shall apply to the contractor in the same manner as such provisions apply to the Thrift Savings Fund.

SEC. 108. SELECTION OF CONTRACTOR.

(a) SELECTION.—

(1) IN GENERAL.—The Secretary of Labor shall contract out, on a competitive basis, the duties under this chapter to a private entity.

(2) MEASUREMENT OF CONTRACT PERFORMANCE.—No contract shall be entered into with any entity under paragraph (1) unless the Secretary of Labor finds that such entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as the Secretary finds pertinent. The Secretary of Labor shall publish in the Federal Register standards and criteria for the efficient and effective performance of contract obligations under this chapter (including standards and criteria for the termination of such contract), and opportunity shall be provided for public comment prior to implementation.

(b) TREATMENT AS TRUSTEE.—For purposes of the Internal Revenue Code of 1986 the contractor shall be treated in the same manner

as a trustee described in section 408(a)(2) of such Code.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary for the Secretary of Labor to design and award the contract described in subsection (a)(1) and for the contractor to begin operations under this chapter.

(d) EFFECTIVE DATE OF SYSTEM.—The system established under section 102 shall take effect on the first day of the sixth month following the month in which the contract under subsection (a) is awarded.

CHAPTER 2—NONREFUNDABLE TAX CREDIT FOR CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS

SEC. 111. NONREFUNDABLE TAX CREDIT FOR CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25 the following new section:

"SEC. 25A. RETIREMENT SAVINGS.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter so much of the qualified retirement contributions of the taxpayer for the taxable year as does not exceed the applicable amount of the adjusted gross income of the taxpayer for such year.

"(b) APPLICABLE AMOUNT.—For purposes of subsection (a), the applicable amount is determined in accordance with the following table:

"If adjusted gross income is:	The applicable amount is:
Not over $15,000	$450.
Over $15,000 but not over $20,000.	$400.
Over $20,000 but not over $25,000.	$350.
Over $25,000 but not over $30,000.	$300.
Over $30,000	$0.

"(c) SECTION NOT TO APPLY TO CERTAIN CONTRIBUTIONS.—This section shall not apply with respect to—

"(1) an employer contribution to a simplified employee pension, and

"(2) any amount contributed to a simple retirement account established under section 408(p).

"(d) OTHER LIMITATIONS AND RESTRICTIONS.—

"(1) BENEFICIARY MUST BE UNDER AGE 70½.—No credit shall be allowed under this section with respect to any qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made.

"(2) RECONTRIBUTED AMOUNTS.—No credit shall be allowed under this section with respect to a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3).

"(3) AMOUNTS CONTRIBUTED UNDER ENDOWMENT CONTRACT.—In the case of an endowment contract described in section 408(b), no credit shall be allowed under this section for that portion of the amounts paid under the contract for the taxable year which is properly allocable, under regulations prescribed by the Secretary, to the cost of life insurance.

"(4) DENIAL OF CREDIT FOR AMOUNT CONTRIBUTED TO INHERITED ANNUITIES OR ACCOUNTS.—No credit shall be allowed under this section with respect to any amount paid to an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)(ii)).

"(5) NO DOUBLE BENEFIT.—No credit shall be allowed under this section for any taxable year with respect to the amount of any qualified retirement contribution for the benefit of an individual if such individual takes a deduction with respect to such amount under section 219 for such taxable year.

"(e) QUALIFIED RETIREMENT CONTRIBUTION.—For purposes of this section, the term 'qualified retirement contribution' means—

"(1) any amount paid in cash for the taxable year by or on behalf of an individual to an individual retirement plan for such individual's benefit, and

"(2) any amount contributed on behalf of any individual to a plan described in section 501(a)(18).

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—

"(1) COMPENSATION.—For purposes of this section, the term 'compensation' has the meaning given in section 219(f)(1).

"(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

"(3) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

"(4) REPORTS.—The Secretary shall prescribe regulations which prescribe the time and the manner in which reports to the Secretary and plan participants shall be made by the plan administrator of a qualified employer or government plan receiving qualified voluntary employee contributions.

"(5) EMPLOYER PAYMENTS.—For purposes of this title, any amount paid by an employer to an individual retirement plan shall be treated as payment of compensation to the employer (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income in the taxable year for which the amount was contributed, whether or not a credit for such payment is allowable under this section to the employee.

"(g) CROSS REFERENCE.—

"For failure to provide required reports, see section 6652(g).".

(b) CONFORMING AMENDMENTS.—

(1) Section 86(f) is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) section 25A(f)(1) (defining compensation),".

(2) Clause (i) of section 501(c)(18)(D) is amended by inserting "which may be taken into account in computing the credit allowable under section 25A or" before "with respect".

(3) Section 6047(c) is amended by inserting "section 25A or" before "section 219".

(4) Section 6652(g) is amended—

(A) by inserting "section 25A(f)(4) or" before "section 219(f)(4)", and

(B) by inserting "CREDITABLE" before "DEDUCTIBLE" in the heading thereof.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25 the following new item:

"Sec. 25A. Retirement savings.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1997.

CHAPTER 3—EXPANDED INDIVIDUAL RETIREMENT ACCOUNTS TO INCREASE COVERAGE AND PORTABILITY

Subchapter A—IRA Deduction

SEC. 121. INCREASE IN INCOME LIMITATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 219(g)(3) (defining applicable dollar amount) is amended—

(1) by striking "$40,000" in clause (i) and inserting "$80,000 ($70,000 in the case of taxable years beginning in 1997, 1998, or 1999)", and

(2) by striking "$25,000" in clause (ii) and inserting "$50,000 ($45,000 in the case of taxable years beginning in 1997, 1998, or 1999)".

(b) PHASEOUT OF LIMITATIONS.—Clause (ii) of section 219(g)(2)(A) (relating to amount of reduction) is amended by striking "$10,000" and inserting "an amount equal to 10 times the dollar amount applicable for the taxable year under subsection (b)(1)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 122. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT AND INCOME LIMITATIONS.

(a) IN GENERAL.—Section 219 (relating to retirement savings) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) COST-OF-LIVING ADJUSTMENTS.—

"(1) DEDUCTIBLE AMOUNTS.—In the case of any taxable year beginning in a calendar year after 1997, the $2,000 amount under subsection (b)(1)(A) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1996' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) APPLICABLE DOLLAR AMOUNT.—In the case of any taxable year beginning in a calendar year after 2000, the applicable dollar amounts under subsection (g)(3)(B) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

"(3) ROUNDING RULES.—

"(A) DEDUCTION AMOUNTS.—If any amount after adjustment under paragraph (1) is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500.

"(B) APPLICABLE DOLLAR AMOUNTS.—If any amount after adjustment under paragraph (2) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.".

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(2) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 408(j) is amended by striking "$2,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

Subchapter B—Distributions and Investments

SEC. 131. DISTRIBUTIONS FROM IRAS MAY BE USED WITHOUT ADDITIONAL TAX TO PURCHASE FIRST HOMES, TO PAY HIGHER EDUCATION, OR TO PAY FINANCIALLY DEVASTATING MEDICAL EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

"(E) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan—

"(i) which are qualified first-time homebuyer distributions (as defined in paragraph (7)); or

"(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (8)) of the taxpayer for the taxable year.".

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) CERTAIN LINEAL DESCENDANTS AND ANCESTORS TREATED AS DEPENDENTS.—Subparagraph (B) of section 72(t)(2) (relating to subsection not to apply to certain distributions) is amended by striking "medical care" and all that follows and inserting "medical care determined—

"(i) without regard to whether the employee itemizes deductions for such taxable year, and

"(ii) in the case of an individual retirement plan, by treating such employee's dependents as including all children, grandchildren, and ancestors of the employee or such employee's spouse.".

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 72(t)(2) is amended by striking "or (D)" and inserting ", (D), or (E)".

(c) DEFINITIONS.—Section 72(t) is amended by adding at the end the following new paragraphs:

"(7) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(E)(i)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the spouse, child (as defined in section 151(c)(3)), or grandchild of such individual.

"(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if—

"(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

"(II) subsection (h) or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

In the case of an individual described in section 143(i)(1)(C) for any year, an ownership interest shall not include any interest under a contract of deed described in such section. An individual who loses an ownership interest in a principal residence incident to a divorce or legal separation is deemed for purposes of this subparagraph to have had no ownership interest in such principal residence within the period referred to in subclause (II).

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—Any portion of any distribution from any individual retirement plan which fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting '120 days' for '60 days' in such section), except that—

"(i) section 408(d)(3)(B) shall not be applied to such portion, and

"(ii) such portion shall not be taken into account in determining whether section 408(d)(3)(B) applies to any other amount.

"(8) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(E)(ii)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse,

"(iii) a dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151, or

"(iv) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

as an eligible student at an institution of higher education.

"(B) EXCEPTIONS.—The term 'qualified higher education expenses' does not include—

"(i) expenses with respect to any course or other education involving sports, games, or hobbies, unless such expenses—

"(I) are part of a degree program, or

"(II) are deductible under this chapter without regard to this section; or

"(ii) any student activity fees, athletic fees, insurance expenses, or other expenses unrelated to a student's academic course of instruction.

"(C) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135.

"(D) ELIGIBLE STUDENT.—For purposes of subparagraph (A), the term 'eligible student' means a student who—

"(i) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

"(ii)(I) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution of higher education, or

"(II) is enrolled in a course which enables the student to improve the student's job skills or to acquire new job skills.

"(E) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution which—

"(i) is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

"(ii) is eligible to participate in programs under title IV of such Act.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1996.

SEC. 132. CONTRIBUTIONS MUST BE HELD AT LEAST 5 YEARS IN CERTAIN CASES.

(a) IN GENERAL.—Section 72(t), as amended by section 131(c), is amended by adding at the end the following new paragraph:

"(9) CERTAIN CONTRIBUTIONS MUST BE HELD 5 YEARS.—

"(A) IN GENERAL.—Paragraph (2)(A)(i) shall not apply to any amount distributed out of an individual retirement plan (other than a special individual retirement account) which is allocable to contributions made to the plan during the 5-year period ending on the date of such distribution (and earnings on such contributions).

"(B) ORDERING RULE.—For purposes of this paragraph—

"(i) FIRST-IN, FIRST-OUT RULE.—Distributions shall be treated as having been made—

"(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(II) then from other contributions (and earnings allocable thereto) in the order in which made.

"(ii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to contributions in such manner as the Secretary may prescribe.

"(iii) AGGREGATIONS OF CONTRIBUTIONS.—Except as provided by the Secretary, for purposes of this subparagraph—

"(I) all contributions made during the same taxable year may be treated as 1 contribution, and

"(II) all contributions made before the first day of the 5-year period ending on the day before any distribution may be treated as 1 contribution.

"(C) SPECIAL RULE FOR ROLLOVERS.—

"(i) PENSION PLANS.—Subparagraph (A) shall not apply to distributions out of an individual retirement plan which are allocable to rollover contributions to which section 402(c), 403(a)(4), or 403(b)(8) applied.

"(ii) CONTRIBUTION PERIOD.—For purposes of subparagraph (A), amounts shall be treated as having been held by a plan during any period such contributions were held (or are treated as held under this clause) by any individual retirement plan from which transferred.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions (and earnings allocable thereto) which are made after December 31, 1996.

CHAPTER 4—PERIODIC PENSION BENEFITS STATEMENTS

SEC. 141. PERIODIC PENSION BENEFITS STATEMENTS.

(a) IN GENERAL.—Subsection (a) of section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking "shall furnish to any plan participant or beneficiary who so requests in writing," and inserting "shall furnish at least

once every 3 years, in the case of a defined benefit plan, and annually, in the case of a defined contribution plan, to each plan participant, and shall furnish to any plan participant or beneficiary who so requests,".

(b) RULE FOR MULTIEMPLOYER PLANS.—Subsection (d) of section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended to read as follows:

"(d) Each administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall furnish to any plan participant or beneficiary who so requests in writing, a statement described in subsection (a).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after the earlier of—

(1) the date of issuance by the Secretary of Labor of regulations providing guidance for simplifying defined benefit plan calculations with respect to the information required under section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025), or

(2) December 31, 1997.

Subtitle B—Improved Fairness in Retirement Plan Benefits

SEC. 151. AMENDMENTS TO SIMPLE RETIREMENT ACCOUNTS.

(a) MINIMUM CONTRIBUTION REQUIREMENT.—

(1) IN GENERAL.—Paragraph (2) of section 408(p) (defining qualified salary reduction arrangement) is amended—

(A) by striking clauses (iii) and (iv) of subparagraph (A) and inserting the following new clauses:

"(iii) the employer is required to make a matching contribution to the simple retirement account for any year in an amount equal to—

"(I) so much of the amount the employee elects under clause (i)(I) as does not exceed 3 percent of compensation for the year, and

"(II) a uniform percentage (which is at least 50 percent but not more than 100 percent) of the amount the employee elects under clause (i)(I) to the extent that such amount exceeds 3 percent but does not exceed 5 percent of the employee's compensation,

"(iv) the employer is required to make nonelective contributions of 1 percent of compensation for each employee eligible to participate in the arrangement who has at least $5,000 of compensation from the employer for the year, and

"(v) no contributions may be made other than contributions described in clause (i), (iii), or (iv).", and

(B) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) CONTRIBUTION RULES.—

"(i) EMPLOYER MAY ELECT 3-PERCENT NONELECTIVE CONTRIBUTION.—An employer shall be treated as meeting the requirements of clauses (iii) and (iv) of subparagraph (A) for any year if, in lieu of the contributions described in such clauses, the employer elects to make nonelective contributions of 3 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this clause for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C).

"(ii) DISCRETIONARY CONTRIBUTIONS.—A plan shall not be treated as failing to meet the requirements of subparagraph (A)(v) merely because, pursuant to the terms of the plan, an employer makes nonelective contributions under subparagraph (A)(iv) or clause (i) of this subparagraph in excess of 1 percent or 3 percent of compensation, respectively, but only if all such contributions bear a uniform relationship to the compensation of each eligible employee and do not exceed 5 percent of compensation for any eligible employee.

"(iii) COMPENSATION LIMITATION.—The compensation taken into account under this paragraph for any year shall not exceed the limitation in effect for such year under section 401(a)(17).".

(2) MATCHING CONTRIBUTIONS.—Subparagraph (B) of section 401(k)(11) (relating to adoption of simple plan to meet nondiscrimination tests) is amended—

(A) by striking subclauses (II) and (III) of clause (i) and inserting the following new subclauses:

"(II) the employer is required to make a matching contribution to the trust for any year in an amount equal to—

"(aa) so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

"(bb) a uniform percentage (which is at least 50 percent but not more than 100 percent) of the amount the employee elects under subclause (I) to the extent that such amount exceeds 3 percent but does not exceed 5 percent of the employee's compensation,

"(III) the employer is required to make nonelective contributions of 1 percent of compensation for each employee eligible to participate in the arrangement who has at least $5,000 of compensation from the employer for the year, and

"(IV) no other contributions may be made other than contributions described in subclause (I), (II), or (III).", and

(B) by striking clause (ii) and inserting the following new clause:

"(ii) CONTRIBUTION RULES.—

"(I) EMPLOYER MAY ELECT 3-PERCENT NONELECTIVE CONTRIBUTION.—An employer shall be treated as meeting the requirements of subclauses (II) and (III) of clause (i) for any year if, in lieu of the contributions described in such subclauses, the employer elects to make nonelective contributions of 3 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subclause for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

"(II) DISCRETIONARY CONTRIBUTIONS.—A plan shall not be treated as failing to meet the requirements of clause (i)(IV) merely because, pursuant to the terms of the plan, an employer makes nonelective contributions under clause (i)(III) or subclause (I) of this clause in excess of 1 percent or 3 percent of compensation, respectively, but only if all such contributions bear a uniform relationship to the compensation of each eligible employee and do not exceed 5 percent of compensation for any eligible employee.".

(b) FIDUCIARY DUTIES.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended—

(1) by striking "(1)" after "(c)" in subsection (c),

(2) by striking paragraph (2) in subsection (c), and

(3) by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d)(1) In the case of a simple retirement account which meets the requirements of section 408(p) of the Internal Revenue Code of 1986, no plan sponsor who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from—

"(A) the designation of the trustee or issuer of such account, or

"(B) the manner in which the assets in the account are invested,

after the earliest of the dates described in paragraph (2).

"(2) The dates described in this paragraph are as follows:

"(A) The date on which an affirmative election with respect to the initial investment of any contribution is made by the individual for whose benefit the account is maintained.

"(B) The date on which there is a rollover of the assets of the account to any other simple retirement account or individual retirement plan.

"(C) The date which is 1 year after the account is established.

"(3) This subsection shall not apply to the plan sponsor of a simple retirement account unless the plan participants are notified in writing (either separately or as part of the notice under section 408(*l*)(2)(C)) that such contributions may be transferred without cost or penalty to another individual account or annuity.".

(c) OPTION TO SUSPEND CONTRIBUTIONS.—Section 408(p) (relating to simple retirement accounts) is amended by adding at the end the following new paragraph:

"(8) SUSPENSION OF PLAN.—Except as provided by the Secretary, a plan shall not be treated as failing to meet the requirements of this subsection if, under the plan, the employer may suspend all elective, matching, and nonelective contributions under the plan after notifying employees eligible to participate in the arrangement of such suspension in writing at least 30 days in advance. Such suspension shall apply to contributions with respect to compensation earned after the effective date of the suspension. Only 1 suspension under this paragraph may take effect during any year.".

(d) CONFORMING AMENDMENTS.—Section 408(p)(2)(C), as so added, is amended—

(1) by striking clause (ii),

(2) by striking "DEFINITIONS" in the heading and inserting "ELIGIBLE EMPLOYER",

(3) by striking "(i) ELIGIBLE EMPLOYER.—", and

(4) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1997.

(2) DELAYED EFFECTIVE DATE FOR PLANS ESTABLISHED IN 1997.—In the case of plans established in 1997 under section 408(p) of the Internal Revenue Code of 1986, as in effect on January 1, 1997, the amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 152. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.

(a) ALTERNATIVE METHODS OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Subparagraph (B) of section 401(k)(12) (relating to alternative methods of meeting nondiscrimination requirements) is amended to read as follows:

"(B) NONELECTIVE AND MATCHING CONTRIBUTIONS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

"(ii) NONELECTIVE CONTRIBUTIONS.—The requirements of this clause are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 1 percent of the employee's compensation.

"(iii) MATCHING CONTRIBUTIONS.—The requirements of this clause are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

"(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

"(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

"(iv) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of clause (iii) are not met if, under the arrangement, the rate of matching contribution with respect to any rate of elective contribution of a highly compensated employee is greater than that with respect to an employee who is not a highly compensated employee. For purposes of this clause, to the extent provided in regulations, the last sentences of paragraph (3)(A) and subsection (m)(2)(B) shall not apply.

"(v) ALTERNATIVE PLAN DESIGNS.—If the rate of matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (iii), an arrangement shall not be treated as failing to meet the requirements of clause (iii) if—

"(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contribution increase, and

"(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (iii).".

(b) CONTRIBUTIONS PART OF QUALIFIED CASH OR DEFERRED ARRANGEMENT.—Subparagraph (E)(ii) of section 401(k)(12), as so added, is amended to read as follows:

"(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—Except as provided in regulations, an arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), and determining whether contributions provided under a plan satisfy subsection (a)(4) on the basis of equivalent benefits, employer contributions under subparagraph (B) or (C) shall not be taken into account.".

(c) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m)(11) (relating to alternative method of satisfying tests) is amended—

(1) by striking "subparagraph (B)" in subparagraph (A)(iii) and inserting "subparagraphs (B) and (C)",

(2) by adding at the end of subparagraph (B) the following new flush sentence:

"To the extent provided in regulations, the last sentences of paragraph (2)(B) and subsection (k)(3)(A) shall not apply for purposes of clause (iii).", and

(3) by adding at the end the following new subparagraph:

"(C) TEST MUST BE MET SEPARATELY.—If this paragraph applies to any matching contributions, such contributions shall not be taken into account in determining whether employee contributions satisfy the requirements of this subsection.".

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—Subparagraph (E) of section 401(k)(3) is amended to read as follows:

"(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

"(i) 3 percent, or

"(ii) the actual deferral percentage of nonhighly compensated employees determined for such first plan year in the case of—

"(I) an employer who elects to have this clause apply, or

"(II) except to the extent provided by the Secretary, a successor plan.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 1433 of the Small Business Job Protection Act of 1996.

SEC. 153. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Subparagraph (B) of section 414(q)(1) (defining highly compensated employee) is amended to read as follows:

"(B) for the preceding year had compensation from the employer in excess of $80,000.".

(b) CONFORMING AMENDMENTS.—

(1)(A) Subsection (q) of section 414 is amended by striking paragraphs (3), (5), and (7) and by redesignating paragraphs (4), (6), and (8) as paragraphs (3) through (5), respectively.

(B) Sections 129(d)(8)(B), 401(a)(5)(D)(ii), 408(k)(2)(C), and 416(i)(1)(D) are each amended by striking "section 414(q)(4)" and inserting "section 414(q)(3)".

(C) Section 416(i)(1)(A) is amended by striking "section 414(q)(5)" and inserting "section 414(r)(9)".

(2)(A) Section 414(r) is amended by adding at the end the following new paragraph:

"(9) EXCLUDED EMPLOYEES.—For purposes of paragraph (2)(A), the following employees shall be excluded:

"(A) Employees who have not completed 6 months of service.

"(B) Employees who normally work less than 17½ hours per week.

"(C) Employees who normally work not more than 6 months during any year.

"(D) Employees who have not attained the age of 21.

"(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.".

(B) Subparagraph (A) of section 414(r)(2) is amended by striking "subsection (q)(5)" and inserting "paragraph (9)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 1431 of the Small Business Job Protection Act of 1996.

Subtitle C—Improving Retirement Plan Coverage

SEC. 161. CREDIT FOR PENSION PLAN START-UP COSTS OF SMALL EMPLOYERS.

(a) ALLOWANCE OF CREDIT.—Section 38(b) (defining current year business credit) is amended by striking "plus" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ", plus", and by adding at the end the following new paragraph:

"(13) the small employer pension plan start-up cost credit.".

(b) SMALL EMPLOYER PENSION PLAN START-UP COST CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45D. SMALL EMPLOYER PENSION PLAN START-UP COST CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38—

"(1) IN GENERAL.—The small employer pension plan start-up cost credit for any taxable year is an amount equal to the qualified start-up costs of an eligible employer in establishing a qualified pension plan or qualified employer payroll deduction system.

"(2) AGGREGATE LIMITATION.—The amount of the credit under paragraph (1) for any taxable year shall not exceed $500, reduced by the aggregate amount determined under this section for all preceding taxable years of the taxpayer.

"(b) ELIGIBLE EMPLOYER.—For purposes of this section, the term 'eligible employer' means an employer which—

"(1) had an average daily number of employees during the preceding taxable year not in excess of 50, and

"(2) did not make any contributions on behalf of any employee to a qualified pension plan during the 2 taxable years immediately preceding the taxable year.

"(c) OTHER DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED START-UP COSTS.—The term 'qualified start-up costs' means any ordinary and necessary expenses of an eligible employer which—

"(A) are paid or incurred in connection with the establishment of a qualified pension plan or a qualified employer payroll deduction system, and

"(B) are of a nonrecurring nature.

"(2) QUALIFIED PENSION PLAN.—The term 'qualified pension plan' means—

"(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(B) a simplified employee pension (as defined in section 408(k)), or

"(C) a simple retirement account (as defined in section 408(p)).

"(3) QUALIFIED EMPLOYER PAYROLL DEDUCTION SYSTEM.—The term 'qualified employer payroll deduction system' means a system described in section 103 of the Retirement Security Act of 1997.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (n) or (o) of section 414 shall be treated as one person.

"(2) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowable under this chapter for any qualified start-up costs for which a credit is allowable under subsection (a).".

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d) is amended by adding at the end the following new paragraph:

"(8) NO CARRYBACK OF PENSION CREDIT.—No portion of the unused business credit for any taxable year which is attributable to the small employer pension plan start-up cost credit determined under section 45D may be carried back to a taxable year ending before the date of the enactment of section 45D.".

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45D. Small employer pension plan start-up cost credit.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to costs incurred after the date of the enactment of this Act in taxable years ending after such date.

SEC. 162. TREATMENT OF MULTIEMPLOYER PLANS UNDER SECTION 415.

(a) COMPENSATION LIMIT.—Paragraph (11) of section 415(b) (relating to limitation for defined benefit plans) is amended to read as follows:

"(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL AND MULTIEMPLOYER PLANS.—In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply.".

(b) TREATMENT OF CERTAIN EXCESS BENEFIT PLANS.—

(1) APPLICATION OF SECTION 457.—Paragraph (14) of section 457(e) (relating to other definitions and special rules) is amended to read as follows:

"(14) TREATMENT OF EXCESS BENEFIT ARRANGEMENTS.—

"(A) IN GENERAL.—Subsections (b)(2) and (c)(1) shall not apply to any excess benefit arrangement and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.

"(B) EXCESS BENEFIT ARRANGEMENT DEFINED.—For purposes of this section, the term 'excess benefit arrangement' means a plan which is maintained by an eligible employer solely for purposes of providing benefits for certain employees in excess of the limits on contributions and benefits imposed by section 415. Such term includes a qualified governmental excess benefit arrangement (as defined in section 415(m)(3)).".

(2) CONFORMING AMENDMENT.—Subparagraph (E) of section 457(f)(2) (relating to tax treatment of participants where plan or arrangement of employer is not eligible) is amended to read as follows:

"(E) an excess benefit arrangement (as defined in subsection (e)(14)(B)).".

(c) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Subparagraph (I) of section 415(b)(2) (relating to limitation for defined benefit plans) is amended—

(1) by inserting "or a multiemployer plan (as defined in section 414(f))" after "section 414(d))" in clause (i),

(2) by inserting "or multiemployer plan" after "governmental plan" in clause (ii), and

(3) by inserting "AND MULTIEMPLOYER" after "GOVERNMENTAL" in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 1444 of the Small Business Job Protection Act of 1996.

SEC. 163. EXEMPTION OF MIRROR PLANS FROM SECTION 457 LIMITS.

(a) IN GENERAL.—Subsection (e) of section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations), as amended by section 162(b)(1), is amended by adding at the end the following new paragraph:

"(15) EXEMPTION FOR MIRROR PLANS.—

"(A) IN GENERAL.—Amounts of compensation deferred under a mirror plan shall not be taken into account in applying this section to amounts of compensation deferred under any other deferred compensation plan.

"(B) MIRROR PLAN.—The term 'mirror plan' means a plan, program, or arrangement maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by section 401(a)(17) or section 415, or both.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 164. SPECIAL RULES FOR SELF-EMPLOYED INDIVIDUALS.

(a) CONTRIBUTIONS BY SELF-EMPLOYED INDIVIDUALS TREATED AS MATCHING CONTRIBUTIONS.—Section 414 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(v) CONTRIBUTIONS BY SELF-EMPLOYED INDIVIDUALS TREATED AS MATCHING CONTRIBUTIONS.—For purposes of this title, matching contributions (as defined in section 401(m)(4)(A)) made on behalf of a self-employed individual shall not be treated as elective deferrals (within the meaning of section 402(g)(3)) or as made pursuant to an election by the self-employed individual.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1996.

SEC. 165. IMMEDIATE PARTICIPATION IN THE THRIFT SAVINGS PLAN FOR FEDERAL EMPLOYEES.

(a) ELIMINATION OF CERTAIN WAITING PERIODS FOR PURPOSES OF EMPLOYEE CONTRIBUTIONS.—Paragraph (4) of section 8432(b) of title 5, United States Code, is amended to read as follows:

"(4) The Executive Director shall prescribe such regulations as may be necessary to carry out the following:

"(A) Notwithstanding subparagraph (A) of paragraph (2), an employee or Member described in such subparagraph shall be afforded a reasonable opportunity to first make an election under this subsection beginning on the date of commencing service or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

"(B) An employee or Member described in subparagraph (B) of paragraph (2) shall be afforded a reasonable opportunity to first make an election under this subsection (based on the appointment or election described in such subparagraph) beginning on the date of commencing service pursuant to such appointment or election or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

"(C) Notwithstanding the preceding provisions of this paragraph, contributions under paragraphs (1) and (2) of subsection (c) shall not be payable with respect to any pay period before the earliest pay period for which such contributions would otherwise be allowable under this subsection if this paragraph had not been enacted.

"(D) Sections 8351(a)(2), 8440a(a)(2), 8440b(a)(2), 8440c(a)(2), and 8440d(a)(2) shall be applied in a manner consistent with the purposes of subparagraphs (A) and (B), to the extent those subparagraphs can be applied with respect thereto.

"(E) Nothing in this paragraph shall affect paragraph (3).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 8432(a) of title 5, United States Code, is amended—

(A) in the first sentence by striking "(b)(1)" and inserting "(b)"; and

(B) by amending the second sentence to read as follows: "Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director.".

(2) Section 8432(b)(1)(B) of such title is amended by inserting "(or any election allowable by virtue of paragraph (4))" after "subparagraph (A)".

(3) Section 8432(b)(3) of such title is amended by striking "Notwithstanding paragraph (2)(A), an" and inserting "An".

(4) Section 8432(i)(1)(B)(ii) of such title is amended by striking "either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or".

(5) Section 8439(a)(1) of such title is amended by inserting "who makes contributions or" after "for each individual" and by striking "section 8432(c)(1)" and inserting "section 8432".

(6) Section 8439(c)(2) of such title is amended by adding at the end the following: "Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.".

(7) Sections 8440a(a)(2) and 8440d(a)(2) of such title are amended by striking all after "subject to" and inserting "subject to this chapter.".

(c) EFFECTIVE DATE.—This section shall take effect 6 months after the date of the enactment of this Act or such earlier date as the Executive Director may by regulation prescribe.

SEC. 166. MODIFICATION OF 10 PERCENT TAX FOR NONDEDUCTIBLE CONTRIBUTIONS.

(a) IN GENERAL.—Subparagraph (B) of section 4972(c)(6) (relating to exceptions) is amended to read as follows:

"(B) contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7), in an amount not in excess of the greater of—

"(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

"(ii) the amount of contributions described in section 401(m)(4)(A) or 402(g)(3)(A).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

Subtitle D—Simplifying Plan Requirements

SEC. 171. FULL FUNDING LIMITATION FOR MULTIEMPLOYER PLANS.

(a) AMENDMENTS TO CODE.—

(1) FULL-FUNDING LIMITATION.—Section 412(c)(7)(C) (relating to full-funding limitation) is amended—

(A) by inserting "or in the case of a multiemployer plan," after "paragraph (6)(B),", and

(B) by inserting "AND MULTIEMPLOYER PLANS" after "PARAGRAPH (6)(B)" in the heading thereof.

(2) VALUATION.—Section 412(c)(9) (relating to annual valuation) is amended—

(A) by inserting "(3 years in the case of a multiemployer plan)" after "year", and

(B) by striking "ANNUAL VALUATION" in the heading and inserting "VALUATION".

(b) AMENDMENTS TO ERISA.—

(1) FULL-FUNDING LIMITATION.—Section 302(c)(7)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)(C)) is amended—

(A) by inserting "or in the case of a multiemployer plan," after "paragraph (6)(B),", and

(B) by inserting "AND MULTIEMPLOYER PLANS" after "PARAGRAPH (6)(B)" in the heading thereof.

(2) VALUATION.—Section 302(c)(9) of such Act (29 U.S.C. 1082(c)(9)) is amended—

(A) by inserting "(3 years in the case of a multiemployer plan)" after "year", and

(B) by striking "ANNUAL VALUATION" in the heading and inserting "VALUATION".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1996.

SEC. 172. ELIMINATION OF PARTIAL TERMINATION RULES FOR MULTIEMPLOYER PLANS.

(a) PARTIAL TERMINATION RULES FOR MULTIEMPLOYER PLANS.—Section 411(d)(3) (relating to termination or partial termination; discontinuance of contributions) is amended by adding at the end the following new sentence: "This paragraph shall not apply in the case of a partial termination of a multiemployer plan.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partial terminations beginning after December 31, 1996.

SEC. 173. MODIFICATIONS TO NONDISCRIMINATION AND MINIMUM PARTICIPATION RULES WITH RESPECT TO GOVERNMENTAL PLANS.

(a) GENERAL NONDISCRIMINATION AND PARTICIPATION RULES.—

(1) NONDISCRIMINATION REQUIREMENTS.—Paragraph (5) of section 401(a) (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by adding at the end the following new subparagraph:

"(F) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).".

(2) ADDITIONAL PARTICIPATION REQUIREMENTS.—Subparagraph (H) of section 401(a)(26) is amended to read as follows:

"(H) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).".

(3) MINIMUM PARTICIPATION STANDARDS.—Paragraph (2) of section 410(c) is amended to read as follows:

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall only apply if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).".

(b) PARTICIPATION STANDARDS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—Paragraph (3) of section 401(k) is amended by adding at the end the following new subparagraph:

"(E)(i) The requirements of subparagraph (A)(i) and (C) shall not apply to a governmental plan (within the meaning of section 414(d)).

"(ii) The requirements of subsection (m)(2) (without regard to subsection (a)(4)) shall apply to any matching contribution of a governmental plan (as so defined).".

(c) NONDISCRIMINATION RULES FOR SECTION 403(b) PLANS.—Paragraph (12) of section 403(b) is amended by adding at the end the following new subparagraph:

"(C) GOVERNMENTAL PLANS.—For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) shall not apply to a governmental plan (within the meaning of section 414(d)).".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403 (b)(1)(D) and (b)(12), and 410 of such Code for all taxable years beginning before the date of the enactment of this Act.

SEC. 174. ELIMINATION OF REQUIREMENT FOR PLAN DESCRIPTIONS AND THE FILING REQUIREMENT FOR SUMMARY PLAN DESCRIPTIONS AND DESCRIPTIONS OF MATERIAL MODIFICATIONS TO A PLAN; TECHNICAL CORRECTIONS.

(a) FILING REQUIREMENTS.—Section 101(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(b)) is amended by striking paragraphs (1), (2), and (3) and by redesignating paragraphs (4) and (5) as paragraphs (1) and (2), respectively.

(b) PLAN DESCRIPTION.—

(1) IN GENERAL.—Section 102(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1022(a)) is amended—

(A) by striking paragraph (2), and

(B) by striking "(a)(1)" and inserting "(a)".

(2) CONFORMING AMENDMENTS.—

(A) Section 102(b) of such Act (29 U.S.C. 1022(b)) is amended by striking "The plan description and summary plan description shall contain" and inserting "The summary plan description shall contain".

(B) The heading for section 102 of such Act is amended by striking "PLAN DESCRIPTION AND".

(c) FURNISHING OF REPORTS.—

(1) IN GENERAL.—Section 104(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(a)(1)) is amended to read as follows:

"SEC. 104. (a)(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing). The Secretary shall make copies of such annual reports available for inspection in the public document room of the Department of Labor.".

(2) SECRETARY MAY REQUEST DOCUMENTS.—

(A) IN GENERAL.—Section 104(a) of such Act (29 U.S.C. 1024(a)) is amended by adding at the end the following new paragraph:

"(6) The administrator of any employee benefit plan subject to this part shall furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest summary plan description (including any summaries of plan changes not contained in the summary plan description), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.".

(B) PENALTY.—Section 502(c) of such Act (29 U.S.C. 1132(c)) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) If, within 30 days of a request by the Secretary to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure (but in no event in excess of $1,000 per request). No penalty shall be imposed under this paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.".

(d) CONFORMING AMENDMENTS.—

(1) Section 104(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(1)) is amended by striking "section 102(a)(1)" each place it appears and inserting "section 102(a)".

(2) Section 104(b)(2) of such Act (29 U.S.C. 1024(b)(2)) is amended by striking "the plan description and" and inserting "the latest updated summary plan description and".

(3) Section 104(b)(4) of such Act (29 U.S.C. 1024(b)(4)) is amended by striking "plan description".

(4) Section 106(a) of such Act (29 U.S.C. 1026(a)) is amended by striking "descriptions,".

(5) Section 107 of such Act (29 U.S.C. 1027) is amended by striking "description or".

(6) Paragraph (2)(B) of section 108 of such Act (29 U.S.C. 1028) is amended to read as follows: "(B) after publishing or filing the annual reports,".

(7) Section 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is amended by striking "or (5)" and inserting "(5), or (6)".

(e) TECHNICAL CORRECTION.—Section 1144(c) of the Social Security Act (42 U.S.C. 1320b–14(c)) is amended by redesignating paragraph (9) as paragraph (8).

SEC. 175. NEW TECHNOLOGIES IN RETIREMENT PLANS.

The Secretary of the Treasury and the Secretary of Labor shall expand their efforts to examine existing guidance regarding notice, recordkeeping, and operational requirements for retirement plans, in order to permit the use of new technologies by plan sponsors and administrators in ways which maintain the protection of the rights of participants and beneficiaries.

TITLE II—SECURITY

SEC. 200. AMENDMENT OF ERISA.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Employee Retirement Income Security Act of 1974.

Subtitle A—General Provisions

SEC. 201. SECTION 401(k) INVESTMENT PROTECTION.

(a) LIMITATIONS ON INVESTMENT IN EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CASH OR DEFERRED ARRANGEMENTS.—Paragraph (3) of section 407(d) (29 U.S.C. 1107(d)) is amended by adding at the end the following new subparagraph:

"(D) The term 'eligible individual account plan' does not include that portion of an individual account plan that consists of elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) pursuant to a qualified cash or deferred arrangement as defined in section 401(k) of the Internal Revenue Code of 1986 (and earnings thereon), if such elective deferrals (or earnings thereon) are required to be invested in qualifying employer securities or qualifying employer real property or both pursuant to the documents and instruments governing the plan or at the direction of a person other than the participant (or the participant's beneficiary) on whose behalf such elective

deferrals are made to the plan. For the purposes of subsection (a), such portion shall be treated as a separate plan. This subparagraph shall not apply to an individual account plan if the fair market value of the assets of all individual account plans maintained by the employer equals not more than 10 percent of the fair market value of the assets of all pension plans maintained by the employer.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) TRANSITION RULE FOR PLANS HOLDING EXCESS SECURITIES OR PROPERTY.—

(A) IN GENERAL.—In the case of a plan which on the date of the enactment of this Act, has holdings of employer securities and employer real property (as defined in section 407(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)) in excess of the amount specified in such section 407, the amendment made by this section applies to any acquisition of such securities and property on or after such date, but does not apply to the specific holdings which constitute such excess during the period of such excess.

(B) SPECIAL RULE FOR CERTAIN ACQUISITIONS.—Employer securities and employer real property acquired pursuant to a binding written contract to acquire such securities and real property entered into and in effect on the date of the enactment of this Act, shall be treated as acquired immediately before such date.

SEC. 202. REQUIREMENT OF ANNUAL, DETAILED INVESTMENT REPORTS APPLIED TO CERTAIN 401(k) PLANS.

(a) IN GENERAL.—Section 104(b)(3) (29 U.S.C. 1024(b)(3)) is amended—

(1) by inserting "(A)" after "(3)"; and

(2) by adding at the end the following new subparagraph:

"(B)(i) If a plan includes a qualified cash or deferred arrangement (as defined in section 401(k)(2) of the Internal Revenue Code of 1986) and is maintained by an employer with less than 100 participants, the administrators shall furnish to each participant and to each beneficiary receiving benefits under the plan an annual investment report detailing such information as the Secretary by regulation shall require.

"(ii) Clause (i) shall not apply with respect to any participant described in section 404(c).".

(b) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Labor, in prescribing regulations required under section 104(b)(3)(B)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(b)(3)(B)(i)), as added by subsection (a), shall consider including in the information required in an annual investment report the following:

(A) Total plan assets and liabilities as of the beginning and ending of the plan year.

(B) Plan income and expenses and contributions made and benefits paid for the plan year.

(C) Any transaction between the plan and the employer, any fiduciary, or any 10-percent owner during the plan year, including the acquisition of any employer security or employer real property.

(D) Any noncash contributions made to or purchases of nonpublicly traded securities made by the plan during the plan year without an appraisal by an independent third party.

In determining the types of information to be included in the annual investment report presented to participants and beneficiaries, the Secretary of Labor shall take into account the purposes of the diversification protection provided to such participants and beneficiaries by section 407(d)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)(3)(D)), as added by section 201(a).

(2) ELECTRONIC TRANSFER.—The Secretary of Labor in prescribing such regulations shall also make provision for the electronic transfer of the required annual investment report by a plan administrator to plan participants and beneficiaries.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to plan years beginning after the date of the enactment of this Act.

SEC. 203. STUDY ON INVESTMENTS IN COLLECTIBLES.

(a) STUDY.—The Secretary of Labor, in consultation with the Secretary of the Treasury, shall study the extent to which pension plans invest in collectibles and whether such investments present a risk to the pension security of the participants and beneficiaries of such plans.

(b) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Labor shall submit a report to the Congress containing the findings of the study described in subsection (a) and any recommendations for legislative action.

SEC. 204. QUALIFIED EMPLOYER PLANS PROHIBITED FROM MAKING LOANS THROUGH CREDIT CARDS AND OTHER INTERMEDIARIES.

(a) IN GENERAL.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(35) PROHIBITION OF LOANS THROUGH CREDIT CARDS AND OTHER INTERMEDIARIES.—A trust shall not constitute a qualified trust under this section if the plan makes any loan to any beneficiary under the plan through the use of any credit card or any other intermediary.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to plan years beginning after the date of the enactment of this Act.

SEC. 205. MULTIEMPLOYER PLAN BENEFITS GUARANTEED.

(a) IN GENERAL.—Section 4022A(c) (29 U.S.C. 1322a(c)) is amended—

(1) by striking "$5" each place it appears in paragraph (1) and inserting "$11",

(2) by striking "$15" in paragraph (1) and inserting "$33", and

(3) by striking paragraphs (2), (5), and (6) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any multiemployer plan that has not received financial assistance (within the meaning of section 4261 of the Employee Retirement Income Security Act of 1974) within the 1-year period ending on the date of the enactment of this Act.

SEC. 206. PROHIBITED TRANSACTIONS.

(a) IN GENERAL.—Section 502(i) (29 U.S.C. 1132(i)) is amended by striking "5 percent" and inserting "10 percent".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to prohibited transactions occurring after the date of the enactment of this Act.

SEC. 207. SUBSTANTIAL OWNER BENEFITS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—Subparagraphs (B) and (C) of section 4022(b)(5) (29 U.S.C. 1322(b)(5)) are amended to read as follows:

"(B) For purposes of this title, the term 'majority owner' has the same meaning as substantial owner under subparagraph (A), except that subparagraph (A) shall be applied by substituting '50 percent or more' for 'more than 10 percent' each place it appears.

"(C) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall not exceed the product of—

"(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 30, and

"(ii) the amount of the majority owner's monthly benefits guaranteed under subsection (a) (as limited by paragraph (3) of this subsection).".

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) (29 U.S.C. 1344(a)(4)(B)) is amended by striking "section 4022(b)(5)" and inserting "section 4022(b)(5)(C)".

(2) Section 4044(b) (29 U.S.C. 1344(b)) is amended—

(A) by striking "(5)" in paragraph (2) and inserting "(4), (5),", and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to subparagraph (B). If assets allocated to subparagraph (B) are insufficient to satisfy in full the benefits in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan terminations—

(1) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) on or after the date of the enactment of this Act, or

(2) under section 4042 of such Act (29 U.S.C. 1342) with respect to which proceedings are instituted by the corporation on or after such date.

SEC. 208. REVERSION REPORT.

(a) IN GENERAL.—Section 4008 (29 U.S.C. 1308) is amended by adding at the end the following new subsection:

"(b) REVERSION REPORT.—As soon as practicable after the close of each fiscal year, the Secretary of Labor (acting in the Secretary's capacity as chairman of the corporation's board) shall transmit to the President and the Congress a report providing information on plans from which residual assets were distributed to employers pursuant to section 4044(d).".

(b) CONFORMING AMENDMENT.—Section 4008 (29 U.S.C. 1308) is amended by striking "SEC. 4008." and inserting "SEC. 4008. (a) ANNUAL REPORT.—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal years beginning after September 30, 1996.

SEC. 209. DEVELOPMENT OF ADDITIONAL REMEDIES.

(a) FINDINGS.—The Congress finds that—

(1) the provisions of this Act, like many of those proposed by the President and recently signed into law, are designed to expand retirement savings;

(2) this goal can be achieved in part by simplifying the pension system and reducing administrative costs of maintaining pension plans for all employers;

(3) such simplification can benefit not only the implementation and ongoing administration of pension plans but also the correction of problems that arise in the operation of such plans;

(4) the Secretary of the Treasury has commendably already acted to develop programs intended to facilitate such corrections; and

(5) efficient correction serves participants and beneficiaries not only by fulfilling the law's requirements regarding pension plans but also by directing funds into plans rather than toward correction efforts and by encouraging employers to continue to sponsor support for such plans.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Secretary of the Treasury should—

(1) review existing correction mechanisms to determine whether modifications might facilitate additional utilization by sponsors, improve voluntary compliance, and hasten the correction of pension plans,

(2) consider whether additional means of addressing nonegregious violations should be explored,

(3) make whatever legislative recommendations, if any, appear necessary to fulfill these goals, and

(4) remain cognizant that the Congress, as well as the Secretary, considers the continuing security of retirement savings for workers, retirees, and beneficiaries of fundamental importance.

Subtitle B—ERISA Enforcement

SEC. 211. REPEAL OF LIMITED SCOPE AUDIT.

(a) IN GENERAL.—Section 103(a)(3)(C) (29 U.S.C. 1023(a)(3)(C)) is amended by adding at the end the following:

"(ii) If an accountant is offering an opinion under this section in the case of an employee pension benefit plan, the accountant shall, to the extent consistent with generally accepted auditing standards, rely on the work of any independent public accountant of any bank or similar institution or insurance carrier that holds assets or processes transactions of the employee pension benefit plan provided that such bank, institution, or insurance carrier is regulated, supervised, and subject to periodic examination by a State or Federal agency.".

(b) CONFORMING AMENDMENTS.—

(1) Section 103(a)(3)(A) of such Act (29 U.S.C. 1023(a)(3)(A)) is amended by striking "subparagraph (C)" and inserting "subparagraph (C)(i)".

(2) Section 103(a)(3)(C) of such Act (29 U.S.C. 1023(a)(3)(C)) is amended by striking "(C) The" and inserting "(C)(i) In the case of an employee benefit plan other than an employee pension benefit plan, the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to opinions required under section 103(a)(3)(A) of the Employee Retirement Income Security Act of 1974 for plan years beginning on or after January 1 of the calendar year following the date of the enactment of this Act.

SEC. 212. ADDITIONAL REQUIREMENTS FOR QUALIFIED PUBLIC ACCOUNTANTS.

(a) IN GENERAL.—Section 103(a)(3)(D) (29 U.S.C. 1023(a)(3)(D)) is amended—

(1) by inserting "(i)" after "(D)";

(2) by inserting ", with respect to any engagement of an accountant under subparagraph (A)" after "means";

(3) by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II), and (III), respectively;

(4) by striking the period at the end of subclause (III) (as so redesignated) and inserting a comma;

(5) by adding after subclause (III) (as so redesignated), and flush with clause (i), the following:

"but only if such person meets the requirements of clauses (ii) and (iii) with respect to such engagement."; and

(6) by adding at the end the following new clauses:

"(ii) A person meets the requirements of this clause with respect to an engagement of such person as an accountant under subparagraph (A) if such person—

"(I) has in operation an appropriate internal quality control system;

"(II) has undergone a qualified external quality control review of the person's accounting and auditing practices, including such practices relevant to employee benefit plans (if any), during the 3-year period immediately preceding such engagement; and

"(III) has completed, within the 2-year period immediately preceding such engagement, at least 80 hours of continuing education or training which contributes to the accountant's professional proficiency and which meets such requirements as may be prescribed by the Secretary in regulations.

The Secretary shall issue the regulations under subclause (III) not later than December 31, 1998.

"(iii) A person meets the requirements of this clause with respect to an engagement of such person as an accountant under subparagraph (A) if such person meets such additional requirements and qualifications of regulations which the Secretary deems necessary to ensure the quality of plan audits.

"(iv) For purposes of clause (ii)(II), an external quality control review shall be treated as qualified with respect to a person referred to in clause (ii) if—

"(I) such review is performed in accordance with the requirements of external quality control review programs of recognized auditing standard-setting bodies, as determined in regulations of the Secretary, and

"(II) in the case of any such person who has, during the peer review period, conducted one or more previous audits of employee benefit plans, such review includes the review of an appropriate number (determined as provided in such regulations, but in no case less than one) of plan audits in relation to the scale of such person's auditing practice.

The Secretary shall issue the regulations under subclause (I) not later than December 31, 1998.".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to plan years beginning on or after the date which is 3 years after the date of the enactment of this Act.

(2) RESTRICTIONS ON CONDUCTING EXAMINATIONS.—Clause (iii) of section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)(6)) shall take effect on the date of the enactment of this Act.

SEC. 213. CLARIFICATION OF FIDUCIARY PENALTIES.

(a) MODIFICATION OF PROHIBITION OF ASSIGNMENT OR ALIENATION.—

(1) IN GENERAL.—Section 206(d) (29 U.S.C. 1056(d)) is amended by adding at the end the following new paragraphs:

"(4) Paragraph (1) shall not apply to any offset of a participant's accrued benefit in an employee pension benefit plan against an amount that the participant is ordered or required to pay to the plan if—

"(A) the order or requirement to pay arises—

"(i) under a judgment of conviction for a crime involving such plan,

"(ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of this subtitle, or

"(iii) pursuant to a settlement agreement between the Secretary and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of this subtitle by a fiduciary or any other person,

"(B) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's accrued benefit in the plan, and

"(C) if the participant has a spouse at the time at which the offset is to be made—

"(i) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan,

"(ii) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of this title, or

"(iii) in such judgment, order, decree, or settlement, such spouse retains the right to receive the value of the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 205(a)(1) and under a qualified preretirement survivor annuity provided pursuant to section 205(a)(2), determined in accordance with paragraph (5).

"(5)(A) The value of the survivor annuity described in paragraph (4)(C)(iii) shall be determined as if—

"(i) the participant terminated employment on the date of the offset,

"(ii) there was no offset,

"(iii) the plan permitted retirement only on or after normal retirement age,

"(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and

"(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

"(B) For purposes of this paragraph, the term 'minimum-required qualified joint and survivor annuity' means the qualified joint and survivor annuity which is the actuarial equivalent of a single annuity for the life of the participant and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act.

(b) CIVIL PENALTIES FOR BREACH OF FIDUCIARY RESPONSIBILITY.—

(1) IMPOSITION AND AMOUNT OF PENALTY MADE DISCRETIONARY.—Section 502(l)(1) (29 U.S.C. 1132(l)(1)) is amended—

(A) by striking "shall" and inserting "may", and

(B) by striking "equal to" and inserting "not greater than".

(2) APPLICABLE RECOVERY AMOUNT.—Section 502(1)(2) (29 U.S.C. 1132(1)(2)) is amended to read as follows:

"(2) For purposes of paragraph (1), the term 'applicable recovery amount' means any amount which is recovered from (or on behalf of) any fiduciary or other person with respect to a breach or violation described in paragraph (1) on or after the 30th day following receipt by such fiduciary or other person of written notice from the Secretary of the violation, whether paid voluntarily or by order of a court in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5). The Secretary may, in the Secretary's sole discretion, extend the 30-day period described in the preceding sentence.".

(3) OTHER RULES.—Section 502(*l*) (29 U.S.C. 1132(*l*)) is amended by adding at the end the following new paragraphs:

"(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

"(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.".

(4) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to any breach of fiduciary responsibility or other violation of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 occurring on or after the date of the enactment of this Act.

(B) TRANSITION RULE.—In applying the amendment made by paragraph (2) (relating to applicable recovery amount), a breach or other violation occurring before the date of the enactment of this Act which continues after the 180th day after such date (and which may have been discontinued at any time during its existence) shall be treated as having occurred after such date of enactment.

SEC. 214. CONFORMING AMENDMENTS RELATING TO ERISA ENFORCEMENT.

(a) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Section 401(a)(13)of the Internal Revenue Code of 1986 (relating to assignment and alienation) is amended by adding at the end the following new subparagraphs:

"(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant's accrued benefit in a plan against an amount that the participant is ordered or required to pay to the plan if—

"(i) the order or requirement to pay arises—

"(I) under a judgment of conviction for a crime involving such plan,

"(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

"(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of such Act,

"(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's accrued benefit in the plan, and

"(iii) if the participant has a spouse at the time at which the offset is to be made—

"(I) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan,

"(II) such spouse is ordered or required to pay in such judgment, order, decree, or settlement an amount to the plan in connection with a violation of part 4 of this title, or

"(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the value of the survivor annuity under a qualified joint and survivor annuity provided pursuant to paragraph (11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to paragraph (11)(A)(ii), determined in accordance with subparagraph (D).

"(D) DETERMINATION OF VALUE OF SURVIVOR ANNUITY IN CONNECTION WITH OFFSET.—The value of the survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if—

"(i) the participant terminated employment on the date of the offset,

"(ii) there was no offset,

"(iii) the plan permitted retirement only on or after normal retirement age,

"(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and

"(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

For purposes of this subparagraph, the term 'minimum-required qualified joint and survivor annuity' means the qualified joint and survivor annuity which is the actuarial equivalent of a single annuity for the life of the participant and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

"(E) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), and section 409(d), a plan shall not be treated as failing to meet such requirements solely by reason of an offset under subparagraph (C).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act.

TITLE III—PORTABILITY

SEC. 301. FASTER VESTING OF EMPLOYER MATCHING CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)) is amended—

(1) by striking "or (B)" and inserting "(B), and, if applicable, (C)",

(2) by striking "3", "4", "5", "6", and "7" in the table in subparagraph (B) and inserting "1", "2", "3", "4", and "5", respectively, and

(3) by adding at the end the following new subparagraph:

"(C) 401(k) PLANS.—A plan satisfies the requirements of this subparagraph if—

"(i) the plan includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) of the Internal Revenue Code of 1986, and

"(ii) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer matching contributions (as defined in section 401(m)(4)(A) of such Code).

For purposes of this subparagraph, matching contributions shall be taken into account regardless of whether the matching contributions are made to the same plan as the contributions made under section 401(k) of such Code, and matching contributions to any plan shall be taken into account if such matching contributions are made with respect to after-tax employee contributions includible in gross income and if the employer's limit on matching contributions with respect to such includible employee contributions is coordinated with the employer's limit on matching contributions with respect to contributions under such section.".

(b) CONFORMING AMENDMENTS.—Paragraph (2) of section 411(a) of the Internal Revenue Code of 1986 (relating to employer contributions) is amended—

(1) by striking "or (B)" and inserting "(B), and, if applicable, (C)",

(2) by striking "3", "4", "5", "6", and "7" in the table in subparagraph (B) and inserting "1", "2", "3", "4", and "5", respectively,

(3) by striking "3 TO 7" and inserting "1 TO 5", and

(4) by adding at the end the following new subparagraph:

"(C) 401(k) PLANS.—A plan satisfies the requirements of this subparagraph if—

"(i) the plan includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)), and

"(ii) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer matching contributions (as defined in section 401(m)(4)(A)).

For purposes of this subparagraph, matching contributions shall be taken into account regardless of whether the matching contributions are made to the same plan as the contributions made under section 401(k), and matching contributions to any plan shall be taken into account if such matching contributions are made with respect to after-tax employee contributions and if the employer's limit on matching contributions with respect to such after-tax employee contributions is coordinated with the employer's limit on matching contributions with respect to contributions under such section.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to plan years beginning after December 31, 1997.

(2) APPLICATION TO CURRENT EMPLOYEES.—The amendments made by this section shall not apply to any employee who does not have at least 1 hour of service in any plan year beginning after December 31, 1997.

(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified by the date of the enactment of this Act, the amendments made by this section shall not apply to employees covered by any such agreement in plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

(ii) January 1, 1998, or

(B) January 1, 2002.

SEC. 302. RATIONALIZE THE RESTRICTIONS ON DISTRIBUTIONS FROM 401(k) PLANS.

(a) IN GENERAL.—Section 401(k)(2)(B)(i)(I) of the Internal Revenue Code of 1986 (relating to qualified cash or deferred arrangements) is amended by striking "separation from service" and inserting "severance from employment".

(b) BUSINESS SALE REQUIREMENTS DELETED.—

(1) IN GENERAL.—Section 401(k)(2)(B)(i)(II) of the Internal Revenue Code of 1986 (relating to qualified cash or deferred arrangements) is amended by striking "an event" and inserting "a plan termination".

(2) CONFORMING AMENDMENTS.—Section 401(k)(10) of such Code is amended—

(A) by striking subparagraph (A) and inserting the following:

"(A) IN GENERAL.—A plan termination is described in this paragraph if the termination of the plan is without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).",

(B) by striking subparagraph (C), and

(C) by striking "OR DISPOSITION OF ASSETS OR SUBSIDIARY" in the heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1997.

SEC. 303. TREATMENT OF TRANSFERS BETWEEN DEFINED CONTRIBUTION PLANS.

(a) IN GENERAL.—Section 411(d)(6) of the Internal Revenue Code of 1986 (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following new subparagraph:

"(D) PLAN TRANSFERS.—A defined contribution plan (in this subparagraph referred to as the 'transferee plan') shall not be treated as failing to meet the requirements of this paragraph merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the 'transferor plan') to the extent that—

"(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

"(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i),

"(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

"(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election,

"(v) if the transferor plan provides for an annuity as the normal form of distribution under the plan in accordance with section 417, the transfer is made with the consent of the participant's spouse (if any), and such consent meets requirements similar to the requirements imposed by section 417(a)2), and

"(vi) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under transferee plan in the form of a single sum distribution.".

(b) CONFORMING AMENDMENT.—Section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) is amended by adding at the end the following new paragraph:

"(4) A defined contribution plan (in this paragraph referred to as the 'transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this paragraph referred to as the 'transferor plan') to the extent that—

"(A) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

"(B) the terms of both the transferor plan and the transferee plan authorize the transfer described in subparagraph (A),

"(C) the transfer described in subparagraph (A) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

"(D) the election described in subparagraph (C) was made after the participant or beneficiary received a notice describing the consequences of making the election,

"(E) if the transferor plan provides for an annuity as the normal form of distribution under the plan in accordance with section 205, the transfer is made with the consent of the participant's spouse (if any), and such consent meets requirements similar to the requirements imposed by section 205(c)2), and

"(F) the transferee plan allows the participant or beneficiary described in subparagraph (C) to receive any distribution to which the participant or beneficiary is entitled under transferee plan in the form of a single sum distribution.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after December 31, 1997.

SEC. 304. MISSING PARTICIPANTS.

(a) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

"(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

"(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

"(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

"(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

"(A) to the corporation, or

"(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

"(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

"(A) in a single sum (plus interest), or

"(B) in such other form as is specified in regulations of the corporation.

"(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

"(A) the plan is a pension plan (within the meaning of section 3(2))—

"(i) to which the provisions of this section do not apply (without regard to this subsection), and

"(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

"(B) at the time the assets are to be distributed upon termination, the plan—

"(i) has missing participants, and

"(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

"(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).".

(b) CONFORMING AMENDMENTS.—

(1) Section 206(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(f)) is amended—

(A) by striking "title IV" and inserting "section 4050", and

(B) by striking "the plan shall provide that".

(2) Section 401(a)(34) (relating to benefits of missing participants on plan termination) is amended by striking "title IV" and inserting "section 4050".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

TITLE IV—TOWARD EQUITY FOR WOMEN

SEC. 401. INDIVIDUAL'S PARTICIPATION IN PLAN NOT TREATED AS PARTICIPATION BY SPOUSE.

(a) IN GENERAL.—Paragraph (1) of section 219(g) of the Internal Revenue Code of 1986 (relating to limitation on deduction for active participants in certain pension plans) is amended by striking "or the individual's spouse".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 402. MODIFICATIONS OF JOINT AND SURVIVOR ANNUITY REQUIREMENTS.

(a) AMENDMENTS TO ERISA.—

(1) AMOUNT OF ANNUITY.—

(A) IN GENERAL.—Paragraph (1) of section 205(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(a)) is amended by inserting "or, at the election of the participant, shall be provided in the form of a qualified joint and⅔ survivor annuity" after "survivor annuity.".

(B) DEFINITION.—Subsection (d) of section 205 of such Act (29 U.S.C. 1055) is amended—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(ii) by inserting "(1)" after "(d)", and

(iii) by adding at the end the following new paragraph:

"(2) For purposes of this section, the term "qualified joint and⅔ survivor annuity" means an annuity—

"(A) for the participant while both the participant and the spouse are alive with a survivor annuity for the life of surviving individual (either the participant or the spouse) equal to 67 percent of the amount of the annuity which is payable to the participant

while both the participant and the spouse are alive,

"(B) which is the actuarial equivalent of a single annuity for the life of the participant, and

"(C) which, for all other purposes of this Act, is treated as a qualified joint and survivor annuity.".

(2) ILLUSTRATION REQUIREMENT.—Clause (i) of section 205(c)(3)(A) of such Act (29 U.S.C. 1055(c)(3)(A)) is amended to read as follows:

"(i) the terms and conditions of each qualified joint and survivor annuity and qualified joint and⅔ survivor annuity offered, accompanied by an illustration of the benefits under each such annuity for the particular participant and spouse and an acknowledgement form to be signed by the participant and the spouse that they have read and considered the illustration before any form of retirement benefit is chosen,".

(b) AMENDMENTS TO INTERNAL REVENUE CODE.—

(1) AMOUNT OF ANNUITY.—

(A) IN GENERAL.—Clause (i) of section 401(a)(11)(A) of the Internal Revenue Code of 1986 (relating to requirement of joint and survivor annuity and preretirement survivor annuity) is amended by inserting "or, at the election of the participant, shall be provided in the form of a qualified joint and⅔ survivor annuity" after "survivor annuity,".

(B) DEFINITION.—Section 417 of such Code (relating to definitions and special rules for purposes of minimum survivor annuity requirements) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) DEFINITION OF QUALIFIED JOINT AND ⅔ SURVIVOR ANNUITY.—For purposes of this section and section 401(a)(11), the term "qualified joint and⅔ survivor annuity" means an annuity—

"(1) for the participant while both the participant and the spouse are alive with a survivor annuity for the life of surviving individual (either the participant or the spouse) equal to 67 percent of the amount of the annuity which is payable to the participant while both the participant and the spouse are alive,

"(2) which is the actuarial equivalent of a single annuity for the life of the participant, and

"(3) which, for all other purposes of this title, is treated as a qualified joint and survivor annuity.".

(2) ILLUSTRATION REQUIREMENT.—Clause (i) of section 417(a)(3)(A) of such Code (relating to explanation of joint and survivor annuity) is amended to read as follows:

"(i) the terms and conditions of each qualified joint and survivor annuity and qualified joint and⅔ survivor annuity offered, accompanied by an illustration of the benefits under each such annuity for the particular participant and spouse and an acknowledgement form to be signed by the participant and the spouse that they have read and considered the illustration before any form of retirement benefit is chosen,".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1996.

SEC. 403. DIVISION OF PENSION BENEFITS UPON DIVORCE.

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—Subsection (p)(1) of section 414 of the Internal Revenue Code of 1986 is amended by adding the following new subparagraph:

"(C) DEEMED DOMESTIC RELATIONS ORDER UPON DIVORCE.—

"(i) IN GENERAL.—A divorce decree issued with respect to the participant and the former spouse pursuant to a State domestic relations law (including an annulment or other order of marital dissolution) shall, upon delivery to a plan along with the information required by paragraph (2)(A), be deemed by the plan to be a domestic relations order that specifies that 50 percent of the marital share of the participant's accrued benefit is to be provided to such former spouse, unless the divorce decree states that pension benefits were considered by the parties and no division is intended.

"(ii) MARITAL SHARE.—The marital share shall be the accrued benefit of the participant under the plan as of the date of the divorce (to the extent such accrued benefit is vested at the date of the divorce or any later date) multiplied by a fraction, the numerator of which is the period of participation by the participant under the plan starting with the date of marriage and ending with the date of divorce, and the denominator of which is the total period of participation by the participant under the plan.

"(iii) INTERPRETATION AS QUALIFIED DOMESTIC RELATIONS ORDER.—Each plan shall establish reasonable rules for determining how any such deemed domestic relations order is to be interpreted under the plan so as to constitute a qualified domestic relations order that satisfies paragraphs (2) through (4) (and a copy of such rules shall be provided to such former spouse promptly after delivery of the divorce decree). Such rules—

"(I) may delay the effect of such an order until the earlier of the date the participant is fully vested or has terminated employment,

"(II) may allow the former spouse to be paid out immediately,

"(III) shall permit the former spouse to be paid not later than the earliest retirement age under the plan,

"(IV) may require the submitter of the divorce decree to present a marriage certificate or other evidence of the marriage date to assist in benefit calculations,

"(V) may require that a divorce decree be presented on the date which is not later than 2 years after the date of the issuance of the decree, and

"(VI) may conform to the rules applicable to qualified domestic relations orders regarding form or type of benefit.

"(iv) APPLICATION.—This subparagraph shall not apply to the extent that a qualified domestic relations order issued in connection with such divorce provides otherwise.".

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subsection (d)(2)(B) of section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding the following new subclause (iii):

"(iii) DEEMED DOMESTIC RELATIONS ORDER UPON DIVORCE.—

"(I) IN GENERAL.—A divorce decree issued with respect to the participant and the former spouse pursuant to a State domestic relations law (including an annulment or other order of marital dissolution) shall, upon delivery to a plan along with the information required by subparagraph (C)(i), be deemed by the plan to be a domestic relations order that specifies that 50 percent of the marital share of the participant's accrued benefit is to be provided to such former spouse.

"(II) MARITAL SHARE.—The marital share shall be the accrued benefit of the participant under the plan as of the date of the divorce (to the extent such accrued benefit is vested at the date of the divorce or any later date) multiplied by a fraction, the numerator of which is the period of participation by the participant under the plan starting with the date of marriage and ending with the date of divorce, and the denominator of which is the total period of participation by the participant under the plan.

"(III) INTERPRETATION AS QUALIFIED DOMESTIC RELATIONS ORDER.—Each plan shall establish reasonable rules for determining how any such deemed domestic relations order is to be interpreted under the plan so as to constitute a qualified domestic relations order that satisfies subparagraphs (C) through (E) (and a copy of such rules shall be provided to such former spouse promptly after delivery of the divorce decree). Such rules (aa) may delay the effect of such an order until the earlier of the date the participant is fully vested or has terminated employment, (bb) may allow the former spouse to be paid out immediately, and (cc) shall permit the spouse to be paid not later than the earliest retirement age under the plan.

"(IV) APPLICATION.—This subclause shall not apply to the extent that a qualified domestic relations order issued in connection with such divorce provides otherwise.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective for divorce decrees issued after December 31, 1999.

SEC. 404. DEFERRED ANNUITIES FOR SURVIVING SPOUSES OF FEDERAL EMPLOYEES.

(a) IN GENERAL.—Section 8341 of title 5, United States Code, is amended—

(1) in subsection (h)(1), by striking "section 8338(b) of this title" and inserting "section 8338(b), and a former spouse of a deceased former employee who separated from the service with title to a deferred annuity under section 8338 (if they were married to one another prior to the date of separation),"; and

(2) by adding at the end the following:

"(j)(1) If a former employee dies after having separated from the service with title to a deferred annuity under section 8338 but before having established a valid claim for annuity, and is survived by a spouse to whom married on the date of separation, the surviving spouse may elect to receive—

"(A) an annuity, commencing on what would have been the former employee's 62d birthday, equal to 55 percent of the former employee's deferred annuity;

"(B) an annuity, commencing on the day after the date of death of the former employee, such that, to the extent practicable, the present value of the future payments of the annuity would be actuarially equivalent to the present value of the future payments under subparagraph (A) as of the day after the former employee's death; or

"(C) the lump-sum credit, if the surviving spouse is the individual who would be entitled to the lump-sum credit and if such surviving spouse files application therefor.

"(2) An annuity under this subsection and the right thereto terminate on the last day of the month before the surviving spouse remarries before becoming 55 years of age, or dies.".

(b) CORRESPONDING AMENDMENT FOR FERS.—Section 8445(a) of title 5, United States Code, is amended—

(1) by striking "(or of a former employee or" and inserting "(or of a former"; and

(2) by striking "annuity)" and inserting "annuity, or of a former employee who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim

for annuity (if such former spouse was married to such former employee prior to the date of separation))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to surviving spouses and former spouses (whose marriage, in the case of the amendments made by subsection (a), terminated after May 6, 1985) of former employees who die after the date of the enactment of this Act.

SEC. 405. PAYMENT OF LUMP-SUM CREDIT FOR FORMER SPOUSES OF FEDERAL EMPLOYEES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in section 8342(c), by striking "Lump-sum" and inserting "Except as provided in section 8345(j), lump-sum";

(2) in section 8345(j)—

(A) in paragraph (1), by inserting after "that individual" the following: ", or be made under section 8342(d) through (f) to an individual entitled under section 8342(c).";" and

(B) by adding at the end the following:

"(4) Any payment under this subsection to a person bars recovery by any other person.";

(3) in section 8424(d), by striking "Lump-sum" and inserting "Except as provided in section 8467(a), lump-sum"; and

(4) in section 8467—

(A) in subsection (a), by inserting after "that individual" the following: ", or be made under section 8424(e) through (g) to an individual entitled under section 8424(d).";" and

(B) by adding at the end the following:

"(d) Any payment under this section to a person bars recovery by any other person.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any death occurring after the 90th day after the date of the enactment of this Act.

SEC. 406. WOMEN'S PENSION TOLL-FREE PHONE NUMBER.

(a) IN GENERAL.—The Secretary of Labor shall contract with an independent organization to create a women's pension toll-free telephone number and contact to serve as—

(1) a resource for women on pension questions and issues;

(2) a source for referrals to appropriate agencies; and

(3) a source for printed information.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000 for each of the fiscal years 1997, 1998, 1999, and 2000.

TITLE V—DATE FOR ADOPTION OF PLAN AMENDMENTS

SEC. 501. DATE FOR ADOPTION OF PLAN AMENDMENTS.

(a) IN GENERAL.—Except as otherwise provided in this Act, if any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the last day of the first plan year beginning on or after January 1, 1998, if—

(1) during the period after such amendment takes effect and before the last day of such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to such period.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

(b) GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), subsection (a) shall be applied by substituting for "January 1, 1998" the later of—

(1) January 1, 1999, or

(2) the date which is 90 days after the opening of the first legislative session beginning after January 1, 1999, of the governing body with authority to amend the plan, but only if such governing body does not meet continuously.

(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—Nothwithstanding any other provision of this Act, in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, any amendment made by this Act which requires an amendment to such plan shall not be required to be made before the last day of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 1998, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 1999.

By Mr. DASCHLE (for himself, Mr. BIDEN, Mr. LEAHY, Mr. KOHL, Mr. BREAUX, Mr. FORD, Ms. MIKULSKI, Mr. DODD, Mr. DURBIN, Mr. KERRY, Mr. LEVIN, Ms. LANDRIEU, Mr. TORRICELLI, Ms. MOSELEY-BRAUN, Mr. GLENN, and Mr. ROCKEFELLER):

S. 15. A bill to control youth violence, crime, and drug abuse, and for other purposes; to the Committee on the Judiciary.

THE YOUTH VIOLENCE, CRIME AND DRUG ABUSE CONTROL ACT OF 1997

Mr. BIDEN. Mr. President, today I rise to introduce—along with Senator DASCHLE, Senator LEAHY, and many other Senators—legislation which will be a key cornerstone of the Senate Democrats anti-crime, anti-drug focus for the new Congress.

Our thrust is clear and straight-forward:

We must continue the successes of the 1994 Biden crime law.

And, at the same time, we must take up the new challenge of confronting crime and drug abuse among our youth with a commonsense strategy balancing tough sanctions, certain punishment and protecting literally millions of kids from the criminals and drug pushers who can target any kid from any family whose parents are at work when the school day ends.

We must continue the success of the 1994 crime law.

While I give the credit first and foremost to the police officers on our Nation's streets, the verdict from the FBI's national crime statistics is that since the 1994 crime law, violent crime is down and down significantly:

1996 is projected to have the lowest murder toll since 1988—and a murder rate that is lowest since 1971;

1996 is projected to have the lowest violent crime total since 1990; and

the murder rate for wives, ex-wives and girlfriends at the hands of their "intimates" fell to an 18-year low in 1994—and is lower still in 1995.

This is a record of success which should convince the Senate to extend the 1994 crime law.

Adding 25,000 more police by extending the 100,000 cops program for two more years.

Extending the Violence Against Women Act funding to shelter 400,000 more battered women and their children and continuing to help States arrest and prosecute batterers. Providing an additional $5 billion to build up to 80,000 more prison cells for violent criminals—we also propose to give States greater flexibility with these dollars to speed the prosecution of violent criminals and increase the use of drug testing. Provide $1 billion to extend such proven law enforcement programs as the Byrne anti-drug grants to State and local law enforcement. And, extend the crime law trust fund to fund all these initiatives from the cost-savings from downsizing the Federal Government—without increasing the Federal budget deficit.

The bottom line—this bill calls on the full Senate to continue the successes of the 1994 Biden crime law.

But, this legislation does not stop there. In the face of rising teen drug abuse and rising youth violence—despite some recent hopeful news—we must undertake a comprehensive effort to target these problems. This legislation offers just such a comprehensive effort:

First, we propose to reform the juvenile justice system to crack down on violent youth by:

Making some key changes to Federal law that respond to legitimate concerns which create the pressure to take the unwise step of prosecuting kids in our overburdened adult courts. Specifically, providing greater access to juveniles records and raising the mandatory release age for juveniles from 21 to 26—so juveniles will face up to 11 years in prison even if they are prosecuted as juveniles.

Providing $1 billion to help States build prisons for violent juveniles as well as additional prosecutors and other improvements to State juvenile justice systems (including certain, graduated punishment for first-time and minor juvenile offenders).

Creating special juvenile "gun" courts where juvenile gun offenders are tried and sentenced on an expedited basis.

These are essential to controlling juvenile crime because, as every mother knows, immediate and certain punishment is the key to disciplining kids.

Second, we must target one of the primary sources of youth violence—street gangs.

We propose aggressive steps to:

Target gang paraphernalia by boosting the penalties for criminals who arm themselves with bullet-proof body armor and deadly accurate laser-sighting devices. And, as Senator LEAHY has identified, we must make some commonsense reforms to speed law enforcement access to the numeric pagers so often used by youth gang criminals.

Create a new crime of interstate franchise spread of street gangs—a step which better targets Federal law enforcement resources than simply federalizing ever more State crimes and encroaching upon the State's traditional handling of juvenile crime.

Cracking down on street gangs also means that we should increase the penalties for witness intimidation, a favored tactic of criminal street gangs. This is a proposal outlined by the President just this weekend.

Third, we must redouble our efforts to treat and prevent youth drug abuse.

For the past several months, you have heard me modify one of the key arguments of the President's 1992 campaign by stating—"it's drugs, stupid, it's drugs."

This statement is—unfortunately—necessary in the face of rising drug abuse among our children. While drug abuse among adults is holding steady, all the surveys tell us that more and more children are falling prey to drugs.

We propose a multi-prong response, because drugs need to be fought not only in our communities, but also in our scientific laboratories where important breakthroughs are being made into medicines to treat drug addiction—we propose additional funding for the Federal Medications Development Program and to provide incentives to the private sector to develop new medicines to treat heroin and cocaine addiction.

We must also expand drug courts to cover 50,000 children—a vast improvement on the no drug testing, no treatment, and no threat of punishment system which typifies too many juvenile courts today.

As I proposed last year, we must tighten controls on the club drug—ketamine—that is popular with too many children today.

Funding drug treatment for 600,000 drug-addicted children is also key—particularly as our Nation stands on the edge of a baby-boomerang wave that will mean more teenagers—and more teen addicts.

Reauthorizing the drug director's office as well as the Safe & Drug-Free Schools Program which is the core of Federal drug prevention efforts are two other necessary steps.

In addition, and in response to the recent passage of so-called medical marijuana initiatives, we seek a measure which should be supported even by their proponents—a simple study to determine if drug abuse among children rises in these two States.

Fourth, we call for a renewed effort to prevent youth violence.

No where has the crime policy debate been subject to more distortions and misunderstandings than on a goal all of us should share—let's prevent kids from getting involved in crime, violence and drugs in the first place.

To get past all the misunderstanding, we propose to call upon the prestigious, non-partisan National Academy of Sciences to answer the questions—can we prevent youth crime? And, if so, how do we do so in the most efficient way possible?

Let me repeat a challenge I offered last week—I will live by the results of this study, if those who oppose prevention efforts will as well. If the national academy says we can't figure out this task, so be it, I will not seek appropriations for any funds we authorize through this legislation. But, if the national academy of sciences says that we can, I challenge all to support full funding for these crime prevention efforts.

But, in the meantime, it seems to me that we do know at least one thing about preventing youth crime and drug abuse—my mom summarized what we know in the simple phrase used by mothers everywhere: "Idle hands are the devil's workshop."

This refers to the commonsense notion that if we can just get kids off the streets and into supervised programs during the after school hours when kids are likely to be the victims of gangs and criminals or the customers of drug pushers—if we can just do that simply thing, with boys and girls clubs or many other proven efforts, we can make important in-roads against drug abuse and crime among children.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 15

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Youth Violence, Crime, and Drug Abuse Control Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—CRIME CONTROL

Subtitle A—More Police Officers on the Beat

Sec. 101. More police officers on the beat.
Sec. 102. Grants for equipment, technology, and support systems.
Sec. 103. National community police telecommunications.
Sec. 104. Technical amendment.

Subtitle B—Violent Offender Incarceration and Truth-in-Sentencing Grants

Sec. 121. Formula allocations.
Sec. 122. Extension of violent offender incarceration and truth-in-sentencing grants.

Subtitle C—Domestic Violence

Sec. 131. Extension of Violence Against Women Act.
Sec. 132. Rural domestic violence and child abuse enforcement assistance.

Subtitle D—Assistance to Local Law Enforcement

Sec. 141. Extension of law enforcement family support funding.
Sec. 142. Extension of rural drug enforcement and training funding.
Sec. 143. Extension of DNA identification grants funding.
Sec. 144. Extension of Byrne grant funding.
Sec. 145. Extension of technical automation grant funding.
Sec. 146. Extension of grants for State court prosecutors.

TITLE II—YOUTH VIOLENCE CONTROL

Subtitle A—Federal Juvenile Prosecutions

Sec. 201. Increased detention, mandatory restitution, and additional sentencing options for youth offenders.
Sec. 202. Access to records.
Sec. 203. Reinstituting dismissed cases.

Subtitle B—Assistance to States for Prosecuting and Punishing Youth Offenders

Sec. 214. Juvenile and violent offender incarceration grants.
Sec. 215. Certain punishment and graduated sanctions for youth offenders.

Subtitle C—Juvenile Gun Courts

Sec. 221. Definitions.
Sec. 222. Grant program.
Sec. 223. Applications.
Sec. 224. Grant awards.
Sec. 225. Use of grant amounts.
Sec. 226. Grant limitations.
Sec. 227. Federal share.
Sec. 228. Report and evaluation.
Sec. 229. Authorization of appropriations.

Subtitle D—Gang Violence Reduction

PART 1—ENHANCED PENALTIES FOR GANG-RELATED ACTIVITIES

Sec. 241. Gang franchising.
Sec. 242. Gang franchising as RICO predicate.
Sec. 243. Increase in offense level for participation in crime as gang member.
Sec. 244. Increasing the penalty for using physical force to tamper with witnesses, victims, or informants.
Sec. 245. Possession of firearms in relation to counts of violence or drug trafficking crimes.
Sec. 246. Increased penalty for transferring a firearm to a minor for use in a crime.
Sec. 247. Elimination of statute of limitations for murder.
Sec. 248. Extension of statute of limitations for violent and drug trafficking crimes.

PART 2—GANG PARAPHERNALIA

Sec. 251. Enhancing law enforcement access to clone numeric pagers.
Sec. 252. Prohibitions relating to body armor.
Sec. 253. Prohibitions relating to laser sighting devices.

Subtitle E—Rights of Victims in State Juvenile Courts

Sec. 261. State guidelines.

TITLE III—PREVENTION AND TREATMENT OF YOUTH DRUG ABUSE AND ADDICTION

Subtitle A—Protecting Youth From Dangerous Drugs

Sec. 301. Rescheduling of "club" drugs.

Subtitle B—Development of Medicines for the Treatment of Drug Addiction
PART 1—PHARMACOTHERAPY RESEARCH
Sec. 321. Reauthorization for medication development program.
PART 2—PATENT PROTECTIONS FOR PHARMACOTHERAPIES
Sec. 331. Recommendation for investigation of drugs.
Sec. 332. Designation of drugs.
Sec. 333. Protection for drugs.
Sec. 334. Open protocols for investigations of drugs.
PART 3—ENCOURAGING PRIVATE SECTOR DEVELOPMENT OF PHARMACOTHERAPIES
Sec. 341. Development, manufacture, and procurement of drugs for the treatment of addiction to illegal drugs.
Subtitle C—Prevention and Treatment Programs
PART 1—COMPREHENSIVE DRUG EDUCATION
Sec. 351. Extension of safe and drug-free schools and communities program.
PART 2—DRUG COURTS
Sec. 361. Reauthorization of drug courts program.
Sec. 362. Juvenile drug courts.
PART 3—DRUG TREATMENT
Sec. 371. Drug treatment for juveniles.
Subtitle D—National Drug Control Policy
Sec. 381. Reauthorization of Office of National Drug Control Policy.
Sec. 382. Study on effects of California and Arizona drug initiatives.
Subtitle E—Penalty Enhancements
Sec. 391. Increased penalties for using Federal property to grow or manufacture controlled substances.
Sec. 392. Technical correction to ensure compliance of Federal sentencing guidelines with Federal law.
TITLE IV—PROTECTING YOUTH FROM VIOLENT CRIME
Subtitle A—Grants for Youth Organizations
Sec. 401. Grant program.
Sec. 402. Grants to national organizations.
Sec. 403. Grants to States.
Sec. 404. Allocation; grant limitation.
Sec. 405. Report and evaluation.
Sec. 406. Authorization of appropriations.
Subtitle B—"Say No to Drugs" Community Centers Act of 1997
Sec. 421. Short title; definitions.
Sec. 422. Grant requirements.
Sec. 423. Authorization of appropriations.
Subtitle C—Missing Children
Sec. 431. Amendments to the Missing Children's Assistance Act.
TITLE V—IMPROVING YOUTH CRIME AND DRUG PREVENTION
Subtitle A—Comprehensive Study of Federal Prevention Efforts
Sec. 501. Study by national academy of science.
Subtitle B—Evaluation Mandate for Authorized Programs
Sec. 522. Evaluation of crime prevention programs.
Sec. 523. Evaluation and research criteria.
Sec. 524. Compliance with evaluation mandate.
Sec. 525. Reservation of amounts for evaluation and research.
Subtitle C—Elimination of Ineffective Programs
Sec. 531. Sense of Senate regarding funding for programs determined to be ineffective.
TITLE VI—EXTENSION OF VIOLENT CRIME REDUCTION TRUST FUND
Sec. 601. Extension of violent crime reduction trust fund.

SEC. 2. DEFINITIONS.

In this Act—

(1) the term "Attorney General" means the Attorney General of the United States;

(2) the term "Indian tribe" means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) the term "juvenile" has the meaning given that term under applicable State law;

(4) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands;

(5) the term "unit of local government" means any city, county, township, borough, parish, or other entity exercising governmental power under State law;

(6) the term "Violent Crime Reduction Trust Fund" means the fund established under title XXXI of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14211 et seq.); and

(7) the term "youth" means a person who is not younger than 5 and not older than 18 years of age.

TITLE I—CRIME CONTROL

Subtitle A—More Police Officers on the Beat

SEC. 101. MORE POLICE OFFICERS ON THE BEAT.

Section 1001(a)(11)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(11)(A)) is amended—

(1) in clause (v), by striking "and" at the end;

(2) in clause (vi), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(vii) $1,240,000,000 for fiscal year 2001; and

"(viii) $1,240,000,000 for fiscal year 2002.".

SEC. 102. GRANTS FOR EQUIPMENT, TECHNOLOGY, AND SUPPORT SYSTEMS.

Section 1701(b)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) is amended to read as follows:

"(A) may not exceed 20 percent of the funds available for grants pursuant to this subsection in any fiscal year.".

SEC. 103. NATIONAL COMMUNITY POLICE TELECOMMUNICATIONS.

Part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.) is amended by adding at the end the following:

"SEC. 1710. NATIONAL POLICE TELECOMMUNICATIONS.

"(a) FINDINGS.—Congress finds that—

"(1) police departments and sheriffs confirm that the 911 system is overloaded and that a large percentage of those calls are nonemergency calls;

"(2) many communities have seen increases in their 911 call volumes of between 40 percent and 50 percent annually;

"(3) police officers are forced to spend too much time responding to nonemergency situations, which eliminates time for proactive community policing; and

"(4) efforts to limit the use of 911 by using general telephone numbers and educating the public to reference a general number in the telephone book have been ineffective.

"(b) PURPOSE.—The purposes of this section are—

"(1) to encourage the Federal Communications Commission to reserve the 311 nonemergency number on a national basis for use by public safety agencies in responding to nonemergency police telephone calls; and

"(2) to establish a Federal assistance program to assist States and localities in establishing 311 nonemergency systems and to educate citizens in the use of 911 and 311.

"(c) AUTHORITY TO MAKE 311 NONEMERGENCY GRANTS.—The Attorney General, acting through the Director of the Office of Community Oriented Policing Services, may make grants to States, units of local governments, Indian tribal governments, other public and private entities, and multijurisdictional or regional consortia, to encourage the use of and to implement 311 nonemergency telecommunication systems for public safety.

"(d) GENERAL REGULATORY AUTHORITY.—The Attorney General may promulgate regulations and guidelines to carry out this section.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Violent Crime Reduction Trust Fund to carry out this section—

"(1) such sums as may be necessary for each of the fiscal years 1998 through 2000; and

"(2) $10,000,000 in each of the fiscal years 2001 and 2002.".

SEC. 104. TECHNICAL AMENDMENT.

Section 1001(a)(11)(B) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended by striking "150,000" each place it appears and inserting "100,000".

Subtitle B—Violent Offender Incarceration and Truth-in-Sentencing Grants

SEC. 121. FORMULA ALLOCATIONS.

Section 20106 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13706) is amended—

(1) in subsection (a)(1), by striking subparagraph (B) and inserting the following:

"(B) FORMULA ALLOCATION.—The amount remaining after application of subparagraph (A) shall be allocated as follows:

"(i) 0.75 percent shall be allocated to each State that meets the requirements of section 20103(b), except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under section 20103(b), shall each be allocated 0.05 percent.

"(ii) The amount remaining after application of clause (i) shall be allocated to each State that meets the requirements of section 20103(b), in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 20103(b) to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made."; and

(2) by striking subsection (b) and inserting the following:

"(b) ALLOCATION OF TRUTH-IN-SENTENCING GRANTS UNDER SECTION 20104.—The amounts available for grants under section 20104 shall be allocated as follows:

"(1) FORMULA ALLOCATION.—0.75 percent shall be allocated to each State that meets the requirements of section 20104, except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible

under section 20104, shall each be allocated 0.05 percent.

"(2) ADDITIONAL ALLOCATION.—The amount remaining after application of paragraph (1) shall be allocated to each State that meets the requirements of section 20104, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 20103(b) to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.".

SEC. 122. EXTENSION OF VIOLENT OFFENDER INCARCERATION AND TRUTH-IN-SENTENCING GRANTS.

(a) VIOLENT OFFENDER INCARCERATION GRANTS.—Section 20108(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13708(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking "and" at the end;

(B) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(F) $2,750,000,000 for fiscal year 2001; and

"(G) $2,750,000,000 for fiscal year 2002."; and

(2) in paragraph (2)(A), by striking "fiscal year," and all that follows before the period and inserting the following: "fiscal year distribute 45 percent for incarceration grants under section 20103, 45 percent for incentive grants under section 20104, and 10 percent for violent juvenile offender incarceration grants under section 214 of the Youth Violence, Crime, and Drug Abuse Control Act of 1997.".

(b) TRUTH IN SENTENCING GRANTS.—Section 20102(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13702(a)) is amended—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(4) for hiring professional staff to supervise violent offenders following release from custody and officers of the court to speed the prosecution of violent offenders.".

Subtitle C—Domestic Violence

SEC. 131. EXTENSION OF VIOLENCE AGAINST WOMEN ACT.

(a) GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN.—Section 1001(a)(18) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(18)) is amended—

(1) in subparagraph (E), by striking "and" at the end;

(2) in subparagraph (F), by inserting "and" at the end; and

(3) by adding at the end the following:

"(G) $174,000,000 for fiscal year 2001; and

"(H) $174,000,000 for fiscal year 2002.".

(b) EDUCATION AND PREVENTION GRANTS TO REDUCE SEXUAL ASSAULTS AGAINST WOMEN.—

(1) IN GENERAL.—Section 40151 of Public Law 103-322 (108 Stat. 1920) is amended by striking "Health and Human Services" and inserting "Health Service".

(2) AMENDMENT.—Section 1910A(c) of the Public Health Service Act is amended—

(A) in paragraph (4), by striking "and" at the end; and

(B) by adding at the end the following:

"(6) $45,000,000 for fiscal year 2001; and

"(7) $45,000,000 for fiscal year 2002.".

(c) GRANT FOR NATIONAL DOMESTIC VIOLENCE HOTLINE.—Section 316(f) of the Family Violence Prevention and Services Act (42 U.S.C. 10401) is amended—

(1) in subparagraph (E), by striking "and" at the end;

(2) in subparagraph (F), by adding "and" at the end; and

(3) by adding at the end the following:

"(G) $500,000 for fiscal year 2001; and

"(H) $500,000 for fiscal year 2002.".

(d) GRANTS FOR BATTERED WOMEN'S SHELTERS.—Section 310(a) of the Family Violence Prevention and Services Act (42 U.S.C. 10409(a)) is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by adding "and" at the end; and

(3) by adding at the end the following:

"(6) $72,500,000 for fiscal year 2001; and

"(7) $72,500,000 for fiscal year 2002.".

(e) VICTIMS OF CHILD ABUSE PROGRAMS.—Section 218(a) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13014(a)) is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by adding "and" at the end; and

(3) by adding at the end the following:

"(6) $10,000,000 for fiscal year 2001; and

"(7) $10,000,000 for fiscal year 2002.".

SEC. 132. RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT ASSISTANCE.

Section 1501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(b)) is amended by striking "through fiscal year 1997" and inserting "or a State that has a population density of more than 60 percent (as defined by the Bureau of the Census of the Department of Commerce)".

Subtitle D—Assistance to Local Law Enforcement

SEC. 141. EXTENSION OF LAW ENFORCEMENT FAMILY SUPPORT FUNDING.

Section 1001(a)(21) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(21)) is amended—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(2) in subparagraph (D), as redesignated, by striking "and" at the end;

(3) in subparagraph (E), as redesignated, by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(F) $7,500,000 for fiscal year 2001; and

"(G) $7,500,000 for fiscal year 2002.".

SEC. 142. EXTENSION OF RURAL DRUG ENFORCEMENT AND TRAINING FUNDING.

(a) OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.—Section 1001(a)(9) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(9)) is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(F) $66,000,000 for fiscal year 2001; and

"(G) $66,000,000 for fiscal year 2002.".

(b) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—Section 18103(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14082(b)) is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(6) $1,000,000 for fiscal year 2001; and

"(7) $1,000,000 for fiscal year 2002.".

SEC. 143. EXTENSION OF DNA IDENTIFICATION GRANTS FUNDING.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended—

(1) by redesignating paragraphs (16) through (22) as paragraphs (12) through (17), respectively; and

(2) in paragraph (17), as redesignated—

(A) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(B) in subparagraph (D), as redesignated, by striking "and" at the end;

(C) in subparagraph (E), as redesignated, by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

"(F) $17,500,000 for fiscal year 2001; and

"(G) $17,500,000 for fiscal year 2002.".

SEC. 144. EXTENSION OF BYRNE GRANT FUNDING.

Section 210101 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 2061) is amended—

(1) by striking "through 2000" and inserting "through 2002";

(2) in paragraph (5), by striking "and" at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(7) $200,000,000 for fiscal year 2001; and

"(8) $200,000,000 for fiscal year 2002.".

SEC. 145. EXTENSION OF TECHNICAL AUTOMATION GRANT FUNDING.

Section 210501(c) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14151(c)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking "and" at the end;

(B) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(F) for fiscal year 2001, $24,000,000; and

"(G) for fiscal year 2002, $24,000,000;"; and

(2) in paragraph (2)—

(A) in subparagraph (D), by striking "and" at the end;

(B) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(F) for fiscal year 2001, $6,000,000; and

"(G) for fiscal year 2002, $6,000,000; and".

SEC. 146. EXTENSION OF GRANTS FOR STATE COURT PROSECUTORS.

Section 21602 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14161) is amended—

(1) in subsection (a)—

(A) by striking "other criminal justice participants" and inserting "other criminal justice participants, in both the adult and juvenile systems,";

(B) by striking "this Act" and all that follows before the period at the end of the section and inserting "this Act, the Youth Violence, Crime, and Drug Abuse Control Act of 1997, and amendments thereto";

(2) by redesignating subsection (d) as subsection (e);

(3) by inserting after subsection (c) the following:

"(d) Not less than 20 percent of the total amount appropriated to carry out this subtitle in each of the fiscal years 2001 and 2002 shall be made available for providing increased resources to State juvenile courts

systems, juvenile prosecutors, juvenile public defenders, and other juvenile court system participants.";

(4) in subsection (e)—

(A) in paragraph (4), by striking "and" at the end;

(B) in paragraph (5), by striking the comma at the end and inserting a semicolon; and

(C) by inserting immediately after paragraph (5) the following:

"(6) $250,000,000 for fiscal year 2001; and

"(7) $250,000,000 for fiscal year 2002.".

TITLE II—YOUTH VIOLENCE CONTROL

Subtitle A—Federal Juvenile Prosecutions

SEC. 201. INCREASED DETENTION, MANDATORY RESTITUTION, AND ADDITIONAL SENTENCING OPTIONS FOR YOUTH OFFENDERS.

Section 5037 of title 18, United States Code, is amended to read as follows:

"§ 5037. Dispositional hearing

"(a) IN GENERAL.—

"(1) HEARING.—In a proceeding under section 5032(a), if the court finds a juvenile to be a juvenile delinquent, the court shall hold a hearing concerning the appropriate disposition of the juvenile not later than 20 court days after the finding of juvenile delinquency unless the court has ordered further study pursuant to subsection (e).

"(2) REPORT.—A predisposition report shall be prepared by the probation officer who shall promptly provide a copy to the juvenile, the attorney for the juvenile, and the attorney for the government.

"(3) VICTIM IMPACT INFORMATION.—Victim impact information shall be included in the report, and victims, or in appropriate cases their official representatives, shall be provided the opportunity to make a statement to the court in person or present any information in relation to the disposition.

"(4) ORDER OF RESTITUTION.—After the dispositional hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 994, of title 28, the court shall enter an order of restitution pursuant to section 3556, and may suspend the findings of juvenile delinquency, place the juvenile on probation, commit the juvenile to official detention (including the possibility of a term of supervised release), and impose any fine that would be authorized if the juvenile had been tried and convicted as an adult.

"(5) RELEASE OR DETENTION.—With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

"(b) TERM OF PROBATION.—The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond the maximum term that would be authorized by section 3561(c) if the juvenile had been tried and convicted as an adult. Sections 3563, 3564, and 3565 are applicable to an order placing a juvenile on probation.

"(c) TERM OF OFFICIAL DETENTION.—

"(1) MAXIMUM TERM.—The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond the lesser of—

"(A) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult;

"(B) 10 years; or

"(C) the date on which the juvenile achieves the age of 26.

"(2) APPLICABILITY OF OTHER PROVISIONS.—Section 3624 shall apply to an order placing a juvenile in detention.

"(d) TERM OF SUPERVISED RELEASE.—The term for which supervised release may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond 5 years. Subsections (c) through (i) of section 3583 shall apply to an order placing a juvenile on supervised release.

"(e) CUSTODY OF ATTORNEY GENERAL.—

"(1) IN GENERAL.—If the court desires more detailed information concerning a juvenile alleged to have committed an act of juvenile delinquency or a juvenile adjudicated delinquent, it may commit the juvenile, after notice and hearing at which the juvenile is represented by an attorney, to the custody of the Attorney General for observation and study by an appropriate agency or entity.

"(2) OUTPATIENT BASIS.—Any observation and study pursuant to a commission under paragraph (1) shall be conducted on an outpatient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information, except that in the case of an alleged juvenile delinquent, inpatient study may be ordered with the consent of the juvenile and the attorney for the juvenile.

"(3) CONTENTS OF STUDY.—The agency or entity conducting an observation or study under this subsection shall make a complete study of the alleged or adjudicated delinquent to ascertain the personal traits, capabilities, background, any prior delinquency or criminal experience, any mental or physical defect, and any other relevant factors pertaining to the juvenile.

"(4) SUBMISSION OF RESULTS.—The Attorney General shall submit to the court and the attorneys for the juvenile and the government the results of the study not later than 30 days after the commitment of the juvenile, unless the court grants additional time.

"(5) EXCLUSION OF TIME.—Any time spent in custody under this subsection shall be excluded for purposes of section 5036.

"(f) CONVICTION AS ADULT.—With respect to any juvenile prosecuted and convicted as an adult under section 5032(c), the court may, pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28, determine to treat the conviction as an adjudication of delinquency and impose any disposition authorized under this section. The United States Sentencing Commission shall promulgate such guidelines as soon as practicable and not later than 1 year after the date of enactment of this Act.".

SEC. 202. ACCESS TO RECORDS.

Section 5038 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking the language preceding the colon and inserting the following:

"Throughout and upon completion of the juvenile delinquency proceeding, the court records of the original proceeding shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances"; and

(B) in subsection (a), by striking paragraph (6) and inserting the following:

"(6) inquiries from any victim of such juvenile delinquency, or in appropriate cases with the attorney for the victim, or, if the victim is deceased, from the immediate family of such victim in order to apprise such person of the status or disposition of the proceeding;";

(2) by striking subsections (d) and (f) and redesignating subsection (e) as subsection (d); and

(3) by adding at the end the following:

"(e) RECORDS AND INFORMATION.—If a juvenile has been adjudicated delinquent for an act that, if committed by an adult, would be a felony or for a violation of section 922(x)—

"(1) the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation;

"(2) the court shall transmit to the Federal Bureau of Investigation the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication; and

"(3) access to the fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, shall be restricted as prescribed by subsection (a).".

SEC. 203. REINSTITUTING DISMISSED CASES.

Section 5036 of title 18, United States Code, is amended by striking the last sentence and inserting the following: "In determining whether an information should be dismissed with or without prejudice, the court shall consider the seriousness of the offense, the facts and circumstances of the case that led to the dismissal, and the impact of a reprosecution on the administration of justice.".

Subtitle B—Assistance to States for Prosecuting and Punishing Youth Offenders

SEC. 214. JUVENILE AND VIOLENT OFFENDER INCARCERATION GRANTS.

(a) GRANTS FOR VIOLENT AND CHRONIC JUVENILE FACILITIES.—

(1) DEFINITIONS.—In this subsection—

(A) the term "colocated facility" means the location of adult and juvenile facilities on the same property consistent with regulations issued by the Attorney General to ensure that adults and juveniles are substantially segregated;

(B) the term "substantially segregated" means—

(i) complete sight and sound separation in residential confinement;

(ii) use of shared direct care and management staff, properly trained and certified by the State to interact with juvenile offenders, if the staff does not interact with adult and juvenile offenders during the same shift; and

(iii) incidental contact during transportation to court proceedings and other activities in accordance with regulations issued by the Attorney General to ensure reasonable efforts are made to segregate adults and juveniles;

(C) the term "violent juvenile offender" means a person under the age of majority pursuant to State law that has been adjudicated delinquent or convicted in adult court of a violent felony as defined in section 924(e)(2)(B) of title 18, United States Code; and

(D) the term "qualifying State" means a State that has submitted, or a State in which an eligible unit of local government has submitted, a grant application that meets the requirements of paragraphs (3) and (5).

(2) AUTHORITY.—

(A) IN GENERAL.—The Attorney General may make grants in accordance with this subsection to States, units of local government, or any combination thereof, to assist them in planning, establishing, and operating secure facilities, staff-secure facilities, detention centers, and other correctional programs for violent juvenile offenders.

(B) USE OF AMOUNTS.—Grants under this subsection may be used—

(i) for colocated facilities for adult prisoners and violent juvenile offenders; and

(ii) only for the construction or operation of facilities in which violent juvenile offenders are substantially segregated from nonviolent juvenile offenders.

(3) APPLICATIONS.—

(A) IN GENERAL.—The chief executive officer of a State or unit of local government that seeks to receive a grant under this subsection shall submit to the Attorney General an application, in such form and in such manner as the Attorney General may prescribe.

(B) CONTENTS.—Each application submitted under subparagraph (A) shall provide written assurances that each facility or program funded with a grant under this subsection—

(i) will provide appropriate educational and vocational training, a program of substance abuse testing, and substance abuse treatment for appropriate juvenile offenders; and

(ii) will afford juvenile offenders intensive post-release supervision and services.

(4) MINIMUM AMOUNT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each qualifying State, together with units of local government within the State, shall be allocated for each fiscal year not less than 1.0 percent of the total amount made available in each fiscal year for grants under this subsection.

(B) EXCEPTION.—The United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.2 percent of the total amount made available in each fiscal year for grants under this subsection.

(5) PERFORMANCE EVALUATION.—

(A) EVALUATION COMPONENTS.—

(i) IN GENERAL.—Each facility or program funded under this subsection shall contain an evaluation component developed pursuant to guidelines established by the Attorney General.

(ii) OUTCOME MEASURES.—The evaluations required by this subsection shall include outcome measures that can be used to determine the effectiveness of the funded programs, including the effectiveness of such programs in comparison with other correctional programs or dispositions in reducing the incidence of recidivism, and other outcome measures.

(B) PERIODIC REVIEW AND REPORTS.—

(i) REVIEW.—The Attorney General shall review the performance of each grant recipient under this subsection.

(ii) REPORTS.—The Attorney General may require a grant recipient to submit to the Office of Justice Programs, Corrections Programs Office the results of the evaluations required under subparagraph (A) and such other data and information as are reasonably necessary to carry out the responsibilities of the Attorney General under this subsection.

(6) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General shall provide technical assistance and training to grant recipients under this subsection to achieve the purposes of this subsection.

(b) JUVENILE FACILITIES ON TRIBAL LANDS.—

(1) RESERVATION OF FUNDS.—Of amounts made available to carry out section 214 of this Act under section 20108(a)(2)(A) of the Violent Crime Control and Law Enforcement Act of 1994, the Attorney General shall reserve, to carry out this subsection, 0.75 percent for each of the fiscal years 1998 through 2002.

(2) GRANTS TO INDIAN TRIBES.—Of amounts reserved under paragraph (1), the Attorney General may make grants to Indian tribes or to regional groups of Indian tribes for the purpose of constructing secure facilities, staff-secure facilities, detention centers, and other correctional programs for incarceration of juvenile offenders subject to tribal jurisdiction.

(3) APPLICATIONS.—To be eligible to receive a grant under this section, an Indian tribe shall submit to the Attorney General an application in such form and containing such information as the Attorney General may by regulation require.

(4) REGIONAL GROUPS.—Individual Indian tribes from a geographic region may apply for grants under paragraph (2) jointly for the purpose of building regional facilities.

(c) REPORT ON ACCOUNTABILITY AND PERFORMANCE MEASURES IN JUVENILE CORRECTIONS PROGRAMS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall, after consultation with the National Institute of Justice and other appropriate governmental and nongovernmental organizations, submit to Congress a report regarding the possible use of performance-based criteria in evaluating and improving the effectiveness of juvenile corrections facilities and programs.

(2) CONTENTS.—The report required under this subsection shall include an analysis of—

(A) the range of performance-based measures that might be utilized as evaluation criteria, including measures of recidivism among juveniles who have been incarcerated in facilities or have participated in correctional programs;

(B) the feasibility of linking Federal juvenile corrections funding to the satisfaction of performance-based criteria by grantees (including the use of a Federal matching mechanism under which the share of Federal funding would vary in relation to the performance of a program or facility);

(C) whether, and to what extent, the data necessary for the Attorney General to utilize performance-based criteria in the Attorney General's administration of juvenile corrections programs are collected and reported nationally; and

(D) the estimated cost and feasibility of establishing minimal, uniform data collection and reporting standards nationwide that would allow for the use of performance-based criteria in evaluating juvenile corrections programs and facilities and administering Federal juvenile corrections funds.

SEC. 215. CERTAIN PUNISHMENT AND GRADUATED SANCTIONS FOR YOUTH OFFENDERS.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) youth violence constitutes a growing threat to the national welfare requiring immediate and comprehensive action by the Federal Government to reduce and prevent youth violence;

(B) the behavior of youth who become violent offenders often follow a progression, beginning with aggressive behavior in school, truancy, and vandalism, leading to property crimes and then serious violent offenses;

(C) the juvenile justice systems in most States are ill-equipped to provide meaningful sanctions to minor, nonviolent offenders because most of their resources are dedicated to dealing with more serious offenders;

(D) in most States, some youth commit multiple, nonviolent offenses without facing any significant criminal sanction;

(E) the failure to provide meaningful criminal sanctions for first time, nonviolent offenders sends the false message to youth that they can engage in antisocial behavior without suffering any negative consequences and that society is unwilling or unable to restrain that behavior;

(F) studies demonstrate that interventions during the early stages of a criminal career can halt the progression to more serious, violent behavior; and

(G) juvenile courts need access to a range of sentencing options so that at least some level of sanction is imposed on all youth offenders, including status offenders, and the severity of the sanctions increase along with the seriousness of the offense.

(2) PURPOSES.—The purposes of this section are to provide assistance to State and local juvenile courts to expand the range of sentencing options for first time, nonviolent offenders and to provide a selection of graduated sanctions for more serious offenses.

(b) DEFINITIONS.—In this section—

(1) the term "first time offender" means a juvenile against whom formal charges have not previously been filed in any Federal or State judicial proceeding;

(2) the term "nonviolent offender" means a juvenile who is charged with an offense that does not involve the use of force against the person of another; and

(3) the term "status offender" means a juvenile who is charged with an offense that would not be criminal if committed by an adult (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of title 18, United States Code (or similar State law)).

(c) GRANT AUTHORIZATION.—

(1) IN GENERAL.—The Attorney General may make grants in accordance with this section to States, State courts, local courts, units of local government, and Indian tribes, for the purposes of—

(A) providing juvenile courts with a range of sentencing options such that first time juvenile offenders, including status offenders such as truants, vandals, and juveniles in violation of State or local curfew laws, face at least some level of punishment as a result of their initial contact with the juvenile justice system; and

(B) increasing the sentencing options available to juvenile court judges so that juvenile offenders receive increasingly severe sanctions—

(i) as the seriousness of their unlawful conduct increases; and

(ii) for each additional offense.

(c) APPLICATIONS.—

(1) ELIGIBILITY.—In order to be eligible to receive a grant under this section, the chief executive of a State, unit of local government, or Indian tribe, or the chief judge of a local court, shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(2) REQUIREMENTS.—Each application submitted in accordance with paragraph (1) shall include—

(A) a request for a grant to be used for the purposes described in this section;

(B) a description of the communities to be served by the grant, including the extent of youth crime and violence in those communities;

(C) written assurances that Federal funds received under this subtitle will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection;

(D) a comprehensive plan described in paragraph (3) (in this section referred to as the "comprehensive plan"); and

(E) any additional information in such form and containing such information as the Attorney General may reasonably require.

(3) IMPLEMENTATION PLAN.—For purposes of paragraph (2), a comprehensive plan shall include—

(A) an action plan outlining the manner in which the applicant will achieve the purposes described in subsection (c)(1);

(B) a description of any resources available in the jurisdiction of the applicant to implement the action plan described in subparagraph (A);

(C) an estimate of the costs of full implementation of the plan; and

(D) a plan for evaluating the impact of the grant on the jurisdiction's juvenile justice system.

(e) GRANT AWARDS.—

(1) CONSIDERATIONS.—In awarding grants under this section, the Attorney General shall consider—

(A) the ability of the applicant to provide the stated services;

(B) the level of youth crime, violence, and drug use in the community; and

(C) to the extent practicable, achievement of an equitable geographic distribution of the grant awards.

(2) ALLOCATIONS.—

(A) IN GENERAL.—The Attorney General shall allot not less than 0.75 percent of the total amount made available to carry out this section in each fiscal year to applicants in each State from which applicants have applied for grants under this section.

(B) INDIAN TRIBES.—The Attorney General shall allocate not less than 0.75 percent of the total amount made available to carry out this section in each fiscal year to Indian tribes.

(f) USE OF GRANT AMOUNTS.—

(1) IN GENERAL.—Each grant made under this section shall be used to establish programs that—

(A) expand the number of judges, prosecutors, and public defenders for the purpose of imposing sanctions on first time juvenile offenders and status offenders;

(B) provide expanded sentencing options, such as restitution, community service, drug testing and treatment, mandatory job training, curfews, house arrest, mandatory work projects, and boot camps, for status offenders and nonviolent offenders;

(C) increase staffing for probation officers to supervise status offenders and nonviolent offenders to ensure that sanctions are enforced;

(D) provide aftercare and supervision for status and nonviolent offenders, such as drug education and drug treatment, vocational training, job placement, and family counseling;

(E) encourage private sector employees to provide training and work opportunities for status offenders and nonviolent offenders; and

(F) provide services and interventions for status and nonviolent offenders designed, in tandem with criminal sanctions, to reduce the likelihood of further criminal behavior.

(2) PROHIBITION ON USE OF AMOUNTS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "alien" has the same meaning as in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)); and

(ii) the terms "secure detention facility" and "secure correctional facility" have the same meanings as in section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603).

(B) PROHIBITION.—No amounts made available under this subtitle may be used for any program that permits the placement of status offenders, alien juveniles in custody, or nonoffender juveniles (such as dependent or neglected children) in secure detention facilities or secure correctional facilities.

(g) GRANT LIMITATIONS.—Not more than 3 percent of the amounts made available to the Attorney General or a grant recipient under this section may be used for administrative purposes.

(h) FEDERAL SHARE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Federal share of a grant made under this subtitle may not exceed 90 percent of the total estimated costs of the program described in the comprehensive plan submitted under subsection (d)(3) for the fiscal year for which the program receives assistance under this section.

(2) WAIVER.—The Attorney General may waive, in whole or in part, the requirements of paragraph (1).

(3) IN-KIND CONTRIBUTIONS.—For purposes of paragraph (1), in-kind contributions may constitute any portion of the non-Federal share of a grant under this section.

(i) REPORT AND EVALUATION.—

(1) REPORT TO THE ATTORNEY GENERAL.—Not later than October 1, 1998, and October 1 of each year thereafter, each grant recipient under this section shall submit to the Attorney General a report that describes, for the year to which the report relates, any progress achieved in carrying out the comprehensive plan of the grant recipient.

(2) EVALUATION AND REPORT TO CONGRESS.—Not later than March 1, 1999, and March 1 of each year thereafter, the Attorney General shall submit to the Congress an evaluation and report that contains a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by grant recipients under this section, and an evaluation of programs established by grant recipients under this section.

(3) CRITERIA.—In assessing the effectiveness of the programs established and operated by grant recipients pursuant to this section, the Attorney General shall consider—

(A) a comparison between the number of first time offenders who received a sanction for criminal behavior in the jurisdiction of the grant recipient before and after initiation of the program;

(B) changes in the recidivism rate for first time offenders in the jurisdiction of the grant recipient;

(C) a comparison of the recidivism rates and the seriousness of future offenses of first time offenders in the jurisdiction of the grant recipient that receive a sanction and those who do not;

(D) changes in truancy rates of the public schools in the jurisdiction of the grant recipient; and

(E) changes in the arrest rates for vandalism and other property crimes in the jurisdiction of the grant recipient.

(4) DOCUMENTS AND INFORMATION.—Each grant recipient under this section shall provide the Attorney General with all documents and information that the Attorney General determines to be necessary to conduct an evaluation of the effectiveness of programs funded under this section.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section from the Violent Crime Reduction Trust Fund—

(1) such sums as may be necessary for each of the fiscal years 1998 and 1999; and

(2) $175,000,000 for each of the fiscal years 2000 and 2001.

Subtitle C—Juvenile Gun Courts

SEC. 221. DEFINITIONS.

In this subtitle—

(1) the term "firearm" has the same meaning as in section 921 of title 18, United States Code;

(2) the term "firearm offender" means any individual charged with an offense involving the illegal possession, use, transfer, or threatened use of a firearm; and

(3) the term "local court" means any section or division of a State or municipal juvenile court system; and

(4) the term "juvenile gun court" means a specialized division within a State or local juvenile court system, or a specialized docket within a State or local court that considers exclusively cases involving juvenile firearm offenders.

SEC. 222. GRANT PROGRAM.

The Attorney General may provide grants in accordance with this subtitle to States, State courts, local courts, units of local government, and Indian tribes for court-based juvenile justice programs that target juvenile firearm offenders through the establishment of juvenile gun courts.

SEC. 223. APPLICATIONS.

(a) ELIGIBILITY.—In order to be eligible to receive a grant under this subtitle, the chief executive of a State, unit of local government, or Indian tribe, or the chief judge of a local court, shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(b) REQUIREMENTS.—Each application submitted in accordance with subsection (a) shall include—

(1) a request for a grant to be used for the purposes described in this subtitle;

(2) a description of the communities to be served by the grant, including the extent of juvenile crime, juvenile violence, and juvenile firearm use and possession in such communities;

(3) written assurances that Federal funds received under this subtitle will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection;

(4) a comprehensive plan described in subsection (c) (hereafter in this subtitle referred to as the "comprehensive plan"); and

(5) any additional information in such form and containing such information as the Attorney General may reasonably require.

(c) COMPREHENSIVE PLAN.—For purposes of subsection (b), a comprehensive plan is described in this subsection if it includes—

(1) a description of the juvenile crime and violence problems in the jurisdiction of the applicant, including gang crime and juvenile firearm use and possession;

(2) an action plan outlining the manner in which the applicant would use the grant amounts in accordance with this subtitle;

(3) a description of any resources available in the jurisdiction of the applicant to implement the action plan described in paragraph (2); and

(4) a description of the plan of the applicant for evaluating the performance of the juvenile gun court.

SEC. 224. GRANT AWARDS.

(a) CONSIDERATIONS.—In awarding grants under this subtitle, the Attorney General shall consider—

(1) the ability of the applicant to provide the stated services;

(2) the level of juvenile crime, violence, and drug use in the community; and

(3) to the extent practicable, achievement of an equitable geographic distribution of the grant awards.

(b) DIVERSITY.—The Attorney General shall allot not less than 0.75 percent of the total amount made available each fiscal year to carry out this subtitle to applicants in each State from which applicants have applied for grants under this subtitle.

(c) INDIAN TRIBES.—The Attorney General shall allocate 0.75 percent of amounts made available under this subtitle for grants to Indian tribes.

SEC. 225. USE OF GRANT AMOUNTS.

Each grant made under this subtitle shall be used—

(1) to establish juvenile gun courts for adjudication of juvenile firearm offenders;

(2) to grant prosecutorial discretion to try, in a gun court, cases involving the illegal possession, use, transfer, or threatened use of a firearm by a juvenile;

(3) to require prosecutors to transfer such cases to the gun court calendar not later than 30 days after arraignment;

(4) to require that gun court trials commence not later than 60 days after transfer to the gun court;

(5) to facilitate innovative and individualized sentencing (such as incarceration, house arrest, victim impact classes, electronic monitoring, restitution, and gang prevention programs);

(6) to provide services in furtherance of paragraph (5);

(7) to limit grounds for continuances and grant continuances only for the shortest practicable time;

(8) to ensure that any term of probation or supervised release imposed on a firearm offender in a juvenile gun court, in addition to, or in lieu of, a term of incarceration, shall include a prohibition on firearm possession during such probation or supervised release and that violation of that prohibition shall result in, to the maximum extent permitted under State law, a term of incarceration; and

(9) to allow transfer of a case or an offender out of the gun court by agreement of the parties, subject to court approval.

SEC. 226. GRANT LIMITATIONS.

Not more than 5 percent of the amounts made available to the Attorney General or a grant recipient under this subtitle may be used for administrative purposes.

SEC. 227. FEDERAL SHARE.

(a) IN GENERAL.—Subject to subsections (b) and (c), the Federal share of a grant made under this subtitle may not exceed 90 percent of the total cost of the program or programs of the grant recipient that are funded by that grant for the fiscal year for which the program receives assistance under this subtitle.

(b) WAIVER.—The Attorney General may waive, in whole or in part, the requirements of subsection (a).

(c) IN-KIND CONTRIBUTIONS.—For purposes of subsection (a), in-kind contributions may constitute any portion of the non-Federal share of a grant under this subtitle.

(d) CONTINUED AVAILABILITY OF GRANT AMOUNTS.—Any amount provided to a grant recipient under this subtitle shall remain available until expended.

SEC. 228. REPORT AND EVALUATION.

(a) REPORT TO THE ATTORNEY GENERAL.—Not later than March 1, 1998, and March 1 of each year thereafter, each grant recipient under this subtitle shall submit to the Attorney General a report that describes, for the year to which the report relates, any progress achieved in carrying out the comprehensive plan of the grant recipient.

(b) EVALUATION AND REPORT TO CONGRESS.—Not later than October 1, 1998, and October 1 of each year thereafter, the Attorney General shall submit to the Congress an evaluation and report that contains a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by grant recipients under this subtitle, and an evaluation of programs established by grant recipients under this subtitle.

(c) CRITERIA.—In assessing the effectiveness of the programs established and operated by grant recipients pursuant to this subtitle, the Attorney General shall consider—

(1) the number of juveniles tried in gun court sessions in the jurisdiction of the grant recipient;

(2) a comparison of the amount of time between the filing of charges and ultimate disposition in gun court and nongun court cases;

(3) the recidivism rates of juvenile offenders tried in gun court sessions in the jurisdiction of the grant recipient in comparison to those tried outside of drug courts;

(4) changes in the amount of gun-related and gang-related crime in the jurisdiction of the grant recipient; and

(5) the quantity of firearms and ammunition recovered in gun court cases in the jurisdiction of the grant recipient.

(d) DOCUMENTS AND INFORMATION.—Each grant recipient under this subtitle shall provide the Attorney General with all documents and information that the Attorney General determines to be necessary to conduct an evaluation of the effectiveness of programs funded under this subtitle.

SEC. 229. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle from the Violent Crime Reduction Trust Fund—

(1) such sums as may be necessary for each of the fiscal years 1998, 1999, and 2000;

(2) $50,000,000 for fiscal year 2001; and

(3) $50,000,000 for fiscal year 2002.

Subtitle D—Gang Violence Reduction

PART 1—ENHANCED PENALTIES FOR GANG-RELATED ACTIVITIES

SEC. 241. GANG FRANCHISING.

(a) IN GENERAL.—Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"SEC. 522. INTERSTATE FRANCHISING OF CRIMINAL STREET GANGS.

"(a) PROHIBITED ACT.—Whoever travels in interstate or foreign commerce, or causes another to do so, to recruit, solicit, induce, command, or cause to create, or attempt to create a franchise of a criminal street gang shall be punished in accordance with subsection (c).

"(b) DEFINITIONS.—

"(1) CRIMINAL STREET GANG.—The term 'criminal street gang' has the meaning given that term in section 521 of title 18, United States Code.

"(2) FRANCHISE.—The term 'franchise' means an organized group of individuals related by name, moniker, or other identifier, that engages in coordinated violent crime or drug trafficking activities in interstate or foreign commerce with a criminal street gang in another State.

"(c) PENALTIES.—A person who violates subsection (a) shall be imprisoned for not more than 10 years, fined under this title, or both.

"(d) SENTENCING ENHANCEMENT.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate enhancement for the recruitment of minors in furtherance of the creation of a criminal street gang franchise.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"522. Interstate franchising of criminal street gangs.".

SEC. 242. GANG FRANCHISING AS A RICO PREDICATE.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(F)"; and

(2) by inserting ", or (G) an offense under section 522 of this title" before the semicolon at the end.

SEC. 243. INCREASE IN OFFENSE LEVEL FOR PARTICIPATION IN CRIME AS GANG MEMBER.

(a) DEFINITION OF CRIMINAL STREET GANG.—In this section, the term "criminal street gang" has the same meaning as in section 521(a) of title 18, United States Code.

(b) SENTENCING ENHANCEMENT.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate enhancement with respect to any offense committed in connection with, or in furtherance of, the activities of a criminal street gang if the defendant is a member of the criminal street gang at the time of the offense.

(c) CONSISTENCY.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishment for substantially the same offense.

SEC. 244. INCREASING THE PENALTY FOR USING PHYSICAL FORCE TO TAMPER WITH WITNESSES, VICTIMS, OR INFORMANTS.

Section 1512 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "as provided in paragraph (2)" and inserting "as provided in paragraph (3)";

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following:

"(2) Whoever uses physical force or the threat of physical force, or attempts to do so, with intent to—

"(A) influence, delay, or prevent the testimony of any person in an official proceeding;

"(B) cause or induce any person to—

"(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

"(ii) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

"(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; and

"(iv) be absent from an official proceeding to which such person has been summoned by legal process; or

"(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).''; and

(D) in paragraph (3)(B), as redesignated, by striking ''in the case of'' and all that follows before the period and inserting ''an attempt to murder, the use of physical force, the threat of physical force, or an attempt to do so, imprisonment for not more than 20 years''; and

(2) in subsection (b), by striking ''or physical force''.

SEC. 245. POSSESSION OF FIREARMS IN RELATION TO COUNTS OF VIOLENCE OR DRUG TRAFFICKING CRIMES.

(a) IN GENERAL.—Sections 924(c)(1) and 929(a)(1) of title 18, United States Code, are each amended—

(1) by striking ''in relation to'' and inserting ''in close proximity to''; and

(2) by striking ''uses or carries'' and inserting ''possesses''.

(b) AMENDMENT OF FEDERAL SENTENCING GUIDELINES.—

(1) DEFINITIONS.—In this subsection, the terms ''crime of violence'' and ''drug trafficking crime'' have the same meanings as in section 924(c) of title 18, United States Code.

(2) SENTENCING ENHANCEMENT.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate sentence enhancement with respect to any defendant who discharges a firearm during or in close proximity to any crime of violence or any drug trafficking crime.

(3) CONSISTENCY.—In carrying out this subsection, the United States Sentencing Commission shall—

(A) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(B) avoid duplicative punishment for substantially the same offense.

SEC. 246. INCREASED PENALTY FOR TRANSFERRING A FIREARM TO A MINOR FOR USE IN A CRIME.

Section 924(h) of title 18, United States Code, is amended by inserting ''except if the transferee is a person who is less than 18 years of age, not more than 15 years,'' before ''fined in accordance with this title, or both''.

SEC. 247. ELIMINATION OF STATUTE OF LIMITATIONS FOR MURDER.

(a) IN GENERAL.—Section 3281 of title 18, United States Code, is amended to read as follows:

''§ 3281. Capital offenses and Class A felonies involving murder

''An indictment for any offense punishable by death or an indictment or information for a Class A felony involving murder (as defined in section 1111 or as defined under applicable State law in the case of an offense under section 1963(a) involving racketeering activity described in section 1961(1)) may be found at any time without limitation.''.

(b) APPLICABILITY.—The amendment made by subsection (a) applies to any offense for which the applicable statute of limitations had not run as of the date of enactment of this Act.

SEC. 248. EXTENSION OF STATUTE OF LIMITATIONS FOR VIOLENT AND DRUG TRAFFICKING CRIMES.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3295. Class A violent and drug trafficking offenses

''Except as provided in section 3281, no person shall be prosecuted, tried, or punished for a Class A felony that is a crime of violence or a drug trafficking crime (as that term is defined in section 924(c)) unless the indictment is returned or the information is filed within 10 years after the commission of the offense.''.

(b) APPLICABILITY.—The amendment made by subsection (a) applies to any offense for which the applicable statute of limitations had not run as of the date of enactment of this Act.

(c) CONFORMING AMENDMENTS.—The chapter analysis for chapter 213 of title 18, United States Code, is amended—

(1) in the item relating to section 3281, by inserting ''and Class A felonies involving murder'' before the period; and

(2) by adding at the end the following:

''3295. Class A violent and drug trafficking offenses.''.

PART 2—GANG PARAPHERNALIA

SEC. 251. ENHANCING LAW ENFORCEMENT ACCESS TO CLONE NUMERIC PAGERS.

(a) AMENDMENT TO CHAPTER 206.—Chapter 206 of title 18, United States Code, is amended—

(1) in the chapter heading, by striking ''AND TRAP AND TRACE DEVICES'' and inserting: ''TRAP AND TRACE DEVICES, AND CLONE NUMERIC PAGERS'';

(2) in the chapter analysis—

(A) by striking ''and trap and trace device'' each place that term appears and inserting ''trap and trace device, and clone pager''; and

(B) by striking ''or a trap and trace device'' each place that term appears and inserting '', a trap and trace device, or a clone pager'';

(3) in section 3121—

(A) in the section heading, by striking **''AND TRAP AND TRACE DEVICE''** and inserting **'', TRAP AND TRACE DEVICE, AND CLONE PAGER''**; and

(B) by striking ''or a trap and trace device'' each place that term appears and inserting '', a trap and trace device, or a clone pager'';

(4) in section 3122—

(A) in the section heading, by striking **''OR A TRAP AND TRACE DEVICE''** and inserting **'', A TRAP AND TRACE DEVICE, OR A CLONE PAGER''**; and

(B) by striking ''or a trap and trace device'' each place that term appears and inserting '', a trap and trace device, or a clone pager'';

(5) in section 3123—

(A) in the section heading, by striking **''OR A TRAP AND TRACE DEVICE''** and inserting **'', A TRAP AND TRACE DEVICE, OR A CLONE PAGER''**;

(B) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court, or of a clone pager the service provider for which is within the jurisdiction of the court, if the court finds, upon a showing by certification of the attorney for the Government or the State law enforcement or investigative officer, that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.'';

(C) in subsection (b)—

(i) in paragraph (1)—

(I) in subparagraph (A), by inserting before the semicolon the following: '', or in the case of a clone pager, the identity, if known, of the person to whom is leased, or who is the subscriber of the paging device communications to which will be intercepted by the clone pager''; and

(II) in subparagraph (C), by inserting before the semicolon the following: '', or in the case of a clone pager, the number of the paging device to which the clone pager is identically programmed''; and

(ii) in paragraph (2), by striking ''or trap and trace device'' and inserting ''trap and trace device, or a clone pager''; and

(D) in subsection (c), by striking ''or trap and trace device'' and inserting ''trap and trace device, or a clone pager''; and

(E) in subsection (d)—

(i) in the subsection heading, by striking ''OR TRAP AND TRACE DEVICE'' and inserting '', TRAP AND TRACE DEVICE, OR CLONE PAGER''; and

(ii) in paragraph (2), by inserting ''or the paging device, communications to which will be intercepted by the clone pager,'' after ''attached,'';

(6) in section 3124—

(A) in the section heading, by striking **''OR A TRAP AND TRACE DEVICE''** and inserting **'', A TRAP AND TRACE DEVICE, OR A CLONE PAGER''**;

(B) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(C) by inserting after subsection (b) the following:

''(c) CLONE PAGER.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to acquire and use a clone pager under this chapter, a Federal court may order, in accordance with section 3123(b)(2), a provider of a paging service or other person to furnish to such investigative or law enforcement officer, all information, facilities, and technical assistance necessary to accomplish the operation and use of a clone pager unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the programming and use is to take place.'';

(7) in section 3125—

(A) in the section heading, by striking **''AND TRAP AND TRACE DEVICE''** and inserting **'', TRAP AND TRACE DEVICE, AND CLONE PAGER''**; and

(B) in subsection (a)—

(i) by striking ''or trap and trace device'' and inserting '', a trap and trace device, or a clone pager'';

(ii) by striking the quotation marks at the end; and

(iii) by striking ''or trap and trace device'' each place that term appears and inserting '', trap and trace device, or clone pager'';

(8) in section 3126—

(A) in the section heading, by striking **''AND TRAP AND TRACE DEVICES''** and inserting **'', TRAP AND TRACE DEVICES, AND CLONE PAGERS''**; and

(B) by inserting ''or clone pagers'' after ''devices''; and

(9) in section 3127—

(A) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(B) by inserting after paragraph (4) the following:

''(5) the term 'clone pager' means a numeric display device that receives transmissions intended for another numeric display paging device.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 2511(2)(H) of title 18, United States Code, is amended by striking clause (i) and inserting the following:

''(i) to use a pen register, a trap and trace device, or a clone pager (as those terms are

defined for the purposes of chapter 206 (relating to pen registers, trap and trace devices, and clone pagers) of this title); or".

(2) Section 2510(12) of title 18, United States Code, is amended—

(A) in subparagraph (B), by striking "or" at the end; and

(B) by inserting after subparagraph (C) the following: "or

"(D) any transmission made through a clone pager (as defined in section 3127(5) of this title).".

SEC. 252. PROHIBITIONS RELATING TO BODY ARMOR.

(a) DEFINITIONS.—In this section—

(1) the term "body armor" means any product sold or offered for sale as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment; and

(2) the term "law enforcement officer" means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(b) SENTENCING ENHANCEMENT.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate sentencing enhancement for any offense in which the defendant used body armor.

(c) CONSISTENCY.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishment for substantially the same offense.

(d) APPLICABILITY.—No Federal sentencing guideline amendment made under this section shall apply if the Federal crime in which the body armor is used constitutes a violation of, attempted violation of, or conspiracy to violate the civil rights of a person by a law enforcement officer acting under color of the authority of such law enforcement officer.

SEC. 253. PROHIBITIONS RELATING TO LASER SIGHTING DEVICES.

(a) DEFINITIONS.—In this section—

(1) the term "firearm" has the same meaning as in section 921 of title 18, United States Code; and

(2) the term "laser-sighting device" includes any device designed to be attached to a firearm that uses technology, such as laser sighting, red-dot-sighting, night sighting, telescopic sighting, or other similarly effective technology, in order to enhance target acquisition.

(b) SENTENCING ENHANCEMENT.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate sentencing enhancement for any offense in which the defendant—

(1) possessed a firearm equipped with a laser-sighting device; or

(2) possessed a firearm and the defendant (or another person at the scene of the crime who was aiding in the commission of the crime) possessed a laser-sighting device (capable of being readily attached to the firearm).

(c) CONSISTENCY.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishment for substantially the same offense.

Subtitle E—Rights of Victims in State Juvenile Courts

SEC. 261. STATE GUIDELINES.

(a) IN GENERAL.—

(1) STATE GUIDELINES.—The Attorney General shall establish guidelines for State programs to require—

(A) prior to disposition of adjudicated juvenile delinquents, that victims, or in appropriate cases their official representatives, shall be provided the opportunity to make a statement to the court in person or to present any information in relation to the disposition;

(B) that victims of the juvenile adjudicated delinquent be given notice of the disposition; and

(C) that restitution to victims may be ordered as part of the disposition of adjudicated juvenile delinquents.

(2) DEFINITION OF VICTIM.—In this section, the term "victim" means any individual against whom a crime of violence has been committed that has as an element the use, attempted use, or threatened use of physical force against the person or property of another or by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(b) NO CAUSE OF ACTION CREATED.—Nothing in this section shall be construed to create a cause of action against any State or any agency or employee thereof.

(c) COMPLIANCE.—

(1) COMPLIANCE.—Not later than 3 years after the date of enactment of this Act, each State shall implement this section, except that the Attorney General may grant an additional 2 years to a State if the Attorney General determines that the State is making good faith efforts to implement this section.

(2) INELIGIBILITY FOR AMOUNTS.—

(A) IN GENERAL.—Beginning on the expiration of the period described in paragraph (1) (or such extended period as the Attorney General may provide with respect to a State under that paragraph), during each fiscal year that any State fails to comply with this section, that State shall receive—

(i) not more than 90 percent of the amount that the State would otherwise receive under subtitle C of this title; and

(ii) not more than 90 percent of the amount that the State would otherwise receive under section 362 of title III.

(B) REALLOCATION OF AMOUNTS.—In each fiscal year, any amounts that are not allocated to States described in subparagraph (A) shall be allocated to otherwise eligible States that are in compliance with this section on a pro rata basis.

TITLE III—PREVENTION AND TREATMENT OF YOUTH DRUG ABUSE AND ADDICTION

Subtitle A—Protecting Youth From Dangerous Drugs

SEC. 301. RESCHEDULING OF "CLUB" DRUGS.

Notwithstanding section 201 or subsection (a) or (b) of section 202 of the Controlled Substances Act (21 U.S.C. 811, 812(a), 812(b)) respecting the scheduling of controlled substances, the Attorney General shall, by order add ketamine hydrochloride to schedule III of such Act.

Subtitle B—Development of Medicines for the Treatment of Drug Addiction

PART 1—PHARMACOTHERAPY RESEARCH

SEC. 321. REAUTHORIZATION FOR MEDICATION DEVELOPMENT PROGRAM.

Section 464P(e) of the Public Health Service Act (42 U.S.C. 285o–4(e)) is amended to read:

"(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002 of which the following amount may be appropriated from the Violent Crime Reduction Trust Fund:

"(1) $100,000,000 for fiscal year 2001; and

"(2) $100,000,000 for fiscal year 2002.".

PART 2—PATENT PROTECTIONS FOR PHARMACOTHERAPIES

SEC. 331. RECOMMENDATION FOR INVESTIGATION OF DRUGS.

Section 525(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aa(a)) is amended—

(1) by striking "States" each place it appears and inserting "States, or for treatment of an addiction to illegal drugs"; and

(2) by striking "such disease or condition" each place it appears and inserting "such disease, condition, or treatment of such addiction".

SEC. 332. DESIGNATION OF DRUGS.

Section 526(a) of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 360bb(a)) is amended—

(1) in paragraph (1)—

(A) by inserting before the period in the first sentence the following: "or for treatment of an addiction to illegal drugs";

(B) in the third sentence, by striking "rare disease or condition" and inserting "rare disease or condition, or for treatment of an addiction to illegal drugs,"; and

(C) by striking "such disease or condition" each place it appears and inserting "such disease, condition, or treatment of such addiction"; and

(2) in paragraph (2)—

(A) by striking "(2) For" and inserting "(2)(A) For";

(B) by striking "(A) affects" and inserting "(i) affects";

(C) by striking "(B) affects" and inserting "(ii) affects"; and

(D) by adding at the end the following:

"(B) TREATMENT OF AN ADDICTION TO ILLEGAL DRUGS.—The term 'treatment of an addiction to illegal drugs' means any pharmacological agent or medication that—

"(i) reduces the craving for an illegal drug for an individual who—

"(I) habitually uses the illegal drug in a manner that endangers the public health, safety, or welfare; or

"(II) is so addicted to the use of the illegal drug that the individual is not able to control the addiction through the exercise of self-control;

"(ii) blocks the behavioral and physiological effects of an illegal drug for an individual described in clause (i);

"(iii) safely serves as a replacement therapy for the treatment of drug abuse for an individual described in clause (i);

"(iv) moderates or eliminates the process of withdrawal for an individual described in clause (i);

"(v) blocks or reverses the toxic effect of an illegal drug on an individual described in clause (i); or

"(vi) prevents, where possible, the initiation of drug abuse in individuals at high risk.

"(C) ILLEGAL DRUG.—The term 'illegal drug' means a controlled substance identified under schedules I, II, III, IV, and V in section 202(c) of the Controlled Substance Act (21 U.S.C. 812(c)).".

SEC. 333. PROTECTION FOR DRUGS.

Section 527 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360cc) is amended—

(1) by striking "rare disease or condition" each place it appears and inserting "rare disease or condition or for treatment of an addiction to illegal drugs";

(2) by striking "such disease or condition" each place it appears and inserting "such disease, condition, or treatment of the addiction"; and

(3) in subsection (b)(1), by striking "the disease or condition" and inserting "the disease, condition, or addiction".

SEC. 334. OPEN PROTOCOLS FOR INVESTIGATIONS OF DRUGS.

Section 528 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360dd) is amended—

(1) by striking "rare disease or condition" and inserting "rare disease or condition or for treatment of an addiction to illegal drugs"; and

(2) by striking "the disease or condition" each place it appears and inserting "the disease, condition, or addiction".

PART 3—ENCOURAGING PRIVATE SECTOR DEVELOPMENT OF PHARMACO THERAPIES

SEC. 341. DEVELOPMENT, MANUFACTURE, AND PROCUREMENT OF DRUGS FOR THE TREATMENT OF ADDICTION TO ILLEGAL DRUGS.

Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by adding at the end the following:

"Subchapter D—Drugs for Cocaine and Heroin Addictions

"SEC. 551. CRITERIA FOR AN ACCEPTABLE DRUG TREATMENT FOR COCAINE AND HEROIN ADDICTIONS.

"(a) IN GENERAL.—Subject to subsections (b) and (c), the Secretary shall, through the Institute of Medicine of the National Academy of Sciences, establish criteria for an acceptable drug for the treatment of an addiction to cocaine and for an acceptable drug for the treatment of an addiction to heroin. The criteria shall be used by the Secretary in making a contract, or entering to a licensing agreement, under section 552.

"(b) REQUIREMENTS.—The criteria established under subsection (a) for a drug shall include requirements—

"(1) that the application to use the drug for the treatment of addiction to cocaine or heroin was filed and approved by the Secretary under this Act after the date of enactment of this section;

"(2) that a performance based test on the drug—

"(A) has been conducted through the use of a randomly selected test group that received the drug as a treatment and a randomly selected control group that received a placebo; and

"(B) has compared the long term differences in the addiction levels of control group participants and test group participants;

"(3) that the performance based test conducted under paragraph (2) demonstrates that the drug is effective through evidence that—

"(A) a significant number of the participants in the test who have an addiction to cocaine or heroin are willing to take the drug for the addiction;

"(B) a significant number of the participants in the test who have an addiction to cocaine or heroin and who were provided the drug for the addiction during the test are willing to continue taking the drug as long as necessary for the treatment of the addiction; and

"(C) a significant number of the participants in the test who were provided the drug for the period of time required for the treatment of the addiction refrained from the use of cocaine or heroin for a period of 3 years after the date of the initial administration of the drug on the participants; and

"(4) that the drug shall have a reasonable cost of production.

"(c) REVIEW AND PUBLICATION OF CRITERIA.—The criteria established under subsection (a) shall, prior to the publication and application of such criteria, be submitted for review to the Committee on the Judiciary and the Committee on Economic and Educational Opportunities of the House of Representatives, and the Committee on the Judiciary and the Committee on Labor and Human Resources of the Senate. Not later than 90 days after notifying each of the committees, the Secretary shall publish the criteria in the Federal Register.

"SEC. 552. PURCHASE OF PATENT RIGHTS FOR DRUG DEVELOPMENT.

"(a) APPLICATION.—

"(1) IN GENERAL.—The patent owner of a drug to treat an addiction to cocaine or heroin, may submit an application to the Secretary—

"(A) to enter into a contract with the Secretary to sell to the Secretary the patent rights of the owner relating to the drug; or

"(B) in the case in which the drug is approved by the Secretary for more than 1 indication, to enter into an exclusive licensing agreement with the Secretary for the manufacture and distribution of the drug to treat an addiction to cocaine or heroin.

"(2) REQUIREMENTS.—An application described in paragraph (1) shall be submitted at such time and in such manner, and accompanied by such information, as the Secretary may require.

"(b) CONTRACT AND LICENSING AGREEMENT.—

"(1) REQUIREMENTS.—The Secretary may enter into a contract or a licensing agreement with a patent owner who has submitted an application in accordance with (a) if the drug covered under the contract or licensing agreement meets the criteria established by the Secretary under section 551(a).

"(2) SPECIAL RULE.—The Secretary may enter into—

"(A) not more than 1 contract or exclusive licensing agreement relating to a drug for the treatment of an addiction to cocaine; and

"(B) not more than 1 contract or licensing agreement relating to a drug for the treatment of an addiction to heroin.

"(3) COVERAGE.—A contract or licensing agreement described in subparagraph (A) or (B) of paragraph (2) shall cover not more than 1 drug.

"(4) PURCHASE AMOUNT.—Subject to amounts provided in advance in appropriations Acts—

"(A) the amount to be paid to a patent owner who has entered into a contract or licensing agreement under this subsection relating to a drug to treat an addiction to cocaine shall not exceed $100,000,000; and

"(B) the amount to be paid to a patent owner who has entered into a contract or licensing agreement under this subsection relating to a drug to treat an addiction to heroin shall not exceed $50,000,000.

"(c) TRANSFER OF RIGHTS UNDER CONTRACTS AND LICENSING AGREEMENT.—

"(1) CONTRACTS.—A contract under subsection (b)(1) to purchase the patent rights relating to a drug to treat cocaine or heroin addiction shall transfer to the Secretary—

"(A) the exclusive right to make, use, or sell the patented drug within the United States for the term of the patent;

"(B) any foreign patent rights held by the patent owner;

"(C) any patent rights relating to the process of manufacturing the drug; and

"(D) any trade secret or confidential business information relating to the development of the drug, process for manufacturing the drug, and therapeutic effects of the drug.

"(2) LICENSING AGREEMENTS.—A licensing agreement under subsection (b)(1) to purchase an exclusive license relating to manufacture and distribution of a drug to treat an addiction to cocaine or heroin shall transfer to the Secretary—

"(A) the exclusive right to make, use, or sell the patented drug for the purpose of treating an addiction to cocaine or heroin within the United States for the term of the patent;

"(B) the right to use any patented processes relating to manufacturing the drug; and

"(C) any trade secret or confidential business information relating to the development of the drug, process for manufacturing the drug, and therapeutic effects of the drug relating to use of the drug to treat an addiction to cocaine or heroin.

"SEC. 553. PLAN FOR MANUFACTURE AND DEVELOPMENT.

"(a) IN GENERAL.—Not later than 90 days after the date on which the Secretary purchases the patent rights of a patent owner, or enters into a licensing agreement with a patent owner, relating to a drug under section 551, the Secretary shall develop a plan for the manufacture and distribution of the drug.

"(b) PLAN REQUIREMENTS.—The plan shall set forth—

"(1) procedures for the Secretary to enter into licensing agreements with private entities for the manufacture and the distribution of the drug;

"(2) procedures for making the drug available to nonprofit entities and private entities to use in the treatment of a cocaine or heroin addiction;

"(3) a system to establish the sale price for the drug; and

"(4) policies and procedures with respect to the use of Federal funds by State and local governments or nonprofit entities to purchase the drug from the Secretary.

"(c) APPLICABILITY OF PROCUREMENT AND LICENSING LAWS.—The procurement and licensing laws of the United States shall be applicable to procurements and licenses covered under the plan described in subsection (a).

"(d) REVIEW OF PLAN.—

"(1) IN GENERAL.—Upon completion of the plan under subsection (a), the Secretary shall notify the Committee on the Judiciary and the Committee on Economic and Educational Opportunities of the House of Representatives, and the Committee on the Judiciary and the Committee on Labor and Human Resources of the Senate, of the development of the plan and publish the plan in the Federal Register. The Secretary shall provide an opportunity for public comment on the plan for a period of not more than 30 days after the date of the publication of the plan in the Federal Register.

"(2) FINAL PLAN.—Not later than 60 days after the date of the expiration of the comment period described in paragraph (1), the

Secretary shall publish in the Federal Register a final plan. The implementation of the plan shall begin on the date of the final publication of the plan.

"(e) CONSTRUCTION.—The development, publication, or implementation of the plan, or any other agency action with respect to the plan, shall not be considered agency action subject to judicial review.

"(f) REGULATIONS.—The Secretary may promulgate regulations to carry out this section.

"SEC. 554. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out this subchapter, such sums as may be necessary in each of the fiscal years 1998 through 2000.".

Subtitle C—Prevention and Treatment Programs

PART 1—COMPREHENSIVE DRUG EDUCATION

SEC. 351. EXTENSION OF SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES PROGRAM.

Title IV of the Elementary and Secondary Education Act (20 U.S.C. 7104) is amended to read as follows:

"TITLE IV—AUTHORIZATIONS

"SEC. 4001. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated for State grants under subpart 1 and national programs under subpart 2, $655,000,000 for fiscal years 1998 through 2000, and $955,000,000 for fiscal years 2001 through 2002, of which the following amounts may be appropriated from the Violent Crime Reduction Trust Fund:

"(1) $300,000,000 for fiscal year 2001; and

"(2) $300,000,000 for fiscal year 2002.".

PART 2—DRUG COURTS

SEC. 361. REAUTHORIZATION OF DRUG COURTS PROGRAM.

Section 1001(a)(20) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(20)) is amended—

(1) in subparagraph (E), by striking "and" at the end;

(2) in subparagraph (F), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(G) $400,000,000 for fiscal year 2001; and

"(H) $400,000,000 for fiscal year 2002.".

SEC. 362. JUVENILE DRUG COURTS.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part Y as part Z;

(2) by redesignating section 2501 as 2601; and

(3) by inserting after part X the following:

"PART Y—JUVENILE DRUG COURTS

"SEC. 2501. GRANT AUTHORITY.

"(a) APPROPRIATE DRUG COURT PROGRAMS.—The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribes to establish programs that—

"(1) involve continuous early judicial supervision over juvenile offenders, other than violent juvenile offenders with substance abuse, or substance abuse-related problems; and

"(2) integrate administration of other sanctions and services, including—

"(A) mandatory periodic testing for the use of controlled substances or other addictive substances during any period of supervised release or probation for each participant;

"(B) substance abuse treatment for each participant;

"(C) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress;

"(D) programmatic, offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support service for each participant who requires such services;

"(E) payment by the offender of treatment costs, to the extent practicable, such as costs for urinalysis or counseling; or

"(F) payment by the offender of restitution, to the extent practicable, to either a victim of the offense at issue or to a restitution or similar victim support fund.

"(b) CONTINUED AVAILABILITY OF GRANT FUNDS.—Amounts made available under this part shall remain available until expended.

"SEC. 2502. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.

"The Attorney General shall issue regulations and guidelines to ensure that the programs authorized in this part do not permit participation by violent offenders.

"SEC. 2503. DEFINITION.

"In this part, the term 'violent offender' means an individual charged with an offense during the course of which—

"(1) the individual carried, possessed, or used a firearm or dangerous weapon;

"(2) the death of or serious bodily injury of another person occurred as a direct result of the commission of such offense; or

"(3) the individual used force against the person of another.

"SEC. 2504. ADMINISTRATION.

"(a) REGULATORY AUTHORITY.—the Attorney General shall issue any regulations and guidelines necessary to carry out this part.

"(b) APPLICATIONS.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this part shall—

"(1) include a long term strategy and detailed implementation plan;

"(2) explain the inability of the applicant to fund the program adequately without Federal assistance;

"(3) certify that the Federal support provided will be used to supplement, and not supplant, State, tribal, or local sources of funding that would otherwise be available;

"(4) identify related governmental or community initiatives that complement or will be coordinated with the proposal;

"(5) certify that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

"(6) certify that participating offenders will be supervised by one or more designated judges with responsibility for the drug court program;

"(7) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

"(8) describe the methodology that will be used in evaluating the program.

"SEC. 2505. APPLICATIONS.

"To request funds under this part, the chief executive or the chief justice of a State, or the chief executive or chief judge of a unit of local government or Indian tribe shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

"SEC. 2506. FEDERAL SHARE.

"(a) IN GENERAL.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the program described in the application submitted under section 2505 for the fiscal year for which the program receives assistance under this part.

"(b) WAIVER.—The Attorney General may waive, in whole or in part, the requirement of a matching contribution under subsection (a).

"(c) IN-KIND CONTRIBUTIONS.—In-kind contributions may constitute a portion of the non-Federal share of a grant under this part.

"SEC. 2507. DISTRIBUTION OF FUNDS.

"(a) GEOGRAPHICAL DISTRIBUTION.—The Attorney General shall ensure that, to the extent practicable, an equitable geographic distribution of grant awards is made.

"(b) INDIAN TRIBES.—The Attorney General shall allocate 0.75 percent of amounts made available under this subtitle for grants to Indian tribes.

"SEC. 2508. REPORT.

"A State, Indian tribe, or unit of local government that receives funds under this part during a fiscal year shall submit to the Attorney General, in March of the year following receipt of a grant under this part, a report regarding the effectiveness of programs established pursuant to this part.

"SEC. 2509. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

"(a) TECHNICAL ASSISTANCE AND TRAINING.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

"(b) EVALUATIONS.—In addition to any evaluation requirements that may be prescribed for grantees, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this part.

"(c) ADMINISTRATION.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.

"SEC. 2510. UNAWARDED FUNDS.

"The Attorney General may reallocate any grant funds that are not awarded for juvenile drug courts under this part for use for other juvenile delinquency and crime prevention initiatives.

"SEC. 2511. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this part from the Violent Crime Reduction Trust Fund—

"(1) such sums as may be necessary for each of the fiscal years 1998, 1999, and 2000;

"(2) $50,000,000 for fiscal year 2001; and

"(3) $50,000,000 for fiscal year 2002.".

PART 3—DRUG TREATMENT

SEC. 371. DRUG TREATMENT FOR JUVENILES.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following:

"PART G—RESIDENTIAL TREATMENT PROGRAMS FOR JUVENILES

"SEC. 575. RESIDENTIAL TREATMENT PROGRAMS FOR JUVENILES.

"(a) IN GENERAL.—The Director of the Center for Substance Abuse Treatment shall award grants to, or enter into cooperative agreements or contracts, with public and nonprofit private entities for the purpose of providing treatment to juveniles for substance abuse through programs in which,

during the course of receiving such treatment the juveniles reside in facilities made available by the programs.

"(b) AVAILABILITY OF SERVICES FOR EACH PARTICIPANT.—A funding agreement for an award under subsection (a) for an applicant is that, in the program operated pursuant to such subsection—

"(1) treatment services will be available through the applicant, either directly or through agreements with other public or nonprofit private entities; and

"(2) the services will be made available to each person admitted to the program.

"(c) INDIVIDUALIZED PLAN OF SERVICES.—A funding agreement for an award under subsection (a) for an applicant is that—

"(1) in providing authorized services for an eligible person pursuant to such subsection, the applicant will, in consultation with the juvenile and, if appropriate the parent or guardian of the juvenile, prepare an individualized plan for the provision to the juvenile or young adult of the services; and

"(2) treatment services under the plan will include—

"(A) individual, group, and family counseling, as appropriate, regarding substance abuse; and

"(B) followup services to assist the juvenile or young adult in preventing a relapse into such abuse.

"(d) ELIGIBLE SUPPLEMENTAL SERVICES.—Grants under subsection (a) may be used to provide an eligible juvenile, the following services:

"(1) HOSPITAL REFERRALS.—Referrals for necessary hospital services.

"(2) HIV AND AIDS COUNSELING.—Counseling on the human immunodeficiency virus and on acquired immune deficiency syndrome.

"(3) DOMESTIC VIOLENCE AND SEXUAL ABUSE COUNSELING.—Counseling on domestic violence and sexual abuse.

"(4) PREPARATION FOR REENTRY INTO SOCIETY.—Planning for and counseling to assist reentry into society, both before and after discharge, including referrals to any public or nonprofit private entities in the community involved that provide services appropriate for the juvenile.

"(e) MINIMUM QUALIFICATIONS FOR RECEIPT OF AWARD.—

"(1) CERTIFICATION BY RELEVANT STATE AGENCY.—With respect to the principal agency of a State or Indian tribe that administers programs relating to substance abuse, the Director may award a grant to, or enter into a cooperative agreement or contract with, an applicant only if the agency or Indian tribe has certified to the Director that—

"(A) the applicant has the capacity to carry out a program described in subsection (a);

"(B) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

"(C) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved.

"(2) STATUS AS MEDICAID PROVIDER.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Director may make a grant, or enter into a cooperative agreement or contract, under subsection (a) only if, in the case of any authorized service that is available pursuant to the State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for the State involved—

"(i) the applicant for the grant, cooperative agreement, or contract will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

"(ii) the applicant will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement plan and is qualified to receive such payments.

"(B) SERVICES.—

"(i) IN GENERAL.—In the case of an entity making an agreement pursuant to subparagraph (A)(ii) regarding the provision of services, the requirement established in such subparagraph regarding a participation agreement shall be waived by the Director if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third party payor, including reimbursement under any insurance policy or under any Federal or State health benefits plan.

"(ii) VOLUNTARY DONATIONS.—A determination by the Director of whether an entity referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

"(C) MENTAL DISEASES.—

"(i) IN GENERAL.—With respect to any authorized service that is available pursuant to the State plan described in subparagraph (A), the requirements established in such subparagraph shall not apply to the provision of any such service by an institution for mental diseases to an individual who has attained 21 years of age and who has not attained 65 years of age.

"(ii) DEFINITION OF INSTITUTION FOR MENTAL DISEASES.—In this subparagraph, the term 'institution for mental diseases' has the same meaning as in section 1905(i) of the Social Security Act (42 U.S.C. 1396d(i)).

"(f) REQUIREMENTS FOR MATCHING FUNDS.—

"(1) IN GENERAL.—With respect to the costs of the program to be carried out by an applicant pursuant to subsection (a), a funding agreement for an award under such subsection is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

"(A) for the first fiscal year for which the applicant receives payments under an award under such subsection, is not less than $1 for each $9 of Federal funds provided in the award;

"(B) for any second such fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

"(C) for any subsequent such fiscal year, is not less than $1 for each $3 of Federal funds provided in the award.

"(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

"(g) OUTREACH.—A funding agreement for an award under subsection (a) for an applicant is that the applicant will provide outreach services in the community involved to identify juveniles who are engaging in substance abuse and to encourage the juveniles to undergo treatment for such abuse.

"(h) ACCESSIBILITY OF PROGRAM.—A funding agreement for an award under subsection (a) for an applicant is that the program operated pursuant to such subsection will be operated at a location that is accessible to low income juveniles.

"(i) CONTINUING EDUCATION.—A funding agreement for an award under subsection (a) is that the applicant involved will provide for continuing education in treatment services for the individuals who will provide treatment in the program to be operated by the applicant pursuant to such subsection.

"(j) IMPOSITION OF CHARGES.—A funding agreement for an award under subsection (a) for an applicant is that, if a charge is imposed for the provision of authorized services to or on behalf of an eligible juvenile, such charge—

"(1) will be made according to a schedule of charges that is made available to the public;

"(2) will be adjusted to reflect the economic condition of the juvenile involved; and

"(3) will not be imposed on any such juvenile whose family has an income of less than 185 percent of the official poverty line, as established by the Director of the Office for Management and Budget and revised by the Secretary in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)).

"(k) REPORTS TO DIRECTOR.—A funding agreement for an award under subsection (a) is that the applicant involved will submit to the Director a report—

"(1) describing the utilization and costs of services provided under the award;

"(2) specifying the number of juveniles served, and the type and costs of services provided; and

"(3) providing such other information as the Director determines to be appropriate.

"(l) REQUIREMENT OF APPLICATION.—The Director may make an award under subsection (a) only if an application for the award is submitted to the Director containing such agreements, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Director determines to be necessary to carry out this section.

"(m) EQUITABLE ALLOCATION OF AWARDS.—In making awards under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, as well as among Indian tribes, subject to the availability of qualified applicants for the awards.

"(n) DURATION OF AWARD.—

"(1) IN GENERAL.—The period during which payments are made to an entity from an award under this section may not exceed 5 years.

"(2) APPROVAL OF DIRECTOR.—The provision of payments described in paragraph (1) shall be subject to—

"(A) annual approval by the Director of the payments; and

"(B) the availability of appropriations for the fiscal year at issue to make the payments.

"(3) NO LIMITATION.—This subsection may not be construed to establish a limitation on the number of awards that may be made to an entity under this section.

"(o) EVALUATIONS; DISSEMINATION OF FINDINGS.—The Director shall, directly or through contract, provide for the conduct of evaluations of programs carried out pursuant to subsection (a). The Director shall disseminate to the States the findings made as a result of the evaluations.

"(p) REPORTS TO CONGRESS.—

"(1) INITIAL REPORT.—Not later than October 1, 1998, the Director shall submit to the Committee on the Judiciary of the House of Representatives, and to the Committee on the Judiciary of the Senate, a report describing programs carried out pursuant to this section.

"(2) PERIODIC REPORTS.—

"(A) IN GENERAL.—Not less than biennially after the date described in paragraph (1), the Director shall prepare a report describing programs carried out pursuant to this section during the preceding 2-year period, and shall submit the report to the Administrator for inclusion in the biennial report under section 501(k).

"(B) SUMMARY.—Each report under this subsection shall include a summary of any evaluations conducted under subsection (m) during the period with respect to which the report is prepared.

"(q) DEFINITIONS.—In this section:

"(1) AUTHORIZED SERVICES.—The term 'authorized services' means treatment services and supplemental services.

"(2) JUVENILE.—The term 'juvenile' means anyone 18 years of age or younger at the time that of admission to a program operated pursuant to subsection (a).

"(3) ELIGIBLE JUVENILE.—The term 'eligible juvenile' means a juvenile who has been admitted to a program operated pursuant to subsection (a).

"(4) FUNDING AGREEMENT UNDER SUBSECTION (A).—The term 'funding agreement under subsection (a)', with respect to an award under subsection (a), means that the Director may make the award only if the applicant makes the agreement involved.

"(5) TREATMENT SERVICES.—The term 'treatment services' means treatment for substance abuse, including the counseling and services described in subsection (c)(2).

"(6) SUPPLEMENTAL SERVICES.—The term 'supplemental services' means the services described in subsection (d).

"(r) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—For the purpose of carrying out this section and section 576 there is authorized to be appropriated such sums as may be necessary for fiscal years 1998, 1999, and 2000. There is authorized to be appropriated from the Violent Crime Reduction Trust Fund $300,000,000 in each of the fiscal years 2001 and 2002.

"(2) TRANSFER.—For the purpose described in paragraph (1), in addition to the amounts authorized in such paragraph to be appropriated for a fiscal year, there is authorized to be appropriated for the fiscal year from the special forfeiture fund of the Director of the Office of National Drug Control Policy such sums as may be necessary.

"(3) RULE OF CONSTRUCTION.—The amounts authorized in this subsection to be appropriated are in addition to any other amounts that are authorized to be appropriated and are available for the purpose described in paragraph (1).

"SEC. 576. OUTPATIENT TREATMENT PROGRAMS FOR JUVENILES.

"(a) GRANTS.—The Secretary of Health and Human Services, acting through the Director of the Center for Substance Abuse Treatment, shall make grants to establish projects for the outpatient treatment of substance abuse among juveniles.

"(b) PREVENTION.—Entities receiving grants under this section shall engage in activities to prevent substance abuse among juveniles.

"(c) EVALUATION.—The Secretary of Health and Human Services shall evaluate projects carried out under subsection (a) and shall disseminate to appropriate public and private entities information on effective projects.".

Subtitle D—National Drug Control Policy

SEC. 381. REAUTHORIZATION OF OFFICE OF NATIONAL DRUG CONTROL POLICY.

(a) REAUTHORIZATION.—Section 1009 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1506) is amended by striking "1997" and inserting "2002".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1011 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1508) is amended by striking "8" and inserting "13".

SEC. 382. STUDY ON EFFECTS OF CALIFORNIA AND ARIZONA DRUG INITIATIVES.

(a) DEFINITION.—In this section, the term "controlled substance" has the same meaning as in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(b) STUDY.—The Director of National Drug Control Policy, in consultation with the Attorney General and the Secretary of Health and Human Services, shall conduct a study on the effect of the 1996 voter referenda in California and Arizona concerning the medicinal use of marijuana and other controlled substances, respectively, on—

(1) marijuana usage in Arizona and California;

(2) usage of other controlled substances in Arizona and California;

(3) perceptions of youth of the dangerousness of marijuana and other controlled substances in Arizona and California;

(4) emergency room admissions for drug abuse in Arizona and California;

(5) seizures of controlled substances in Arizona and California;

(6) arrest rates for use of controlled substances in Arizona and California;

(7) arrest rates for trafficking of controlled substances in Arizona and California;

(8) conviction rates in cases concerning use of controlled substances in Arizona and California; and

(9) conviction rates in jury trials concerning use of controlled substances in Arizona and California.

(c) REPORT.—Not later than January 1, 1998, the Director of National Drug Policy, in consultation with the Attorney General and the Secretary of Health and Human Services, shall—

(1) issue a report on the results of the study under subsection (b); and

(2) submit a copy of the report to the Committees on the Judiciary of the House of Representatives and the Senate.

(d) AUTHORIZATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 and 1999.

Subtitle E—Penalty Enhancements

SEC. 391. INCREASED PENALTIES FOR USING FEDERAL PROPERTY TO GROW OR MANUFACTURE CONTROLLED SUBSTANCES.

(a) IN GENERAL.—Section 401(b)(5) of the Controlled Substances Act (21 U.S.C. 841(b)(5)) is amended to read as follows:

"(5) OFFENSES ON FEDERAL PROPERTY.—Any person who violates subsection (a) by cultivating or manufacturing a controlled substance on any property in whole or in part owned by or leased to the United States or any department or agency thereof shall be subject to twice the maximum punishment otherwise authorized for the offense.".

(b) SENTENCING ENHANCEMENT.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate enhancement to ensure that violations of section 401(b)(5) of the Controlled Substances Act are punished substantially more severely than violations that do not occur on Federal property.

(c) CONSISTENCY.—In carrying out this subsection, the United States Sentencing Commission shall—

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishment for substantially the same offense.

SEC. 392. TECHNICAL CORRECTION TO ENSURE COMPLIANCE OF FEDERAL SENTENCING GUIDELINES WITH FEDERAL LAW.

Section 994(a) of title 28, United States Code, is amended by striking "consistent with all pertinent provisions of this title and title 18, United States Code," and inserting "consistent with all pertinent provisions of Federal law".

TITLE IV—PROTECTING YOUTH FROM VIOLENT CRIME

Subtitle A—Grants for Youth Organizations

SEC. 401. GRANT PROGRAM.

The Attorney General may make grants to States, Indian tribes, and national nonprofit organizations in crime prone areas, such as Boys and Girls Clubs, Police Athletic Leagues, 4–H Clubs, D.A.R.E. America, and Kids 'N Kops programs, for the purpose of—

(1) providing constructive activities to youth during after school hours, weekends, and school vacations to prevent the criminal victimization of program participants;

(2) providing supervised activities in safe environments to youth in crime prone areas;

(3) providing antidrug education to prevent drug abuse among youth;

(4) supporting police officer training and salaries and educational materials to expand D.A.R.E. America's middle school campaign; or

(5) providing constructive activities to youth in a safe environment through parks and other public recreation areas.

SEC. 402. GRANTS TO NATIONAL ORGANIZATIONS.

(a) APPLICATIONS.—

(1) ELIGIBILITY.—In order to be eligible to receive a grant under this section, the chief operating officer of a national community-based organization shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(2) APPLICATION REQUIREMENTS.—Each application submitted in accordance with paragraph (1) shall include—

(A) a request for a grant to be used for the purposes described in this subtitle;

(B) a description of the communities to be served by the grant, including the nature of juvenile crime, violence, and drug use in the communities;

(C) written assurances that Federal funds received under this subtitle will be used to supplement and not supplant, non-Federal funds that would otherwise be available for activities funded under this subtitle;

(D) written assurances that all activities will be supervised by an appropriate number of responsible adults;

(E) a plan for assuring that program activities will take place in a secure environment that is free of crime and drugs; and

(F) any additional statistical or financial information that the Attorney General may reasonably require.

(b) GRANT AWARDS.—In awarding grants under this section, the Attorney General shall consider—

(1) the ability of the applicant to provide the stated services;

(2) the history and establishment of the applicant in providing youth activities on a nationwide basis; and

(3) the extent to which the organizations shall achieve an equitable geographic distribution of the grant awards.

SEC. 403. GRANTS TO STATES.

(a) APPLICATIONS.—

(1) IN GENERAL.—The Attorney General may make grants under this section to States for distribution to units of local government and community-based organizations for the purposes set forth in section 401.

(2) GRANTS.—To request a grant under this section, the chief executive of a State shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(3) APPLICATION REQUIREMENTS.—Each application submitted in accordance with paragraph (2) shall include—

(A) a request for a grant to be used for the purposes described in this subtitle;

(B) a description of the communities to be served by the grant, including the nature of juvenile crime, violence, and drug use in the community;

(C) written assurances that Federal funds received under this subtitle will be used to supplement and not supplant, non-Federal funds that would otherwise be available for activities funded under this subtitle;

(D) written assurances that all activities will be supervised by an appropriate number of responsible adults; and

(E) a plan for assuring that program activities will take place in a secure environment that is free of crime and drugs.

(b) GRANT AWARDS.—In awarding grants under this section, the State shall consider—

(1) the ability of the applicant to provide the stated services;

(2) the history and establishment of the applicant in the community to be served;

(3) the level of juvenile crime, violence, and drug use in the community;

(4) the extent to which structured extracurricular activities for youth are otherwise unavailable in the community;

(5) the need in the community for secure environments for youth to avoid criminal victimization and exposure to crime and illegal drugs;

(6) to the extent practicable, achievement of an equitable geographic distribution of the grant awards; and

(7) whether the applicant has an established record of providing extracurricular activities that are generally not otherwise available to youth in the community.

(c) ALLOCATION.—

(1) STATE ALLOCATIONS.—The Attorney General shall allot not less than 0.75 percent of the total amount made available each fiscal year to carry out this section to each State that has applied for a grant under this section.

(2) INDIAN TRIBES.—The Attorney General shall allot not less than 0.75 percent of the total amount made available each fiscal year to carry out this section to Indian tribes, in accordance with the criteria set forth in subsections (a) and (b).

(3) REMAINING AMOUNTS.—Of the amount remaining after the allocations under paragraphs (1) and (2), the Attorney General shall allocate to each State an amount that bears the same ratio to the total amount of remaining funds as the population of the State bears to the total population of all States.

SEC. 404. ALLOCATION; GRANT LIMITATION.

(a) ALLOCATION.—Of amounts made available to carry out this subtitle—

(1) 20 percent shall be for grants to national organizations under section 402; and

(2) 80 percent shall be for grants to States under section 403.

(b) GRANT LIMITATION.—Not more than 3 percent of the funds made available to the Attorney General or a grant recipient under this subtitle may be used for administrative purposes.

SEC. 405. REPORT AND EVALUATION.

(a) REPORT TO THE ATTORNEY GENERAL.—Not later than October 1, 1998, and October 1 of each year thereafter, each grant recipient under this subtitle shall submit to the Attorney General a report that describes, for the year to which the report relates—

(1) the activities provided;

(2) the number of youth participating;

(3) the extent to which the grant enabled the provision of activities to youth that would not otherwise be available; and

(4) any other information that the Attorney General requires for evaluating the effectiveness of the program.

(b) EVALUATION AND REPORT TO CONGRESS.—Not later than March 1, 1999, and March 1 of each year thereafter, the Attorney General shall submit to the Congress an evaluation and report that contains a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by grant recipients under this subtitle, and an evaluation of programs established by grant recipients under this subtitle.

(c) CRITERIA.—In assessing the effectiveness of the programs established and operated by grant recipients pursuant to this subtitle, the Attorney General shall consider—

(1) the number of youth served by the grant recipient;

(2) the percentage of youth participating in the program charged with acts of delinquency or crime compared to youth in the community at large;

(3) the percentage of youth participating in the program that uses drugs compared to youth in the community at large;

(4) the percentage of youth participating in the program that are victimized by acts of crime or delinquency compared to youth in the community at large; and

(5) the truancy rates of youth participating in the program compared to youth in the community at large.

(d) DOCUMENTS AND INFORMATION.—Each grant recipient under this subtitle shall provide the Attorney General with all documents and information that the Attorney General determines to be necessary to conduct an evaluation of the effectiveness of programs funded under this subtitle.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this subtitle from the Violent Crime Reduction Trust Fund—

(1) such sums as may be necessary for each of the fiscal years 1998 through 2000;

(2) for fiscal year 2001, $125,000,000; and

(3) for fiscal year 2002, $125,000,000.

(b) CONTINUED AVAILABILITY.—Amounts made available under this subtitle shall remain available until expended.

Subtitle B—"Say No to Drugs" Community Centers Act of 1997

SEC. 421. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This subtitle may be cited as the "Say No to Drugs Community Centers Act of 1997".

(b) DEFINITIONS.—For purposes of this subtitle—

(1) the term "community-based organization" means a private, locally initiated organization that—

(A) is a nonprofit organization, as that term is defined in section 103(23) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603(23)); and

(B) involves the participation, as appropriate, of members of the community and community institutions, including—

(i) business and civic leaders actively involved in providing employment and business development opportunities in the community;

(ii) educators;

(iii) religious organizations (which shall not provide any sectarian instruction or sectarian worship in connection with program activities funded under this subtitle);

(iv) law enforcement agencies; and

(v) other interested parties;

(2) the term "eligible community" means a community—

(A) identified by an eligible recipient for assistance under this subtitle; and

(B) an area that meets such criteria as the Attorney General may, by regulation, establish, including criteria relating to poverty, juvenile delinquency, and crime;

(3) the term "eligible recipient" means a community-based organization or public school that has—

(A) been approved for eligibility by the Attorney General, upon application submitted to the Attorney General in accordance with section 412(b); and

(B) demonstrated that the projects and activities it seeks to support in an eligible community involve the participation, when feasible and appropriate, of—

(i) parents, family members, and other members of the eligible community;

(ii) civic and religious organizations serving the eligible community;

(iii) school officials and teachers employed at schools located in the eligible community;

(iv) public housing resident organizations in the eligible community; and

(v) public and private nonprofit organizations and organizations serving youth that provide education, child protective services, or other human services to low income, at-risk youth and their families;

(4) the term "poverty line" means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved; and

(5) the term "public school" means a public elementary school, as defined in section 1201(i) of the Higher Education Act of 1965 (20 U.S.C. 1141(i)), and a public secondary school, as defined in section 1201(d) of that Act (42 U.S.C. 1141(d)).

SEC. 422. GRANT REQUIREMENTS.

(a) IN GENERAL.—The Attorney General may make grants to eligible recipients, which grants may be used to provide to youth living in eligible communities during after school hours or summer vacations, the following services:

(1) Rigorous drug prevention education.

(2) Drug counseling and treatment.

(3) Academic tutoring and mentoring.

(4) Activities promoting interaction between youth and law enforcement officials.

(5) Vaccinations and other basic preventive health care.

(6) Sexual abstinence education.

(7) Other activities and instruction to reduce youth violence and substance abuse.

(b) LOCATION AND USE OF AMOUNTS.—An eligible recipient that receives a grant under this subtitle—

(1) shall ensure that the stated program is carried out—

(A) when appropriate, in the facilities of a public school during nonschool hours; or

(B) in another appropriate local facility that is—

(i) in a location easily accessible to youth in the community; and

(ii) in compliance with all applicable State and local ordinances;

(2) shall use the grant amounts to provide to youth in the eligible community services and activities that include extracurricular and academic programs that are offered—

(A) after school and on weekends and holidays, during the school year; and

(B) as daily full day programs (to the extent available resources permit) or as part day programs, during the summer months;

(3) shall use not more than 5 percent of the amounts to pay for the administrative costs of the program;

(4) shall not use such amounts to provide sectarian worship or sectarian instruction; and

(5) may not use the amounts for the general operating costs of public schools.

(c) APPLICATIONS.—

(1) IN GENERAL.—Each application to become an eligible recipient shall be submitted to the Attorney General at such time, in such manner, and accompanied by such information, as the Attorney General may reasonably require.

(2) CONTENTS OF APPLICATION.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities and services to be provided through the program for which the grant is sought;

(B) contain a comprehensive plan for the program that is designed to achieve identifiable goals for youth in the eligible community;

(C) describe in detail the drug education and drug prevention programs that will be implemented;

(D) specify measurable goals and outcomes for the program that will include—

(i) reducing the percentage of youth in the eligible community that enter the juvenile justice system or become addicted to drugs;

(ii) increasing the graduation rates, school attendance, and academic success of youth in the eligible community; and

(iii) improving the skills of program participants;

(E) contain an assurance that the applicant will use grant amounts received under this subtitle to provide youth in the eligible community with activities and services consistent with subsection (g);

(F) demonstrate the manner in which the applicant will make use of the resources, expertise, and commitment of private entities in carrying out the program for which the grant is sought;

(G) include an estimate of the number of youth in the eligible community expected to be served under the program;

(H) include a description of charitable private resources, and all other resources, that will be made available to achieve the goals of the program;

(I) contain an assurance that the applicant will comply with any evaluation under section 522, any research effort authorized under Federal law, and any investigation by the Attorney General;

(J) contain an assurance that the applicant will prepare and submit to the Attorney General an annual report regarding any program conducted under this subtitle;

(K) contain an assurance that the program for which the grant is sought will, to the maximum extent practicable, incorporate services that are provided solely through non-Federal private or nonprofit sources; and

(L) contain an assurance that the applicant will maintain separate accounting records for the program for which the grant is sought.

(3) PRIORITY.—In determining eligibility under this section, the Attorney General shall give priority to applicants that submit applications that demonstrate the greatest local support for the programs they seek to support.

(d) PAYMENTS; FEDERAL SHARE; NON-FEDERAL SHARE.—

(1) PAYMENTS.—The Attorney General shall, subject to the availability of appropriations, provide to each eligible recipient the Federal share of the costs of developing and carrying out programs described in this section.

(2) FEDERAL SHARE.—The Federal share of the cost of a program under this subtitle shall be not more than—

(A) 75 percent of the total cost of the program for each of the first 2 years of the duration of a grant;

(B) 70 percent of the total cost of the program for the third year of the duration of a grant; and

(C) 60 percent of the total cost of the program for each year thereafter.

(3) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The non-Federal share of the cost of a program under this subtitle may be in cash or in kind, fairly evaluated, including plant, equipment, and services. Federal funds made available for the activity of any agency of an Indian tribal government or the Bureau of Indian Affairs on any Indian lands may be used to provide the non-Federal share of the costs of programs or projects funded under this subtitle.

(B) SPECIAL RULE.—Not less than 15 percent of the non-Federal share of the costs of a program under this subtitle shall be provided from private or nonprofit sources.

(e) PROGRAM AUTHORITY.—

(1) IN GENERAL.—

(A) ALLOCATIONS FOR STATES AND INDIAN TRIBES.—

(i) IN GENERAL.—In any fiscal year in which the total amount made available to carry out this subtitle is equal to not less than $20,000,000, from the amount made available to carry out this subtitle, the Attorney General shall allocate not less than 0.75 percent for grants under subparagraph (B) to eligible recipients in each State.

(ii) INDIAN TRIBES.—The Attorney General shall allocate 0.75 percent of amounts made available under this subtitle for grants to Indian tribes.

(B) GRANTS TO COMMUNITY-BASED ORGANIZATIONS AND PUBLIC SCHOOLS FROM ALLOCATIONS.—For each fiscal year described in subparagraph (A), the Attorney General may award grants from the appropriate State or Indian tribe allocation determined under subparagraph (A) on a competitive basis to eligible recipients to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this subtitle.

(C) REALLOCATION.—If, at the end of a fiscal year described in subparagraph (A), the Attorney General determines that amounts allocated for a particular State or Indian tribe under subparagraph (B) remain unobligated, the Attorney General shall use such amounts to award grants to eligible recipients in another State or Indian tribe to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this subtitle. In awarding such grants, the Attorney General shall consider the need to maintain geographic diversity among eligible recipients.

(D) AVAILABILITY OF AMOUNTS.—Amounts made available under this paragraph shall remain available until expended.

(2) OTHER FISCAL YEARS.—In any fiscal year in which the amount made available to carry out this subtitle is equal to or less than $20,000,000, the Attorney General may award grants on a competitive basis to eligible recipients to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this subtitle.

(3) ADMINISTRATIVE COSTS.—The Attorney General may use not more than 3 percent of the amounts made available to carry out this subtitle in any fiscal year for administrative costs, including training and technical assistance.

SEC. 423. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle from the Violent Crime Reduction Trust Fund—

(1) for fiscal year 2001, $125,000,000; and

(2) for fiscal year 2002, $125,000,000.

Subtitle C—Missing Children

SEC. 431. AMENDMENTS TO THE MISSING CHILDREN'S ASSISTANCE ACT.

(a) DUTIES AND FUNCTIONS OF THE ADMINISTRATOR.—Section 404 of the Missing Children's Assistance Act (42 U.S.C. 5773) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) in subsection (b)—

(A) by striking "(b) The Administrator" and all that follows through "shall—" and inserting the following:

"(b) TOLL-FREE HOTLINE AND NATIONAL RESOURCE CENTER.—The Administrator shall make grants to or enter into contracts with the National Center for Missing and Exploited Children, for purposes of—";

(B) in paragraph (1)—

(i) in subparagraph (A), by striking "establish and operate" and inserting "providing"; and

(ii) in subparagraph (B), by adding "and" at the end;

(C) in paragraph (2)—

(i) by striking "establish and operate" and inserting "operating";

(ii) in subparagraph (A), by inserting "foreign governments," after "State and local governments"; and

(iii) in subparagraph (D)—

(I) by inserting "foreign governments," after "State and local governments"; and

(II) by striking "; and" at the end and inserting a period;

(D) in paragraph (3), by striking "(3) periodically" and inserting the following:

"(c) NATIONAL INCIDENCE STUDIES.—The Administrator, either by making grants to or entering into contracts with public agencies or nonprofit private agencies, shall—

"(1) periodically"; and

(E) by redesignating paragraph (4) as paragraph (2).

(b) GRANTS.—Section 405(a) of the Missing Children's Assistance Act (42 U.S.C. 5775(a)) is amended by inserting "the National Center for Missing and Exploited Children and with" before "public agencies".

TITLE V—IMPROVING YOUTH CRIME AND DRUG PREVENTION

Subtitle A—Comprehensive Study of Federal Prevention Efforts

SEC. 501. STUDY BY NATIONAL ACADEMY OF SCIENCE.

(a) IN GENERAL.—The Attorney General shall enter into a contract with a public or nonprofit private entity, subject to subsection (b), for the purpose of conducting a study or studies—

(1) to evaluate the effectiveness of federally funded programs for preventing youth violence and youth substance abuse;

(2) to evaluate the effectiveness of federally funded grant programs for preventing criminal victimization of juveniles;

(3) to identify specific Federal programs and programs that receive Federal funds that contribute to reductions in youth violence, youth substance abuse, and risk factors among youth that lead to violent behavior and substance abuse;

(4) to identify specific programs that have not achieved their intended results; and

(5) to make specific recommendations on programs that—

(A) should receive continued or increased funding because of their proven success; or

(B) should have their funding terminated or reduced because of their lack of effectiveness.

(b) NATIONAL ACADEMY OF SCIENCES.—The Attorney General shall request the National Academy of Sciences to enter into the contract under subsection (a) to conduct the study or studies described in subsection (a). If the Academy declines to conduct the study, the Attorney General shall carry out such subsection through other public or nonprofit private entities.

(c) ASSISTANCE.—In conducting the study under subsection (a) the contracting party may obtain analytic assistance, data, and other relevant materials from the Department of Justice and any other appropriate Federal agency.

(d) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Not later than January 1, 2000, the Attorney General shall submit a report describing the findings made as a result of the study required by subsection (a) to the Committee on the Judiciary and the Committee on Economic and Educational Opportunity of the House of Representatives and the Committee on the Judiciary and the Committee on Labor and Human Resources of the Senate.

(2) CONTENTS.—The report required by this subsection shall contain specific recommendations concerning funding levels for the programs evaluated. Reports on the effectiveness of such programs and recommendations on funding shall be provided to the appropriate subcommittees of the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate.

(e) FUNDING.—There are authorized to be appropriated to carry out the study under subsection (a) $1,000,000,000.

Subtitle B—Evaluation Mandate for Authorized Programs

SEC. 522. EVALUATION OF CRIME PREVENTION PROGRAMS.

The Attorney General, with respect to the programs in titles II, III, and IV of this Act shall provide, directly or through grants and contracts, for the comprehensive and thorough evaluation of the effectiveness of each program established by this Act and the amendments made by this Act.

SEC. 523. EVALUATION AND RESEARCH CRITERIA.

(a) INDEPENDENT EVALUATIONS AND RESEARCH.—Evaluations and research studies conducted pursuant to this subtitle shall be independent in nature, and shall employ rigorous and scientifically recognized standards and methodologies.

(b) CONTENT OF EVALUATIONS.—Evaluations conducted pursuant to this title may include comparison between youth participating in the programs and the community at large of rates of—

(1) delinquency, youth crime, youth gang activity, youth substance abuse, and other high risk factors;

(2) risk factors in young people that contribute to juvenile violence, including academic failure, excessive school absenteeism, and dropping out of school;

(3) risk factors in the community, schools, and family environments that contribute to youth violence; and

(4) criminal victimizations of youth.

SEC. 524. COMPLIANCE WITH EVALUATION MANDATE.

The Attorney General may require the recipients of Federal assistance for programs under this Act to collect, maintain, and report information considered to be relevant to any evaluation conducted pursuant to section 502, and to conduct and participate in specified evaluation and assessment activities and functions.

SEC. 525. RESERVATION OF AMOUNTS FOR EVALUATION AND RESEARCH.

(a) IN GENERAL.—The Attorney General, with respect to titles II, III, and IV shall reserve not less than 2 percent, and not more than 4 percent, of the amounts made available pursuant to such titles and the amendments made by such titles in each fiscal year to carry out the evaluation and research required by this title.

(b) ASSISTANCE TO GRANTEES AND EVALUATED PROGRAMS.—To facilitate the conduct and defray the costs of crime prevention program evaluation and research, the Attorney General shall use amounts reserved under this section to provide compliance assistance to grantees under this Act who are selected to participate in evaluations pursuant to section 522.

Subtitle C—Elimination of Ineffective Programs

SEC. 531. SENSE OF SENATE REGARDING FUNDING FOR PROGRAMS DETERMINED TO BE INEFFECTIVE.

It is the sense of the Senate that programs identified in the study performed pursuant to section 501 as being ineffective in addressing juvenile crime and substance abuse should not receive Federal funding in any fiscal year following the issuance of such study.

TITLE VI—EXTENSION OF VIOLENT CRIME REDUCTION TRUST FUND

SEC. 601. EXTENSION OF VIOLENT CRIME REDUCTION TRUST FUND.

(a) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—Section 310001(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14211(b)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(7) for fiscal year 2001, $6,500,000,000; and

"(8) for fiscal year 2002, $6,500,000,000.".

(b) BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—Section 251A(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901a(b)) is amended—

(1) by striking all after "$4,904,000,000."; and

(2) by adding at the end the following:

"(E) For fiscal year 1999, $5,639,000,000.

"(F) For fiscal year 2000, $6,225,000,000.

"(G) For fiscal year 2001, $6,225,000,000.

"(H) For fiscal year 2002, $6,225,000,000.".

(c) REDUCTION IN DISCRETIONARY SPENDING LIMITS.—Beginning on the date of enactment of this Act, the discretionary spending limits set forth in section 601(a)(1) of the Congressional Budget Act of 1974 (2 U.S.C. 665(a)(2) (as adjusted in conformance with section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, and in the Senate, with section 301 of House Concurrent Resolution 178 (104th Congress)) for fiscal years 2001 through 2002 are reduced as follows:

(1) For fiscal year 2001, for the discretionary category: $6,500,000,000 in new budget authority and $6,225,000,000 in outlays.

(2) For fiscal year 2002, for the discretionary category: $6,500,000,000 in new budget authority and $6,225,000,000 in outlays.

Mr. LEAHY. Mr. President, I am pleased to join with Senator DASCHLE and other Democratic Senators in introducing S. 15, the Youth Violence, Crime and Drug Abuse Control Act.

Unfortunately, we need to look no further than today's headlines to see how badly we need this legislation. Over the past week, the chilling story has unfolded about Darryl Hall, a 12-year-old boy violently abducted on his way home from school in our Nation's Capital and then found dead and frozen with a gunshot to the back of his head. Three youths have been arrested, and the police suspect this heinous crime was the work of a gang. We must put a stop to the brutality of children killing children.

We all want to protect the children of this country from becoming victims of crime, from joining gangs, and from becoming drug addicts. This is not a partisan issue. Gang members do not ask their new recruits whether they are Republican or Democrat. Criminals do not ask before they strike whether their victim is Republican or Democrat. We in Congress need to make every effort to work together to get a handle on this problem.

The Democratic crime initiative we are introducing today builds on and continues the proven elements of the 1994 crime bill and takes the next steps to confront the problems of youth crime, drug abuse and gang violence. Our bill targets youthful offenders for certain punishment when they commit violent acts and offers helpful treatment when they need it. Although the number of juveniles arrested for violent crimes dipped in 1995, these numbers remain at unacceptable levels: sixty-four percent more juveniles were arrested for violent crimes in 1995 than in 1987.

Concern about the spread of gangs—the violence, the drug dealing and other criminal activity that gangs leave in their wake—has spread from

our large cities to rural American towns. Indeed, one of the major factors responsible for the increases in juvenile crime over the past decade is the growth of criminal street gangs across this country. Although places such as Los Angeles or New York City first spring to mind when the word "gang" is mentioned, gangs are spreading across State boundaries and are problems today in many rural areas, as well as in urban centers.

In my days as a prosecutor, gangs were unheard of in Vermont. Unfortunately, this is no longer the case. Just last month, the Vermont Corrections Commissioner reported significant increases in gang activity occurring in Vermont's prisons. There are also reports that franchises of the "los solidos" gang have set up shop in Rutland, and the "la familia" gang has moved into St. Johnsbury.

Gangs violate the law, corrupt our youth, and disturb the tranquility of our streets. They are a problem we all now face, and they are a driving force in the crime wave which this Congress and the Federal Government must address, in partnership with our States and communities and with law enforcement authorities at all levels.

What do we propose to do about it? First, we hope to work constructively with our colleagues from the other side of the aisle to deal with the problems of gangs and youth violence. We were able to do that in 1994. Senator BIDEN, who was then chairman of the Senate Judiciary Committee, worked tirelessly to ensure passage of the 1994 crime law. The Democratic youth violence bill we introduce today has been crafted under the leadership of Senator DASCHLE and reflects the contributions of Senators BIDEN, KOHL, FEINSTEIN, KENNEDY, and others.

This Democratic leadership bill builds on the successes of the 1994 crime law, which is putting 100,000 cops on our Nation's streets and increased prevention and intervention efforts to keep children safe from crime and drugs. Specifically, our bill will:

Expand the community oriented policing [COPS] Program to put 25,000 more cops on the beat;

Continue the Violence Against Women Act by providing $600 million to prosecute batterers, shelter 400,000 battered women and their children and continue the national domestic violence hotline; and

Provide $5 billion to build prisons so that States requiring serious violent offenders to serve at least 85 percent of their sentences will be better able to house criminals.

The Democratic crime bill also looks to the future with new laws and programs to crack down on violent youth and gang violence. These measures target the use of "gang paraphernalia," the spread of gang "franchises," the intimidation of witnesses, and reform of the juvenile justice system, with more protection for the victims of juvenile crime.

Specifically, our bill would increase the penalties for illegally using "gang paraphernalia" such as body armor and laser sighting devices. Police officers use kevlar vests to protect their lives and hence our public safety. When criminals use kevlar vests, they do so to ensure their escape and enjoy the fruits of their crime. Under this bill, they would get more time when they are caught using such body armor in the commission of a crime.

The bill also makes it easier for law enforcement to use clone beepers to investigate gang activity. Beepers are how gang members and drug dealers keep in touch with each other. One tool law enforcement uses to investigate these criminals is a "clone beeper," which displays the same numbers displayed on the beepers of targeted criminals. This bill will permit law enforcement to get a clone beeper with the same kind of court order they already use to get information on the numbers dialed to or from a telephone. This is not to be confused with wiretap order to eavesdrop on what people say; clone beepers only give information on the numbers displayed on the beeper. The bill will speed up the process for law enforcement to get "clone beepers."

Our bill would double the penalty for using physical violence or threatening physical violence against witnesses, victims or informants. Nothing undermines our system of justice more than scaring people away from providing information that helps the police, prosecutors, judges and juries from finding the truth.

The bill would create a new Federal crime for expanding gangs across State borders and increase penalties for using firearms to commit drug trafficking crimes and crimes of violence.

We also propose several needed changes in the juvenile justice system to respond to the need to crack down on violent youth with the full force of the law. This means increasing the incarceration periods for juvenile offenders so that they may be incarcerated until the age of 26 instead of mandatory release at the age of 21, streamlining procedures for prosecuting violent juveniles as adults, and building more prisons to incarcerate juvenile offenders. In addition, our bill creates new juvenile gun and drug courts to speed prosecution and sentencing for drug abuse and weapons violations.

The bill also improves the rights of victims of violent juvenile crime. Whether the perpetrator of a violent crime is an adult or a juvenile, the victim should have the opportunity to speak to the sentencing judge and be entitled to restitution.

Drugs have had a devastating effect on our society. It is clear that no solution to the juvenile crime problem will work if it does not address the role that drug abuse and drug trafficking play in creating unsafe environments for our children. For this reason, the Democratic crime bill includes measures to prevent and treat youth drug addiction. These measures include:

Providing $200 million investment in research and development of medicines to treat heroin and cocaine addiction; and

Extending the drug courts program to force more than 500,000 adult and juvenile drug offenders to engage in a rigorous drug testing and drug treatment—or face certain imprisonment.

We also protect children from becoming the victims of crime, with programs that would keep children like Darryl Hall in safer environments. These measures include:

Extending the Safe and Drug Free Schools Program; and

Creating after-school "safe havens" where children are protected from drugs, gangs and crime in supervised and productive environments.

In Vermont, we have a very successful program called "Kids 'N Kops" that brings school-age children and our law enforcement officers together in a fun and constructive way. Last spring, the attorney general attended an annual event in Vermont celebrating this program and urged that the program be replicated elsewhere in the country. This bill would help make that a reality.

Youth crime has many causes, and no one bill can solve them all. But that should not paralyze us from taking sensible steps, in partnership with States and communities of all sizes and in all regions of the Nation, to begin turning the tables on youth crime and drug abuse. This bill proposes a balanced approach combining strong, targeted law enforcement measures with the prevention efforts that law enforcement officers on the front lines tell us are necessary to make a dent in the problem.

In the final stages, the 1994 crime bill was passed over vigorous partisan obstacles and objections, and crime bills often spark some of our most partisan debates. But this time, we truly have the opportunity to pass a bipartisan bill with the active support of a President who is making youth crime prevention a priority in his second term and who supports the thrust of what we are proposing in this package. We have come forward with balanced, commonsense solutions to youth crime. We should debate and refine this bill as we go along, but these are not suggestions that should divide us along party lines.

We look forward to working with the administration, our Republican colleagues and the Department of Justice—which has demonstrated its ability to move effectively in implementing anti-crime initiatives—in

bringing these proposals to Congress' front burner for debate and prompt action.

Mr. BREAUX. Mr. President, I am pleased to be an original cosponsor of this Democratic leadership bill—the youth violence, crime, and drug abuse bill.

Crime ranks among the highest concerns of all Americans, no matter what their race or social background. Louisiana is no exception. In a recent poll, 86 percent of Louisianians said crime is a serious problem, ranking it as the No. 1 problem in our State. The city of New Orleans is experiencing a murder rate that is eight times higher than the national average. People want us and their local governments and State governments to do something about this problem.

The Federal Bureau of Investigation recently released statistics showing that serious and violent crime dropped nationwide in the first half of last year. It is good news, certainly, that violent crime in this country has gone down; but the bad news is that juvenile crime is on the increase. Youth crimes, particularly homicides perpetrated with guns, have skyrocketed. The average cost of incarcerating a juvenile for just 1 year is somewhere between $23,000 and $64,000. I strongly support this Democratic legislation because it focuses directly on juveniles, punishes violent youthful offenders, and provides more access to treatment and prevention programs.

We must continue the success of the COPS Program and put 25,000 more cops on the beat. We must create a new Federal crime targeting the interstate franchising spread of criminal street gangs and other changes aimed at gang violence, such as increasing the penalties for witness intimidation. We must extend the drug court program to force some 500,000 drug offenders to engage in rigorous drug testing and treatment, or face imprisonment and, finally, we must continue to provide funds to arrest and prosecute batterers and shelter 400,000 battered women. Mr. President, this bill includes all of these provisions, and I would urge my colleagues to support it.

For the sake of generations to come, it is time that we attack crime with a renewed vigor. Today's juvenile criminal becomes tomorrow's adult criminal. We must pass this legislation.

By Mr. DASCHLE (for himself, Mr. HARKIN, Mr. JOHNSON, Mr. DORGAN, Mr. CONRAD, Mr. KERREY, Mr. BAUCUS, Mr. BINGAMAN, Mr. KOHL, Mr. FEINGOLD, Mr. LEAHY, and Mr. WELLSTONE):

S. 16. A bill to ensure the continued viability of livestock producers and the livestock industry in the United States, to assure foreign countries do not deny market access to United States meat and meat products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE CATTLE INDUSTRY IMPROVEMENT ACT OF 1997

Mr. DASCHLE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 16

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Cattle Industry Improvement Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CATTLE INDUSTRY IMPROVEMENT

Sec. 101. Prohibition on noncompetitive practices.
Sec. 102. Domestic market reporting.
Sec. 103. Import reporting.
Sec. 104. Protection of livestock producers against retaliation by packers.
Sec. 105. Review of Federal agriculture credit policies.
Sec. 106. Streamlining and consolidating the United States food inspection system.
Sec. 107. Labeling system for meat and meat food products produced in the United States.
Sec. 108. Sense of Senate on interstate shipment of State-inspected meat, poultry, and eggs.
Sec. 109. Exchange of cattle production data with Canada.

TITLE II—MARKET ACCESS FOR UNITED STATES MEAT PRODUCTS

Sec. 201. Short title.

Subtitle A—Identification of Countries

Sec. 211. Findings; purposes.
Sec. 212. Identification of countries that deny market access.
Sec. 213. Investigations.
Sec. 214. Authorized actions by United States Trade Representative.

Subtitle B—Review of Third Country Meat Directive

Sec. 221. Findings.
Sec. 223. Definitions.
Sec. 224. Requirement for determination by United States Trade Representative.
Sec. 225. Request for dispute settlement.
Sec. 226. Review of certain meat facilities.

TITLE I—CATTLE INDUSTRY IMPROVEMENT

SEC. 101. PROHIBITION ON NONCOMPETITIVE PRACTICES.

Section 202 of the Packers and Stockyards Act, 1921 (7 U.S.C. 192), is amended—

(1) in subsection (g), by striking the period at the end and inserting "; or"; and

(2) by adding at the end the following:

"(h) Engage in any practice or device that the Secretary by regulation, after consultation with producers of cattle, lamb, and hogs, and other persons in the cattle, lamb, and hog industries, determines is a detrimental noncompetitive practice or device relating to the price or a term of sale for the procurement of livestock or the sale of meat or other byproduct of slaughter.".

SEC. 102. DOMESTIC MARKET REPORTING.

(a) PERSONS IN SLAUGHTER BUSINESS.—Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)) is amended—

(1) by striking "(g) To" and inserting the following:

"(g) COLLECTION AND DISSEMINATION OF MARKETING INFORMATION.—

"(1) IN GENERAL.—To"; and

(2) by adding at the end the following:

"(2) DOMESTIC MARKET REPORTING.—

"(A) MANDATORY REPORTING.—Each person engaged in the business of slaughtering a quantity of livestock determined by the Secretary shall report to the Secretary in such manner as the Secretary shall require, as soon as practicable but not later than 24 hours after a transaction takes place, such information relating to prices and the terms of sale for the procurement of livestock and the sale of meat food products and livestock products as the Secretary determines is necessary to carry out this subsection.

"(B) NONCOMPLIANCE.—Whoever knowingly fails or refuses to provide to the Secretary information required to be reported by subparagraph (A) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

"(C) VOLUNTARY REPORTING.—The Secretary shall encourage voluntary reporting by any person engaged in the business of slaughtering livestock who is not subject to subparagraph (A).

"(D) AVAILABILITY OF INFORMATION.—The Secretary shall make information received under this subsection available to the public only in the aggregate and shall ensure the confidentiality of persons providing the information.

"(E) TERMINATION OF AUTHORITY.—The authority provided by this paragraph shall terminate on the date that is 1 year after the date of enactment of this paragraph, except that the Secretary may extend the authority beyond that date if the Secretary determines the extension is necessary or appropriate.".

(b) ELIMINATION OF OUTMODED REPORTS.—The Secretary of Agriculture, after consultation with producers and other affected parties, shall periodically—

(1) eliminate obsolete reports; and

(2) streamline the collection and reporting of data related to livestock and meat and livestock products, using modern data communications technology, to provide information to the public on as close to a real-time basis as practicable.

(c) DEFINITION OF "CAPTIVE SUPPLY".—For the purpose of regulations issued by the Secretary of Agriculture relating to reporting under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) and the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), the term "captive supply" means livestock obligated to a packer in any form of transaction in which more than 7 days elapses from the date of obligation to the date of delivery of the livestock.

SEC. 103. IMPORT REPORTING.

(a) IN GENERAL.—The Secretary of Agriculture and the Secretary of Commerce shall, using modern data communications technology to provide the information to the public on as close to a real-time basis as practicable, jointly make available to the public aggregate price and quantity information on imported meat food products, livestock products, and livestock (as the terms are defined in section 2 of the Packers and Stockyards Act, 1921 (7 U.S.C. 182)).

(b) FIRST REPORT.—The Secretaries shall release to the public the first report under subsection (a) not later than 60 days after the date of enactment of this Act.

SEC. 104. PROTECTION OF LIVESTOCK PRODUCERS AGAINST RETALIATION BY PACKERS.

(a) RETALIATION PROHIBITED.—Section 202(b) of the Packers and Stockyards Act, 1921 (7 U.S.C. 192(b)), is amended—

(1) by striking "or subject" and inserting "subject"; and

(2) by inserting before the semicolon at the end the following: ", or retaliate against any livestock producer on account of any statement made by the producer (whether made to the Secretary or a law enforcement agency or in a public forum) regarding an action of any packer".

(b) SPECIAL REQUIREMENTS REGARDING ALLEGATIONS OF RETALIATION.—Section 203 of the Packers and Stockyards Act, 1921 (7 U.S.C. 193), is amended by adding at the end the following:

"(e) SPECIAL PROCEDURES REGARDING ALLEGATIONS OF RETALIATION.—

"(1) CONSIDERATION BY SPECIAL PANEL.—The President shall appoint a special panel consisting of 3 members to receive and initially consider a complaint submitted by any person that alleges prohibited packer retaliation under section 202(b) directed against a livestock producer.

"(2) COMPLAINT; HEARING.—If the panel has reason to believe from the complaint or resulting investigation that a packer has violated or is violating the retaliation prohibition under section 202(b), the panel shall notify the Secretary who shall cause a complaint to be issued against the packer, and a hearing conducted, under subsection (a).

"(3) EVIDENTIARY STANDARD.—In the case of a complaint regarding retaliation prohibited under section 202(b), the Secretary shall find that the packer involved has violated or is violating section 202(b) if the finding is supported by a preponderance of the evidence.".

(c) DAMAGES FOR PRODUCERS SUFFERING RETALIATION.—Section 203 of the Packers and Stockyards Act, 1921 (7 U.S.C. 193) (as amended by subsection (b)), is amended by adding at the end the following:

"(f) DAMAGES FOR PRODUCERS SUFFERING RETALIATION.—

"(1) IN GENERAL.—If a packer violates the retaliation prohibition under section 202(b), the packer shall be liable to the livestock producer injured by the retaliation for not more than 3 times the amount of damages sustained as a result of the violation.

"(2) ENFORCEMENT.—The liability may be enforced either by complaint to the Secretary, as provided in subsection (e), or by suit in any court of competent jurisdiction.

"(3) OTHER REMEDIES.—This subsection shall not abridge or alter a remedy existing at common law or by statute. The remedy provided by this subsection shall be in addition to any other remedy.".

SEC. 105. REVIEW OF FEDERAL AGRICULTURE CREDIT POLICIES.

The Secretary of Agriculture, in consultation with the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Board of the Farm Credit Administration, shall establish an interagency working group to study—

(1) the extent to which Federal lending practices and policies have contributed, or are contributing, to market concentration in the livestock and dairy sectors of the national economy; and

(2) whether Federal policies regarding the financial system of the United States adequately take account of the weather and price volatility risks inherent in livestock and dairy enterprises.

SEC. 106. STREAMLINING AND CONSOLIDATING THE UNITED STATES FOOD INSPECTION SYSTEM.

(a) PREPARATION.—In consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and all other interested parties, the President shall prepare a plan to consolidate the United States food inspection system that ensures the best use of available resources to improve the consistency, coordination, and effectiveness of the United States food inspection system, taking into account food safety risks.

(b) SUBMISSION.—Not later than 1 year after the date of enactment of this Act, the President shall submit to Congress the plan prepared under subsection (a).

SEC. 107. LABELING SYSTEM FOR MEAT AND MEAT FOOD PRODUCTS PRODUCED IN THE UNITED STATES.

(a) LABELING.—Section 7 of the Federal Meat Inspection Act (21 U.S.C. 607) is amended by adding at the end the following:

"(g) LABELING OF MEAT OF UNITED STATES ORIGIN.—

"(1) IN GENERAL.—The Secretary shall develop a system for the labeling of carcasses, parts of carcasses, and meat produced in the United States from livestock raised in the United States, and meat food products produced in the United States from the carcasses, parts of carcasses, and meat, to indicate the United States origin of the carcasses, parts of carcasses, meat, and meat food products.

"(2) ASSISTANCE.—The Secretary shall provide technical and financial assistance to establishments subject to inspection under this title to implement the labeling system.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.".

SEC. 108. SENSE OF SENATE ON INTERSTATE SHIPMENT OF STATE-INSPECTED MEAT, POULTRY, AND EGGS.

It is the sense of the Senate that—

(1) not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture should convene a public meeting of State inspection officials and all other interested parties to determine whether the interstate shipment of State-inspected meat, poultry, and egg products should be permitted; and

(2) the meeting should be structured to ensure that all parties are given an opportunity to present their views on the subject described in paragraph (1).

SEC. 109. EXCHANGE OF CATTLE PRODUCTION DATA WITH CANADA.

The Secretary of Agriculture shall seek immediate consultation with the Minister of Agriculture of Canada to provide for a regular monthly exchange of cattle production data, including cattle on feed, cattle slaughtered, and cattle and beef shipped to the United States.

TITLE II—MARKET ACCESS FOR UNITED STATES MEAT PRODUCTS

SEC. 201. SHORT TITLE.

This title may be cited as the "Meat Products Market Access Act of 1997".

Subtitle A—Identification of Countries

SEC. 211. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) The export of meat and meat products is of vital importance to the economy of the United States.

(2) In 1995, agriculture was the largest positive contributor to the United States merchandise trade balance with a trade surplus of $25,800,000,000.

(3) The growth of exports of United States meat and meat products should continue to be an important factor in improving the United States merchandise trade balance.

(4) Increasing exports of meat and meat products will increase farm income in the United States, thereby protecting family farms and contributing to the economic well-being of rural communities in the United States.

(5) Although the United States efficiently produces high-quality meat and meat products, United States producers cannot realize their full export potential because many foreign countries deny fair and equitable market access to United States agricultural products.

(6) The Foreign Agricultural Service estimates that United States agricultural exports are reduced by $4,700,000,000 annually due to unjustifiable imposition of sanitary and phytosanitary measures that deny or limit market access to United States products.

(7) The denial of fair and equitable market access for United States meat and meat products impedes the ability of United States farmers to export their products, thereby harming the economic interests of the United States.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to reduce or eliminate foreign unfair trade practices and to remove constraints on fair and open trade in meat and meat products;

(2) to ensure fair and equitable market access for exports of United States meat and meat products; and

(3) to promote free and fair trade in meat and meat products.

SEC. 212. IDENTIFICATION OF COUNTRIES THAT DENY MARKET ACCESS.

(a) IDENTIFICATION REQUIRED.—Chapter 8 of title I of the Trade Act of 1974 is amended by adding at the end the following:

"SEC. 183. IDENTIFICATION OF COUNTRIES THAT DENY MARKET ACCESS FOR MEAT AND MEAT PRODUCTS.

"(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the annual report is required to be submitted to Congressional committees under section 181(b), the United States Trade Representative (hereafter in this section referred to as the 'Trade Representative') shall identify—

"(1) those foreign countries that—

"(A) deny fair and equitable market access to United States meat and meat products, or

"(B) apply standards for the importation of meat and meat products from the United States that are not related to public health concerns or cannot be substantiated by reliable analytical methods; and

"(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

"(b) SPECIAL RULES FOR IDENTIFICATIONS.—

"(1) CRITERIA.—In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

"(A) that engage in or have the most onerous or egregious acts, policies, or practices that deny fair and equitable market access to United States meat and meat products,

"(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

"(C) that are not—

"(i) entering into good faith negotiations, or

"(ii) making significant progress in bilateral or multilateral negotiations,
to provide fair and equitable market access to United States meat and meat products.

"(2) CONSULTATION AND CONSIDERATION REQUIREMENTS.—In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

"(A) consult with the Secretary of Agriculture and other appropriate officers of the Federal Government, and

"(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b) and petitions submitted under section 302.

"(3) FACTUAL BASIS REQUIREMENT.—The Trade Representative may identify a foreign country under subsection (a)(1) only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3).

"(4) CONSIDERATION OF HISTORICAL FACTORS.—In identifying foreign countries under paragraphs (1) and (2) of subsection (a), the Trade Representative shall take into account—

"(A) the history of meat and meat products trade relations with the foreign country, including any previous identification under subsection (a)(2), and

"(B) the history of efforts of the United States, and the response of the foreign country, to achieve fair and equitable market access for United States meat and meat products.

"(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—

"(1) AUTHORITY TO ACT AT ANY TIME.—If information available to the Trade Representative indicates that such action is appropriate, the Trade Representative may at any time—

"(A) revoke the identification of any foreign country as a priority foreign country under this section, or

"(B) identify any foreign country as a priority foreign country under this section.

"(2) REVOCATION REPORTS.—The Trade Representative shall include in the semiannual report submitted to the Congress under section 309(3) a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

"(d) FAIR AND EQUITABLE MARKET ACCESS.—For purposes of this section, a foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product through the use of laws, procedures, practices, or regulations which—

"(1) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

"(2) constitute discriminatory nontariff trade barriers.

"(e) PUBLICATION.—The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) and shall make such revisions to the list as may be required by reason of the action under subsection (c).

"(f) ANNUAL REPORT.—The Trade Representative shall, not later than the date by which countries are identified under subsection (a), transmit to the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on the actions taken under this section during the 12 months preceding such report, and the reasons for such actions, including a description of progress made in achieving fair and equitable market access for United States meat and meat products.".

(b) CLERICAL AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 182 the following:

"Sec. 183. Identification of countries that deny market access for meat and meat products.".

SEC. 213. INVESTIGATIONS.

(a) INVESTIGATION REQUIRED.—Subparagraph (A) of section 302(b)(2) of the Trade Act of 1974 (19 U.S.C. 2412(b)(2)) is amended by inserting "or 183(a)(2)" after "section 182(a)(2)" in the matter preceding clause (i).

(b) CONFORMING AMENDMENT.—Subparagraph (D) of section 302(b)(2) of such Act is amended by inserting "concerning intellectual property rights that is" after "any investigation".

SEC. 214. AUTHORIZED ACTIONS BY UNITED STATES TRADE REPRESENTATIVE.

Section 301(c)(1) of the Trade Act of 1974 (19 U.S.C. 2411(c)(1)) is amended—

(1) by striking "or" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D)(iii)(II) and inserting "; or"; and

(3) by adding at the end the following:

"(E) with respect to an investigation of a country identified under section 183(a)(1), to request that the Secretary of Agriculture (who, upon receipt of such a request, shall) direct the Food Safety and Inspection Service of the Department of Agriculture to review certifications for the facilities of such country that export meat and other agricultural products to the United States.".

Subtitle B—Review of Third Country Meat Directive

SEC. 221. FINDINGS.

Congress makes the following findings:

(1) The European Union's Third Country Meat Directive has been used to decertify more than 400 United States facilities exporting beef and pork products to the European Union even though United States health inspection procedures are equivalent to those provided for in the Third Country Meat Directive.

(2) An effect of the decertifications is to prohibit the importation of United States beef and pork products into the European Union.

(3) As a result of the decertifications, the highly competitive United States pork industry loses as much as $60,000,000 each year from trade with European Union countries.

(4) In July 1987 and November 1990, at the request of affected United States industries, the United States initiated investigations under section 301 of the Trade Act of 1974 into the European Union's administration of the Third Country Meat Directive and sought resolution of the meat and pork trade problems through the dispute settlement process established under the General Agreement on Tariffs and Trade.

(5) The United States Trade Representative preliminarily concluded on October 10, 1992, that the European Union's administration of the Third Country Meat Directive created a burden on and restricted United States commerce.

(6) Bilateral talks, initiated as a result of that finding, resulted in an Exchange of Letters in which the United States and the European Union concluded that the meat inspection systems of the United States and the European Union provided "equivalent safeguards against public health risks" and agreed to take steps to resolve remaining differences regarding meat inspection.

(7) Even though the United States terminated the section 301 investigation as a result of the Exchange of Letters, the United States determined that the practices under investigation would have been actionable if an acceptable agreement had not been reached.

(8) United States meat and pork producers have displayed consistent interest in exporting products to the European Union and have undertaken substantial investment to take the steps specified by the Exchange of Letters.

(9) The European Union has failed to acknowledge changes in plant safety and inspection procedures undertaken in the United States specifically at the European Union's request and has not fulfilled its obligation to inspect and relist United States producers who have taken the steps specified by the Exchange of Letters.

(10) The actions of the European Union in conducting United States plant inspections places the European Union in violation of commitments made in the Exchange of Letters.

(11) The European Union, in addition to being a party to the Exchange of Letters, is a signatory to GATT 1994 and to the Agreement on the Application of Sanitary and Phytosanitary Measures, which requires that meat and pork inspection procedures under Department of Agriculture regulations be treated as equivalent to inspection procedures required by the European Union under the Third Country Meat Directive.

(12) Whenever a foreign country is not satisfactorily implementing an international trade measure or agreement, the United States Trade Representative is required under section 306(b)(1) of the Trade Act of 1974 (19 U.S.C. 2416(b)(1)) to determine the actions to be taken under section 301(a) of such Act.

SEC. 223. DEFINITIONS.

For purposes of this subtitle:

(1) EXCHANGE OF LETTERS.—The term "Exchange of Letters" means the exchange of letters concerning the application of the Community Third Country Directive, signed in May 1991 and November 1992, which constitute the agreement between the United States and the European Economic Community regarding the Third Country Meat Directive.

(2) GATT 1994.—The term "GATT 1994" means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(3) THIRD COUNTRY MEAT DIRECTIVE; COMMUNITY THIRD COUNTRY DIRECTIVE.—The terms "Third Country Meat Directive" and "Community Third Country Directive" mean the European Union's Council Directive 72/462/EEC relating to inspection and certification of slaughter and processing plants that export meat and pork products to the European Union.

(4) WTO AGREEMENT.—The term "WTO Agreement" means the Agreement establishing the World Trade Organization entered into on April 15, 1994.

SEC. 224. REQUIREMENT FOR DETERMINATION BY UNITED STATES TRADE REPRESENTATIVE.

Not later than 30 days after the date of enactment of this Act, the United States Trade Representative shall determine, for purposes of section 306(b)(1) of the Trade Act of 1974, whether the European Union has failed to implement satisfactorily its obligations under the Exchange of Letters, the Agreement on the Application of Sanitary and Phytosanitary Measures, or any other Agreement.

SEC. 225. REQUEST FOR DISPUTE SETTLEMENT.

If the United States Trade Representative determines under section 224 that the European Union has failed to implement satisfactorily its obligations under the Exchange of Letters, the Agreement on the Application of Sanitary and Phytosanitary Measures, or any other agreement, the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures applicable to the agreement.

SEC. 226. REVIEW OF CERTAIN MEAT FACILITIES.

(a) REVIEW BY FOOD SAFETY AND INSPECTION SERVICE.—If the United States Trade Representative determines pursuant to section 224 that the European Union has failed to implement satisfactorily its obligations under the Exchange of Letters, the Agreement on the Application of Sanitary and Phytosanitary Measures, or any other Agreement, the United States Trade Representative shall request the Secretary of Agriculture (who, upon receipt of the request, shall) direct the Food Safety and Inspection Service of the Department of Agriculture to review certifications for European Union facilities that import meat and other agricultural products into the United States.

(b) RELATIONSHIP TO USTR AUTHORITY.—The review authorized under subsection (a) is in addition to the authority of the United States Trade Representative to take actions described in section 301(c)(1) of the Trade Act of 1974 (19 U.S.C. 2411(c)(1)).

By Mr. DASCHLE (for himself, Mr. BREAUX, Mr. KENNEDY, Mr. DODD, Ms. MIKULSKI, Mr. DORGAN, Mr. JOHNSON, Mr. ROCKEFELLER, Mr. KERRY, Ms. MOSELEY-BRAUN, Mr. REID, and Mr. LAUTENBERG):

S. 17. A bill to consolidate certain Federal job training programs by developing a system of vouchers to provide to dislocated workers and economically disadvantaged adults the opportunity to choose the type of job training that most closely meets the needs of such workers and adults, by establishing a one-stop career center system to provide high quality job training and employment-related services, and for other purposes; to the Committee on Labor and Human Resources.

THE WORKING AMERICANS OPPORTUNITY ACT

Mr. DASCHLE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 17

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Working Americans Opportunity Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—JOB TRAINING VOUCHERS

Sec. 101. Establishment.
Sec. 102. Individual choice.
Sec. 103. Eligibility.
Sec. 104. Obtaining a voucher.
Sec. 105. Oversight and accountability.
Sec. 106. Eligibility requirements for job training providers.
Sec. 107. Evaluation of voucher system.
Sec. 108. Apportionment of funds.

TITLE II—CONSOLIDATION OF FEDERAL JOB TRAINING PROGRAMS

Sec. 201. Consolidation of programs.

TITLE III—EMPLOYMENT-RELATED INFORMATION AND SERVICES THROUGH ONE-STOP CAREER CENTERS

Sec. 301. One-stop career centers.
Sec. 302. Access to information.
Sec. 303. Direct loans to United States workers.

TITLE IV—REPORTS AND PLANS

Sec. 401. Consolidation and streamlining.
Sec. 402. Report relating to income support.

TITLE V—GENERAL PROVISIONS

Sec. 501. Authorization of appropriations.
Sec. 502. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) increasing international competition, technological advances, and structural changes in the economy of the United States present new challenges to private firms and public policymakers in creating a skilled workforce with the ability to adapt to change and progress;

(2) a substantial number of workers in the United States lose jobs due to the constantly changing world and national economies rather than cyclical downturns, with more than 2,000,000 full-time workers permanently displaced annually due to plant closures, production cutbacks, and layoffs;

(3) the current response of the Federal Government to dislocation and structural employment is a patchwork of categorical programs, with varying eligibility requirements and different sets of services and benefits;

(4) the lack of coherence among existing Federal job training programs creates administrative and regulatory obstacles that hamper the efforts of individuals who are seeking new jobs or reemployment;

(5) enacted in 1944, the Servicemen's Readjustment Act of 1944, (commonly known as the "G.I. Bill of Rights"), helped millions of World War II veterans and, later, Korean and Vietnam War veterans, finance college educations and assisted in building the middle class of the United States;

(6) restructuring the current job training system, with respect to dislocated and disadvantaged workers, in a manner that is conceptually similar to the G.I. Bill of Rights will help millions of workers in the United States to become more competitive in today's dynamic world economy, in which most of the workers—

(A) can expect to move to new jobs a number of times, voluntarily or by layoff; and

(B) must upgrade their skills continuously;

(7) success in this ever-changing environment depends, in part, on an individual's effective management of the individual's career based on personal choice and reliable information;

(8) there is insufficient job market information and assistance regarding access to job training opportunities that lead to good employment opportunities;

(9) only a small fraction of individuals eligible for current Federal job training are now served, and by removing obstacles and layers of administrative costs, more funds will be made available to individuals to enable such individuals to receive the job training of their choice; and

(10) while the Federal Government proceeds to create a new marketplace for job training, the Federal Government must also maintain a commitment to providing intensive services to assist individuals who are economically disadvantaged adults.

(b) PURPOSES.—The purposes of this Act are to—

(1) enhance the choices available to dislocated workers, and economically disadvantaged adults, who want to upgrade their work skills and learn new skills to compete in a changing economy;

(2) enable individuals to make choices that are best for the careers of such individuals;

(3) consolidate job training programs and provide a simple voucher system that relies on individual choice and provides high quality job market information;

(4) allow an individual to tailor job training and education to the personal needs of such individual so that such individual may remain in long-term employment yet have the means to be flexible when necessary; and

(5) create a system that provides timely and reliable information to individuals to use to assist such individuals in making the best choices with respect to the use of vouchers for job training.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) COMMUNITY-BASED ORGANIZATION.—The term "community-based organization" means a private nonprofit organization that—

(A) is representative of a community or a significant segment of a community; and

(B) provides job training and employment-related services.

(2) DISLOCATED WORKER.—

(A) IN GENERAL.—The term "dislocated worker" means an individual who—

(i) has been terminated or laid off, or has received a notice of termination or layoff, from employment, is eligible for or has exhausted entitlement to unemployment compensation, and is unlikely to return to a previous industry or occupation;

(ii) has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

(iii) has been unemployed long-term and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individual resides, including an older individual who may have substantial barriers to employment by reason of age;

(iv) was self-employed (including a farmer, a rancher, and a fisher) and is unemployed as a result of general economic conditions in the community in which such individual resides or because of a natural disaster, subject to regulations prescribed by the Secretary; or

(v) is an employee of the Department of Defense or of a private defense contractor who has been terminated or laid off, or has

received a notice of termination or layoff, from employment as a result of the closure or realignment of a military installation, or a reduction in defense spending as determined by the Secretary of Defense.

(B) SPECIAL RULE FOR SELF-EMPLOYED INDIVIDUALS.—The Secretary of Labor shall establish categories of self-employed individuals and of economic conditions and natural disasters to which subparagraph (A)(iv) applies.

(C) SPECIAL RULE FOR DISPLACED HOMEMAKERS.—The term "dislocated worker" shall, for the purpose of applying provisions related to job training and employment-related services under titles I and III within a State, include a displaced homemaker (as defined by the Secretary of Labor in regulation), if the State determines that such definition of the term is appropriate and will not adversely affect the delivery of services to other dislocated workers in the State.

(3) ECONOMICALLY DISADVANTAGED ADULT.—The term "economically disadvantaged adult" means an individual who is age 18 or older and who had received an income, or is a member of a family that had received a total family income, for the 6-month period prior to application for the activity involved (exclusive of unemployment compensation, child support payments, and welfare payments) that, in relation to family size, does not exceed the higher of—

(A) the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), for an equivalent period; or

(B) 70 percent of the lower living standard income level, for an equivalent period.

(4) JOB TRAINING PROVIDER.—The term "job training provider" means a public agency, private nonprofit organization, or private for-profit entity that delivers job training.

(5) SERVICE DELIVERY AREA.—The term "service delivery area" means an area established under section 101 of the Job Training Partnership Act (29 U.S.C. 1511).

(6) STATE.—The term "State", used to refer to a jurisdiction, means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(7) WORKFORCE DEVELOPMENT ENTITY.—The term "workforce development entity" means a private industry council as described in section 102 of the Job Training Partnership Act (29 U.S.C. 1512), or such successor entity as may be established by Federal statutory law specifically to serve as such entity.

TITLE I—JOB TRAINING VOUCHERS

SEC. 101. ESTABLISHMENT.

The Secretary of Labor shall, pursuant to the requirements of this title, establish a job training system that provides vouchers to individuals for the purpose of enabling the individuals to obtain job training.

SEC. 102. INDIVIDUAL CHOICE.

(a) IN GENERAL.—Upon notification of approval of an application submitted under section 104, an individual may receive a voucher for a 2-year period, beginning on the date on which the application is approved.

(b) USE OF VOUCHERS FOR JOB TRAINING.—

(1) IN GENERAL.—An individual who is a recipient of a voucher under subsection (a) may use such voucher to pay for job training obtained from a job training provider that meets the requirements of section 106.

(2) AUTHORIZED JOB TRAINING.—The job training described in paragraph (1) may include training through—

(A) associate degree and nondegree programs at—

(i) two- and four-year colleges;

(ii) vocational and technical education schools;

(iii) private for-profit and not-for-profit training organizations;

(iv) public agencies and schools; and

(v) community-based organizations;

(B) employer work-based training programs; and

(C) in the case of individuals who are economically disadvantaged adults, preemployment training programs.

SEC. 103. ELIGIBILITY.

An individual shall be eligible to receive a voucher under this title if such individual is—

(1) a dislocated worker; or

(2) an economically disadvantaged adult.

SEC. 104. OBTAINING A VOUCHER.

(a) APPLICATION.—An individual who desires to receive a voucher under this title shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require.

(b) ASSISTANCE TO APPLICANTS.—

(1) ONE-STOP CAREER CENTERS.—Each one-stop career center established under section 301 shall—

(A) provide applications for vouchers under this title to interested individuals, assist such individuals in completing such applications, and collect completed applications for determination of eligibility;

(B) provide performance-based information to the applicants relating to job training providers eligible to receive payment by vouchers in accordance with section 106;

(C) provide information to the applicants on—

(i) the local economy and availability of employment;

(ii) profiles of local industries; and

(iii) details of local labor market demand; and

(D) carry out such other duties relating to the voucher system as may be specified in regulations issued by the Secretary of Labor.

(2) CONFLICT OF INTEREST STANDARDS.—The Secretary of Labor shall issue regulations establishing procedures to ensure that a one-stop career center that is operated by an entity that is concurrently an eligible job training provider under the voucher system provides information to the applicants relating to the other eligible job training providers in the service delivery area in an objective and equitable manner.

SEC. 105. OVERSIGHT AND ACCOUNTABILITY.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Labor shall issue regulations that—

(1) specify the—

(A) voucher application requirements;

(B) form of the vouchers;

(C) use of the vouchers;

(D) method of redemption of the vouchers;

(E) most expeditious and effective process of distribution (consistent with the findings and purposes of this Act) of the vouchers to eligible individuals; and

(F) the arrangements necessary to phase in the voucher system in each State in a timely manner;

(2) specify the duties and responsibilities of job training providers under a voucher system under this title;

(3) specify the Federal and State responsibilities in oversight of job training providers, including the enforcement responsibilities and the determination of administrative costs with respect to the voucher system under this title; and

(4) specify the manner in which economically disadvantaged adults will receive adequate counseling and support services necessary to take full advantage of voucher assistance under this title.

(b) PUBLIC COMMENT.—In issuing regulations under subsection (a), the Secretary of Labor shall provide an opportunity for comment from the public, including the business community, labor organizations, and community-based organizations.

SEC. 106. ELIGIBILITY REQUIREMENTS FOR JOB TRAINING PROVIDERS.

(a) ELIGIBILITY REQUIREMENTS.—A job training provider shall be eligible to receive payment by vouchers under this title if such provider—

(1) is—

(A) eligible to participate in programs under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); or

(B) determined to be eligible under the procedure described in subsection (b); and

(2) provides the performance-based information required pursuant to subsection (c).

(b) ALTERNATIVE ELIGIBILITY PROCEDURE.—

(1) IN GENERAL.—The State shall establish an alternative eligibility procedure for job training providers desiring to receive payment by vouchers under this title, but that are not eligible to participate in programs under title IV of the Higher Education Act of 1965.

(2) PROCEDURE REQUIREMENTS.—In establishing the procedure described in paragraph (1), the State shall establish minimum acceptable levels of performance for job training providers based on factors and guidelines developed by the Secretary of Labor in consultation with the Secretary of Education. Such factors shall be comparable in rigor and scope to the provisions of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099a et seq.) that are used to determine the eligibility of an institution of higher education to participate in programs under such title and are appropriate to the type of job training provider seeking eligibility under this subsection and the nature of the job training to be provided.

(3) LIMITATION.—Notwithstanding paragraph (1), if the participation of an institution of higher education in any of the programs under title IV of the Higher Education Act of 1965 is terminated, such institution shall not be eligible to receive funds under this title for a period of 2 years beginning on the date of such termination.

(c) PERFORMANCE-BASED INFORMATION.—

(1) CONTENTS.—The Secretary of Labor shall identify performance-based information that is to be submitted by job training providers desiring to receive payment by vouchers under this title. Such information may include information relating to—

(A) the percentage of students completing the programs conducted by a job training provider;

(B) the rates of licensure of graduates of the programs conducted by such job training provider;

(C) the percentage of graduates of the programs conducted by such job training provider that meet industry-specific skill standards;

(D) the rates of placement and retention in employment, and earnings of, the graduates of the programs conducted by such job training provider;

(E) the percentage of graduates of the programs conducted by such job training provider who obtained employment in an occupation related to such programs conducted by such provider; and

(F) the warranties or guarantees provided by such job training provider relating to the skill levels or employment to be attained by graduates of the programs conducted by such provider.

(2) ADDITIONS.—The State may, pursuant to the approval of the Secretary of Labor, prescribe additional performance-based information that shall be submitted by job training providers pursuant to this subsection.

(d) ADMINISTRATION.—

(1) STATE AGENCY.—The Governor shall designate a State agency to collect, verify, and disseminate the performance-based information submitted pursuant to subsection (c).

(2) APPLICATION.—A job training provider desiring to be eligible to receive funds under this title shall submit the information required under subsection (c) to the State agency designated under paragraph (1) at such time and in such form as such State agency may require.

(3) LIST OF ELIGIBLE PROVIDERS.—The State agency designated under paragraph (1) shall compile a list of eligible job training providers, accompanied by the performance-based information submitted, and disseminate such list and information to the one-stop career centers established under section 301, and other appropriate entities within the State.

(4) ACCURACY OF INFORMATION.—

(A) IN GENERAL.—If the State agency determines that a job training provider submitted inaccurate performance-based information under this subsection, such provider shall be disqualified from receiving funds under this title for a period of 2 years beginning on the date of such determination, unless such provider can demonstrate, to the satisfaction of the State agency designated pursuant to paragraph (1), that the information was provided in good faith.

(B) APPEAL.—The State shall establish a procedure for a job training provider to appeal a determination by a State agency that results in a disqualification under subparagraph (A). Such procedure shall provide an opportunity for a hearing and include appropriate time limits to ensure prompt resolution of the appeal.

(5) ASSISTANCE IN DEVELOPING INFORMATION.—The State agency designated under paragraph (1) may provide technical assistance to a job training provider in developing the performance-based information required under subsection (c). Such assistance may include facilitating the utilization of State administrative records, such as unemployment compensation wage records, and conducting other appropriate coordination activities.

(6) CONSULTATION.—The Secretary of Labor shall consult with the Secretary of Education regarding the eligibility of institutions of higher education to participate in programs under this title.

SEC. 107. EVALUATION OF VOUCHER SYSTEM.

The Secretary of Labor shall annually—

(1) monitor the effectiveness of the voucher system;

(2) evaluate the benefit of such system to voucher recipients under this title and the taxpayer; and

(3) submit information obtained from such evaluation to the appropriate committees of Congress.

SEC. 108. APPORTIONMENT OF FUNDS.

(a) IN GENERAL.—The Secretary of Labor shall, without in any way reducing the commitment of, or the level of effort by, the Federal Government to improve the job training, employment, and earnings of all workers and jobseekers (particularly in hard-to-serve communities), apportion sums appropriated under section 501 to each State for each fiscal year in accordance with subsections (b) and (c), to enable States and service delivery areas in the States to carry out this title and title III.

(b) ALLOCATION BY CATEGORY.—

(1) FUNDING FOR DISLOCATED WORKERS.—From the sums appropriated pursuant to section 501 for each fiscal year, the Secretary of Labor shall determine the portion of the sums to be made available for providing job training and employment-related services for dislocated workers under this title and title III, which shall be not less than the total amount made available to the States for such purpose for fiscal year 1997. The Secretary shall apportion such portion among the States, based on consideration of factors described in subsection (c), as appropriate.

(2) FUNDING FOR ECONOMICALLY DISADVANTAGED ADULTS.—From the sums appropriated pursuant to section 501 for each fiscal year, the Secretary of Labor shall determine the portion of the sums to be made available for providing job training and employment-related services for economically disadvantaged adults under this title and title III. The Secretary shall apportion such total amount among the States, based on consideration of factors described in subsection (c), as appropriate.

(c) CONSIDERATION OF FACTORS FOR APPORTIONMENT TO STATES.—The apportionment of the portions described in subsection (b) by the Secretary to each State shall be based on the following factors:

(1) The relative number of unemployed individuals who reside in each State as compared to the total number of unemployed individuals in all the States.

(2) The relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States.

(3) The relative number of individuals who have been unemployed for 15 weeks or more and who reside in each State as compared to the total number of such individuals in all the States.

(4) The relative number of economically disadvantaged adults who reside in each State as compared to the total number of such adults in all the States.

(d) STATE RESERVE.—

(1) DISLOCATED WORKER FUNDS.—From the amount apportioned to each State from the portion described in subsection (b)(1), the State may reserve to carry out State activities, including rapid response assistance (as described in section 314(b) of the Job Training Partnership Act, as in existence on the date of enactment of this Act (29 U.S.C. 1661c(b))) and State administration, an amount that is not greater than the proportion of funds reserved for State activities under title III of the Job Training Partnership Act, as in existence on such date (29 U.S.C. 1651 et seq.) for fiscal year 1997.

(2) ECONOMICALLY DISADVANTAGED ADULTS.—From the amount apportioned to each State from the portion described in subsection (b)(2), the State may reserve to carry out State activities, including State administration, an amount that is not greater than the proportion of funds reserved for State activities under part A of title II of the Job Training Partnership Act, as in existence on the date of enactment of this Act (29 U.S.C. 1601 et seq.) for fiscal year 1997.

(e) CONSIDERATION OF FACTORS FOR APPORTIONMENT TO SERVICE DELIVERY AREAS.—The apportionment of amounts received by each State under subsection (c), and not reserved under subsection (d), to service delivery areas within such State shall be based on the following factors:

(1) The relative number of unemployed individuals who reside in each service delivery area within the State as compared to the total number of unemployed individuals in all such service delivery areas.

(2) The relative excess number of unemployed individuals who reside in each service delivery area within the State as compared to the total excess number of unemployed individuals in all such service delivery areas.

(3) The relative number of individuals who have been unemployed for 15 weeks or more and who reside in each service delivery area within the State as compared to the total number of such individuals in all such service delivery areas.

(4) The relative number of economically disadvantaged adults who reside in each service delivery area within the State as compared to the total number of such adults in all such service delivery areas.

(f) FUNDS FOR VOUCHERS.—Not less than 75 percent of funds apportioned to a service delivery area under subsection (e) and used for job training under this Act by the service delivery area shall be made available in the form of vouchers to individuals in such area who are eligible under section 103.

(g) DEFINITION.—For purposes of this section, the term "excess number of unemployed individuals" means the number that represents unemployed individuals in excess of 4.5 percent of the civilian labor force in a State or service delivery area, as appropriate.

TITLE II—CONSOLIDATION OF FEDERAL JOB TRAINING PROGRAMS

SEC. 201. CONSOLIDATION OF PROGRAMS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the consolidation and streamlining of Federal job training programs should be accomplished without in any way reducing the commitment of, or the level of effort provided by, the Federal Government to improve the job training, employment, and earnings of all workers and jobseekers (particularly in hard-to-serve communities).

(b) REPEALS OF FEDERAL JOB TRAINING PROGRAMS.—The following provisions are repealed:

(1) Section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4)).

(2) Section 106(b)(7) of the Job Training Partnership Act (29 U.S.C. 1516(b)(7)).

(3) Section 123 of such Act (29 U.S.C. 1533).

(4) Section 204(d) of such Act (29 U.S.C. 1604(d)).

(5) Part A of title II of such Act (29 U.S.C. 1601 et seq.).

(6) Section 302(c) of such Act (29 U.S.C. 1652(c)).

(7) Part A of title III of such Act (29 U.S.C. 1661 et seq.).

(8) Section 325 of such Act (29 U.S.C. 1662d).

(9) Section 325A of such Act (29 U.S.C. 1662d–1).

(10) Section 326 of such Act (29 U.S.C. 1662e).

(11) Sections 301 through 303 of such Act (29 U.S.C. 1651 et seq.).

(12) The Displaced Homemakers Self-Sufficiency Assistance Act (29 U.S.C. 2301 et seq.).

(13) Subtitle C of title VII of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11441 et seq.).

(14) Subchapter I of chapter 421 of title 49, United States Code.

(15) Title II of Public Law 95-250 (92 Stat. 172).

TITLE III—EMPLOYMENT-RELATED INFORMATION AND SERVICES THROUGH ONE-STOP CAREER CENTERS

SEC. 301. ONE-STOP CAREER CENTERS.

(a) ESTABLISHMENT.—Each service delivery area receiving funds under this Act shall develop and implement a network of one-stop career centers for the area to provide access for jobseekers, workers, and businesses to a comprehensive array of high quality job training described in section 102(b)(2) and employment-related services (including provision of information) described in subsections (f) and (g).

(b) PROCEDURES.—Each workforce development entity for a service delivery area, in conjunction with the appropriate local chief elected official for the area, shall negotiate with the State a method for establishing one-stop career centers (including designating one-stop career center operators) for the area, consistent with criteria established by the Secretary of Labor.

(c) ELIGIBLE ENTITIES.—Each entity within the service delivery area that provides the services specified in subsection (f) or (g) shall be eligible to be designated as a one-stop career center operator.

(d) PERFORMANCE STANDARDS.—The Secretary of Labor shall establish a performance standard system for assessing the performance of each one-stop career center operator.

(e) PERIOD OF SELECTION.—Each one-stop career center operator shall be designated for 2-year period. Every 2 years, the workforce development entity for a service delivery area shall reevaluate the designation of one-stop career center operators for the area, based on performance under the standards established under subsection (d).

(f) EMPLOYMENT-RELATED SERVICES TO INDIVIDUALS.—Each one-stop career center for a service delivery area may make available—

(1) outreach to make individuals aware of, and encourage the use of, services available from workforce development programs operating in the service delivery area;

(2) intake and orientation to the information and services available through the one-stop career center;

(3) assistance in filing initial claims for unemployment compensation;

(4) initial assessments (including appropriate testing) of the skill levels and service needs of individuals, including basic skills, occupational skills, work experience, employability, interest, aptitude, and supportive service needs;

(5) job search assistance, including resume and interview preparation and workshops;

(6) information relating to the supply, demand, price, and quality of job training available in each service delivery area in the State involved, including performance-based information provided pursuant to section 106(c);

(7) job market information, including—

(A) data on the local economy and availability of employment;

(B) profiles of local industries;

(C) details of local labor market demand; and

(D) local demographic and socioeconomic characteristics;

(8) referral to appropriate job training and employment services, and to other services described in this subsection, in the service delivery area;

(9) supportive services, including child care;

(10) job development; and

(11) counseling.

(g) EMPLOYMENT-RELATED SERVICES TO EMPLOYERS.—Each one-stop career center for a service delivery area may provide to employers, at the request of the employers—

(1) information relating to supply, demand, price, and quality of job training available in each service delivery area in the State;

(2) customized screening and referral of individuals for employment;

(3) customized assessment of skills of the workers of the employer;

(4) an analysis of the skill needs of the employer; and

(5) other specialized employment and training services.

SEC. 302. ACCESS TO INFORMATION.

(a) FINDINGS.—Congress finds that accurate, timely, and relevant data regarding employment, job training, job skills, and job training opportunities are useful for individuals making choices about the careers of such individuals.

(b) AUTHORITY.—The Secretary of Labor is authorized to make arrangements to develop and provide through one-stop career centers and other appropriate mechanisms relevant job market information to interested individuals, including voucher recipients under title I, jobseekers, employers, and workers.

SEC. 303. DIRECT LOANS TO UNITED STATES WORKERS.

(a) FINDINGS.—Congress finds that the William D. Ford Federal Direct Loan Program authorized by part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.), is a valuable financing tool for United States workers who desire to take advantage of training and education programs, consistent with the goals of such workers, to learn new skills for careers that may bring higher salaries and improved quality of life.

(b) AWARENESS.—The Department of Education shall endeavor to make known the value and availability of direct loans through the William D. Ford Federal Direct Loan Program authorized by part D of title IV of the Higher Education Act of 1965 through cooperative arrangements with one-stop career centers, training and educational training programs, State agencies, and other Federal agencies.

TITLE IV—REPORTS AND PLANS

SEC. 401. CONSOLIDATION AND STREAMLINING.

(a) REPORT ON CONSOLIDATING NONCOVERED FEDERAL JOB TRAINING PROGRAMS.—Not later than January 1, 1998, and each year thereafter, the Secretary of Labor shall prepare and submit to Congress a report that describes how additional Federal job training programs not covered by this Act can be consolidated into a more integrated and accountable workforce development system that better meets the needs of jobseekers, workers, and business.

(b) PLAN ON USE OF COMMON DEFINITIONS, MEASURES, STANDARDS, AND CYCLES.—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor shall develop a plan that, wherever practicable, requires the Federal job training programs to use common definitions, common outcome measures, common eligibility standards, and common funding cycles in order to make such training programs more accessible.

SEC. 402. REPORT RELATING TO INCOME SUPPORT.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) many dislocated workers and economically disadvantaged adults are unable to enroll in long-term job training because such workers and adults lack income support after unemployment compensation is exhausted;

(2) evidence suggests that long-term job training is among the most effective adjustment service in assisting dislocated workers and economically disadvantaged adults to obtain employment and enhance wages; and

(3) there is a need to identify options relating to how income support may be provided to enable dislocated workers and economically disadvantaged adults to participate in long-term job training.

(b) REPORT.—Not later than 120 days after the date of enactment of this Act, the Secretary of Labor shall prepare and submit to Congress a report that—

(1) examines the need for income support to enable dislocated workers and economically disadvantaged adults to participate in long-term job training;

(2) identifies options relating to how such income support may be provided to such workers and adults; and

(3) contains such recommendations as the Secretary of Labor determines are appropriate.

TITLE V—GENERAL PROVISIONS

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out titles I and III such sums as may be necessary for each of fiscal years 1998 through 2002.

(b) PROGRAM YEAR.—Appropriations for any fiscal year for activities carried out under this Act shall be available for obligation only on the basis of a program year. The program year shall begin on July 1 in the fiscal year for which the appropriation is made.

SEC. 502. EFFECTIVE DATE.

This Act shall take effect on July 1, 1998.

By Mr. LAUTENBERG (for himself, Mr. BAUCUS, Mr. REID, Mr. MOYNIHAN, Mr. GRAHAM, Mrs. BOXER, Mr. WYDEN, Mr. LEVIN, Mr. TORRICELLI, Mr. BREAUX, and Mr. KENNEDY):

S. 18. A bill to assist the States and local governments in assessing and remediating brownfield sites and encouraging environmental cleanup programs, and for other purposes; to the Committee on Environmental and Public Works.

THE BROWNFIELDS AND ENVIRONMENTAL CLEANUP ACT OF 1997

Mr. LAUTENBERG. Madam President, today along with Senators DASCHLE, BAUCUS, MOYNIHAN, GRAHAM, HARRY REID, BOXER, WYDEN, LEVIN, TORRICELLI, SARBANES, and BREAUX, I am introducing the Brownfields and Environmental Cleanup Act of 1997. This legislation is designed to foster the cleanup of potentially thousands of toxic waste sites across this country, and just as importantly this bill is about jobs, about revenue, and economic opportunity, because it will help turn abandoned industrial sites into engines of economic development.

Madam President, I have been interested for a long time now in the issue of these abandoned, underutilized, and contaminated industrial sites, commonly known as brownfields. Our Nation's great industrial tradition was

the lifeblood of our Nation's economy. But this industrial tradition also entailed tremendous environmental costs. Sites were contaminated, and then when the manufacturers, the companies left, the legacy remained behind. Today, decaying industrial plants define the skyline and contaminate the land in many of our urban areas. Their rusting frames, like aging skyscrapers, are a silent reminder of those manufacturers that left, taking inner-city jobs and often inner-city hope with them.

Yet, Madam President, in these foul fields may lie the seeds of urban revitalization, and I continue to feel as I did when I introduced similar legislation in 1993 and 1996, that a brownfields cleanup program can spur significant economic development and create jobs. This type of cleanup initiative makes good environmental sense and good business sense. To appreciate, one need only look at a few of the brownfields success stories from across the States. Now, these are sites again that do not qualify as a Superfund site because they are not toxic enough, but they lie there and they contaminate not only the aesthetics of the area but also the opportunity for jobs and for business investment.

A pilot project in Cleveland resulted in $3.2 million in private investment, a $1 million increase on the local tax base, and more than 170 new jobs. In Elizabeth, NJ, a former municipal landfill will be turned by the fall of 1998 into a major mall with 5,000 employees.

Madam President, the potential for job creation across the country is enormous, and every revitalized brownfields may represent for someone a field of dreams, especially to an unemployed urban worker.

While fostering jobs, brownfield cleanup also means that dangerous contaminants are removed from our environment, and the scars of decades of neglected industrial waste which disfigure our cities and suburbs and even rural areas may be finally allowed to heal. The Superfund Program provides Federal authority to assist in cleaning up abandoned waste sites that pose the most serious threats. However, there are in this country of ours 100,000 of these brownfield sites that do not fall under Superfund because of lower levels of contamination.

What do we do? We can't just watch them keep these communities from revitalizing themselves. The risks posed by many of these sites may be relatively low and others even nonexistent, because brownfields are abandoned or underutilized industrial or commercial sites where expansion or redevelopment is complicated by real or even perceived, not really factually established, environmental contamination. But their full economic use is being stymied because there is no ready mechanism for getting them evaluated or, if necessary, cleaned up, even when the owner of the property is ready, willing and eager to do so.

In addition, prospective purchasers and developers are reluctant to get involved in transactions with these properties because of their concern, however minimal, they might potentially create enormous environmental liability.

The challenge is to turn these abandoned properties into thriving businesses that can generate needed jobs and act as a catalyst for economic development.

My legislation would provide financial assistance in the form of grants to local and State governments to inventory and evaluate brownfields sites. This would enable interested parties to know what would be required to clean the site and what reuse would best suit the property.

My bill would also provide grants to State and local governments to establish and capitalize low-interest loan programs. These funds would be loaned to current owners, prospective purchasers and municipalities to facilitate voluntary cleanup actions where traditional lending mechanisms are just not available. The minimum seed money involved in the program would leverage substantial economic payoffs, as well as turning lands which may be of negative worth into assets for the future.

The bill also would limit the potential liability of innocent buyers of these properties, and it would set a standard to gauge when parties couldn't have reasonably known that the property was contaminated. So there is no hidden liability in there. There is no sudden surprise for someone who conscientiously and innocently made an investment, and suddenly they find they are liable for far, far more than their initial investment.

Madam President, cleaning up brownfields will mean a safer environment and more jobs for places that badly need them. It will also send a message to those who want to invest in our urban areas that they don't have to leave the inner city in search of open space. They can build right there in our downtowns, the places that already have the services, the infrastructure and the people to do the job.

There has been bipartisan interest, Madam President, in addressing brownfields, both in the Senate and in the other body on the other side of the Capitol. I am hopeful we can move this legislation forward in a cooperative way with support of Members on both sides of the aisle.

I ask unanimous consent that a copy of the bill, a section-by-section analysis and a letter of endorsement from the Regional Planning Association, the country's oldest planning organization, be printed in the RECORD.

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

S. 18

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Brownfields and Environmental Cleanup Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
TITLE I—BROWNFIELD REMEDIATION AND ENVIRONMENTAL CLEANUP
Sec. 101. Definitions.
Sec. 102. Inventory and assessment grant program.
Sec. 103. Grants for revolving loan programs.
Sec. 104. Economic redevelopment grants.
Sec. 105. Reports.
Sec. 106. Limitations on use of funds.
Sec. 107. Effect on other laws.
Sec. 108. Regulations.
Sec. 109. Authorizations of appropriations.
TITLE II—PROSPECTIVE PURCHASERS
Sec. 201. Limitations on liability for response costs for prospective purchasers.
TITLE III—INNOCENT LANDOWNERS
Sec. 301. Innocent landowners.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) past uses of land in the United States for industrial and commercial purposes have created many sites throughout the United States that have environmental contamination;

(2) Congress and the governments of States and political subdivisions of States have enacted laws to—

(A) prevent environmental contamination; and

(B) carry out response actions to correct past instances of environmental contamination;

(3) many sites are minimally contaminated, do not pose serious threats to human health or the environment, and can be satisfactorily remediated expeditiously with little government oversight;

(4) promoting the assessment, cleanup, and redevelopment of contaminated sites could lead to significant environmental and economic benefits, particularly in any case in which a cleanup can be completed quickly and during a period of time that meets short-term business needs;

(5) the private market demand for sites affected by environmental contamination frequently is reduced, often because of uncertainties regarding liability or potential cleanup costs of innocent landowners and prospective purchasers under Federal law;

(6) the abandonment or underutilization of brownfield sites impairs the ability of the Federal Government and the governments of States and political subdivisions of States to provide economic opportunities for the people of the United States, particularly the unemployed and economically disadvantaged;

(7) the abandonment or underuse of brownfield sites also results in the inefficient use of public facilities and services, as well as land and other natural resources, and extends conditions of blight in local communities;

(8) cooperation among Federal agencies, departments and agencies of States and political subdivisions of States, local community development organizations, and current owners and prospective purchasers of

brownfield sites is required to accomplish timely response actions and the redevelopment or reuse of brownfield sites;

(9) there is a need to provide financial incentives and assistance to inventory and assess certain brownfield sites and facilitate the cleanup of the sites so that the sites may be redeveloped for beneficial uses; and

(10) there is a need for a program to—

(A) encourage cleanups of brownfield sites; and

(B) facilitate the establishment and enhancement of programs by States and local governments to foster cleanups of brownfield sites through capitalization of loan programs.

(b) PURPOSES.—The purposes of this Act are to create new business and employment opportunities through the economic redevelopment of brownfield sites that generally do not pose a serious threat to human health or the environment and to stimulate the assessment and cleanup of brownfield sites by—

(1) encouraging States and local governments to provide for the assessment and cleanup of brownfield sites that may not be remediated under other environmental laws (including regulations) in effect on the date of enactment of this Act;

(2) encouraging local governments and private parties, including local community development organizations, to participate in programs, such as State cleanup programs, that facilitate expedited response actions that are consistent with business needs at brownfield sites;

(3) directing the Administrator of the Environmental Protection Agency to establish programs that provide financial assistance to—

(A) facilitate site assessments of certain brownfield sites;

(B) encourage cleanup of appropriate brownfield sites through capitalization of loan programs; and

(C) encourage workforce development in areas adversely affected by contaminated properties; and

(4) reducing transaction costs and paperwork, and preventing needless duplication of effort and delay at all levels of government.

TITLE I—BROWNFIELD REMEDIATION AND ENVIRONMENTAL CLEANUP

SEC. 101. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) BROWNFIELD SITE.—The term "brownfield site" means a facility that has or is suspected of having environmental contamination that—

(A) could prevent the timely use, development, reuse, or redevelopment of the facility; and

(B) is relatively limited in scope or severity and can be comprehensively assessed and readily analyzed.

(3) CONTAMINANT.—The term "contaminant" includes any hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)).

(4) DISPOSAL.—The term "disposal" has the meaning given the term in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(5) ENVIRONMENT.—The term "environment" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(6) ENVIRONMENTAL CONTAMINATION.—The term "environmental contamination" means the existence at a facility of 1 or more contaminants that may pose a threat to human health or the environment.

(7) FACILITY.—The term "facility" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(8) GRANT.—The term "grant" includes a cooperative agreement.

(9) GROUND WATER.—The term "ground water" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(10) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(11) LOCAL GOVERNMENT.—The term "local government" has the meaning given the term "unit of general local government" in the first sentence of section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)), except that the term includes an Indian tribe.

(12) NATURAL RESOURCES.—The term "natural resources" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(13) OWNER.—The term "owner" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(14) PERSON.—The term "person" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(15) PROSPECTIVE PURCHASER.—The term "prospective purchaser" means a prospective purchaser of a brownfield site.

(16) RELEASE.—The term "release" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(17) RESPONSE ACTION.—The term "response action" has the meaning given the term "response" in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(18) SITE ASSESSMENT.—

(A) IN GENERAL.—The term "site assessment" means an investigation that determines the nature and extent of a release or potential release of a hazardous substance at a brownfield site and meets the requirements of subparagraph (B).

(B) INVESTIGATION.—For the purposes of this paragraph, an investigation that meets the requirements of this subparagraph—

(i) shall include—

(I) an onsite evaluation; and

(II) sufficient testing, sampling, and other field-data-gathering activities to accurately determine whether the brownfield site is contaminated and the threats to human health and the environment posed by the release of contaminants at the brownfield site; and

(ii) may include—

(I) review of such information regarding the brownfield site and previous uses as is available at the time of the review; and

(II) an offsite evaluation, if appropriate.

(19) STATE.—The term "State" has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

SEC. 102. INVENTORY AND ASSESSMENT GRANT PROGRAM.

(a) IN GENERAL.—The Administrator shall establish a program to award grants to States or local governments to inventory brownfield sites and to conduct site assessments of brownfield sites.

(b) SCOPE OF PROGRAM.—

(1) GRANT AWARDS.—To carry out subsection (a), the Administrator may, on approval of an application, provide financial assistance to a State or local government.

(2) GRANT APPLICATION.—An application for a grant under this section shall include, to the extent practicable, each of the following:

(A) An identification of the brownfield sites for which assistance is sought and a description of the effect of the brownfield sites on the community, including a description of the nature and extent of any known or suspected environmental contamination within the areas.

(B) A description of the need of the applicant for financial assistance to inventory brownfield sites and conduct site assessments.

(C) A demonstration of the potential of the grant assistance to stimulate economic development, including the extent to which the assistance will stimulate the availability of other funds for site assessment, site identification, or environmental remediation and subsequent redevelopment of the areas in which eligible brownfield sites are situated.

(D) A description of the local commitment as of the date of the application, which shall include a community involvement plan that demonstrates meaningful community involvement.

(E) A plan that shows how the site assessment, site identification, or environmental remediation and subsequent development will be implemented, including—

(i) an environmental plan that ensures the use of sound environmental procedures;

(ii) an explanation of the appropriate government authority and support for the project as in existence on the date of the application;

(iii) proposed funding mechanisms for any additional work; and

(iv) a proposed land ownership plan.

(F) A statement on the long-term benefits and the sustainability of the proposed project that includes—

(i) the ability of the project to be replicated nationally and measures of success of the project; and

(ii) to the extent known, the potential of the plan for each area in which an eligible brownfield site is situated to stimulate economic development of the area on completion of the environmental remediation.

(G) Such other factors as the Administrator considers relevant to carry out this title.

(3) APPROVAL OF APPLICATION.—

(A) IN GENERAL.—In making a decision whether to approve an application under paragraph (1), the Administrator shall—

(i) consider the need of the State or local government for financial assistance to carry out this section;

(ii) consider the ability of the applicant to carry out an inventory and site assessment under this section;

(iii) ensure a fair distribution of grant funds between urban and nonurban areas; and

(iv) consider such other factors as the Administrator considers relevant to carry out this section.

(B) GRANT CONDITIONS.—As a condition of awarding a grant under this section, the Administrator may, on the basis of the criteria

considered under subparagraph (A), attach such conditions to the grant as the Administrator determines appropriate.

(4) GRANT AMOUNT.—The amount of a grant awarded to any State or local government under subsection (a) for inventory and site assessment of 1 or more brownfield sites shall not exceed $200,000.

(5) TERMINATION OF GRANTS.—If the Administrator determines that a State or local government that receives a grant under this subsection is in violation of a condition of a grant referred to in paragraph (3)(B), the Administrator may terminate the grant made to the State or local government and require full or partial repayment of the grant.

SEC. 103. GRANTS FOR REVOLVING LOAN PROGRAMS.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—The Administrator shall establish a program to award grants to be used by State or local governments to capitalize revolving loan funds for the cleanup of brownfield sites.

(2) LOANS.—The loans may be provided by the State or local government to finance cleanups of brownfield sites by the State or local government, or by an owner or a prospective purchaser of a brownfield site (including a local government) at which a cleanup is being conducted or is proposed to be conducted.

(b) SCOPE OF PROGRAM.—

(1) IN GENERAL.—

(A) GRANTS.—In carrying out subsection (a), the Administrator may award a grant to a State or local government that submits an application to the Administrator that is approved by the Administrator.

(B) USE OF GRANT.—The grant shall be used by the State or local government to capitalize a revolving loan fund to be used for cleanup of 1 or more brownfield sites.

(C) GRANT APPLICATION.—An application for a grant under this section shall be in such form as the Administrator determines appropriate. At a minimum, the application shall include the following:

(i) Evidence that the grant applicant has the financial controls and resources to administer a revolving loan fund in accordance with this title.

(ii) Provisions that—

(I) ensure that the grant applicant has the ability to monitor the use of funds provided to loan recipients under this title;

(II) ensure that any cleanup conducted by the applicant is protective of human health and the environment; and

(III) ensure that any cleanup funded under this Act will comply with all applicable Federal and State laws that apply to the cleanup.

(iii) Identification of the criteria to be used by the State or local government in providing for loans under the program. The criteria shall include the financial standing of the applicants for the loans, the use to which the loans will be put, the provisions to be used to ensure repayment of the loan funds, and the following:

(I) A complete description of the financial standing of the applicant that includes a description of the assets, cash flow, and liabilities of the applicant.

(II) A written statement that attests that the cleanup of the site would not occur without access to the revolving loan fund.

(III) The proposed method, and anticipated period of time required, to clean up the environmental contamination at the brownfield site.

(IV) An estimate of the proposed total cost of the cleanup to be conducted at the brownfield site.

(V) An analysis that demonstrates the potential of the brownfield site for stimulating economic development on completion of the cleanup of the brownfield site.

(2) GRANT APPROVAL.—In determining whether to award a grant under this section, the Administrator shall consider—

(A) the need of the State or local government for financial assistance to clean up brownfield sites that are the subject of the application, taking into consideration the financial resources available to the State or local government;

(B) the ability of the State or local government to ensure that the applicants repay the loans in a timely manner;

(C) the extent to which the cleanup of the brownfield site or sites would reduce health and environmental risks caused by the release of contaminants at, or from, the brownfield site or sites;

(D) the demonstrable potential of the brownfield site or sites for stimulating economic development on completion of the cleanup;

(E) the demonstrated ability of the State or local government to administer such a loan program;

(F) the demonstrated experience of the State or local government regarding brownfield sites and the reuse of contaminated land, including whether the government has received any grant under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) to assess brownfield sites, except that applicants who have not previously received such a grant may be considered for awards under this section;

(G) the efficiency of having the loan administered by the level of government represented by the applicant entity;

(H) the experience of administering any loan programs by the entity, including the loan repayment rates;

(I) the demonstrations made regarding the ability of the State or local government to ensure a fair distribution of grant funds among brownfield sites within the jurisdiction of the State or local government; and

(J) such other factors as the Administrator considers relevant to carry out this section.

(3) GRANT AMOUNT.—The amount of a grant made to a State or local applicant under this section shall not exceed $500,000.

(4) REVOLVING LOAN FUND APPROVAL.—Each application for a grant to capitalize a revolving loan fund under this section shall, as a condition of approval by the Administrator, include a written statement by the State or local government that—

(A) cleanups to be funded under the loan program of the State or local government shall be conducted under the auspices of, and in compliance with, the State voluntary cleanup program or State Superfund program or Federal authority;

(B) the cleanup or proposed voluntary cleanup is cost-effective; and

(C) the estimated total cost of the cleanup is reasonable.

(c) GRANT AGREEMENTS.—Each grant under this section for a revolving loan fund shall be made pursuant to a grant agreement. At a minimum, the grant agreement shall include provisions that ensure the following:

(1) COMPLIANCE WITH LAW.—The grant recipient will include in all loan agreements a requirement that the loan recipient shall comply with all applicable Federal and State laws applicable to the cleanup and shall ensure that the cleanup is protective of human health and the environment.

(2) REPAYMENT.—The State or local government will require repayment of the loan consistent with this title.

(3) USE OF FUNDS.—The State or local government will use the funds solely for purposes of establishing and capitalizing a loan program in accordance with this title and of cleaning up the environmental contamination at the brownfield site or sites.

(4) REPAYMENT OF FUNDS.—The State or local government will require in each loan agreement, and take necessary steps to ensure, that the loan recipient will use the loan funds solely for the purposes stated in paragraph (3), and will require the return of any excess funds immediately on a determination by the appropriate State or local official that the cleanup has been completed.

(5) NONTRANSFERABILITY.—The funds will not be transferable, unless the Administrator agrees to the transfer in writing.

(6) LIENS.—

(A) DEFINITIONS.—In this paragraph, the terms "security interest" and "purchaser" have the meanings given the terms in section 6323(h) of the Internal Revenue Code of 1986.

(B) LIENS.—A lien in favor of the grant recipient shall arise on the contaminated property subject to a loan under this section.

(C) COVERAGE.—The lien shall cover all real property included in the legal description of the property at the time the loan agreement provided for in this section is signed, and all rights to the property, and shall continue until the terms and conditions of the loan agreement have been fully satisfied.

(D) TIMING.—The lien shall—

(i) arise at the time a security interest is appropriately recorded in the real property records of the appropriate office of the State, county, or other governmental subdivision, as designated by State law, in which the real property subject to the lien is located; and

(ii) be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is or has been perfected under applicable State law before the notice has been filed in the appropriate office of the State, county, or other governmental subdivision, as designated by State law, in which the real property subject to the lien is located.

(7) OTHER CONDITIONS.—The State or local government will comply with such other terms and conditions as the Administrator determines are necessary to protect the financial interests of the United States and to protect human health and the environment.

(d) AUDITS.—

(1) IN GENERAL.—The Inspector General of the Environmental Protection Agency shall audit a portion of the grants awarded under this section to ensure that all funds are used for the purposes set forth in this section.

(2) FUTURE GRANTS.—The result of the audit shall be taken into account in awarding any future grants to the State or local government.

SEC. 104. ECONOMIC REDEVELOPMENT GRANTS.

(a) EXPENDITURES FROM THE SUPERFUND.—Amounts in the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 shall be made available consistent with, and for the purposes of carrying out, the grant programs established under sections 102 and 103.

(b) AUTHORITY TO AWARD GRANTS.—There is authorized to be appropriated from the Hazardous Substance Superfund for grants to State and local governments under sections 102 and 103, $25,000,000 for each of fiscal years 1998 through 2002.

SEC. 105. REPORTS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and not later than January 31 of each of the 3 calendar years thereafter, the Administrator shall prepare and submit a report describing the results of each program established under this title to—

(1) the Committee on Environment and Public Works of the Senate; and

(2) the Committee on Commerce of the House of Representatives.

(b) CONTENTS OF REPORT.—Each report shall, with respect to each of the programs established under this title, include a description of—

(1) the number of applications received by the Administrator during the preceding calendar year;

(2) the number of applications approved by the Administrator during the preceding calendar year; and

(3) the allocation of assistance under sections 102 and 103 among the States and local governments.

SEC. 106. LIMITATIONS ON USE OF FUNDS.

(a) EXCLUDED FACILITIES.—A grant for site inventory and assessment under section 102 or to capitalize a revolving loan fund under section 103 may not be used for any activity involving—

(1) a facility that is the subject of a planned or an ongoing response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), except for a facility for which a preliminary assessment, site investigation, or removal action has been completed and with respect to which the Administrator has decided not to take further response action, including cost recovery action;

(2) a facility included, or proposed for inclusion, on the National Priorities List maintained by the Administrator under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(3) a facility with respect to which a record of decision, other than a no-action record of decision, has been issued by the President under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) with respect to the facility;

(4) a facility that is subject to corrective action under section 3004(u), 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(5) any land disposal unit with respect to which a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted and closure requirements have been specified in a closure plan or permit;

(6) a facility at which there has been a release of a polychlorinated biphenyl and that is subject to the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(7) a facility with respect to which an administrative order on consent or a judicial consent decree requiring cleanup has been entered into by the President and is in effect under—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(8) a facility at which assistance for response activities may be obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986; and

(9) a facility owned or operated by a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe.

(b) FINES AND COST-SHARING.—A grant made under this title may not be used to pay any fine or penalty owed to a State or the Federal Government, or to meet any Federal cost-sharing requirement.

(c) OTHER LIMITATIONS.—

(1) IN GENERAL.—Funds made available to a State or local government under the grant programs established under sections 102 and 103 shall be used only to inventory and assess brownfield sites as authorized by this title and for capitalizing a revolving loan fund as authorized by this title, respectively.

(2) RESPONSIBILITY FOR CLEANUP ACTION.—Funds made available under this title may not be used to relieve a local government or State of the commitment or responsibilities of the local government or State under State law to assist or carry out cleanup actions at brownfield sites.

SEC. 107. EFFECT ON OTHER LAWS.

Nothing in this title affects the liability or response authorities for environmental contamination under any other law (including any regulation), including—

(1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

SEC. 108. REGULATIONS.

(a) IN GENERAL.—The Administrator may issue such regulations as are necessary to carry out this title.

(b) PROCEDURES AND STANDARDS.—The regulations shall include such procedures and standards as the Administrator considers necessary, including procedures and standards for evaluating an application for a grant or loan submitted under this title.

SEC. 109. AUTHORIZATIONS OF APPROPRIATIONS.

(a) SITE ASSESSMENT PROGRAM.—There is authorized to be appropriated to carry out section 102 $10,000,000 for each of fiscal years 1998 through 2002.

(b) ECONOMIC REDEVELOPMENT ASSISTANCE PROGRAM.—There is authorized to be appropriated to carry out section 103 $15,000,000 for each of fiscal years 1998 through 2002.

(c) AVAILABILITY OF FUNDS.—The amounts appropriated under this section shall remain available until expended.

TITLE II—PROSPECTIVE PURCHASERS

SEC. 201. LIMITATIONS ON LIABILITY FOR RESPONSE COSTS FOR PROSPECTIVE PURCHASERS.

(a) LIMITATIONS ON LIABILITY.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

"(n) LIMITATIONS ON LIABILITY FOR PROSPECTIVE PURCHASERS.—Notwithstanding paragraphs (1) through (4) of subsection (a), to the extent the liability of a person, with respect to a release or the threat of a release from a facility, is based solely on subsection (a)(1), the person shall not be liable under this Act if the person—

"(1) is a bona fide prospective purchaser of the facility; and

"(2) does not impede the performance of any response action or natural resource restoration at a facility.".

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended by subsection (a)) is amended by inserting after subsection (n) the following:

"(o) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

"(1) IN GENERAL.—In any case in which there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (n), and the conditions described in paragraph (3) are met, the United States shall have a lien on the facility, or may obtain, from the appropriate responsible party or parties, a lien on other property or other assurances of payment satisfactory to the Administrator, for the unrecovered costs.

"(2) AMOUNT; DURATION.—The lien—

"(A) shall be for an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of the property;

"(B) shall arise at the time costs are first incurred by the United States with respect to a response action at the facility;

"(C) shall be subject to the requirements for notice and validity specified in subsection (l)(3); and

"(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.

"(3) CONDITIONS.—The conditions referred to in paragraph (1) are the following:

"(A) RESPONSE ACTION.—A response action for which there are unrecovered costs is carried out at the facility.

"(B) FAIR MARKET VALUE.—The response action increases the fair market value of the facility above the fair market value of the facility that existed on the date that is 180 days before the response action was commenced.".

(c) DEFINITION OF BONA FIDE PROSPECTIVE PURCHASER.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

"(39) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person who acquires ownership of a facility after the date of enactment of the Brownfields and Environmental Cleanup Act of 1997, or a tenant of such a person, who can establish each of the following by a preponderance of the evidence:

"(A) DISPOSAL PRIOR TO ACQUISITION.—All active disposal of hazardous substances at the facility occurred before the person acquired the facility.

"(B) INQUIRY.—

"(i) IN GENERAL.—The person made all appropriate inquiry into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.

"(ii) STANDARDS.—The standards and practices issued by the Administrator under

paragraph (35)(B)(ii) shall satisfy the requirements of this subparagraph.

"(iii) RESIDENTIAL PROPERTY.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation shall satisfy the requirements of this subparagraph.

"(C) NOTICES.—The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

"(D) CARE.—The person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

"(i) stop ongoing releases;

"(ii) prevent threatened future releases of hazardous substances; and

"(iii) prevent or limit human or natural resource exposure to hazardous substances previously released into the environment.

"(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and facility access to such persons as are authorized to conduct response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(F) RELATIONSHIP.—The person is not liable, or is not affiliated with any other person that is potentially liable, for response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.".

TITLE III—INNOCENT LANDOWNERS

SEC. 301. INNOCENT LANDOWNERS.

(a) KNOWLEDGE OF INQUIRY REQUIREMENT.—Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended by striking subparagraph (B) and inserting the following:

"(B) KNOWLEDGE OF INQUIRY REQUIREMENT.—

"(i) DEFINITION OF CONTAMINATION.—In this subparagraph, the term 'contamination' means an existing release, a past release, or the threat of a release of a hazardous substance.

"(ii) REQUIREMENT.—

"(I) INQUIRY.—To establish that the defendant had no reason to know (under subparagraph (A)(i)), the defendant must have made, at the time of the acquisition, all appropriate inquiry (as well as comply with clause (vii)) into the previous ownership and uses of the facility, consistent with good commercial or customary practice in an effort to minimize liability.

"(II) CONSIDERATIONS.—For the purpose of subclause (I) and until the President issues or designates standards as provided in clause (iv), the court shall take into account—

"(aa) any specialized knowledge or experience on the part of the defendant;

"(bb) the relationship of the purchase price to the value of the property if uncontaminated;

"(cc) commonly known or reasonably ascertainable information about the property;

"(dd) the obviousness of the presence or likely presence of contamination at the property; and

"(ee) the ability to detect the contamination by appropriate investigation.

"(iii) CONDUCT OF ENVIRONMENTAL ASSESSMENT.—A person who has acquired real property shall be considered to have made all appropriate inquiry within the meaning of clause (ii)(I) if—

"(I) the person establishes that, within 180 days prior to the date of acquisition, an environmental site assessment of the real property was conducted that meets the requirements of clause (iv); and

"(II) the person complies with clause (vii).

"(iv) ENVIRONMENTAL SITE ASSESSMENT.—

"(I) IN GENERAL.—An environmental site assessment meets the requirements of this clause if the assessment is conducted in accordance with the standards set forth in the American Society for Testing and Materials (ASTM) Standard E1527-94, titled 'Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process' or with any alternative standards issued by regulation by the President or issued or developed by other entities and designated by regulation by the President.

"(II) STUDY OF PRACTICES.—Before issuing or designating alternative standards under subclause (I), the President shall conduct a study of commercial and industrial practices concerning environmental site assessments in the transfer of real property in the United States.

"(v) CONSIDERATIONS IN ISSUING STANDARDS.—In issuing or designating any standards under clause (iv), the President shall consider requirements governing each of the following:

"(I) Conduct of an inquiry by an environmental professional.

"(II) Interviews of each owner, operator, and occupant of the property to determine information regarding the potential for contamination.

"(III) Review of historical sources as necessary to determine each previous use and occupancy of the property since the property was first developed. In this subclause, the term 'historical sources' means any of the following, if reasonably ascertainable: each recorded chain of title document regarding the real property, including each deed, easement, lease, restriction, and covenant, any aerial photograph, fire insurance map, property tax file, United States Geological Survey 7.5 minutes topographic map, local street directory, building department record, and zoning/land use record, and any other source that identifies a past use or occupancy of the property.

"(IV) Determination of the existence of any recorded environmental cleanup lien against the real property that has arisen under any Federal, State, or local law.

"(V) Review of reasonably ascertainable Federal, State, and local government records of any facility that is likely to cause or contribute to contamination at the real property, including, as appropriate—

"(aa) any investigation report for the facility;

"(bb) any record of activities likely to cause or contribute to contamination at the real property, including any landfill or other disposal location record, underground storage tank record, hazardous waste handler and generator record, and spill reporting record; and

"(cc) any other reasonably ascertainable Federal, State, and local government environmental record that could reflect an incident or activity that is likely to cause or contribute to contamination at the real property.

"(VI) A visual site inspection of the real property and each facility and improvement on the real property and a visual site inspection of each immediately adjacent property, including an investigation of any hazardous substance use, storage, treatment, or disposal practice on the property.

"(VII) Any specialized knowledge or experience on the part of the person that acquired the property.

"(VIII) The relationship of the purchase price to the value of the property if uncontaminated.

"(IX) Commonly known or reasonably ascertainable information about the property.

"(X) The obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

"(vi) REASONABLY ASCERTAINABLE.—A record shall be considered to be reasonably ascertainable for purposes of clause (v) if a copy or reasonable facsimile of the record is publicly available by request (within reasonable time and cost constraints) and the record is practicably reviewable.

"(vii) APPROPRIATE INQUIRY.—A person shall not be treated as having made all appropriate inquiry under clause (ii)(I) unless—

"(I) the person has maintained a compilation of the information reviewed and gathered in the course of any environmental site assessment;

"(II) the person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

"(aa) stop ongoing releases of hazardous substances;

"(bb) prevent threatened future releases of hazardous substances; and

"(cc) prevent or limit human or natural resource exposure to hazardous substances previously released into the environment; and

"(III) the person provides full cooperation, assistance, and facility access to such persons as are authorized to conduct response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(viii) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation shall satisfy the requirements of clause (ii).".

(b) REGULATORY AUTHORITY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency may—

(A) issue such regulations as the Administrator considers necessary to carry out the amendment made by this section; and

(B) delegate and assign any duties or powers imposed on or assigned to the Administrator by the amendment made by this section, including the authority to issue regulations.

(2) AUTHORITY TO CLARIFY AND IMPLEMENT.—The authority under paragraph (1) includes authority to clarify or interpret all terms, including the terms used in this section, and to implement any provision of the amendment made by this section.

SECTION-BY-SECTION SUMMARY OF THE BROWNFIELDS AND ENVIRONMENTAL CLEANUP ACT OF 1997

Section 1 states the short title: the "Brownfields and Environmental Cleanup Act of 1997."

Section 2(a) makes 10 findings summarizing the brownfields problem, and affirming a need for financial incentives and assistance to redevelop brownfield sites; and (b) states the purpose of the bill: economic redevelopment of the sites.

TITLE I—BROWNFIELD REMEDIATION AND ENVIRONMENTAL CLEANUP

Section 101 presents 19 definitions of terms used in the bill.

Section 102. Inventory and Assessment Grant Program. The bill directs EPA to establish a program of grants to local governments to inventory brownfield sites within their jurisdictions, and to conduct site characterizations of sites targeted for cleanup under a state cleanup program. It sets eight requirements of what the grant application must contain, and establishes the criteria EPA is to use in deciding whether to approve a grant. EPA may attach conditions to the grant award, and may terminate the grant if the conditions are violated. Grants may not exceed $200,000.

Section 103. Grants for Revolving Loan Programs. The bill directs EPA to establish a grant program for state and local governments to capitalize loan programs for site cleanup. The loan fund is to be used by the local or state entity to make loans to finance brownfield cleanups by the owner or a prospective purchaser of an affected site. The grant application must demonstrate the government's ability to manage a revolving loan program and oversee loans they grant under the program. Twelve factors to be considered by EPA in determining whether to award a grant are laid out. A loan program grant to a local or State applicant shall not exceed $500,000.

Section 104 authorizes $25 million to be appropriated from the Superfund for each of fiscal years 1997 through 2001 for the programs provided for in sections 101 and 102.

Section 105 requires EPA to submit an annual report to the congressional authorizing committees describing the achievements of each program, including the number of applications received and approved, and detailing the allocation of assistance among the states and local governments.

Section 106 limits how funds may be used. No grant may be used to pay fines or penalties to a state or the federal government, or for federal cost-sharing requirements. Nor may it be used to relieve a state or local government of its cleanup responsibility under state law at affected sites.

Section 107. Statutory Construction. The section states that nothing in this title is intended to affect the liability of response authorities of any other law, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or the Superfund Act), the Solid Waste Disposal Act, the Federal Water Pollution Control Act, and the Safe Drinking Water Act.

Section 108 authorizes EPA to promulgate regulations to carry out the Act.

Section 109 specifies that $10 million of the section 104 appropriation shall be for the section 101 site characterization program each year, and $15 million shall be for the section 102 economic redevelopment assistance program. The appropriations shall remain available until expended.

TITLE II—PROSPECTIVE PURCHASERS

Section 201(a). Liability Limitation. The bill amends section 107 of CERCLA, exempting a bona fide prospective purchaser from liability provided he does not impede the performance of response actions or natural resource restoration at a facility.

Section 1201(b). Windfall Lien. The bill further amends section 107 to give the United States a lien on the facility when a response action has been carried out at the facility and there are unrecovered response costs for which the prospective purchaser is not liable. Alternatively, the United States may obtain from the appropriate responsible party a lien on other property or other assurances of payment. The lien shall not be for more than the increase in fair market value of the property attributable to the response action.

Section 201(c) amends section 101 of CERCLA to define "bona fide prospective purchaser." The definition requires that: all disposal of hazardous substances occurred before the person acquired the facility; the purchaser made all appropriate inquiry into its previous ownership and uses; the person provided proper notice regarding the discovery of hazardous substances at the facility; he exercised appropriate care; he provided full cooperation, assistance, and facility access to those conducting the response action; and there is no family or business relationship with a potentially responsible party at the facility.

TITLE III—INNOCENT LANDOWNERS

Section 301(a) amends section 101(35) of CERCLA clarifying the exception from liability of innocent landowners. The requirements that such a person make "all appropriate inquiry" is satisfied if he has an environmental site assessment conducted within the 180 days preceding the acquisition of the property "Environmental site assessment" means one conducted in accordance with the American Society of Testing and Materials (ASTM) standard for a Phase I environmental site assessment (Standard E1527-94), or an alternative standard issued by the President. To be treated as having made "all appropriate inquiry," a person must: (1) maintain a compilation of the information gathered in the course of the site assessment; (2) exercise appropriate care by stopping on-going releases, preventing threatened future releases, and limiting human and natural resource exposure to hazardous substances; and (3) provide full cooperation assistance, and facility access to persons conducting response actions at the facility. For the purposes of this subsection and 101(35) (the definition of "contractual relationship"), the term "contamination" means an existing release, a past release, or the threat of a release.

The court shall take into account any specialized knowledge of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known information about the property, the obviousness of the presence of contamination at the property, and the ability to detect the contamination. EPA shall issue or designate standards and practices that satisfy these requirements. The bill identifies 10 factors for EPA to consider in issuing the standards:

1. Conduct of an inquiry by an environmental professional.
2. Interviews with past and present owners, operators, and occupants of the facility.
3. A review of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records.
4. A search for recorded environmental liens, filed under Federal, state, or local law.
5. A review of Federal, state, and local government records (such as waste disposal records), underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records.
6. A visual inspection of the facility, and adjoining properties.
7. Any specialized knowledge or experience on the part of the defendant.
8. The relationship of the purchase price to the value of the property if uncontaminated.
9. Commonly known or reasonably ascertainable information about the property.
10. The obviousness of the presence of contamination, and the ability to detect it by appropriate investigation.

In the case of a property for residential or similar use purchased by a nongovernmental or noncommercial entity, a site inspection and title search are sufficient to satisfy the requirements.

Section 301(b) authorizes EPA to issue regulations to carry out section 301, and gives it the authority to clarify or interpret all terms.

REGIONAL PLAN ASSOCIATION,
Newark, NJ, January 20, 1997.

Senator FRANK LAUTENBERG,
Hart Office Building, Washington, DC.

Re: Brownfields and Environmental Cleanup Act of 1997.

DEAR SENATOR LAUTENBERG: As Director of the New Jersey Office of Regional Plan Association, I am happy to support your proposed Brownfields and Environmental Cleanup Act. RPA is the country's oldest private, non profit regional planning organization charged with improving transportation, environmental conservation and economic development in the 31-county New York, New Jersey and Connecticut metropolitan area. RPA has been a leading force in brownfields redevelopment in New Jersey, having successfully coordinated the award-winning OENJ brownfields Model Redevelopment Project in Elizabeth, and overseeing the Legislative and Regulatory Reform committee of the EPA Brownfields Pilot Project in Newark.

The proposed Brownfields and Environmental Cleanup Act of 1997 will go a long way towards stimulating redevelopment of the region's abandoned, contaminated land. In particular, the provisions for local site characterization grants and site cleanup loans will provide an important incentive for local governments to prioritize and implement redevelopment of critical sites within their municipalities. The liability limitations under Section 201 are also important incentives at the federal level to encourage prospective purchasers to invest in brownfields redevelopment. Some of these provisions are being discussed at the State level in New Jersey. The passage of federal legislation will greatly assist our efforts to promote brownfields cleanup nationwide.

I am grateful for this opportunity to support your far-reaching legislation, and wish you the best of luck in its speedy passage.

Sincerely,

LINDA P. MORGAN,
Director.

By Mr. DODD (for himself, Mr. DASCHLE, Mr. KENNEDY, Ms. MIKULSKI, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. TORRICELLI, and Mrs. BOXER):

S. 19. A bill to provide funds for child care for low-income working families, and for other purposes; to the Committee on Labor and Human Resources

WORKING FAMILIES CHILD CARE ACT OF 1997

Mr. DODD. Mr. President, I rise today to introduce the Working Families Child Care Act of 1997.

Mr. President, balancing the daunting responsibilities of work with the responsibilities of raising children is always a difficult task. It is especially challenging when so many parents today are working outside the

home and are forced to depend on child care.

Not surprisingly, these challenges are especially acute for low-income, working families. In fact according to a national child care study, when compared to all other income groups, the working poor are the least likely to receive assistance with child care costs—even though it consumes a disproportionate share of their income—24 percent, compared to 6 percent for middle-income families.

What's more, it's a constant struggle for low-income families to remain self-sufficient without child care assistance. In a survey of families on a waiting list in one community, it was found that of those paying for child care, 71 percent faced serious debt or bankruptcy.

Currently, in 38 States and the District of Columbia the working poor are on waiting lists to receive child care. Georgia has 41,000 on its waiting list; Texas 36,000; Illinois 20,000; Alabama 20,000. Most of the States which don't have a waiting list either don't keep one, are expecting to create one in the future, or currently are experiencing a brief respite.

In my own State of Connecticut, new openings for child care assistance were frozen in November 1993. When new slots became available, for only 2 days this past summer, 5,500 applications were received.

During the last Congress, we intensely debated the issue of child care—in the larger context of welfare reform legislation. The original welfare legislation in January 1995, cut funds for child care and eliminated critically important health and safety standards.

In the 104th Congress I continued to fight for child care, offering amendments to increase funding and ensure quality. While I disagreed with the final welfare reform bill, I am pleased that many of these amendments succeeded and that in the end, the final bill included child care funding of $14.2 billion over 6 years and restored rigorous health and safety standards.

However, while the bill we passed made significant and crucial strides in providing child care for welfare recipients—there is still work to be done.

The bill I am proposing today will address the issue of child care for low-income working families and make it easier for them to access adequate child care assistance.

First, this legislation restores $1.4 billion in child care funding.

According to a recent CBO report, even if States meet the work requirements of the welfare bill they will still be short $1.4 billion for money needed to continue serving certain low-income working families. These aren't new recipients we're talking about, but instead families who were receiving child care assistance prior to passage of welfare reform legislation.

The legislation I am introducing today will prevent working parents from losing child care assistance simply as a result of the welfare reform bill.

Second, it begins to address the shortage of assistance for working families, by raising the authorization for child care subsidies for low-income working families from $1 billion to $2 billion per year.

And finally, it authorizes $500 million per year through 2002 to help communities meet supply shortages in areas such as infant care and school age care.

Even when subsidies are available, child care can be difficult to obtain. According to the National Academy of Sciences, there is "Consistent evidence of a relatively low supply of care for infants, for school age children, for children with disabilities and special health care needs and for parents with unconventional or shifting work hours."

What's more, a 1995 GAO study based in Michigan found a shortage of infant and special needs child care in inner cities and a shortage of all types of child care in rural areas. So, we're not simply talking about financial assistance for child care, but whether child care actually exists.

This shortage of child care is a problem for both working families and welfare recipients who want to become self-sufficient. How can we expect someone to make the difficult transition from welfare to work when they cannot find an adequate provider for an infant or are forced to have a 6, 7 or 8 year old spend hours alone at home when the school day ends?

This lack of supervision can have a devastating long-term impact. One study found that children who start to take care of themselves in elementary school are significantly more likely to report high use of alcohol by the eighth grade. Eighth graders left home alone for 11 or more hours a week report significantly greater use of cigarettes, alcohol, and marijuana than children not left home alone. We know all this, and yet only one third of the schools in low-income neighborhoods offer school age child care, compared with 52 percent in more affluent areas.

For those struggling to make the difficult journey to self-sufficiency, the lack of available child care before 9, after 5, and on weekends can be an enormous problem. What's worse, such arrangements put the safety of a child in question.

The reality is that nearly 1 in 5 full time workers—14.3 million—work nonstandard hours. More than 1 in 3 are women. However, only 10 percent of child care centers and 6 percent of family day care provide care on weekends. Yet one third of working mothers with incomes below poverty and one fourth of mothers with income above poverty, but below $25,000, work on weekends.

An additional supply problem is that head start and other prekindergarten programs are part day and part year. As a result, they often do not meet the needs of parents who work full time. Less than 30 percent of Head Start programs operate on a full-time, full-year basis.

Simply put, child care funds need to be available to make these programs accessible for working parents. In my view, we as a nation have a solemn commitment to guarantee that children will not be left to fend for themselves while their parents are working to put food on the table.

Child care is one of the most important ingredients for helping poor working families achieve and maintain economic security. Like parents in any community and of any financial background, low-income families need to know that when they go to work, their children will receive the care and assistance they need.

The bill I am introducing today will make it easier for low-income, working families to balance the responsibilities of work and caring for their children. I urge all my colleagues to join together in supporting this legislation—for the good of America's children.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 19

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Working Families Child Care Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Assistance for low-income working families.
Sec. 4. Grants for child care supply shortages.
Sec. 5. Report on access to child care by low-income working families.
Sec. 6. Effective date.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Availability and affordability of quality child care is a major obstacle for working parents who struggle to remain self-sufficient.

(A) Compared to all other income groups, the working poor are the least likely to receive assistance with their child care costs.

(B) Low-income families spend 24 percent of their household income on child care, whereas middle-income families spend 6 percent of their household income on child care.

(C) 38 States have waiting lists for child care for the working poor. Among those States, Georgia has 41,000 individuals on its waiting list, Texas has 36,000 individuals on its waiting list, and Illinois and Alabama each have 20,000 individuals on their waiting lists.

(D) One survey of low-income families on a waiting list for subsidized child care found

that of those families paying for child care out of their own funds, 71 percent faced serious debt or bankruptcy.

(E) Half of the States and the District of Columbia, even before the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, 110 Stat. 2105) during the 104th Congress, increased the proportion of child care slots or dollars going to families on welfare, rather than to working poor families.

(2) The Congressional Budget Office estimates that there will be $1,400,000,000 less expenditures of child care funds for working poor families as a result of the States implementing the work requirements imposed under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, 110 Stat. 2105).

(3) Important types of child care are not available in certain States including infant care, school-age care, care for children with disabilities and special health care needs, and child care for parents with unconventional or shifting work hours.

(A) A 1995 State study by the Comptroller General of the United States found a shortage of child care for infants and children with special needs in inner cities, and a shortage of all types of child care in rural areas.

(B) Only⅓ of the schools in low-income neighborhoods offer school-age child care, compared with 52 percent of schools in more affluent areas offering such care.

(C) Eighth-graders who are left home alone for 11 or more hours a week report significantly greater use of cigarettes, alcohol, and marijuana than eighth-graders who are not left home alone.

(D) Existing child care arrangements do not accommodate the work schedules of many working women. According to a 1995 statistic published by the Department of Labor, 14,300,000 workers, nearly 1 in 5 full-time workers work nonstandard hours, and more than 1 in 3 of those workers are women.

(E) Only 10 percent of child care centers and 6 percent of family day care providers offer child care on weekends. Yet⅓ of working mothers with annual incomes below the poverty level and¼ of mothers with annual incomes above the poverty level but below $25,000 work on weekends.

(F) Less than 30 percent of Head Start programs operate on a full-time, full-year basis.

SEC. 3. ASSISTANCE FOR LOW-INCOME WORKING FAMILIES.

Section 658B of the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858) is amended to read as follows:

"SEC. 658B. FUNDING OF GRANTS.

"(a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in subsection (b), there is authorized to be appropriated to carry out this subchapter $2,000,000,000 for each of fiscal years 1997 through 2002.

"(b) APPROPRIATION.—The Secretary shall pay, from funds in the Treasury not otherwise appropriated, $1,400,000,000 for fiscal years 1997 through 2002, through the awarding of grants to States under this subchapter for the purpose of providing child care services for families who have left the State program of assistance under part A of title IV of the Social Security Act because of employment, families that are at risk of becoming dependent on such assistance program, and low-income working families described in section 658E(c)(3)(D). Funds shall be paid under this subsection to the States in the same manner, and subject to the same requirements and limitations, as funds are paid to the States under section 418 of the Social Security Act (42 U.S.C. 618).".

SEC. 4. GRANTS FOR CHILD CARE SUPPLY SHORTAGES.

(a) GRANTS FOR CHILD CARE SUPPLY SHORTAGES.—Section 658E(c)(3) of the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)(3)) is amended by adding at the end the following:

"(E) CHILD CARE SUPPLY SHORTAGES.—

"(i) IN GENERAL.—A State shall ensure that 100 percent of amounts paid to the State out of funds appropriated under section 658B(a)(2) with respect to each of the fiscal years 1997 through 2002 shall be used to carry out child care activities described in clause (ii) in geographic areas within the State that have a shortage, as determined by the State, in consultation with localities, of child care services.

"(ii) CHILD CARE ACTIVITIES DESCRIBED.—The child care activities described in this clause include the following:

"(I) Infant care programs.

"(II) Before- and after-school child care programs.

"(III) Resource and referral programs.

"(IV) Nontraditional work hours child care programs.

"(V) Extending the hours of pre-kindergarten programs to provide full-day services.

"(VI) Any other child care programs that the Secretary determines are appropriate.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 658B(a) of the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858(a)), as amended by section 2, is amended—

(1) by striking "Except as provided in" and inserting the following:

"(1) IN GENERAL.—Except as provided in paragraph (2) and"; and

(2) by adding at the end the following:

"(2) CHILD CARE SUPPLY SHORTAGES.—There is authorized to be appropriated to carry out section 658E(c)(3)(E), $500,000,000 for each of fiscal years 1997 through 2002.".

(c) CONFORMING AMENDMENT.—Section 658(c)(3)(A) of the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)(3)(A)) is amended by striking "(D)" and inserting "(E)".

SEC. 5. REPORT ON ACCESS TO CHILD CARE BY LOW-INCOME WORKING FAMILIES.

(a) STATE REPORTING REQUIREMENT.—Section 658K(a)(2) of the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858i(a)(2)) is amended—

(1) in subparagraph (D), by striking "and" at the end; and

(2) by inserting after subparagraph (E), the following:

"(F) the total number of families described in section 658B(b) that were eligible for but did not receive assistance under this subchapter or under section 418 of the Social Security Act and a description of the obstacles to providing such assistance; and

"(G) the total number of families described in section 658B(b) that received assistance provided under this subchapter or under section 418 of the Social Security Act and a description of the manner in which that assistance was provided;".

(b) SECRETARIAL REPORTING REQUIREMENT.—Section 658L of the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858j) is amended by inserting ", with particular emphasis on access of low-income working families," after "public".

SEC. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, 110 Stat. 2105).

By Mr. DASCHLE (for himself, Mr. REID, Mr. LIEBERMAN, Mr. DORGAN, Mr. BREAUX, Mr. KOHL, Mr. WYDEN, and Mr. BINGAMAN):

S. 20. A bill to amend the Internal Revenue Code of 1986 to increase the rate and spread the benefits of economic growth, and for other purposes; to the Committee on Finance.

TARGETED INVESTMENT INCENTIVE AND ECONOMIC GROWTH ACT OF 1997

Mr. DASCHLE. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 20

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Targeted Investment Incentive and Economic Growth Act of 1997".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—TAXATION OF CAPITAL GAINS AND LOSSES

SEC. 101. ROLLOVER OF CAPITAL GAINS ON CERTAIN SMALL BUSINESS INVESTMENTS.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by adding at the end the following new section:

"SEC. 1045. ROLLOVER OF GAIN ON SMALL BUSINESS INVESTMENTS.

"(a) NONRECOGNITION OF GAIN.—In the case of the sale of any eligible small business investment with respect to which the taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

"(1) the cost of any other eligible small business investment purchased by the taxpayer during the 6-month period beginning on the date of such sale, reduced by

"(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this subtitle.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) PURCHASE.—The term 'purchase' has the meaning given such term by section 1043(b)(4).

"(2) ELIGIBLE SMALL BUSINESS INVESTMENT.—Except as otherwise provided in this section, the term 'eligible small business investment' means any stock in a domestic corporation, and any partnership interest in a domestic partnership, which is originally issued after December 31, 1996, if—

"(A) as of the date of issuance, such corporation or partnership is a qualified small business entity,

"(B) such stock or partnership interest is acquired by the taxpayer at its original issue (directly or through an underwriter)—

"(i) in exchange for money or other property (not including stock), or

"(ii) as compensation for services (other than services performed as an underwriter of such stock or partnership interest), and

"(C) the taxpayer has held such stock or interest at least 6 months as of the time of the sale described in subsection (a).

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this section.

"(3) ACTIVE BUSINESS REQUIREMENT.—Stock in a corporation, and a partnership interest in a partnership, shall not be treated as an eligible small business investment unless, during substantially all of the taxpayer's holding period for such stock or partnership interest, such corporation or partnership meets the active business requirements of subsection (c). A rule similar to the rule of section 1202(c)(2)(B) shall apply for purposes of this section.

"(4) QUALIFIED SMALL BUSINESS ENTITY.—

"(A) IN GENERAL.—The term 'qualified small business entity' means any domestic corporation or partnership if—

"(i) such entity (and any predecessor thereof) had aggregate gross assets (as defined in section 1202(d)(2)) of less than $25,000,000 at all times before the issuance of the interest described in paragraph (2), and

"(ii) the aggregate gross assets (as so defined) of the entity immediately after the issuance (determined by taking into account amounts received in the issuance) are less than $25,000,000.

"(B) AGGREGATION RULES.—Rules similar to the rules of section 1202(d)(3) shall apply for purposes of this paragraph.

"(c) ACTIVE BUSINESS REQUIREMENT.—

"(1) IN GENERAL.—For purposes of subsection (b)(3), the requirements of this subsection are met by a qualified small business entity for any period if—

"(A) the entity is engaged in the active conduct of a trade or business, and

"(B) at least 80 percent (by value) of the assets of such entity are used in the active conduct of a qualified trade or business (within the meaning of section 1202(e)(3)).

Such requirements shall not be treated as met for any period if during such period the entity is described in subparagraph (A), (B), (C), or (D) of section 1202(e)(4).

"(2) SPECIAL RULE FOR CERTAIN ACTIVITIES.—For purposes of paragraph (1), if, in connection with any future trade or business, an entity is engaged in—

"(A) startup activities described in section 195(c)(1)(A),

"(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

"(C) activities with respect to in-house research expenses described in section 41(b)(4), such entity shall be treated with respect to such activities as engaged in (and assets used in such activities shall be treated as used in) the active conduct of a trade or business. Any determination under this paragraph shall be made without regard to whether the entity has any gross income from such activities at the time of the determination.

"(3) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), (7), and (8) of section 1202(e) shall apply for purposes of this subsection.

"(d) CERTAIN OTHER RULES TO APPLY.—Rules similar to the rules of subsections (f), (g), (h), and (j) of section 1202 shall apply for purposes of this section, except that a 6-month holding period shall be substituted for a 5-year holding period where applicable.

"(e) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any eligible small business investment which is purchased by the taxpayer during the 6-month period described in subsection (a).

"(f) STATUTE OF LIMITATIONS.—If any gain is realized by the taxpayer on the sale or exchange of any eligible small business investment and there is in effect an election under subsection (a) with respect to such gain, then—

"(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's cost of purchasing other eligible small business investments which the taxpayer claims results in nonrecognition of any part of such gain,

"(B) the taxpayer's intention not to purchase other eligible small business investments within the 6-month period described in subsection (a), or

"(C) a failure to make such purchase within such 6-month period, and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, or otherwise and regulations to modify the application of section 1202 to the extent necessary to apply such section to a partnership rather than a corporation."

(b) CONFORMING AMENDMENT.—Paragraph (23) of section 1016(a) is amended—

(1) by striking "or 1044" and inserting ", 1044, or 1045", and

(2) by striking "or 1044(d)" and inserting ", 1044(d), or 1045(e)".

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end the following new item:

"Sec. 1045. Rollover of gain on small business investments."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1996.

SEC. 102. LOSSES ON ELIGIBLE SMALL BUSINESS INVESTMENTS.

(a) INCREASE IN MAXIMUM AMOUNT.—Section 1244(b) (relating to maximum amount for any taxable year) is amended—

(1) by striking "$50,000" in paragraph (1) and inserting "$150,000", and

(2) by striking "$100,000" in paragraph (2) and inserting "$300,000".

(b) EXTENSION OF APPLICATION OF SECTION 1244 TO PARTNERSHIP INTEREST AND INCREASE IN VALUE OF CORPORATIONS ELIGIBLE FOR APPLICATION.—

(1) EXTENSION TO PARTNERSHIPS.—So much of section 1244(c) as precedes paragraph (2) is amended to read as follows:

"(c) SECTION 1244 INTEREST DEFINED.—

"(1) SECTION 1244 INTEREST.—For purposes of this section—

"(A) IN GENERAL.—The term 'section 1244 interest' means an eligible small business investment (as defined in section 1045(b)(1)) in a qualified small business entity (as defined in section 1045(b)(4)) if such entity, during the period of its 5 most recent taxable years ending before the date the loss on such investment was sustained, derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interests, annuities, and sales or exchanges of stocks or securities.

"(B) TRANSITION RULE.—Any stock in a domestic corporation issued before January 1, 1997, which was section 1244 stock under this section on December 31, 1996 (determined under this section as in effect on such date), shall be treated as a section 1244 interest for purposes of this section."

(2) CONFORMING AMENDMENTS.—

(A) Section 1244(a) is amended by striking "section 1244 stock" and inserting "a section 1244 interest".

(B) Section 1244(c)(2) is amended—

(i) by striking "PARAGRAPH (1)(C)" in the heading and inserting "PARAGRAPH (1)",

(ii) by striking "paragraph (1)(C)" each place it appears and inserting "paragraph (1)",

(iii) by striking "corporation" each place it appears and inserting "entity", and

(iv) by striking "Paragraph (1)(C)" in subparagraph (C) and inserting "Paragraph (1)".

(C) Section 1244(c) is amended by striking paragraph (3).

(D) Section 1244(d) is amended—

(i) by striking "section 1244 stock" each place it appears and inserting "a section 1244 interest",

(ii) by striking "stock" each place it appears and inserting "interest",

(iii) by striking "paragraphs (1)(C) and (3)(A) of subsection (c)" in paragraph (2) and inserting "subsection (c)(1)", and

(iv) by striking "(other than subparagraph (C) thereof)" and inserting "(other than the gross receipts test thereof)".

(E)(i) The heading for section 1244 is amended by striking "**stock**" and inserting "**interest**".

(ii) The item relating to section 1244 in the table of sections for part IV of subchapter P of chapter 1 is amended by striking "stocks" and inserting "interests".

(F) Section 165(m)(5) is amended by striking "stock" and inserting "interests".

(G) Section 1274(c)(3)(A)(i) is amended—

(i) by inserting ", as in effect on the day before the date of enactment of subclause (IV)" after "section 1244(c)(3)" in subclauses (II) and (III),

(ii) by striking "or" at the end of subclause (II),

(iii) by striking the period at the end of subclause (III) and inserting ", or", and

(iv) by adding at the end the following new subclause:

"(IV) by a section 1244 interest (as defined in section 1244(c)(1))."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1996.

SEC. 103. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) EXCLUSION AVAILABLE TO CORPORATIONS.—

(1) IN GENERAL.—Subsection (a) of section 1202 is amended by striking "other than a corporation".

(2) TECHNICAL AMENDMENT.—Subsection (c) of section 1202 is amended by adding at the end the following new paragraph:

"(4) STOCK HELD AMONG MEMBERS OF CONTROLLED GROUP NOT ELIGIBLE.—Stock shall not be treated as qualified small business stock if such stock was at any time held by any member of the parent-subsidiary controlled group (as defined in subsection (d)(3)) which includes the qualified small business."

(b) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) IN GENERAL.—Section 57(a) is amended by striking paragraph (7).

(2) TECHNICAL AMENDMENT.—Section 53(d)(1)(B)(ii)(II) is amended by striking ", (5), and (7)" and inserting "and (5)".

(c) STOCK OF LARGER BUSINESSES ELIGIBLE FOR EXCLUSION.—

(1) Section 1202(d)(1) is amended by striking "$50,000,000" each place it appears and inserting "$100,000,000".

(2) Section 1202(d) is amended by adding at the end the following new paragraph:

"(4) INFLATION ADJUSTMENT OF ASSET LIMITATION.—In the case of stock issued in any calendar year after 1997, the $100,000,000 amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1996' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $1,000,000, such amount shall be rounded to the next lower multiple of $1,000,000."

(d) PER-ISSUER LIMITATION.—Section 1202(b)(1)(A) is amended by striking "$10,000,000" and inserting "$20,000,000".

(e) OTHER MODIFICATIONS.—

(1) WORKING CAPITAL LIMITATION.—Section 1202(e)(6) is amended by striking "2 years" each place it appears and inserting "5 years".

(2) REDEMPTION RULES.—Section 1203(c)(3) is amended by adding at the end the following new subparagraph:

"(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitation of this section."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to stock issued after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by subsection (b), (d), and (e) shall apply to stock issued after August 10, 1993.

SEC. 104. EXEMPTION FROM TAX FOR GAIN ON SALE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended to read as follows:

"SEC. 121. EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.

"(a) EXCLUSION.—Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed $250,000 ($500,000 in the case of a joint return where both spouses meet the use requirement of subsection (a)).

"(2) APPLICATION TO ONLY 1 SALE OR EXCHANGE EVERY 2 YEARS.—

"(A) IN GENERAL.—Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer or his spouse to which subsection (a) applied.

"(B) PREMARRIAGE SALES BY SPOUSE NOT TAKEN INTO ACCOUNT.—If, but for this subparagraph, subsection (a) would not apply to a sale or exchange by a married individual by reason of a sale or exchange by such individual's spouse before their marriage—

"(i) subparagraph (A) shall be applied without regard to the sale or exchange by such individual's spouse, but

"(ii) the amount of gain excluded from gross income under subsection (a) with respect to the sale or exchange by such individual shall not exceed $250,000.

"(C) PRE-1997 SALES NOT TAKEN INTO ACCOUNT.—Subparagraph (A) shall be applied without regard to any sale or exchange before January 1, 1997.

"(c) EXCLUSION FOR TAXPAYERS FAILING TO MEET CERTAIN REQUIREMENTS.—

"(1) IN GENERAL.—In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(2) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale of exchange shall not exceed—

"(A) the amount which bears the same ratio to the amount which would be so excluded if such requirements had been met, as

"(B) the shorter of—

"(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

"(ii) the period after the date of the most recent prior sale or exchange by the taxpayer or his spouse to which subsection (a) applied and before the date of such sale or exchange,

bears to 2 years.

"(2) SALES AND EXCHANGES TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any sale or exchange if—

"(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

"(i) a failure to meet the ownership and use requirements of subsection (a), or

"(ii) subsection (b)(2), and

"(B) such sale or exchange is by reason of a change in place of employment, health, or other unforeseen circumstances.

"(d) SPECIAL RULES.—

"(1) JOINT RETURNS.—For purposes of this section, if a husband and wife make a joint return for the taxable year of the sale or exchange of property, subsection (a) shall, subject to the provisions of subsection (b), apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

"(2) PROPERTY OF DECEASED SPOUSE.—For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned such property shall include the period such deceased spouse held such property before death.

"(3) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

"(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

"(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

"(4) INVOLUNTARY CONVERSIONS.—

"(A) IN GENERAL.—For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

"(B) APPLICATION OF SECTION 1033.—In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

"(C) PROPERTY ACQUIRED AFTER INVOLUNTARY CONVERSION.—If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

"(5) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after December 31, 1996, in respect of such property.

"(6) DETERMINATION OF USE DURING PERIODS OF OUT-OF-RESIDENCE CARE.—In the case of a taxpayer who—

"(A) becomes physically or mentally incapable of self-care, and

"(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

"(7) DETERMINATION OF MARITAL STATUS.—In the case of any sale or exchange, for purposes of this section—

"(A) the determination of whether an individual is married shall be made as of the date of the sale or exchange, and

"(B) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

"(e) DENIAL OF EXCLUSION FOR EXPATRIATES.—This section shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) applies to such individual.

"(f) ELECTION TO HAVE SECTION NOT APPLY.—This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

"(g) RESIDENCES ACQUIRED IN ROLLOVERS UNDER SECTION 1034.—For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034 (as in effect on the day before the date of the enactment of this sentence) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(7) in determining the holding period of such property) had been so owned and used."

(b) REPEAL OF NONRECOGNITION OF GAIN ON ROLLOVER OF PRINCIPAL RESIDENCE.—Section

1034 (relating to rollover of gain on sale of principal residence) is hereby repealed.

(c) CONFORMING AMENDMENTS.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "section 1034" and inserting "section 121": sections 25(e)(7), 56(e)(1)(A), 56(e)(3)(B)(i), 143(i)(1)(C)(i)(I), 163(h)(4)(A)(i)(I), 280A(d)(4)(A), 464(f)(3)(B)(i), 1033(h)(3), 1274(c)(3)(B), 6334(a)(13), and 7872(f)(11)(A).

(2) Paragraph (4) of section 32(c) is amended by striking "(as defined in section 1034(h)(3))" and by adding at the end the following new sentence: "For purposes of the preceding sentence, the term 'extended active duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period."

(3) Subparagraph (A) of 143(m)(6) is amended by inserting "(as in effect on the day before the date of the enactment of the Targeted Investment Incentive and Economic Growth Act of 1997)" after "1034(e)".

(4) Subsection (e) of section 216 is amended by striking "such exchange qualifies for nonrecognition of gain under section 1034(f)" and inserting "such dwelling unit is used as his principal residence (within the meaning of section 121)".

(5) Section 512(a)(3)(D) is amended by inserting "(as in effect on the day before the date of the enactment of the Targeted Investment Incentive and Economic Growth Act of 1997)" after "1034".

(6) Paragraph (7) of section 1016(a) is amended by inserting "(as in effect on the day before the date of the enactment of the Targeted Investment Incentive and Economic Growth Act of 1997)" after "1034" and by inserting "(as so in effect)" after "1034(e)".

(7) Paragraph (3) of section 1033(k) is amended to read as follows:

"(3) For exclusion from gross income of gain from involuntary conversion of principal residence, see section 121."

(8) Subsection (e) of section 1038 is amended to read as follows:

"(e) PRINCIPAL RESIDENCES.—If—

"(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which gain was not recognized under section 121 (relating to gain on sale of principal residence); and

"(2) within 1 year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying section 121, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property."

(9) Paragraph (7) of section 1223 is amended by inserting "(as in effect on the day before the date of the enactment of the Targeted Investment Incentive and Economic Growth Act of 1997)" after "1034".

(10) Paragraph (7) of section 1250(d) is amended to read as follows:

"(7) DISPOSITION OF PRINCIPAL RESIDENCE.—Subsection (a) shall not apply to a disposition of property to the extent used by the taxpayer as his principal residence (within the meaning of section 121, relating to gain on sale of principal residence)."

(11) Subsection (c) of section 6012 is amended by striking "(relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55)" and inserting "(relating to gain from sale of principal residence)".

(12) Paragraph (2) of section 6212(c) is amended by striking subparagraph (C) and by redesignating the succeeding subparagraphs accordingly.

(13) Section 6504 is amended by striking paragraph (4) and by redesignating the succeeding paragraphs accordingly.

(14) The item relating to section 121 in the table of sections for part III of subchapter B of chapter 1 is amended to read as follows:

"Sec. 121. Exclusion of gain from sale of principal residence."

(15) The table of sections for part III of subchapter O of chapter 1 of such Code is amended by striking the item relating to section 1034.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to sales and exchanges after December 31, 1996.

(2) BINDING CONTRACTS, ETC.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after December 31, 1996, if—

(A) such sale or exchange is pursuant to a contract which was binding on the date of the enactment of this Act, or

(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual.

TITLE II—RETIREMENT SAVINGS

SEC. 201. INCREASE IN DEDUCTION FOR CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Section 219(b)(1)(A) is amended by striking "$2,000" and inserting "$2,500".

(b) CONFORMING AMENDMENTS.—Subsections (a)(1), (b), and (j) of section 408 are each amended by striking "$2,000" each place it appears and inserting "$2,500".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 202. ROLLOVER OF GAIN FROM SALE OF FARM ASSETS TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by inserting after section 1034 the following new section:

"SEC. 1034A. ROLLOVER OF GAIN ON SALE OF FARM ASSETS INTO ASSET ROLLOVER ACCOUNT.

"(a) NONRECOGNITION OF GAIN.—Subject to the limits of subsection (c), if a taxpayer has a qualified net farm gain from the sale of a qualified farm asset, then, at the election of the taxpayer, gain (if any) from such sale shall be recognized only to the extent such gain exceeds the contributions to 1 or more asset rollover accounts of the taxpayer for the taxable year in which such sale occurs.

"(b) ASSET ROLLOVER ACCOUNT.—

"(1) GENERAL RULE.—Except as provided in this section, an asset rollover account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(2) ASSET ROLLOVER ACCOUNT.—For purposes of this title, the term 'asset rollover account' means an individual retirement plan which is designated at the time of the establishment of the plan as an asset rollover account. Such designation shall be made in such manner as the Secretary may prescribe.

"(c) CONTRIBUTION RULES.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to an asset rollover account.

"(2) AGGREGATE CONTRIBUTION LIMITATION.—Except in the case of rollover contributions, the aggregate amount for all taxable years which may be contributed to all asset rollover accounts established on behalf of an individual shall not exceed—

"(A) $400,000 ($200,000 in the case of a separate return by a married individual), reduced by

"(B) the amount by which the aggregate value of the assets held by the individual (and spouse) in individual retirement plans (other than asset rollover accounts) exceeds $100,000.

The determination under subparagraph (B) shall be made as of the close of the taxable year for which the determination is being made.

"(3) ANNUAL CONTRIBUTION LIMITATIONS.—

"(A) GENERAL RULE.—The aggregate contribution which may be made in any taxable year to all asset rollover accounts shall not exceed the lesser of—

"(i) the qualified net farm gain for the taxable year, or

"(ii) an amount determined by multiplying the number of years the taxpayer is a qualified farmer by $10,000.

"(B) SPOUSE.—In the case of a married couple filing a joint return under section 6013 for the taxable year, subparagraph (A) shall be applied by substituting '$20,000' for '$10,000' for each year the taxpayer's spouse is a qualified farmer.

"(4) TIME WHEN CONTRIBUTION DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to an asset rollover account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

"(d) QUALIFIED NET FARM GAIN; ETC.—For purposes of this section—

"(1) QUALIFIED NET FARM GAIN.—The term 'qualified net farm gain' means the lesser of—

"(A) the net capital gain of the taxpayer for the taxable year, or

"(B) the net capital gain for the taxable year determined by only taking into account gain (or loss) in connection with a disposition of a qualified farm asset.

"(2) QUALIFIED FARM ASSET.—The term 'qualified farm asset' means an asset used by a qualified farmer in the active conduct of the trade or business of farming (as defined in section 2032A(e)).

"(3) QUALIFIED FARMER.—

"(A) IN GENERAL.—The term 'qualified farmer' means a taxpayer who—

"(i) during the 5-year period ending on the date of the disposition of a qualified farm asset materially participated in the trade or business of farming, and

"(ii) owned (or who with the taxpayer's spouse owned) 50 percent or more of such trade or business during such 5-year period.

"(B) MATERIAL PARTICIPATION.—For purposes of this paragraph, a taxpayer shall be treated as materially participating in a trade or business if the taxpayer meets the requirements of section 2032A(e)(6).

"(4) ROLLOVER CONTRIBUTIONS.—Rollover contributions to an asset rollover account

may be made only from other asset rollover accounts.

"(e) DISTRIBUTION RULES.—For purposes of this title, the rules of paragraphs (1) and (2) of section 408(d) shall apply to any distribution from an asset rollover account.

"(f) INDIVIDUAL REQUIRED TO REPORT QUALIFIED CONTRIBUTIONS.—

"(1) IN GENERAL.—Any individual who—

"(A) makes a contribution to any asset rollover account for any taxable year, or

"(B) receives any amount from any asset rollover account for any taxable year,

shall include on the return of tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe) information described in paragraph (2).

"(2) INFORMATION REQUIRED TO BE SUPPLIED.—The information described in this paragraph is information required by the Secretary which is similar to the information described in section 408(o)(4)(B).

"(3) PENALTIES.—For penalties relating to reports under this paragraph, see section 6693(b)."

(b) CONTRIBUTIONS NOT DEDUCTIBLE.—Section 219(d) (relating to other limitations and restrictions) is amended by adding at the end the following new paragraph:

"(5) CONTRIBUTIONS TO ASSET ROLLOVER ACCOUNTS.—No deduction shall be allowed under this section with respect to a contribution under section 1034A."

(c) EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Section 4973 (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended by adding at the end the following new subsection:

"(e) ASSET ROLLOVER ACCOUNTS.—For purposes of this section, in the case of an asset rollover account referred to in subsection (a)(1), the term 'excess contribution' means the excess (if any) of the amount contributed for the taxable year to such account over the amount which may be contributed under section 1034A."

(2) CONFORMING AMENDMENTS.—

(A) Section 4973(a)(1) is amended by inserting "an asset rollover account (within the meaning of section 1034A)," after the comma at the end.

(B) The heading for section 4973 is amended by inserting "**ASSET ROLLOVER ACCOUNTS,**" after "**CONTRACTS**".

(C) The table of sections for chapter 43 is amended by inserting "asset rollover accounts," after "contracts" in the item relating to section 4973.

(d) TECHNICAL AMENDMENTS.—

(1) Section 408(a)(1) (defining individual retirement account) is amended by inserting "or a qualified contribution under section 1034A," before "no contribution".

(2) Section 408(d)(5)(A) is amended by inserting "or qualified contributions under section 1034A" after "rollover contributions".

(3)(A) Section 6693(b)(1)(A) is amended by inserting "or 1034A(f)(1)" after "408(o)(4)".

(B) Section 6693(b)(2) is amended by inserting "or 1034A(f)(1)" after "408(o)(4)".

(4) The table of sections for part III of subchapter O of chapter 1 is amended by inserting after the item relating to section 1034 the following new item:

"Sec. 1034A. Rollover of gain on sale of farm assets into asset rollover account."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges after the date of the enactment of this Act.

TITLE III—PERFORMANCE STOCK OPTIONS

SEC. 301. PERFORMANCE STOCK OPTIONS.

(a) IN GENERAL.—Part II of subchapter D of chapter 1 (relating to certain stock options) is amended by redesignating section 424 as section 425 and by inserting after section 423 the following new section:

"SEC. 424. PERFORMANCE STOCK OPTIONS.

"(a) IN GENERAL.—Section 421(a) shall apply with respect to the transfer of a share of stock to any person pursuant to the exercise of a performance stock option if no disposition of such share is made by such person within 1 year after the transfer of such share to such person.

"(b) PERFORMANCE STOCK OPTION.—For purposes of this part—

"(1) IN GENERAL.—The term 'performance stock option' means an option to purchase stock of any corporation described in paragraph (4) which is granted to any person—

"(A) in connection with the performance of services for an entity described in paragraph (4), and

"(B) upon the attainment of performance goals established by the entity.

"(2) ADDITIONAL REQUIREMENTS.—An option shall not be treated as a performance stock option unless the following requirements are met:

"(A) NONDISCRIMINATION.—Either—

"(i) the option is granted to an employee who, at the time of the grant, is not a highly compensated employee, or

"(ii) immediately after the grant of the option, employees who are not highly compensated employees hold performance share options which permit the acquisition of at least 50 percent of all shares which may be acquired pursuant to all performance stock options outstanding (whether or not exercisable) as of such time.

For purposes of clause (ii), only that portion of the options held by persons other than nonhighly compensated employees which results in the requirements of clause (ii) not being met shall be treated as options which are not performance stock options, and such portion shall be allocated among options held by such persons in such manner as the Secretary may prescribe.

"(B) SPECIFIC NUMBER OF OPTIONS.—The option is granted pursuant to a plan that includes either—

"(i) the aggregate number of shares that may be issued under options granted under the plan, or

"(ii) a method by which the aggregate number of shares that may be issued under options granted under the plan can be determined (without regard to whether such aggregate number may change under such method),

and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted.

"(C) TIME WHEN OPTION GRANTED.—The option is granted within 10 years after the date the plan described in subparagraph (B) is adopted, or the date such plan is approved by the stockholders, whichever is earlier.

"(D) TIME FOR EXERCISING OPTION.—The option by its terms is not exercisable after the expiration of 10 years from the date such option is granted.

"(E) OPTION PRICE.—Except as provided in paragraph (6) of subsection (c), the option price is not less than the fair market value of the stock at the time the option is granted.

"(F) TRANSFERABILITY.—The option by its terms is not transferable by the person holding the option, other than—

"(i) in the case of an individual, by will or the laws of descent and distribution, or pursuant to a qualified domestic relations order (as defined in subsection (p) of section 414), and

"(ii) in the case of any other person, by any transaction in which gain or loss is not recognized in whole or in part.

"(3) ELECTION NOT TO TREAT OPTION AS PERFORMANCE STOCK OPTION.—An option shall not be treated as a performance stock option if—

"(A) as of the time the option is granted the terms of such option provide that it will not be treated as a performance stock option, or

"(B) as of the time such option is exercised the grantor and holder agree that such option will not be treated as a performance stock option.

"(4) ENTITIES TO WHICH SECTION APPLIES.—This section shall apply to an option granted to a person who performs services for—

"(A) the corporation issuing the option, or its parent or subsidiary corporation,

"(B) a partnership in which the corporation issuing the option holds (at the time of the grant) a capital or profits interest representing at least 20 percent of the total capital or profits interest of the partnership, or

"(C) a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 425(a) applies.

"(5) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term 'highly compensated employee' has the meaning given such term by section 414(q).

"(c) SPECIAL RULES.—

"(1) GOOD FAITH EFFORTS TO VALUE STOCK.—If a share of stock is acquired pursuant to the exercise by any person of an option which would fail to qualify as a performance stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subparagraph (E) of subsection (b)(2), the requirement of subparagraph (E) of subsection (b)(2) shall be considered to have been met.

"(2) PERMISSIBLE PROVISIONS.—An option that meets the requirements of subsection (b) shall be treated as a performance stock option even if—

"(A) the option holder may pay for the stock with stock of the corporation granting the option,

"(B) the option holder has the right to receive property at the time of the exercise of the option,

"(C) the right to exercise all or any portion of a performance stock option may be subject to any condition, contingency or other criteria (including, without limitation, the continued performance of services, achievement of performance objectives, or the occurrence of any event) which are determined in accordance with the provisions of the plan or the terms of such option, or

"(D) the option is subject to any condition not inconsistent with the provisions of subsection (b).

"(3) FAIR MARKET VALUE.—For purposes of this section, the fair market value of stock shall be determined without regard to any restriction other than a restriction that, by its terms, will never lapse.

"(4) DEFINITION OF PARENT AND SUBSIDIARY CORPORATIONS.—For purposes of this section, the terms 'parent corporation' and 'subsidiary corporation' have the meanings given such terms by subsections (e) and (f) of section 425 except that such subsections shall be applied by substituting '20 percent' for '50 percent' each place it appears.

"(5) PERFORMANCE CRITERIA.—In the case of a performance stock option that provides that its exercise is subject to any conditions or criteria described in subparagraph (C) of paragraph (2), the date or time the option is granted with respect to each share that may be acquired shall be the date or time the original performance share option is granted and subject to the provisions of section 425(h), no portion of the option shall be treated as granted at any other time.

"(6) CONVERSION OF OPTIONS.—If—

"(A) there is a transfer of an incentive stock option in exchange for a performance stock option, and

"(B) the number of shares that may be acquired pursuant to such performance stock option and the transferred incentive stock option are the same,

then the option acquired shall qualify as a performance stock option if the option price pursuant to the performance share option is no less than the option price under the transferred incentive stock option."

(b) CONFORMING AMENDMENTS.—

(1) Section 421(a) is amended by striking "or 423(a)" and inserting ", 423(a), or 424(a)".

(2) Section 421(b) is amended—

(A) by striking "or 423(a)" and inserting ", 423(a), or 424(a)", and

(B) by striking "or 423(a)(1)" and inserting "423(a)(1), or 424(a)".

(3) Section 421(c)(1)(A) is amended by inserting "and the holding period requirement of section 424(a)" after "423(a)".

(4)(A) Sections 421(a)(2), 422(a)(2), and 423(a)(2) are each amended by striking "424(a)" and inserting "425(a)".

(B) Clause (ii) of section 402(e)(4)(E) is amended by striking "424" and inserting "425".

(5) Section 423(b)(3) is amended by striking "424(d)" and inserting "425(d)".

(6) Section 425(a), as redesignated by subsection (a), is amended by striking "424(a)" and inserting "425(a)".

(7) Section 425(c)(3)(A)(ii), as redesignated by subsection (a), is amended by striking "or 423(a)(1)" and inserting ", 423(a)(1), or 424(a)".

(8) Section 425(g), as redesignated by subsection (a), is amended by striking "and 423(a)(2)" and inserting ", 423(a)(2) and 424(b)(4) (as modified by section 424(c)(4))".

(9) Section 425(j), as redesignated by subsection (a) (relating to cross-references), is amended by inserting "performance stock option" after "employee stock purchase plans,".

(10) Section 1042(c)(1)(B)(ii) is amended by striking "or 423" and inserting "423, or 424".

(11)(A) Section 6039(a)(1) is amended by inserting "or performance stock option" after "incentive stock option".

(B) Section 6039(b)(1) is amended by inserting ", performance share option," after "incentive stock option".

(C) Section 6039(c) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and" and by adding at the end the following new paragraph:

"(3) the term 'performance share option', see 424(b)."

(12) The table of sections for part II of subchapter D of chapter 1 is amended by striking the item relating to section 424 and inserting the following new items:

"Sec. 424. Performance stock options.

"Sec. 425. Definitions and special rules."

SEC. 302. TAX TREATMENT OF GAIN ON PERFORMANCE SHARE OPTIONS.

(a) EXCLUSION.—

(1) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to capital gains and losses) is amended by adding at the end the following new section:

"SEC. 1203. 50-PERCENT EXCLUSION FOR GAIN FROM STOCK ACQUIRED THROUGH PERFORMANCE STOCK OPTIONS.

"(a) GENERAL RULE.—Gross income shall not include 50 percent of the gain from the disposition of any stock acquired pursuant to the exercise of a performance stock option if such disposition occurs more than 2 years after the date on which such option was exercised with respect to such stock.

"(b) DEFINITIONS AND RULES.—For purposes of this section—

"(1) PERFORMANCE STOCK OPTION.—The term 'performance stock option' has the meaning given such term by section 424(b).

"(2) CERTAIN ACQUISITIONS DISREGARDED.—If stock described in subsection (a) is disposed of and the basis of the person acquiring the stock is determined by reference to the basis of the stock in the hands of the person who acquired it through exercise of the performance stock option, such person shall be treated as acquiring such stock pursuant to such option on the date such stock was acquired pursuant to the exercise of such option.

"(3) EXERCISE BY ESTATE.—If a performance stock option is exercised after the death of an individual holder by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the 2-year holding requirement of subsection (a) shall not apply to the disposition by such estate or person."

(2) CONFORMING AMENDMENTS.—

(A) Section 172(d)(2) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets, and

"(B) the exclusion provided by section 1202 shall not be allowed."

(B) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202 or 1203. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(C) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The exclusion under section 1202 or 1203 shall not be taken into account."

(D) Paragraph (4) of section 691(c) is amended by striking "1202, and 1211" and inserting "1202, 1203, and 1211".

(E) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to sections 1202 and 1203 and" after "except that".

(F) The table of sections for part I of subchapter P of chapter 1 is amended by adding after the item relating to section 1202 the following new item:

"Sec. 1203. 50-percent exclusion for gain from stock acquired through performance stock options."

(b) TREATMENT FOR WAGE WITHHOLDING AND EMPLOYMENT TAXES.—

(1) FICA TAXES.—Section 3121(a) (defining wages) is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ", or", and by adding after paragraph (21) the following new paragraph:

"(22) any gain from the exercise of a performance stock option (as defined in section 424(b)) or from the disposition of stock acquired pursuant to the exercise of such a performance stock option."

(2) FUTA TAXES.—Section 3306(b) (defining wages) is amended by striking "or" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ", or", and by adding after paragraph (17) the following new paragraph:

"(18) any gain described in section 3121(a)(22)."

(3) WAGE WITHHOLDING.—

(A) Section 3401(a) (defining wages) is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ", or", and by adding at the end the following new paragraph:

"(22) any gain from the exercise of a performance stock option (as defined in section 424(b)) or from the disposition of stock acquired pursuant to such a performance stock option."

(B) Section 421(b) (relating to effect of disqualifying disposition) is amended by adding at the end the following new sentence: "A deduction to the employer corporation in the case of a transfer pursuant to an option described in section 422, 423, or 424 shall not be disallowed by reason of a failure to withhold tax under chapter 24 with respect to gain on stock acquired in the transfer."

SEC. 303. EFFECTIVE DATE.

The amendments made by this title shall apply to options granted after the date of the enactment of this Act.

TITLE IV—EMPLOYER-PROVIDED TRAINING

SEC. 401. EXTENSION OF EXCLUSION FOR EDUCATIONAL ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Section 127 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 402. STUDY OF NONDISCRIMINATION RULES APPLICABLE TO EDUCATIONAL ASSISTANCE PROGRAMS.

(a) STUDY.—The Secretary of Labor, in consultation with the Secretary of the Treasury, shall conduct a study which examines—

(1) the pattern in which taxpayers providing job-related training and education assistance programs under section 127 of the Internal Revenue Code of 1986 extend such benefits to highly compensated employees and nonhighly compensated employees;

(2) the merits and administrative feasibility of applying nondiscrimination rules to job-related training and educational assistance programs under section 127 of the Internal Revenue Code of 1986 which are similar to the nondiscrimination rules applicable to employer-provided pension plans; and

(3) the merits and administrative feasibility of conditioning the exclusion for job-related training and section 127 assistance on an employee remaining with the employer for at least 1 year after receiving the training or educational assistance.

(b) REPORT.—Not later than 9 months after the date of the enactment of this Act, the

Secretary of Labor shall report to the Congress the results of the study conducted under subsection (a), including any recommendations for legislation as the Secretary determines appropriate.

TITLE V—ESTATE TAX RELIEF

SEC. 501. FAMILY-OWNED BUSINESS EXCLUSION.

(a) IN GENERAL.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2033 the following new section:

"SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.

"(a) IN GENERAL.—In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

"(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

"(2) $900,000, reduced by the amount of any exclusion allowed under this section with respect to the estate of a previously deceased spouse of the decedent.

"(b) ESTATES TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to an estate if—

"(A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

"(B) the sum of—

"(i) the adjusted value of the qualified family-owned business interests described in paragraph (2), plus

"(ii) the amount of the gifts of such interests determined under paragraph (3),

exceeds 50 percent of the adjusted gross estate, and

"(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

"(i) such interests were owned by the decedent or a member of the decedent's family, and

"(ii) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

"(2) INCLUDIBLE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—The qualified family-owned business interests described in this paragraph are the interests which—

"(A) are included in determining the value of the gross estate (without regard to this section), and

"(B) are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

"(3) INCLUDIBLE GIFTS OF INTERESTS.—The amount of the gifts of qualified family-owned business interests determined under this paragraph is the excess of—

"(A) the sum of—

"(i) the amount of such gifts from the decedent to members of the decedent's family taken into account under subsection 2001(b)(1)(B), plus

"(ii) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death, over

"(B) the amount of such gifts from the decedent to members of the decedent's family otherwise included in the gross estate.

"(c) ADJUSTED GROSS ESTATE.—For purposes of this section, the term 'adjusted gross estate' means the value of the gross estate (determined without regard to this section)—

"(1) reduced by any amount deductible under paragraph (3) or (4) of section 2053(a), and

"(2) increased by the excess of—

"(A) the sum of—

"(i) the amount of gifts determined under subsection (b)(3), plus

"(ii) the amount (if more than de minimis) of other transfers from the decedent to the decedent's spouse (at the time of the transfer) within 10 years of the date of the decedent's death, plus

"(iii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, other than gifts to members of the decedent's family otherwise excluded under section 2503(b), over

"(B) the sum of the amounts described in clauses (i), (ii), and (iii) of subparagraph (A) which are otherwise includible in the gross estate.

For purposes of the preceding sentence, the Secretary may provide that de minimis gifts to persons other than members of the decedent's family shall not be taken into account.

"(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

"(1) any amount deductible under paragraph (3) or (4) of section 2053(a), over

"(2) the sum of—

"(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

"(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152), plus

"(C) any indebtedness not described in clause (i) or (ii), to the extent such indebtedness does not exceed $10,000.

"(e) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified family-owned business interest' means—

"(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

"(B) an interest in an entity carrying on a trade or business, if—

"(i) at least—

"(I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,

"(II) 70 percent of such entity is so owned by members of 2 families, or

"(III) 90 percent of such entity is so owned by members of 3 families, and

"(ii) for purposes of subclause (II) or (III) of clause (i), at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

"(2) LIMITATION.—Such term shall not include—

"(A) any interest in a trade or business the principal place of business of which is not located in the United States,

"(B) any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years of the date of the decedent's death,

"(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a)),

"(D) that portion of an interest in a trade or business that is attributable to—

"(i) cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business, and

"(ii) any other assets of the trade or business (other than assets used in the active conduct of a trade or business described in section 542(c)(2)), the income of which is described in section 543(a) or in subparagraph (B), (C), (D), or (E) of section 954(c)(1) (determined by substituting 'trade or business' for 'controlled foreign corporation').

"(3) RULES REGARDING OWNERSHIP.—

"(A) OWNERSHIP OF ENTITIES.—For purposes of paragraph (1)(B)—

"(i) CORPORATIONS.—Ownership of a corporation shall be determined by the holding of stock possessing the appropriate percentage of the total combined voting power of all classes of stock entitled to vote and the appropriate percentage of the total value of shares of all classes of stock.

"(ii) PARTNERSHIPS.—Ownership of a partnership shall be determined by the owning of the appropriate percentage of the capital interest in such partnership.

"(B) OWNERSHIP OF TIERED ENTITIES.—For purposes of this section, if by reason of holding an interest in a trade or business, a decedent, any member of the decedent's family, any qualified heir, or any member of any qualified heir's family is treated as holding an interest in any other trade or business—

"(i) such ownership interest in the other trade or business shall be disregarded in determining if the ownership interest in the first trade or business is a qualified family-owned business interest, and

"(ii) this section shall be applied separately in determining if such interest in any other trade or business is a qualified family-owned business interest.

"(C) INDIVIDUAL OWNERSHIP RULES.—For purposes of this section, an interest owned, directly or indirectly, by or for an entity described in paragraph (1)(B) shall be considered as being owned proportionately by or for the entity's shareholders, partners, or beneficiaries. A person shall be treated as a beneficiary of any trust only if such person has a present interest in such trust.

"(f) TAX TREATMENT OF FAILURE TO MATERIALLY PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTERESTS.—

"(1) IN GENERAL.—There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

"(A) the material participation requirements described in section 2032A(c)(6)(B) are not met with respect to the qualified family-owned business interest which was acquired (or passed) from the decedent,

"(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)),

"(C) the qualified heir loses United States citizenship (within the meaning of section 877) or with respect to whom an event described in subparagraph (A) or (B) of section

877(e)(1) occurs, and such heir does not comply with the requirements of subsection (g), or

"(D) the principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

"(2) ADDITIONAL ESTATE TAX.—

"(A) IN GENERAL.—The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

"(i) the applicable percentage of the adjusted tax difference attributable to the qualified family-owned business interest (as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

"(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

"(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined under the following table:

"If the event described in paragraph (1) occurs in the following year of material participation:	The applicable percentage is:
1 through 6	100
7	80
8	60
9	40
10	20.

"(g) SECURITY REQUIREMENTS FOR NONCITIZEN QUALIFIED HEIRS.—

"(1) IN GENERAL.—Except upon the application of subparagraph (F) or (M) of subsection (h)(3), if a qualified heir is not a citizen of the United States, any interest under this section passing to or acquired by such heir (including any interest held by such heir at a time described in subsection (f)(1)(C)) shall be treated as a qualified family-owned business interest only if the interest passes or is acquired (or is held) in a qualified trust.

"(2) QUALIFIED TRUST.—The term 'qualified trust' means a trust—

"(A) which is organized under, and governed by, the laws of the United States or a State, and

"(B) except as otherwise provided in regulations, with respect to which the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation.

"(h) OTHER DEFINITIONS AND APPLICABLE RULES.—For purposes of this section—

"(1) QUALIFIED HEIR.—The term 'qualified heir'—

"(A) has the meaning given to such term by section 2032A(e)(1), and

"(B) includes any active employee of the trade or business to which the qualified family-owned business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent's death.

"(2) MEMBER OF THE FAMILY.—The term 'member of the family' has the meaning given to such term by section 2032A(e)(2).

"(3) APPLICABLE RULES.—Rules similar to the following rules shall apply:

"(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

"(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

"(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

"(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

"(E) Section 2032A(c)(4) (relating to due date).

"(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

"(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treated as material participation).

"(H) Section 2032A(e)(10) (relating to community property).

"(I) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

"(J) Section 2032A(f) (relating to statute of limitations).

"(K) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

"(L) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).

"(M) Section 6324B (relating to special lien for additional estate tax).".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by inserting after the item relating to section 2033 the following new item:

"Sec. 2033A. Family-owned business exclusion.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1996.

SEC. 502. PORTION OF ESTATE TAX SUBJECT TO 4-PERCENT INTEREST RATE INCREASED TO $1,600,000.

(a) IN GENERAL.—Subparagraph (B) of section 6601(j)(2) (defining 4-percent portion) is amended by striking "$345,800" and inserting "$600,800".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after December 31, 1996.

SEC. 503. CERTAIN CASH RENTALS OF FARMLAND NOT TO CAUSE RECAPTURE OF SPECIAL ESTATE TAX VALUATION.

(a) IN GENERAL.—Subsection (c) of section 2032A (relating to tax treatment of dispositions and failures to use for qualified use) is amended by adding at the end the following new paragraph:

"(8) CERTAIN CASH RENTAL NOT TO CAUSE RECAPTURE.—For purposes of this subsection, a qualified heir shall not be treated as failing to use property in a qualified use solely because such heir rents such property on a net cash basis to a member of the decedent's family, but only if, during the period of the lease, such member of the decedent's family uses such property in a qualified use."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to rentals occurring after December 31, 1976.

TITLE VI—TRANSPORTATION INVESTMENT

SEC. 601. FINDINGS.

Congress finds that—

(1) decaying roads and bridges are clogging the economic lifelines and hampering growth of communities around the country, costing nearly $40,000,000,000 in annual losses from traffic congestion alone;

(2) with "just-in-time" manufacturing a critical aspect of our economic competitiveness, a modern, efficient transportation system is more vital now than ever;

(3) user fee revenues continue to flow into our transportation trust funds for their intended purpose of infrastructure investment;

(4) Federal budget constraints have prevented States from fully utilizing all amounts of the transportation trust fund revenues made available to them;

(5) at the same time, recent Federal initiatives have equipped States with new infrastructure financing tools that help attract private investment, stimulate the Nation's economy, and create jobs; and

(6) enabling States to use a portion of their unobligated balances of apportioned Highway Trust Fund revenues via these new financing tools will maximize the benefits of vitally needed infrastructure investments.

SEC. 602. PROGRAM STRUCTURE.

(a) IN GENERAL.—The Secretary of Transportation (referred to in this title as the "Secretary") shall make available to a State a portion of the State's unobligated balance in accordance with section 603.

(b) QUALIFYING PROJECT.—Federal funds made available under this title may be used only to provide assistance with respect to a project eligible for assistance under section 133(b) of title 23, United States Code.

(c) PROJECT ADMINISTRATION.—A project receiving assistance under this title shall be carried out in accordance with title 23, United States Code.

SEC. 603. FUNDING.

(a) UNOBLIGATED BALANCES.—

(1) IN GENERAL.—For each fiscal year, upon the request of a State, the Secretary shall make available to the State to carry out projects eligible for assistance under this title an aggregate amount not to exceed 10 percent, as of the last day of the preceding fiscal year, of the funds that were apportioned to the State under sections 104(b)(1), 104(b)(3), 104(b)(5), 144, and 160 of title 23, United States Code, and are not obligated.

(2) URBANIZED AREAS OVER 200,000.—Funds that were apportioned to a State under section 104(b)(3) or 160 of title 23, United States Code, and attributed to an urbanized area of the State with an urbanized area population of over 200,000 under section 133(d)(3) of that title may be made available by the Secretary under paragraph (1) only if the metropolitan planning organization designated for the area concurs, in writing, with that use.

(b) USE OF FUNDS.—

(1) STATE INFRASTRUCTURE BANKS.—

(A) IN GENERAL.—A State shall contribute the amounts made available to the State under subsection (a)(1) to the State infrastructure bank established by the State in accordance with section 350 of the National Highway System Designation Act of 1995 (23 U.S.C. 101 note; 109 Stat. 618). Federal funds contributed to the bank under this subparagraph shall constitute a capitalization grant for the infrastructure bank.

(B) DISBURSEMENTS.—The Secretary shall ensure that the disbursements of the Federal funds referred to in subparagraph (A) to the infrastructure bank shall be at a rate consistent with historic rates for the Federal-aid highway program.

(2) GRANTS.—In lieu of contributing the funds to an infrastructure bank, and upon approval by the Secretary, a State may obligate amounts made available to the State under subsection (a)(1) for a project eligible for assistance under section 602(b).

(3) NO OBLIGATION LIMITATION.—No limitation shall apply to obligations of amounts made available under subsection (a)(1).

By Mr. MOYNIHAN:

S. 21. A bill to establish a medical education trust fund, and for other purposes; to the Committee on Finance.

THE MEDICAL EDUCATION TRUST FUND ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise to introduce legislation that would establish a medical education trust fund to support America's 142 accredited

medical schools and 1,250 teaching hospitals. These institutions are national treasures; they are the very best in the world. Yet today they find themselves in a precarious financial situation as market forces reshape the health care delivery system in the United States. Explicit and dedicated funding for these institutions, which this legislation will provide, will ensure that the United States continues to lead the world in the quality of its health care system.

This legislation requires that the public sector, through the Medicare and Medicaid Programs, and the private sector, through an assessment on health insurance premiums, contribute broad-based and fair financial support.

BRIEF HISTORY

My particular interest in this subject began in 1994, when the Finance Committee took up the President's Health Security Act. I was chairman of the committee at the time. In January of that year, I asked Dr. Paul Marks, M.D., president of Memorial Sloan-Kettering Cancer Center in New York City, if he would arrange a seminar for me on health care issues. He agreed, and gathered a number of medical school deans together one morning in New York.

Early on in the meeting, one of the seminarians remarked that the University of Minnesota might have to close its medical school. In an instant I realized I had heard something new. Minnesota is a place where they open medical schools, not close them. How, then, could this be? The answer was that Minnesota, being Minnesota, was a leading State in the growth of competitive health care markets, in which competing managed care organizations try to deliver services at lower costs. In this environment, HMO's and the like do not send patients to teaching hospitals, absent which you cannot have a medical school.

We are in the midst of a great era of discovery in medical science. It is certainly not a time to close medical schools. This great era of medical discovery is occurring right here in the United States, not in Europe like past ages of scientific discovery. And it is centered in New York City. This heroic age of medical science started in the late 1930's. Before then, the average patient was probably as well off, perhaps better, out of a hospital as in one. Progress from that point 60 years ago has been remarkable. The last few decades have brought us images of the inside of the human body based on the magnetic resonance of bodily tissues; laser surgery; micro surgery for reattaching limbs; and organ transplantation, among other wonders. Physicians are now working on a gene therapy that might eventually replace bypass surgery. I can hardly imagine what might be next.

After months of hearings and debate on the President's Health Security Act, I became convinced that special provisions would have to be made for medical schools, teaching hospitals, and medical research if we were not to see this great moment in medical science suddenly constrained. To that end, when the Committee on Finance voted 12 to 8 on July 2, 1994, to report the Health Security Act, it included a graduate medical education and academic health centers trust fund. The trust fund provided an 80-percent increase in Federal funding for academic medicine; as importantly, it represented stable, long-term funding. While nothing came of the effort to enact universal health care coverage, the medical education trust fund enjoyed widespread support. An amendment by Senator Malcolm Wallop to kill the trust fund by striking the source of its revenue—a 1.75-percent assessment on health insurance premiums—failed on a 7 to 13 vote in the Finance Committee.

I continued to press the issue in the first session of the 104th Congress. On September 29, 1995, during Finance Committee consideration of budget reconciliation legislation, I offered an amendment to establish a similar trust fund. With a new majority in control and the committee in the midst of considering a highly partisan budget reconciliation bill, my amendment failed on a tie vote, 10 to 10. Notably, however, the House version of the reconciliation bill did include a graduate medical education trust fund. That provision ultimately passed both Houses as part of the conference agreement, which was subsequently vetoed by President Clinton. The budget resolution for fiscal year 1997 as passed by Congress also appeared to assume that a similar trust fund was to be included in the Medicare reconciliation bill—a bill which never materialized.

The chairman of the House Ways and Means Committee, Representative BILL ARCHER, was largely responsible for the inclusion of trust fund provisions in the Balanced Budget Act of 1995 and the budget resolution for fiscal year 1997. He and I share a strong commitment to ensuring the continued success of our system of medical education. Indeed, Chairman ARCHER and I were both honored last year to receive the American Association of Medical Colleges' Public Service Excellence Award.

That is the history of this effort, briefly stated.

NEED FOR LEGISLATION

Medical education is one of America's most precious public resources. Within our increasingly competitive health care system, it is rapidly becoming a public good—that is, a good from which everyone benefits, but for which no one is willing to pay. Therefore, it would be explicitly financed with contributions from all sectors of the health care system, not just the Medicare Program as is the case today. The fiscal pressures of a competitive health market are increasingly closing off traditional implicit revenue sources (such as additional payments from private payers) that have supported medical schools, graduate medical education, and research until now. In its June, 1995 Report to Congress, the Prospective Payment Assessment Commission [ProPAC], created to advise Congress on Medicare hospital insurance [part A] payment, summarized the situation of teaching hospitalsas follows:

> As competition in the health care system intensifies, the additional costs borne by teaching hospitals will place them at a disadvantage relative to other facilities. The role, scale, function, and number of these institutions increasingly will be challenged....Accelerating price competition in the private sector...is reducing the ability of teaching hospitals to obtain the higher patient care rates from other payers that traditionally have contributed to financing the costs associated with graduate medical education.

ProPAC's June, 1996 Report to Congress confirmed that "major teaching hospitals have the dual problems of higher overall losses from uncompensated care and less above-cost revenue from private insurers."

The State of New York provides a good example of what is happening as health care markets become more competitive. Effective at the end of the 1996 calendar year, New York repealed a State law that set hospital rates. Hospitals must now negotiate their fees with each and every health plan in the State. Where teaching hospitals were once guaranteed a payment that recognized, to some degree, its higher costs of providing services, the private sector is free to squeeze down payments to hospitals with no such recognition. While the State of New York operates funding pools that provide partial support for graduate medical education and uncompensated care, it is largely up to the teaching hospitals to try to win higher rates than other hospitals when negotiating contracts with health plans. Some may succeed in doing so, but most will probably not. New York's State law was unique, but the same process of negotiation between hospitals and private health plans takes place across the country. Who, in this context, will pay for the higher costs of operating teaching hospitals?

It is obvious that teaching hospitals can no longer rely on higher payments from private payers to do so. Nor should they. The establishment of this trust fund, which explicitly reimburses teaching hospitals for the costs of graduate medical education, will ensure that teaching hospitals can pursue their vitally important patient care, training, and research missions in the face of an increasingly competitive health system.

Medical schools also face an uncertain future. There are many policy

issues that need to be examined regarding the role of medical schools in our health system, but two threats faced by medical schools require immediate attention. This legislation addresses both. First, many medical schools are immediately threatened by the dire financial condition of their affiliated teaching hospitals. Medical schools rely on teaching hospitals to provide a place for their faculty to practice and perform research, a place to send third and fourth-year medical school students for training, and for some direct revenues. By improving the financial condition of teaching hospitals, this legislation significantly improves the outlook for medical schools.

The second immediate threat faced by medical schools stems from their reliance on a portion of the clinical practice revenue generated by their faculties to support their operations. As competition within the health system intensifies and managed care proliferates, these revenues are shrinking. This legislation provides payments to medical schools from the trust fund that are designed to partially offset this loss of revenue.

None of the foregoing is meant to suggest that the new competitive forces reshaping health care have brought only negative results. To the contrary, the onset of competition has had many beneficial effects, the dramatic curtailing of growth in health insurance premiums being the most obvious. But as Monsignor Charles J. Fahey of Fordham warned in testimony before the Finance Committee in 1994, we must be wary of the "commodification of health care," by which he meant that health care is not just another commodity. We can rely on competition to hold down costs in much of the health system, but we must not allow it to bring a premature end to this great age of medical discovery, an age made possible by this country's exceptionally well-trained health professionals and superior medical schools and teaching hospitals. This legislation complements a competitive health market by providing tax-supported funding for the public services provided by teaching hospitals and medical schools.

DESCRIPTION OF LEGISLATION

Accordingly, the medical education trust fund established in the legislation I have just reintroduced would receive funding from three sources broadly representing the entire health care system: a 1.5 percent tax on health insurance premiums—the private sector's contribution—Medicare and Medicaid—the latter two sources comprising the public sector's contribution. The relative contribution from each of these sources will be in rough proportion to the medical education costs attributable to their respective covered populations.

Over the 5 years following enactment, the medical education trust fund provides average annual payments of about $17 billion. The tax on health insurance premium—including self-insured health plans—raises approximately $4 billion per year for the trust fund. Federal health programs contribute about $13 billion per year to the trust fund: $9 billion in transfers of Medicare graduate medical education payments and $4 billion in federal Medicaid spending.

This legislation is only a first step. It establishes the principle that, as a public good, medical education should be supported by dedicated, long-term Federal funding. To ensure that the United States continues to lead the world in the quality of its medical education and its health system as a whole, the legislation would also create a Medical Education Advisory Commission to conduct a thorough study and make recommendations, including the potential use of demonstration projects, regarding the following: alternative and additional sources of medical education financing; alternative methodologies for financing medical education; policies designed to maintain superior research and educational capacities in an increasingly competitive health system; the appropriate role of medical schools in graduate medical education; and policies designed to expand eligibility for graduate medical education payments to institutions other than teaching hospitals.

Mr. President, the services provided by this Nation's teaching hospitals and medical schools—ground breaking research, highly skilled medical care, and the training of tomorrow's physicians—are vitally important and must be protected in this time of intense economic competition in the health system.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 21

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Medical Education Trust Fund Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Medical Education Trust Fund.
Sec. 3. Amendments to medicare program.
Sec. 4. Amendments to medicaid program.
Sec. 5. Assessments on insured and self-insured health plans.
Sec. 6. Medical Education Advisory Commission.
Sec. 7. Demonstration projects.

SEC. 2. MEDICAL EDUCATION TRUST FUND.

The Social Security Act (42 U.S.C. 300 et seq.) is amended by adding after title XX the following new title:

"TITLE XXI—MEDICAL EDUCATION TRUST FUND

"TABLE OF CONTENTS OF TITLE

"Sec. 2101. Establishment of Trust Fund.
"Sec. 2102. Payments to medical schools.
"Sec. 2103. Payments to teaching hospitals.

"SEC. 2101. ESTABLISHMENT OF TRUST FUND.

"(a) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the Medical Education Trust Fund (in this title referred to as the 'Trust Fund'), consisting of the following accounts:

"(1) The Medical School Account.

"(2) The Medicare Teaching Hospital Indirect Account.

"(3) The Medicare Teaching Hospital Direct Account.

"(4) The Non-Medicare Teaching Hospital Indirect Account.

"(5) The Non-Medicare Teaching Hospital Direct Account.

Each such account shall consist of such amounts as are allocated and transferred to such account under this section, sections 1876(a)(7), 1886(j) and 1931, and section 4503 of the Internal Revenue Code of 1986. Amounts in the accounts of the Trust Fund shall remain available until expended.

"(b) EXPENDITURES FROM TRUST FUND.—Amounts in the accounts of the Trust Fund are available to the Secretary for making payments under sections 2102 and 2103.

"(c) INVESTMENT.—

"(1) IN GENERAL.—The Secretary of the Treasury shall invest amounts in the accounts of the Trust Fund which the Secretary determines are not required to meet current withdrawals from the Trust Fund. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

"(2) SALE OF OBLIGATIONS.—The Secretary of the Treasury may sell at market price any obligation acquired under paragraph (1).

"(3) AVAILABILITY OF INCOME.—Any interest derived from obligations held in each such account, and proceeds from any sale or redemption of such obligations, are hereby appropriated to such account.

"(d) MONETARY GIFTS TO TRUST FUND.—There are appropriated to the Trust Fund such amounts as may be unconditionally donated to the Federal Government as gifts to the Trust Fund. Such amounts shall be allocated and transferred to the accounts described in subsection (a) in the same proportion as the amounts in each of the accounts bears to the total amount in all the accounts of the Trust Fund.

"SEC. 2102. PAYMENTS TO MEDICAL SCHOOLS.

"(a) FEDERAL PAYMENTS TO MEDICAL SCHOOLS FOR CERTAIN COSTS.—

"(1) IN GENERAL.—In the case of a medical school that in accordance with paragraph (2) submits to the Secretary an application for fiscal year 1998 or any subsequent fiscal year, the Secretary shall make payments for such year to the medical school for the purpose specified in paragraph (3). The Secretary shall make such payments from the Medical School Account in an amount determined in accordance with subsection (b), and may administer the payments as a contract, grant, or cooperative agreement.

"(2) APPLICATION FOR PAYMENTS.—For purposes of paragraph (1), an application for payments under such paragraph for a fiscal year is in accordance with this paragraph if—

"(A) the medical school involved submits the application not later than the date specified by the Secretary; and

"(B) the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(3) PURPOSE OF PAYMENTS.—The purpose of payments under paragraph (1) is to assist medical schools in maintaining and developing quality educational programs in an increasingly competitive health care system.

"(b) AVAILABILITY OF TRUST FUND FOR PAYMENTS; ANNUAL AMOUNT OF PAYMENTS.—

"(1) AVAILABILITY OF TRUST FUND FOR PAYMENTS.—The following amounts shall be available for a fiscal year for making payments under subsection (a) from the amount allocated and transferred to the Medical School Account under sections 1876(a)(7), 1886(j), 1931, 2101(c)(3) and (d), and section 4503 of the Internal Revenue Code of 1986:

"(A) In the case of fiscal year 1998, $200,000,000.

"(B) In the case of fiscal year 1999, $300,000,000.

"(C) In the case of fiscal year 2000, $400,000,000.

"(D) In the case of fiscal year 2001, $500,000,000.

"(E) In the case of fiscal year 2002, $600,000,000.

"(F) In the case of each subsequent fiscal year, the amount specified in this paragraph in the previous fiscal year updated through the midpoint of the year by the estimated percentage change in the general health care inflation factor (as defined in subsection (d)) during the 12-month period ending at that midpoint, with appropriate adjustments to reflect previous underestimations or overestimations under this subparagraph in the projected health care inflation factor.

"(2) AMOUNT OF PAYMENTS FOR MEDICAL SCHOOLS.—

"(A) IN GENERAL.—Subject to the annual amount available under paragraph (1) for a fiscal year, the amount of payments required under subsection (a) to be made to a medical school that submits to the Secretary an application for such year in accordance with subsection (a)(2) is an amount equal to an amount determined by the Secretary in accordance with subparagraph (B).

"(B) DEVELOPMENT OF FORMULA.—The Secretary shall develop a formula for allocation of funds to medical schools under this section consistent with the purpose described in subsection (a)(3).

"(c) MEDICAL SCHOOL DEFINED.—For purposes of this section, the term 'medical school' means a school of medicine (as defined in section 799 of the Public Health Service Act) or a school of osteopathic medicine (as defined in such section).

"(d) GENERAL HEALTH CARE INFLATION FACTOR.—The term 'general health care inflation factor' means the consumer price index for medical services as determined by the Bureau of Labor Statistics.

"SEC. 2103. PAYMENTS TO TEACHING HOSPITALS.

"(a) FORMULA PAYMENTS TO ELIGIBLE ENTITIES.—

"(1) IN GENERAL.—In the case of any fiscal year beginning after September 30, 1997, the Secretary shall make payments to each eligible entity that, in accordance with paragraph (2), submits to the Secretary an application for such fiscal year. Such payments shall be made from the Trust Fund, and the total of the payments to the eligible entity for the fiscal year shall equal the sum of the amounts determined under subsections (b), (c), (d), and (e).

"(2) APPLICATION.—For purposes of paragraph (1), an application shall contain such information as may be necessary for the Secretary to make payments under such paragraph to an eligible entity during a fiscal year. An application shall be treated as submitted in accordance with this paragraph if it is submitted not later than the date specified by the Secretary, and is made in such form and manner as the Secretary may require.

"(3) PERIODIC PAYMENTS.—Payments under paragraph (1) to an eligible entity for a fiscal year shall be made periodically, at such intervals and in such amounts as the Secretary determines to be appropriate (subject to applicable Federal law regarding Federal payments).

"(4) ADMINISTRATOR OF PROGRAMS.—The Secretary shall carry out responsibility under this title by acting through the Administrator of the Health Care Financing Administration.

"(5) ELIGIBLE ENTITY.—For purposes of this title, the term 'eligible entity', with respect to any fiscal year, means—

"(A) for payment under subsections (b) and (c), an entity which would be eligible to receive payments for such fiscal year under—

"(i) section 1886(d)(5)(B), if such payments had not been terminated for discharges occurring after September 30, 1997;

"(ii) section 1886(h), if such payments had not been terminated for cost reporting periods beginning after September 30, 1997; or

"(iii) both sections; or

"(B) for payment under subsections (d) and (e)—

"(i) an entity which meets the requirement of subparagraph (A); or

"(ii) an entity which the Secretary determines should be considered an eligible entity.

"(b) DETERMINATION OF AMOUNT FROM MEDICARE TEACHING HOSPITAL INDIRECT ACCOUNT.—

"(1) IN GENERAL.—The amount determined for an eligible entity for a fiscal year under this subsection is the amount equal to the applicable percentage of the total amount allocated and transferred to the Medicare Teaching Hospital Indirect Account under sections 1876(a)(7) and 1886(j)(1), and subsections (c)(3) and (d) of section 2101 for such fiscal year.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage for any fiscal year is equal to the percentage of the total payments which would have been made to the eligible entity in such fiscal year under section 1886(d)(5)(B) if—

"(A) such payments had not been terminated for discharges occurring after September 30, 1997; and

"(B) such payments included payments for individuals enrolled in a plan under section 1876, except that for fiscal years 1998, 1999, and 2000, only the applicable percentage (as defined in section 1876(a)(7)(B)) of such payments shall be taken into account.

"(c) DETERMINATION OF AMOUNT FROM MEDICARE TEACHING HOSPITAL DIRECT ACCOUNT.—

"(1) IN GENERAL.—The amount determined for an eligible entity for a fiscal year under this subsection is the amount equal to the applicable percentage of the total amount allocated and transferred to the Medicare Teaching Hospital Direct Account under sections 1876(a)(7) and 1886(j)(2), and subsections (c)(3) and (d) of section 2101 for such fiscal year.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage for any fiscal year is equal to the percentage of the total payments which would have been made to the eligible entity in such fiscal year under section 1886(h) if—

"(A) such payments had not been terminated for cost reporting periods beginning after September 30, 1997; and

"(B) such payments included payments for individuals enrolled in a plan under section 1876, except that for fiscal years 1998, 1999, and 2000, only the applicable percentage (as defined in section 1876(a)(7)(B)) of such payments shall be taken into account.

"(d) DETERMINATION OF AMOUNT FROM NON-MEDICARE TEACHING HOSPITAL INDIRECT ACCOUNT.—

"(1) IN GENERAL.—The amount determined for an eligible entity for a fiscal year under this subsection is the amount equal to the applicable percentage of the total amount allocated and transferred to the Non-Medicare Teaching Hospital Indirect Account for such fiscal year under section 1931, subsections (c)(3) and (d) of section 2101, and section 4503 of the Internal Revenue Code of 1986.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage for any fiscal year for an eligible entity is equal to the percentage of the total payments which, as determined by the Secretary, would have been made in such fiscal year under section 1886(d)(5)(B) if—

"(A) such payments had not been terminated for discharges occurring after September 30, 1997; and

"(B) non-medicare patients were taken into account in lieu of medicare patients.

"(e) DETERMINATION OF AMOUNT FROM NON-MEDICARE TEACHING HOSPITAL DIRECT ACCOUNT.—

"(1) IN GENERAL.—The amount determined for an eligible entity for a fiscal year under this subsection is the amount equal to the applicable percentage of the total amount allocated and transferred to the Non-Medicare Teaching Hospital Direct Account for such fiscal year under section 1931, subsections (c)(3) and (d) of section 2101, and section 4503 of the Internal Revenue Code of 1986.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage for any fiscal year for an eligible entity is equal to the percentage of the total payments which, as determined by the Secretary, would have been made in such fiscal year under section 1886(h) if—

"(A) such payments had not been terminated for cost reporting periods beginning after September 30, 1997; and

"(B) non-medicare patients were taken into account in lieu of medicare patients.".

SEC. 3. AMENDMENTS TO MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended—

(1) in subsection (d)(5)(B), in the matter preceding clause (i), by striking "The Secretary shall provide" and inserting the following: "For discharges occurring before October 1, 1997, the Secretary shall provide";

(2) in subsection (h)—

(A) in paragraph (1), in the first sentence, by striking "the Secretary shall provide" and inserting "the Secretary shall, subject to paragraph (6), provide"; and

(B) by adding at the end the following new paragraph:

"(6) LIMITATION.—

"(A) IN GENERAL.—The authority to make payments under this subsection shall not apply with respect to—

"(i) cost reporting periods beginning after September 30, 1997; and

"(ii) any portion of a cost reporting period beginning on or before such date which occurs after such date.

"(B) RULE OF CONSTRUCTION.—This paragraph may not be construed as authorizing any payment under section 1861(v) with respect to graduate medical education."; and

(3) by adding at the end the following new subsection:

"(j) TRANSFERS TO MEDICAL EDUCATION TRUST FUND.—

"(1) INDIRECT COSTS OF MEDICAL EDUCATION.—

"(A) TRANSFER.—

"(i) IN GENERAL.—From the Federal Hospital Insurance Trust Fund, the Secretary shall, for fiscal year 1998 and each subsequent fiscal year, transfer to the Medical Education Trust Fund an amount equal to the amount estimated by the Secretary under subparagraph (B).

"(ii) ALLOCATION.—Of the amount transferred under clause (i)—

"(I) there shall be allocated and transferred to the Medical School Account an amount which bears the same ratio to the total amount available under section 2102(b)(1) for the fiscal year (reduced by the balance in such account at the end of the preceding fiscal year) as the amount transferred under clause (i) bears to the total amounts transferred to the Medical Education Trust Fund under title XXI (excluding amounts transferred under subsections (c)(3) and (d) of section 2101) for such fiscal year; and

"(II) the remainder shall be allocated and transferred to the Medicare Teaching Hospital Indirect Account.

"(B) DETERMINATION OF AMOUNTS.—The Secretary shall make an estimate for each fiscal year involved of the nationwide total of the amounts that would have been paid under subsection (d)(5)(B) to hospitals during the fiscal year if such payments had not been terminated for discharges occurring after September 30, 1997.

"(2) DIRECT COSTS OF MEDICAL EDUCATION.—

"(A) TRANSFER.—

"(i) IN GENERAL.—From the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, the Secretary shall, for fiscal year 1998 and each subsequent fiscal year, transfer to the Medical Education Trust Fund an amount equal to the amount estimated by the Secretary under subparagraph (B).

"(ii) ALLOCATION.—Of the amount transferred under clause (i)—

"(I) there shall be allocated and transferred to the Medical School Account an amount which bears the same ratio to the total amount available under section 2102(b)(1) for the fiscal year (reduced by the balance in such account at the end of the preceding fiscal year) as the amount transferred under clause (i) bears to the total amounts transferred to the Medical Education Trust Fund under title XXI (excluding amounts transferred under subsections (c)(3) and (d) of section 2101) for such fiscal year; and

"(II) the remainder shall be allocated and transferred to the Medicare Teaching Hospital Direct Account.

"(B) DETERMINATION OF AMOUNTS.—For each hospital, the Secretary shall make an estimate for the fiscal year involved of the amount that would have been paid under subsection (h) to the hospital during the fiscal year if such payments had not been terminated for cost reporting periods beginning after September 30, 1997.

"(C) ALLOCATION BETWEEN FUNDS.—In providing for a transfer under subparagraph (A) for a fiscal year, the Secretary shall provide for an allocation of the amounts involved between part A and part B (and the trust funds established under the respective parts) as reasonably reflects the proportion of direct graduate medical education costs of hospitals associated with the provision of services under each respective part.".

(b) MEDICARE HMO'S.—Section 1876(a) of the Social Security Act (42 U.S.C. 1395mm(a)) is amended by inserting after paragraph (6) the following new paragraph:

"(7)(A) In determining the adjusted average per capita cost under paragraph (4) for fiscal years after 1997, the Secretary shall not take into account the applicable percentage of costs under sections 1886(d)(5)(B) (indirect costs of medical education) and 1886(h) (direct graduate medical education costs).

"(B) For purposes of subparagraph (A), the applicable percentage is—

"(i) for fiscal year 1998, 25 percent;

"(ii) for fiscal year 1999, 50 percent;

"(iii) for fiscal year 2000, 75 percent; and

"(iv) for fiscal year 2001 and each subsequent fiscal year, 100 percent.

"(C)(i) There is appropriated and transferred to the Medical Education Trust Fund each fiscal year an amount equal to the aggregate amounts not taken into account under paragraph (4) by reason of subparagraph (A).

"(ii) Of the amounts transferred under clause (i)—

"(I) there shall be allocated and transferred to the Medical School Account an amount which bears the same ratio to the total amount available under section 2102(b)(1) for the fiscal year (reduced by the balance in such account at the end of the preceding fiscal year) as the amount transferred under clause (i) bears to the total amounts transferred to the Medical Education Trust Fund under section 2101 (excluding amounts transferred under subsections (c)(3) and (d) of such section) for such fiscal year; and

"(II) the remainder shall be allocated and transferred to the Medicare Teaching Hospital Indirect Account under such section and the Medicare Teaching Hospital Direct Account under such section in the same proportion as the amounts attributable to the costs under sections 1886(d)(5)(B) and 1886(h) were of the amounts transferred under clause (i).

"(iii) The Secretary shall make payments under clause (i) from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, in the same manner as the Secretary determines under section 1886(j).".

SEC. 4. AMENDMENTS TO MEDICAID PROGRAM.

(a) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(1) by redesignating section 1931 as section 1932; and

(2) by inserting after section 1930, the following new section:

"TRANSFER OF FUNDS TO ACCOUNTS

"SEC. 1931. (a) TRANSFER OF FUNDS.—

"(1) IN GENERAL.—For fiscal year 1998 and each subsequent fiscal year, the Secretary shall transfer to the Medical Education Trust Fund an amount equal to the amount determined under subsection (b).

"(2) ALLOCATION.—Of the amount transferred under paragraph (1)—

"(A) there shall be allocated and transferred to the Medical School Account an amount which bears the same ratio to the total amount available under section 2102(b)(1) for the fiscal year (reduced by the balance in such account at the end of the preceding fiscal year) as the amount transferred under paragraph (1) bears to the total amounts transferred to the Medical Education Trust Fund under title XXI (excluding amounts transferred under subsections (c)(3) and (d) of section 2101) for such fiscal year; and

"(B) the remainder shall be allocated and transferred to the Non-Medicare Teaching Hospital Indirect Account and the Non-Medicare Teaching Hospital Direct Account, in the same proportion as the amounts transferred to each account under section 1886(j) relate to the total amounts transferred under such section for such fiscal year.

"(b) AMOUNT DETERMINED.—

"(1) OUTLAYS FOR ACUTE MEDICAL SERVICES DURING PRECEDING FISCAL YEAR.—Beginning with fiscal year 1998, the Secretary shall determine 5 percent of the total amount of Federal outlays made under this title for acute medical services, as defined in paragraph (2), for the preceding fiscal year.

"(2) ACUTE MEDICAL SERVICES DEFINED.—The term 'acute medical services' means items and services described in section 1905(a) other than the following:

"(A) Nursing facility services (as defined in section 1905(f)).

"(B) Intermediate care facility for the mentally retarded services (as defined in section 1905(d)).

"(C) Personal care services (as described in section 1905(a)(24)).

"(D) Private duty nursing services (as referred to in section 1905(a)(8)).

"(E) Home or community-based services furnished under a waiver granted under subsection (c), (d), or (e) of section 1915.

"(F) Home and community care furnished to functionally disabled elderly individuals under section 1929.

"(G) Community supported living arrangements services under section 1930.

"(H) Case-management services (as described in section 1915(g)(2)).

"(I) Home health care services (as referred to in section 1905(a)(7)), clinic services, and rehabilitation services that are furnished to an individual who has a condition or disability that qualifies the individual to receive any of the services described in a previous subparagraph.

"(J) Services furnished in an institution for mental diseases (as defined in section 1905(i)).

"(c) ENTITLEMENT.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to the Non-Medicare Teaching Hospital Indirect Account, the Non-Medicare Teaching Hospital Direct Account, and the Medical School Account of amounts determined in accordance with subsections (a) and (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective on and after October 1, 1997.

SEC. 5. ASSESSMENTS ON INSURED AND SELF-INSURED HEALTH PLANS.

(a) GENERAL RULE.—Subtitle D of the Internal Revenue Code of 1986 (relating to miscellaneous excise taxes) is amended by adding after chapter 36 the following new chapter:

"CHAPTER 37—HEALTH RELATED ASSESSMENTS

"SUBCHAPTER A. Insured and self-insured health plans.

"Subchapter A—Insured and Self-Insured Health Plans

"Sec. 4501. Health insurance and health-related administrative services.

"Sec. 4502. Self-insured health plans.
"Sec. 4503. Transfer to accounts.
"Sec. 4504. Definitions and special rules.

"SEC. 4501. HEALTH INSURANCE AND HEALTH-RELATED ADMINISTRATIVE SERVICES.

"(a) IMPOSITION OF TAX.—There is hereby imposed—

"(1) on each taxable health insurance policy, a tax equal to 1.5 percent of the premiums received under such policy, and

"(2) on each amount received for health-related administrative services, a tax equal to 1.5 percent of the amount so received.

"(b) LIABILITY FOR TAX.—

"(1) HEALTH INSURANCE.—The tax imposed by subsection (a)(1) shall be paid by the issuer of the policy.

"(2) HEALTH-RELATED ADMINISTRATIVE SERVICES.—The tax imposed by subsection (a)(2) shall be paid by the person providing the health-related administrative services.

"(c) TAXABLE HEALTH INSURANCE POLICY.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the term 'taxable health insurance policy' means any insurance policy providing accident or health insurance with respect to individuals residing in the United States.

"(2) EXEMPTION OF CERTAIN POLICIES.—The term 'taxable health insurance policy' does not include any insurance policy if substantially all of the coverage provided under such policy relates to—

"(A) liabilities incurred under workers' compensation laws,

"(B) tort liabilities,

"(C) liabilities relating to ownership or use of property,

"(D) credit insurance, or

"(E) such other similar liabilities as the Secretary may specify by regulations.

"(3) SPECIAL RULE WHERE POLICY PROVIDES OTHER COVERAGE.—In the case of any taxable health insurance policy under which amounts are payable other than for accident or health coverage, in determining the amount of the tax imposed by subsection (a)(1) on any premium paid under such policy, there shall be excluded the amount of the charge for the nonaccident or nonhealth coverage if—

"(A) the charge for such nonaccident or nonhealth coverage is either separately stated in the policy, or furnished to the policyholder in a separate statement, and

"(B) such charge is reasonable in relation to the total charges under the policy.

In any other case, the entire amount of the premium paid under such policy shall be subject to tax under subsection (a)(1).

"(4) TREATMENT OF PREPAID HEALTH COVERAGE ARRANGEMENTS.—

"(A) IN GENERAL.—In the case of any arrangement described in subparagraph (B)—

"(i) such arrangement shall be treated as a taxable health insurance policy,

"(ii) the payments or premiums referred to in subparagraph (B)(i) shall be treated as premiums received for a taxable health insurance policy, and

"(iii) the person referred to in subparagraph (B)(i) shall be treated as the issuer.

"(B) DESCRIPTION OF ARRANGEMENTS.—An arrangement is described in this subparagraph if under such arrangement—

"(i) fixed payments or premiums are received as consideration for any person's agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided, and

"(ii) substantially all of the risks of the rates of utilization of services is assumed by such person or the provider of such services.

"(d) HEALTH-RELATED ADMINISTRATIVE SERVICES.—For purposes of this section, the term 'health-related administrative services' means—

"(1) the processing of claims or performance of other administrative services in connection with accident or health coverage under a taxable health insurance policy if the charge for such services is not included in the premiums under such policy, and

"(2) processing claims, arranging for provision of accident or health coverage, or performing other administrative services in connection with an applicable self-insured health plan (as defined in section 4502(c)) established or maintained by a person other than the person performing the services.

For purposes of paragraph (1), rules similar to the rules of subsection (c)(3) shall apply.

"SEC. 4502. SELF-INSURED HEALTH PLANS.

"(a) IMPOSITION OF TAX.—In the case of any applicable self-insured health plan, there is hereby imposed a tax for each month equal to 1.5 percent of the sum of—

"(1) the accident or health coverage expenditures for such month under such plan, and

"(2) the administrative expenditures for such month under such plan to the extent such expenditures are not subject to tax under section 4501.

In determining the amount of expenditures under paragraph (2), rules similar to the rules of subsection (d)(3) apply.

"(b) LIABILITY FOR TAX.—

"(1) IN GENERAL.—The tax imposed by subsection (a) shall be paid by the plan sponsor.

"(2) PLAN SPONSOR.—For purposes of paragraph (1), the term 'plan sponsor' means—

"(A) the employer in the case of a plan established or maintained by a single employer,

"(B) the employee organization in the case of a plan established or maintained by an employee organization, or

"(C) in the case of—

"(i) a plan established or maintained by 2 or more employers or jointly by 1 or more employers and 1 or more employee organizations,

"(ii) a voluntary employees' beneficiary association under section 501(c)(9), or

"(iii) any other association plan,

the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

"(c) APPLICABLE SELF-INSURED HEALTH PLAN.—For purposes of this section, the term 'applicable self-insured health plan' means any plan for providing accident or health coverage if any portion of such coverage is provided other than through an insurance policy.

"(d) ACCIDENT OR HEALTH COVERAGE EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The accident or health coverage expenditures of any applicable self-insured health plan for any month are the aggregate expenditures paid in such month for accident or health coverage provided under such plan to the extent such expenditures are not subject to tax under section 4501.

"(2) TREATMENT OF REIMBURSEMENTS.—In determining accident or health coverage expenditures during any month of any applicable self-insured health plan, reimbursements (by insurance or otherwise) received during such month shall be taken into account as a reduction in accident or health coverage expenditures.

"(3) CERTAIN EXPENDITURES DISREGARDED.—Paragraph (1) shall not apply to any expenditure for the acquisition or improvement of land or for the acquisition or improvement of any property to be used in connection with the provision of accident or health coverage which is subject to the allowance under section 167, except that, for purposes of paragraph (1), allowances under section 167 shall be considered as expenditures.

"SEC. 4503. TRANSFER TO ACCOUNTS.

"For fiscal year 1998 and each subsequent fiscal year, there are hereby appropriated and transferred to the Medical Education Trust Fund amounts equivalent to taxes received in the Treasury under sections 4501 and 4502, of which—

"(1) there shall be allocated and transferred to the Medical School Account an amount which bears the same ratio to the total amount available under section 2102(b)(1) for the fiscal year (reduced by the balance in such account at the end of the preceding fiscal year) as the amount transferred to the Medical Education Trust Fund under title XXI of the Social Security Act under this section bears to the total amounts transferred to such Trust Fund (excluding amounts transferred under subsections (c)(3) and (d) of section 2101 of such Act) for such fiscal year; and

"(2) the remainder shall be allocated and transferred to the Non-Medicare Teaching Hospital Indirect Account and the Non-Medicare Teaching Hospital Direct Account, in the same proportion as the amounts transferred to such account under section 1886(j) relate to the total amounts transferred under such section for such fiscal year.

Such amounts shall be transferred in the same manner as under section 9601.

"SEC. 4504. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) ACCIDENT OR HEALTH COVERAGE.—The term 'accident or health coverage' means any coverage which, if provided by an insurance policy, would cause such policy to be a taxable health insurance policy (as defined in section 4501(c)).

"(2) INSURANCE POLICY.—The term 'insurance policy' means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

"(3) PREMIUM.—The term 'premium' means the gross amount of premiums and other consideration (including advance premiums, deposits, fees, and assessments) arising from policies issued by a person acting as the primary insurer, adjusted for any return or additional premiums paid as a result of endorsements, cancellations, audits, or retrospective rating. Amounts returned where the amount is not fixed in the contract but depends on the experience of the insurer or the discretion of management shall not be included in return premiums.

"(4) UNITED STATES.—The term 'United States' includes any possession of the United States.

"(b) TREATMENT OF GOVERNMENTAL ENTITIES.—

"(1) IN GENERAL.—For purposes of this subchapter—

"(A) the term 'person' includes any governmental entity, and

"(B) notwithstanding any other law or rule of law, governmental entities shall not be exempt from the taxes imposed by this subchapter except as provided in paragraph (2).

"(2) EXEMPT GOVERNMENTAL PROGRAMS.—In the case of an exempt governmental program—

"(A) no tax shall be imposed under section 4501 on any premium received pursuant to

such program or on any amount received for health-related administrative services pursuant to such program, and

"(B) no tax shall be imposed under section 4502 on any expenditures pursuant to such program.

"(3) EXEMPT GOVERNMENTAL PROGRAM.—For purposes of this subchapter, the term 'exempt governmental program' means—

"(A) the insurance programs established by parts A and B of title XVIII of the Social Security Act,

"(B) the medical assistance program established by title XIX of the Social Security Act,

"(C) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being—

"(i) members of the Armed Forces of the United States, or

"(ii) veterans, and

"(D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

"(c) NO COVER OVER TO POSSESSIONS.—Notwithstanding any other provision of law, no amount collected under this subchapter shall be covered over to any possession of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle D of the Internal Revenue Code of 1986 is amended by inserting after the item relating to chapter 36 the following new item:

"CHAPTER 37. Health related assessments."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to premiums received, and expenses incurred, with respect to coverage for periods after September 30, 1997.

SEC. 6. MEDICAL EDUCATION ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is hereby established an advisory commission to be known as the Medical Education Advisory Commission (in this section referred to as the "Advisory Commission").

(b) DUTIES.—

(1) IN GENERAL.—The Advisory Commission shall—

(A) conduct a thorough study of all matters relating to—

(i) the operation of the Medical Education Trust Fund established under section 2;

(ii) alternative and additional sources of graduate medical education funding;

(iii) alternative methodologies for compensating teaching hospitals for graduate medical education;

(iv) policies designed to maintain superior research and educational capacities in an increasing competitive health system;

(v) the role of medical schools in graduate medical education; and

(vi) policies designed to expand eligibility for graduate medical education payments to institutions other than teaching hospitals;

(B) develop recommendations, including the use of demonstration projects, on the matters studied under subparagraph (A) in consultation with the Secretary of Health and Human Services and the entities described in paragraph (2);

(C) not later than January 1999, submit an interim report to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and the Secretary of Health and Human Services; and

(D) not later than January 2001, submit a final report to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and the Secretary of Health and Human Services.

(2) ENTITIES DESCRIBED.—The entities described in this paragraph are—

(A) other advisory groups, including the Council on Graduate Medical Education, the Prospective Payment Assessment Commission, and the Physician Payment Review Commission;

(B) interested parties, including the Association of American Medical Colleges, the Association of Academic Health Centers, and the American Medical Association;

(C) health care insurers, including managed care entities; and

(D) other entities as determined by the Secretary of Health and Human Services.

(c) NUMBER AND APPOINTMENT.—The membership of the Advisory Commission shall include 9 individuals who are appointed to the Advisory Commission from among individuals who are not officers or employees of the United States. Such individuals shall be appointed by the Secretary of Health and Human Services, and shall include individuals from each of the following categories:

(1) Physicians who are faculty members of medical schools.

(2) Officers or employees of teaching hospitals.

(3) Officers or employees of health plans.

(4) Deans of medical schools.

(5) Such other individuals as the Secretary determines to be appropriate.

(d) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), members of the Advisory Commission shall serve for the lesser of the life of the Advisory Commission, or 4 years.

(2) SERVICE BEYOND TERM.—A member of the Advisory Commission may continue to serve after the expiration of the term of the member until a successor is appointed.

(e) VACANCIES.—If a member of the Advisory Commission does not serve the full term applicable under subsection (d), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(f) CHAIR.—The Secretary of Health and Human Services shall designate an individual to serve as the Chair of the Advisory Commission.

(g) MEETINGS.—The Advisory Commission shall meet not less than once during each 4-month period and shall otherwise meet at the call of the Secretary of Health and Human Services or the Chair.

(h) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—Members of the Advisory Commission shall receive compensation for each day (including travel time) engaged in carrying out the duties of the Advisory Commission. Such compensation may not be in an amount in excess of the maximum rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(i) STAFF.—

(1) STAFF DIRECTOR.—The Advisory Commission shall, without regard to the provisions of title 5, United States Code, relating to competitive service, appoint a Staff Director who shall be paid at a rate equivalent to a rate established for the Senior Executive Service under 5382 of title 5, United States Code.

(2) ADDITIONAL STAFF.—The Secretary of Health and Human Services shall provide to the Advisory Commission such additional staff, information, and other assistance as may be necessary to carry out the duties of the Advisory Commission.

(j) TERMINATION OF THE ADVISORY COMMISSION.—The Advisory Commission shall terminate 90 days after the date on which the Advisory Commission submits its final report under subsection (b)(1)(D).

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 7. DEMONSTRATION PROJECTS.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish, by regulation, guidelines for the establishment and operation of demonstration projects which the Medical Education Advisory Commission recommends under subsection (b)(1)(B) of section 6.

(b) FUNDING.—

(1) IN GENERAL.—For any fiscal year after 1997, amounts in the Medical Education Trust Fund under title XXI of the Social Security Act shall be available for use by the Secretary in the establishment and operation of demonstration projects described in subsection (a).

(2) FUNDS AVAILABLE.—

(A) LIMITATION.—Not more than 1/10 of 1 percent of the funds in such trust fund shall be available for the purposes of paragraph (1).

(B) ALLOCATION.—Amounts under paragraph (1) shall be paid from the accounts established under paragraphs (2) through (5) of section 2101(a) of the Social Security Act, in the same proportion as the amounts transferred to such accounts bears to the total of amounts transferred to all 4 such accounts for such fiscal year.

(c) LIMITATION.—Nothing in this section shall be construed to authorize any change in the payment methodology for teaching hospitals and medical schools established by this Act.

SUMMARY OF THE MEDICAL EDUCATION TRUST FUND ACT OF 1997

OVERVIEW

The legislation establishes a Medical Education Trust Fund to support America's 142 medical schools and 1,250 teaching hospitals. These institutions are in a precarious financial situation as market forces reshape the health care delivery system. Explicit and dedicated funding for these institutions will guarantee that the United States continues to lead the world in the quality of its health care system.

The Medical Education Trust Fund Act of 1997 recognizes the need to begin moving away from existing medical education payment policies. Funding would be provided for demonstration projects and alternative payment methods, but permanent policy changes would await a report from a new Medical Education Advisory Commission established by the bill. The primary and immediate purpose of the legislation is to establish as Federal policy that medical education is a public good which should be supported by all sectors of the health care system.

To ensure that the burden of financing medical education is shared equitably by all sectors, the Medical Education Trust Fund will receive funding from three sources: a 1.5 percent assessment on health insurance premiums (the private sector's contribution), Medicare, and Medicaid (the public sector's contribution). The relative contribution from each of these sources is in rough proportion to the medical education costs attributable to their respective covered populations.

Over the five years following enactment, the Medical Education Trust Fund will provide average annual payments of about $17

billion, roughly doubling federal funding for medical education. The assessment on health insurance premiums (including self-insured health plans) contributes approximately $4 billion per year to the Trust Fund. Federal health programs contribute about $13 billion per year to the Trust Fund: $9 billion in transfers of current Medicare graduate medical education payments and $4 billion in federal Medicaid spending.

Estimated average annual trust fund revenue by source, first 5 years

[In billions of dollars]

1.5 percent assessment	4
Medicare	9
Medicaid	4
Total	17

INTERIM PAYMENT METHODOLOGIES

Payments to Medical Schools

Medical schools rely on a portion of the clinical practice revenue generated by their faculties to support their operations. As competition within the health system intensifies and managed care proliferates, these revenues are being constrained. Payments to medical schools from the Trust Fund are designed to partially offset this loss of revenue. Initially, these payments will be based upon an interim methodology developed by the Secretary of Health and Human Services.

Payments to Teaching Hospitals

To cover the costs of education, teaching hospitals have traditionally charged higher rates than other hospitals. As private payers become increasingly unwilling to pay these higher rates, the future of these important institutions, and the patient care, training, and research they provide, is placed at risk. Payments from the Trust Fund reimburse teaching hospitals for both the direct[1] and indirect[2] costs of graduate medical education.

Payments for direct costs are based on the actual of costs of employing medical residents. Payments for indirect costs are based on the number of patients cared for in each hospital and the severity of their illnesses as well as a measure of the teaching load in that hospital.[3] For the purposes of payments to teaching hospitals, the allocation of Medicare funds is based on the number of Medicare patients in each hospital; the allocation of the tax revenue and Medicaid funds is based on the number of non-Medicare patients in each hospital.

The legislation also includes a "carve out" of graduate medical education payments from Medicare's payment to HMOs. Under current law, this payment is based on Medicare's average fee-for-service costs—including graduate medical education costs. Therefore, every time a Medicare beneficiary enrolls in an HMO, money that was being paid to teaching hospitals for medical education in the form of additional payments for direct and indirect costs, is paid instead to an HMO as part of a monthly premium. There is no requirement that HMOs use any of this payment to support medical education. Over a four-year period, the legislation removes graduate medical education payments from HMO payment calculation. These funds are deposited into the Medical Education Trust Fund and paid directly to teaching hospitals.

MEDICAL EDUCATION ADVISORY COMMISSION

The legislation also establishes a Medical Education Advisory Commission to conduct a study and make recommendations, including the potential use of demonstration projects, regarding the following: Operations of the Medical Education Trust Fund; alternative and additional sources of medical education financing; alternative methodologies for distributing medical education payments; policies designed to maintain superior research and educational capacities in an increasingly competitive health system; the role of medical schools in graduate medical education; and policies designed to expand eligibility for graduate medical education payments to institutions other than teaching hospitals.

The Commission, comprised of nine individuals appointed by the Secretary of Health and Human Services, will be required to issue an interim report no later than January 1, 1999, and a final report no later than January 1, 2001.

FOOTNOTES

[1] Medical residents' salaries are the primary direct cost.

[2] These indirect costs include the cost of treating more seriously ill patients and the costs of additional tests that may be ordered by medical residents.

[3] The legislation will use Medicare's measure of teaching load as an interim measure.

By Mr. MOYNIHAN:

S. 22. A bill to establish a bipartisan national commission to address the year 2000 computer problem; to the Committee on Governmental Affairs.

THE YEAR 2000 COMPUTER PROBLEM LEGISLATION

Mr. MOYNIHAN. Mr. President, 1,074 days. Rather, one thousand seventy-four days and counting. We have 1,074 days until January 1, 2000. Historically, the passage of the century has caused quite a stir. Until now, however, there has been little factual basis on which doomsayers and apocalyptic fearmongers could spread their gospel. I rise today, on the first day of legislative business in the 105th Congress, to warn that we have cause for fear.

In the 6th century AD, the Western world began the practice of numbering years consecutively. The 6th-century monk, Dionysius Exiguus (known as "Denis the Small"), introduced the first consecutive year calendar. Popular mythology would have us believe that at the end of the first millennium, Christians and pagans everywhere were cowering in fear of the end of the world. Yet, current historians believe that at the end of the year 999, much of the populace had no idea what year it was, and thus no idea that the millennium was coming to a close. In an ironic twist of fate, many calendars in our current, most advanced technological society ever may be as inaccurate as those of the people who faced the beginning of the Second Millennia A.D.

I have no proof that the Sun is about to rise on the apocalyptic millennium of which chapter 20 of the Book of Revelation speaks, nor do I have proof that, armed with flood and catastrophe, the Four Horsemen will arrive on January 1, 2000. I do know, however, that a seemingly innocuous "computer glitch" relating to how computers use the date could wreak worldwide havoc. This lack of recognition on the part of computers—called the year 2000 Computer Problem, or Y2K as computer aficionados call it—could cause everything from the failure of weapons systems, widespread disruption of business operations, the miscalculation of taxes by the Internal Revenue Service, possible misdiagnosis or improper medical treatment due to errors in medical records, to incorrect traffic signals at street corners across the country.

In the 1950's and 1960's, computer programmers decided that, in order to minimize the consumption of computer memory, most computer languages would be designed to express the date with only six digits. In this format, the date of this speech would be 97-01-21. The century designation "19" is assumed. The problem is that many programs will read January 1, 2000 as January 1, 1900. Millions of computer programs will not function correctly because they cannot recognize the 21st century. The answer to this problem is a costly, time-consuming process of rewriting the computer codes.

Estimates to fix the problem in the United States alone are in the range of $300 billion ($600 billion worldwide). That's billion with a "B". Experts have estimated that about half the cost of upgrading U.S. computers will have to be paid by Government entities. Furthermore, the cost of fixing the 'Y2K' problem will increase at 20 to 50 percent per year due to the decreasing supply of, and increasing demand for, the skilled professionals who can rewrite the codes.

There is no time to cower at the immensity and pervasiveness of the problem, even though it is true that at our current rate of addressing this problem, millions of computer programs across the globe will not recognize the year 2000. We have developed the medicine to cure the disease. It is our job to recognize the extent of our ills and the time-consuming nature of the cure.

I now enter my second year warning of this problem. People have begun to listen. But neither the public nor private sector is anywhere near where they need to be. I congratulate my counterparts in the other Chamber of Congress, namely Representative STEPHEN HORN, Representative CAROLYN MALONEY, Representative CONNIE MORELLA, and Representative JOHN TANNER, who have held hearings on this matter and helped uncover the Federal Government's lack of preparation for this crisis. The administration has only begun to stir.

In his November 25, 1996 letter (answering my July 31st letter to the President) Franklin Raines, the Director of the Office of Management and Budget, stated that:

We have been meeting with senior agency officials and urging them to complete their assessments of the scope of the problem now, so they will have time to fix it. We have assurances that all of their systems will either

[1]*Footnotes to appear at end of article.

be fixed, replaced, or scrapped before 2000. and we will continue to monitor their progress. As we develop the President's 1998 budget, we are working with the agencies to assure that there is adequate funding to support agency year 2000 activities.

Mr. Raines paints a much more comfortable picture than was revealed in the Congressional findings of just 2 months prior. In September 1996, the House Committee on Government Oversight reported that: only 9 of the 24 departments and agencies (which the Committee had just queried) had a plan for addressing the problem; five had not even designated an official within the organization to be responsible for the problem; and 17 of the departments and agencies lacked any cost estimates for the problem. I am encouraged that Representative STEPHEN HORN (R-CA) will continue his subcommittee's oversight hearings on February 24, 1997.

Yet, someone or something needs to ensure that the Federal Government, State governments, and all sectors of the economy are "Year 2000 Compliant." The OMB has neither the staff nor the resources to do this alone. I am introducing today a revamped bill that will set up a Commission to address this problem.

Commissions are not by definition weak. This commission will assume responsibility for assuring that all Federal agencies are Year 2000 compliant by January 1, 1999 (a year early, so as to leave enough time for testing—some say the longest part). The Commission will be composed of experts on the Federal response and the State response in order to face the problems of integration. The Commission will prioritize which agencies are most at risk of not performing vital functions, and through its reports to the President and Congress, it will recommend the appropriate triage process and medicine. It it not enough to recognize that this problem exists. Unless we install the doctors for the triage, the Y2K disease will manifest itself in all sectors of government and the economy.

We are told that the President will include adequate funding for the Executive Agencies in his budget plan for fiscal year 1998. My hope is that Congress will recognize the importance of providing the funding now; for if we wait, not only will the costs rise, but we are liable to see major Government agencies and State governments unable to perform critical functions.

It is January 21 of 1997; we have 1,074 days remaining until January 1, 2000. Too late to lament, time to act.

In the first stanza of his epic work, "The Second Coming," Yeats wrote of the onslaught of the apocalypse:

Turning and turning in the widening gyre
The falcon cannot hear the falconer;
Things fall apart; the center cannot hold;
Mere anarchy is loosed upon the world.
The blood dimmed tide is loosed . . .

At the upcoming turn of the millennium, we cannot test what "blood dimmed tide" computer malfunctions could loose on our society.

By Mr. SPECTER (for himself and Ms. MOSELEY-BRAUN):

S. 23. A bill to promote a new urban agenda, and for other purposes; to the Committee on Finance.

NEW AGENDA FOR AIDING AMERICA'S CITIES ACT OF 1997

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation that will deal with the plight of our Nation's cities and Washington's increasing neglect of them. There is an urgent need to improve our urban economies and the quality of life for the millions of Americans who live in our cities. My proposal, the "New Agenda For Aiding America's Cities Act of 1997" is based on legislation which I introduced in the 103d and 104th Congress along with my distinguished colleague, Senator CAROL MOSELEY-BRAUN, and I am pleased she is again joining in this effort. The bill constitutes an effort to give our cities some much-needed attention, but reflects the Federal budget constraints which govern all that we in Congress do these days.

This bill, based in significant part on suggestions by Philadelphia Mayor Edward G. Rendell and the League of Cities, offers aid to the cities without increasing Federal expenditures and by re-instituting important cost-effective tax breaks which have been discontinued.

If we are to really address many of the very serious social issues that we face—unemployment, teenage pregnancy, welfare dependency, and other pressing issues—we cannot give up on our cities. There must be new strategies for dealing with the problems of urban America. The days of creating "Great Society" Federal aid programs are clearly past, but that is no excuse for the National Government to turn a blind eye to the problems of the cities.

The goals of this initiative have strong bipartisan support as indicated during the vice-presidential debate in the 1996 campaign, where both the Republican and Democratic candidates spoke of the need to focus our economic resources in our Nation's urban areas. The recent November elections reaffirm the basic principle of limited government. Limited government, however, does not mean an uncaring or do-nothing government.

The impact of last year's welfare reform legislation also requires close scrutiny on what will be happening to America's big cities.

Urban areas remain integral to America's greatness as centers of commerce, industry, education, health care, and culture. Yet urban areas, particularly the inner cities which tend to have a disproportionate share of our Nation's poor, also have special needs which must be recognized. We must develop ways of aiding our cities that do not require either new taxes or more government bureaucracy.

I commend the mayor of Philadelphia, Edward Rendell, for his efforts to revitalize America's cities. Collaborating with the Conference of Mayors and the National League of Cities, he proposed in 1994 a "New Urban Agenda." Much of that proposal is the basis of this legislation.

As a Philadelphia resident, I have first-hand knowledge of the growing problems that plague our cities. As of 1990, Philadelphia had over 300,000 individuals in poverty. Reflecting on my experience as a Philadelphian, I have long supported a variety of programs to assist our cities, such as increased funding for Community Development Block Grants and legislation to establish enterprise and empowerment zones. To encourage similar efforts, in April 1994, I hosted my Senate Republican colleagues on a visit to explore urban problems in my hometown. We talked with people who wanted to obtain work, but had found few opportunities. We saw a crumbling infrastructure and its impact on residents and businesses. We were reminded of the devastating effect that the loss of inner city businesses and jobs has had on our neighborhoods in America's cities. What my Republican colleagues saw then in Philadelphia is the urban rule across our country and not the exception.

There are many who do not know of city life, who are far removed from the cities and would not be expected to have any key interest in what goes on in the big cities of America. I cite my own boyhood experience illustratively: Born in Wichita, Kansas, raised in Russell, a small town of 5,000 people on the plains of Kansas, where there is not much detailed knowledge of what goes on in Philadelphia, Pennsylvania, or other big cities like Los Angeles, San Francisco, New York, Miami, Pittsburgh, Dallas, Detroit or Chicago.

Those big cities are alien to people in much of America. But there is a growing understanding that the problems of big cities contribute significantly to the general problems affecting our Nation and have an economic impact, at the very least, on our small towns. For rural America to prosper, we need to make sure that urban America prospers and vice-versa. For example, if cities had more economic growth, taxes could be reduced on all Americans at the federal and state level because revenues would increase and social welfare spending would be reduced.

What are the problems? Crime for one. Take the Bloods and the Crips gangs from Los Angeles, California, and similar gangs; that are all over America. They are in Lancaster, Pennsylvania; Des Moines, Iowa; Portland, Oregon; Jackson, Mississippi; Racine,

Wisconsin; and Martinsburg, West Virginia. They are literally everywhere, big city and small city alike.

According to the National League of Cities 1992 report, "State of America's Cities," 397 randomly selected municipal leaders said that after overall economic conditions, crime and drugs were the second and third items that had caused their cities to deteriorate the most in the prior five years. In Atlanta, the number of crimes per 100,000 people was 17,067, making it number one in 1995. We have all heard of that unenviable moniker for our nation's capital—the "murder capital."

Not just municipal leaders voice concern about crime's impact. Mr. Scott Zelov, President of VIZ Manufacturing in the Germantown section of Philadelphia, told my staff that his workers can't even walk to work in safety anymore, making it difficult for him to retain his employees and to continue to stay in business, causing him to consider moving out of the city to a safer location or even closing his business altogether.

Dan DeRitis, owner of Sisko, Inc., a property management and development company in the University City section of West Philadelphia, wrote to me to tell me while he has been a resident and business owner in West Philadelphia for more than twenty years, and while the city had been good to him and his family in the past, recently, he has had reason to fear for the safety of his children, his employees and ultimately, his business. He looks desperately for reasons to stay, but everyday it gets harder and harder.

Joblessness and a less skilled work force is another problem. To facilitate economic development and job creation in the United States, I supported the Balanced Budget Act of 1995, which contained such provisions as the Job Training Partnership Act and the Targeted Job Tax Credit. As Congress put the final touches on that legislation, I circulated a joint letter from several Senators to then-Majority Leader Dole and Speaker GINGRICH recommending spurring job creation and economic growth in our cities through several urban initiatives such as: a targeted capital gains exclusion, commercial revitalization tax credit, historic rehabilitation tax credit, and child care credit.

As part of that effort, on December 19, 1995, I arranged a meeting between Majority Leader Dole and Mayors Edward Rendell of Philadelphia, Thomas Menino of Boston, Richard Daley of Chicago, and Victor Ashe, of Knoxville, Tennessee, to discuss their top tax priorities, which were reflected in the joint letter to the Majority Leader Dole and Speaker GINGRICH. In that meeting the Mayors stressed the necessity of strengthening economic growth in our urban centers to impact directly on social ills identified with weak economic infrastructures. These problems include poverty, crime, and joblessness. Census data from 1990 shows that many of our urban centers suffered from critically high poverty rates as of 1989.

As of 1990, New York City led the way, with 1.3 million individuals in poverty. My home of Philadelphia had 313,374 individuals in poverty at that time. These facts emphasize the need for more efforts to be focused on strengthening our inner city businesses which, in turn, will boost local economies and serve to provide more jobs, reduce poverty and, hopefully, reduce crime.

I have previously introduced legislation to provide targeted tax incentives for investing in small minority- or women-owned businesses. Small businesses provide the bulk of the jobs in this country. Many minority entrepreneurs, for instance, have told me that they are dedicated to staying in the cities to employ people there, but continue to confront capital access issues. My "Minority and Women Capital Formation Act of 1993" would have helped remove the capital access barriers, thereby enabling these entrepreneurs to grow their businesses and payrolls.

Municipal leaders are stressing many of the same concerns that business people are voicing. In a July, 1994 National League of Cities report dealing with poverty and economic development, municipal leaders ranked inadequate skills and education of workers as one of the top three reasons, in addition to shortage of jobs and below-poverty wages, for poverty and joblessness in their cities. They said, according to the survey, that more jobs must be created through local economic development initiatives.

This "skills deficit" is highlighted in an urban revitalization plan prepared in 1991 by the National Urban League called "Playing to Win: A Marshall Plan for America's Cities." The report cites a statistic by the Commission on Achieving Necessary Skills which showed that 60 percent of all 21–25 year-olds lack the basic reading and writing skills needed for the modern workplace, and only 10 percent of those in that age group have enough mathematical competence for today's jobs.

The economic problems our cities are facing are not easy to deal with or answer. In a report by the National League of Cities entitled "City Fiscal Conditions in 1996," municipal officials from 381 cities answered questions on the economic state of their cities. In response to state budgetary problems, 21.7 percent of responding cities reduced municipal employment and 18.5 percent had frozen municipal employment. Nearly 6 out of 10 cities raised or imposed new taxes or user fees during the past twelve months.

These numbers are of concern to me and I believe they highlight the need for federal legislation to enhance the ability of cities to achieve competitive economic status. An added concern is that city managers are forced to balance cuts in services or enact higher taxes. Neither choice is easy and it often counteracts municipal efforts to retain residents or businesses.

One issue, in particular, that is hurting many cities is the erosion of their tax bases, evidenced particularly by middle-class flight to the suburbs. Mr. Ronald Walters, professor of Political Science at Howard University, in testimony before the Senate Banking Committee in April 1993, stated that in 1950, 23 percent of the American population lived outside central cities; by 1988, that number was up to 46 percent.

In an October 9, 1994 article in The Washington Post Magazine, David Finkel profiled Ward 7 of Washington, DC and wrote that Ward 7 lost 13,000 residents between 1980 and 1990 alone. He noted further that the population decline in Washington, DC has averaged 10,000 people a year since 1990. This trend continues into 1997. These losses are devastating, not only to the financial stability of the city, but to the social fabric as well.

On the financial side, statistics show that those people fleeing cities were earning an average of $30,000 to $75,000 a year. On the social side, roughly half of these are African-American middle-class families. By losing this critical demographic group, the city loses much of what makes it strong.

Eroding tax bases are also caused by job-flight and job loss. Professor Walters testified that Chicago lost 47 percent of its manufacturing jobs between 1972 and 1982. Los Angeles lost 327,000 jobs, half of which were in the manufacturing sector. More recently, according to Census data, New York City had only 11.4 percent of its population employed in manufacturing. According to Stephen Moore and Dean Stansel in a March, 1994 USA Today Magazine article, since the 1970's more than 50 Fortune 500 company headquarters have fled New York City, representing a loss of over 500,000 jobs.

It is clear that the social fabric of our cities is also deteriorating. The issues of infant mortality and single-parent families are tragic problems that plague American urban areas. According to 1990 Census data, Washington, DC ranked first out of 77 cities for infant death rates per 1,000 live births in 1988. Detroit led the same number of cities in the percentage of one-parent households in 1990 at 53 percent.

When I traveled to Pittsburgh in 1984, I saw one-pound babies for the first time and I learned that Pittsburgh had the highest infant mortality rate of African-American babies of any city in the United States. It is a human tragedy for a child to be born weighing 16 ounces with attendant problems that

last a lifetime. I wondered, how could that be true of Pittsburgh, which has such enormous medical resources. It was an amazing thing for me to see a one-pound baby, about as big as my hand. Indeed, our cities are desperate, and the issues are heavy.

Historically, cities have been the center of commerce and culture. Surrounding communities have relied on a thriving, growing economy in our metropolitan areas to provide jobs and opportunities. As I have noted though, over the past several decades, America's cities have struggled with the loss or exodus of residents, businesses and industry and other problems. The resulting tax base shrinkage causes enormous budget problems for city governments. Across the country, cities such as New York, Los Angeles, and the District of Columbia have experienced the flight of major industries to the suburbs.

As a result, city residents who remain are faced with problems ranging from increased tax burdens and lesser services to dwindling economic opportunities, leading to welfare dependence and unemployment assistance. In the face of all this, what do we do?

The Federal Government has attempted to revitalize our ailing urban infrastructure by providing Federal funding for transit and sewer systems, roads and bridges. I have supported this. For example, as a member of the Transportation Appropriations Subcommittee and as co-chair of an informal Senate Transit Coalition, I have been a strong supporter of public transit which provides critically needed transportation services in urban areas. Transit helps cities meet clean air standards, reduce traffic congestion, and allows disadvantaged persons access to jobs. Federal assistance for urban areas, however, has become increasingly scarce as we grapple with the nation's deficit and debt. Therefore, we must find alternatives to reinvigorate our nation's cities so they can once again be economically productive areas providing promising opportunities for residents and neighboring areas.

I believe there are ways Congress can assist the cities. In 1994, Mayor Rendell came up with a legislative package which contains many good ideas. I have since added and revised provisions to take into account new developments at the federal, state and local levels.

First, recognizing that the federal government is the nation's largest purchaser of goods and services, this legislation would require that no less than 15 percent of federal government purchases be made from businesses and industries within designated urban Empowerment Zones and Enterprise Communities. Similarly, it would require that not less than 15 percent of foreign aid funds be redeemed through purchases of products manufactured in urban Empowerment Zones and Enterprise Communities. I presented this idea to then-Treasury Secretary Bentsen at a March 22, 1994, hearing of the Appropriations Subcommittee on Foreign Operations. The Secretary responded favorably.

I have also written to several mayors across the country regarding this concept. By letter dated July 28, 1994, Miami Mayor Stephen P. Clark responded: "Miami's selection as a procurement center for foreign aid would be a natural complement to our status as the Business Capital of the Americas." Miami has a wide range of businesses, such as high-technology firms and medical equipment manufacturers that would benefit from this provision. And by letter dated April 6, 1994, Harrisburg, Pennsylvania Mayor Stephen R. Reed wrote: "Many of our existing businesses would no doubt seize upon the opportunity to broaden their market by engaging in export activity triggered by foreign aid vouchers. . . Therefore, in brief, we believe the voucher proposal has considerable merit and that this city would benefit from the same." I ask unanimous consent that a copy of my letter and the letters from Mayor Clark and Mayor Reed be included in the RECORD at the end of my statement.

The second major provision of this bill would commit the federal government to play an active role in restoring the economic health of our cities by encouraging the location, or relocation, of federal facilities in urban areas. To accomplish this, all federal agencies would be required to prepare and submit to the President an Urban Impact Statement detailing the impact that relocation or downsizing decisions would have on the affected city. Presidential approval would be required to place a federal facility outside an urban area, or to downsize a city-based agency.

The third critical component of this bill would revive and expand federal tax incentives that were eliminated or restricted in the Tax Reform Act of 1986. Until there is passage of legislation on the flat tax, which would provide benefits superior to all targeted tax breaks, I believe America's cities should have the advantages of such tax benefits. These provisions offer meaningful incentives to business to invest in our cities. I am calling for the restoration of the Historic Rehabilitation Tax Credit which supports inner city revitalization projects. According to information provided by Mayor Rendell, there were 8,640 construction jobs involved in 356 projects in Philadelphia from 1978 to 1985 stimulated by the Historic Rehabilitation Tax Credit. In Chicago, 302 projects prior to 1985 generated $524 million in investment and created 20,695 jobs. In St. Louis, 849 projects generated $653 million in investment and created 27,735 jobs.

Nationally, according to National Park Service estimates for the 16 years before the 1986 Act, the Historic Rehabilitation Tax Credit stimulated $16 billion in private investment for the rehabilitation of 24,656 buildings and the creation of 125,306 homes which included 23,377 low and moderate income housing units. The 1986 Tax Act dramatically reduced the pool of private investment capital available for rehabilitation projects. In Philadelphia, projects dropped from 356 to 11 by 1988 from 1985 levels. During the same period, investments dropped 46 percent in Illinois and 92 percent in St. Louis.

Another tool is to expand the authorization of commercial industrial development bonds. Under the Tax Reform Act of 1986, authorization for commercial industrial bonds was permitted to expire. Consequently, private investment in cities declined. For instance, according to Mayor Rendell, from 1986—the last year commercial development bonds were permitted—to 1987, the total number of city-supported projects in Philadelphia was reduced by more than half.

Industrial development or private activity bonds encourage private investment by allowing, under certain circumstances, tax-exempt status for projects where more than 10 percent of the bond proceeds are used for private business purposes. The availability of tax-exempt commercial industrial development bonds will encourage private investment in cities, particularly the construction of sports, convention and trade show facilities; free standing parking facilities owned and operated by the private sector; air and water pollution facilities owned and operated by the private sector; and, industrial parks.

The bill I am introducing would allow this. It would also increase the small issue exemption—which means a way to help finance private activity in the building of manufacturing facilities—from $10 million to $50 million to allow increased private investment in our cities.

A minor change in the federal tax code related to arbitrage rebates on municipal bond interest earnings could also free additional capital for infrastructure and economic development by cities. Currently, municipalities are required to rebate to the federal government any arbitrage—a financial term meaning interest earned in excess of interest paid on the debt—earned from the issuance of tax-free municipal bonds. I am informed that compliance, or the cost for consultants to perform the complicated rebate calculations, is actually costing municipalities more than the actual rebate owed to the government. This bill would allow cities to keep the arbitrage earned so that they can use it to fund city projects and for other necessary purposes.

My legislation also provides important incentives for businesses to invest

and locate in our nation's cities. Specifically, the bill includes a provision which I have advocated to provide a 50 percent exclusion for capital gains tax purposes for any gain resulting from targeted investments in small businesses located in urban empowerment zones, enterprise communities, or enterprise zones. I also want to note that the exclusion would extend to any venture funds that invest in those small businesses, which is critical because venture funds are often the lifeblood of a small business. This is one of the incentives I recommended to Senator Dole in December, 1995 for inclusion in the Balanced Budget Act of 1995 which was later vetoed by President Clinton. A targeted capital gains exclusion will serve as a catalyst for job creation and economic growth in our cities by encouraging additional private investment in our urban areas.

A fourth provision of this legislation provides needed reforms to regulations concerning affordable housing. This legislation provides language to study streamlining Federal housing program assistance to urban areas into "block grant" form so that municipal agencies can better serve local residents. Affordable housing is not currently widely available to most low income families. According to the National Housing Law Project, in 1996, only one in four families were eligible to receive HUD assistance. The bill would improve the circumstances of public housing tenants by encouraging the location of newly built units on the lots of demolished older housing and allowing the original residents to move into the new units. This provision will contribute to community stability and promote urban renewal.

Last, this bill helps urban areas by taking several important steps toward reforming the current Superfund law. First, the legislation authorizes a Federal brownfields program to help clean up idle or underused industrial and commercial facilities and waives Federal liability for persons who fully comply with a State cleanup plan to clean sites in urban areas pursuant to state law, provided that the site is not listed or proposed to be listed on the National Priorities List. The Environmental Protection Agency currently operates this pilot program under general authority provided by the Superfund law. My legislation would make this a permanent program and substantially increase the funding levels from $36.7 million to a $50 million authorized level for Fiscal Year 1998. The EPA could expend funds to identify and examine potential idle or underused Brownfield sites and to provide grants to States and local governments of up to $200,000 per site to put them back to productive use. One such grant has been used to great success by Pittsburgh Mayor Tom Murphy, and I hope this provision will generate additional success stories of redeveloping urban brownfields.

The Brownfields program allows sites with minor levels of toxic waste to be cleaned up by State and local governments with Federal and non-Federal funds. Companies and individuals who are interested in developing land into industrial, commercial, recreational, or residential use are often reluctant to purchase property with any level of toxic waste because of a fear of being saddled with cleanup liability under the Superfund law. Through expanded Brownfields grants, cleanup at such sites will be expedited and will encourage redevelopment of otherwise unusable urban property.

My bill would also waive Federal liability for persons who fully comply with a State cleanup plan to clean sites in urban areas pursuant to State law, providing that the site is not listed or proposed to be listed on the National Priorities List. Many States, including Pennsylvania, have developed their own toxic waste cleanup programs and have done good work to clean up many of these sites. Pennsylvania Governor Tom Ridge has developed an extensive plan, where contaminated sites are made safe based on sound science by returning the site to productive use through the development of uniform cleanup standards, by creating a set of standardized review procedures, by releasing owners and developers from liability who fully comply with the State cleanup standards and procedures, and by providing financial assistance. However, the efforts of States like Pennsylvania are often stifled because the Federal Government has not been willing to work with the States to release owners and developers from liability, even when they fully comply with the state plans.

This section of my bill only applies only to sites that are not on the National Priorities List. These are sites that the State has identified for which the State has created a comprehensive cleanup plan. If the Federal Government has concerns with the cleanup procedure or the safety of the site, then the government has full authority to place that site on the National Priority List. The plans, like that developed by Governor Ridge, deal with sites not controlled by the Superfund law. By not allowing the individual states to take the initiative to clean up these sites, and by not providing a waiver for federal liability to those who fully comply with the procedures and standards of the State cleanup, the Federal Government chills the efforts of the States to work to clean up their own sites. This provision takes a significant step toward encouraging states to take the responsibility for their toxic waste sites and to encourage the effective cleanup of these sites in our Nation's urban areas.

In the 103d Congress, my "New Urban Agenda Act" (S. 2535) contained a section that would eliminate unfunded Federal mandates based on legislation I cosponsored in the 103d Congress (S. 993) which was introduced by my distinguished colleague from Idaho, Senator DIRK KEMPTHORNE. There is no longer a need to include that provision in my urban agenda bill because Congress enacted the unfunded Federal mandates bill in February, 1995.

Mr. President, it may well be that America has given up on its cities. That is a stark statement, but it is one which I believe may be true—that America has given up on its cities. But this Senator has not done so. And I believe there are others in this body on both sides of the aisle who have not done so.

As one of a handful of United States Senators who lives in a big city, I understand both the problems and the promise of urban America. This legislation for our cities is good public policy. The plight of our cities must be of extreme concern to America. We can ill-afford for them to wither and die. I am committed to a new urban agenda that relies on market forces, and not welfare-statism, for urban revitalization. I invite the input and assistance of my colleagues in order to fashion a strong approach assisting the cities with their pressing problems.

I ask unanimous consent that my bill be printed in the RECORD as if read, along with an Executive Summary. I thank the Chair and yield the floor.

EXECUTIVE SUMMARY

NEW AGENDA FOR AIDING AMERICA'S CITIES ACT OF 1997

A. Promote Urban Economic Development through Empowerment and Enterprise Zones. Requires a portion of federal and foreign aid purchases (not less than 15 percent) to be from businesses operating in urban zones, and commits the government to purchase recycled products from businesses operating in urban zones.

B. Locating/Relocating Federal Facilities in Distressed Urban Areas. Requires an urban impact statement, with Presidential approval, that details the impact on cities of agency downsizing or relocation. Under the bill, a "distressed urban area" follows HUD's definition, namely any city having a population of more than 100,000.

C. Revives and Expands Federal Tax Incentives. Expands the Historic Rehabilitation Tax Credit which was reduced in 1986. It would restore the issuance of tax-free industrial development bonds and would allow cities to keep the arbitrage earned from the issuance of tax-free municipal bonds. Currently, local governments are required to rebate to the federal government arbitrage earned from the issuance of tax-free municipal bonds, and often spend more on compliance than on the actual rebate.

D. Contains Incentives for Businesses. To encourage businesses to invest and locate in our nation's cities, provides a 50 percent exclusion for capital gains tax purposes for any gain resulting from targeted investments in small businesses located in urban empowerment zones, enterprise communities, or enterprise zones. The exclusion also extends to any venture that invest in those small businesses.

E. Lifts Federal Restrictions on Community-Based Housing Development. To boost the efficiency of regional housing authorities, a study would be done to streamline current and future housing programs into "block grants." The bill would also allow the reconstruction of new units on demolished sites, and relocate the original tenants to the newly constructed units.

F. Reforms Superfund Law to Encourage Industrial Cleanup. Authorizes an expanded federal brownfields grant program to help clean up idle or underused industrial and commercial facilities. Also provides regulatory relief by waiving federal liability for businesses and individuals that fully comply with a state cleanup plan to clean sites in urban areas pursuant to state law, provided that the site is not listed or proposed to be listed on the National Priorities List.

S. 23

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "New Urban Agenda Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
TITLE I—FEDERAL COMMITMENT TO URBAN ECONOMIC DEVELOPMENT
Sec. 101. Federal purchases from businesses in empowerment zones, enterprise communities, and enterprise zones.
Sec. 102. Minimum allocation of foreign assistance for purchase of certain United States goods.
Sec. 103. Preference for location of manufacturing outreach centers in urban areas.
Sec. 104. Preference for construction and improvement of Federal facilities in distressed urban areas.
Sec. 105. Definitions.
TITLE II—TAX INCENTIVES TO STIMULATE URBAN ECONOMIC DEVELOPMENT.
Sec. 201. Treatment of rehabilitation credit under passive activity limitations.
Sec. 202. Rehabilitation credit allowed to offset portion of alternative minimum tax.
Sec. 203. Commercial industrial development bonds.
Sec. 204. Increase in amount of qualified small issue bonds permitted for facilities to be used by related principal users.
Sec. 205. Simplification of arbitrage interest rebate waiver.
Sec. 206. Qualified residential rental project bonds partially exempt from state volume cap.
Sec. 207. Expansion of qualified wages subject to work opportunity credit.
Sec. 208. Exclusion for capital gains on certain investments within empowerment zones and enterprise communities.
TITLE III—COMMUNITY-BASED HOUSING DEVELOPMENT
Sec. 301. Block grant study.
Sec. 302. Demolition and disposition of public housing.
TITLE IV—RESPONSE TO URBAN ENVIRONMENTAL CHALLENGES
Sec. 401. Release from liability of persons that fulfill requirements of State and local law.
Sec. 402. Brownfield program.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) cities in the United States have been facing an economic downhill trend in the past several years; and

(2) a new approach to help such cities prosper is necessary.

(b) PURPOSES.—It is the purpose of this Act to—

(1) provide various incentives for the economic growth of cities in the United States;

(2) provide an economic agenda designed to reverse current urban economic trends; and

(3) revitalize the jobs and tax base of such cities without significant new Federal outlays.

TITLE I—FEDERAL COMMITMENT TO URBAN ECONOMIC DEVELOPMENT

SEC. 101. FEDERAL PURCHASES FROM BUSINESSES IN EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND ENTERPRISE ZONES.

(a) REQUIREMENTS.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

"PURCHASES FROM BUSINESSES IN EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND ENTERPRISE ZONES

"SEC. 38. (a) MINIMUM PURCHASE REQUIREMENT.—Not less than 15 percent of the total amount expended by executive agencies for the purchase of goods in a fiscal year shall be expended for the purchase of goods from businesses located in empowerment zones, enterprise communities, or enterprise zones.

"(b) RECYCLED PRODUCTS.—To the maximum extent practicable consistent with applicable law, the head of an executive agency shall purchase recycled products that meet the needs of the executive agency from businesses located in empowerment zones, enterprise communities, or enterprise zones.

"(c) REGULATIONS.—The Federal Acquisition Regulations shall include provisions that ensure the attainment of the minimum purchase requirement set out in subsection (a).

"(d) DEFINITIONS.—In this section:

"(1) The term 'empowerment zone' means a zone designated as an empowerment zone pursuant to subchapter U of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 1391 et seq.).

"(2) The term 'enterprise community' means a community designated as an enterprise community pursuant to subchapter U of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 1391 et seq.).

"(3) The term 'enterprise zone' has the meaning given such term in section 701(a)(1) of the Housing and Community Development Act of 1987 (42 U.S.C. 11501(a)(1)).".

(b) EFFECTIVE DATE.—Section 38 of the Office of Federal Procurement Policy Act, as added by subsection (a), shall take effect on the date of the enactment of this Act and shall apply with respect to fiscal years beginning after September 30, 1996.

(c) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Office of Federal Procurement Policy Act is amended by adding at the end the following new item:

"Sec. 38. Purchases from businesses in empowerment zones, enterprise communities, and enterprise zones.".

SEC. 102. MINIMUM ALLOCATION OF FOREIGN ASSISTANCE FOR PURCHASE OF CERTAIN UNITED STATES GOODS.

(a) ALLOCATION OF ASSISTANCE.—Notwithstanding any other provision of law, effective beginning with fiscal year 1997, not less than 15 percent of United States assistance provided in a fiscal year shall be provided in the form of credits which may only be used for the purchase of United States goods produced, manufactured, or assembled in empowerment zones, enterprise communities, or enterprise zones within the United States.

(b) UNITED STATES ASSISTANCE.—As used in this section, the term "United States assistance" means—

(1) any assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.);

(2) sales, or financing of sales under the Arms Export Control Act (22 U.S.C. 2751 et seq.); and

(3) assistance and other activities under the Support for East European Democracy (SEED) Act of 1989 (22 U.S.C. 5401 et seq.).

SEC. 103. PREFERENCE FOR LOCATION OF MANUFACTURING OUTREACH CENTERS IN URBAN AREAS.

(a) DESIGNATION.—In designating an organization as a manufacturing outreach center under paragraph (11) of section 5 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3704(11)), the Secretary of Commerce shall, to the maximum extent practicable, designate organizations that are located in empowerment zones, enterprise communities, or enterprise zones.

(b) FINANCIAL ASSISTANCE.—In utilizing a competitive, merit-based review process to determine the manufacturing outreach centers to which to provide financial assistance under such section, the Secretary shall give such additional preference to centers located in empowerment zones, enterprise communities, and enterprise zones as the Secretary determines appropriate in order to ensure the continuing existence of such centers in such zones.

SEC. 104. PREFERENCE FOR CONSTRUCTION AND IMPROVEMENT OF FEDERAL FACILITIES IN DISTRESSED URBAN AREAS.

(a) PREFERENCE.—Notwithstanding any other provision of law, in determining the location for the construction of a new facility of a department or agency of the Federal Government, in determining to improve an existing facility (including an improvement in lieu of such construction), or in determining the location to which to relocate functions of a department or agency, the head of the department or agency making the determination shall take affirmative action to construct or improve the facility, or to relocate the functions, in a distressed urban area.

(b) URBAN IMPACT STATEMENT.—A determination to construct a new facility of a department or agency of the Federal Government, to improve an existing facility, or to relocate the functions of a department or agency may not be made until the head of the department or agency making the determination prepares and submits to the President a report that—

(1) in the case of a facility to be constructed—

(A) identifies at least one distressed urban area that is an appropriate location for the facility;

(B) describes the costs and benefits arising from the construction and utilization of the facility in the area, including the effects of such construction and utilization on the rate of unemployment in the area; and

(C) describes the effect on the economy of the area of the closure or consolidation, if any, of Federal facilities located in the area during the 10-year period ending on the date of the report, including the total number of Federal and non-Federal employment positions terminated in the area as a result of such closure or consolidation;

(2) in the case of a facility to be improved that is not located in a distressed urban area—

(A) identifies at least one facility located in a distressed urban area that would serve as an appropriate alternative location for the facility;

(B) describes the costs and benefits arising from the improvement and utilization of the facility located in such area as an alternative location for the facility to be improved, including the effect of the improvement and utilization of the facility so located on the rate of unemployment in such area; and

(C) describes the effect on the economy of such area of the closure or consolidation, if any, of Federal facilities located in such area during the 10-year period ending on the date of the report, including the total number of Federal and non-Federal employment positions terminated in such area as a result of such closure or consolidation;

(3) in the case of a facility to be improved that is located in a distressed urban area—

(A) describes the costs and benefits arising from the improvement and continuing utilization of the facility in the area, including the effect of such improvement and continuing utilization on the rate of unemployment in the area; and

(B) describes the effect on the economy of the area of the closure or consolidation, if any, of Federal facilities located in the area during the 10-year period ending on the date of the report, including the total number of Federal and non-Federal employment positions terminated in the area as a result of such closure or consolidation; or

(4) in the case of a relocation of functions—

(A) identifies at least one distressed urban area that would serve as an appropriate location for the carrying out of the functions;

(B) describes the costs and benefits arising from carrying out the functions in the area, including the effect of carrying out the functions on the rate of unemployment in the area; and

(C) describes the effect on the economy of the area of the closure or consolidation, if any, of Federal facilities located in the area during the 10-year period ending on the date of the report, including the total number of Federal and non-Federal employment positions terminated in the area as a result of such closure or consolidation.

(c) APPLICABILITY TO DEPARTMENT OF DEFENSE FACILITIES.—The requirements set forth in subsections (a) and (b) shall apply to a determination to construct or improve any facility of the Department of Defense, or to relocate any functions of the Department, unless the President determines that the waiver of the application of such requirements to the facility, or to such relocation, is in the national interest.

(d) DEFINITION.—In this section, the term "distressed urban area" means any city having a population of more than 100,000 that meets (as determined by the Secretary of Housing and Urban Development) the qualifications for making an Urban Development Action Grant to a community experiencing severe economic distress that are otherwise established for large cities and urban counties under subpart G of part 570 of title 24, Code of Federal Regulations.

SEC. 105. DEFINITIONS.

As used in this title:

(1) The term "empowerment zone" means a zone designated as an empowerment zone pursuant to subchapter U of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 1391 et seq.).

(2) The term "enterprise community" means a community designated as an enterprise community pursuant to subchapter U of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 1391 et seq.).

(3) The term "enterprise zone" has the meaning given such term in section 701(a)(1) of the Housing and Community Development Act of 1987 (42 U.S.C. 11501(a)(1)).

TITLE II—TAX INCENTIVES TO STIMULATE URBAN ECONOMIC DEVELOPMENT

SEC. 201. TREATMENT OF REHABILITATION CREDIT UNDER PASSIVE ACTIVITY LIMITATIONS.

(a) GENERAL RULE.—Paragraphs (2) and (3) of section 469(i) of the Internal Revenue Code of 1986 (relating to $25,000 offset for rental real estate activities) are amended to read as follows:

"(2) DOLLAR LIMITATIONS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the aggregate amount to which paragraph (1) applies for any taxable year shall not exceed $25,000, reduced (but not below zero) by 50 percent of the amount (if any) by which the adjusted gross income of the taxpayer for the taxable year exceeds $100,000.

"(B) PHASEOUT NOT APPLICABLE TO LOW-INCOME HOUSING CREDIT.—In the case of the portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42—

"(i) subparagraph (A) shall not apply, and

"(ii) paragraph (1) shall not apply to the extent that the deduction equivalent of such portion exceeds—

"(I) $25,000, reduced by

"(II) the aggregate amount of the passive activity loss (and the deduction equivalent of any passive activity credit which is not so attributable and is not attributable to the rehabilitation credit determined under section 47) to which paragraph (1) applies after the application of subparagraph (A).

"(C) $55,500 LIMIT FOR REHABILITATION CREDITS.—In the case of the portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined under section 47—

"(i) subparagraph (A) shall not apply, and

"(ii) paragraph (1) shall not apply to the extent that the deduction equivalent of such portion exceeds—

"(I) $55,500, reduced by

"(II) the aggregate amount of the passive activity loss (and the deduction equivalent of any passive activity credit which is not so attributable) to which paragraph (1) applies for the taxable year after the application of subparagraphs (A) and (B).

"(3) ADJUSTED GROSS INCOME.—For purposes of paragraph (2)(A), adjusted gross income shall be determined without regard to—

"(A) any amount includable in gross income under section 86,

"(B) any amount excludable from gross income under section 135, 911, 931, or 933,

"(C) any amount allowable as a deduction under section 219, and

"(D) any passive activity loss.".

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 469(i)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

"(B) REDUCTION FOR SURVIVING SPOUSE'S EXEMPTION.—For purposes of subparagraph (A), the $25,000 amounts under paragraph (2)(A) and (2)(B)(ii) and the $55,500 amount under paragraph (2)(C)(ii) shall each be reduced by the amount of the exemption under paragraph (1) (determined without regard to the reduction contained in paragraph (2)(A)) which is allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.".

(2) Subparagraph (A) of section 469(i)(5) of such Code is amended by striking clauses (i), (ii), and (iii) and inserting the following:

"(i) '$12,500' for '$25,000' in subparagraphs (A) and (B)(ii) of paragraph (2),

"(ii) '$50,000' for '$100,000' in paragraph (2)(A)", and

"(iii) '$27,750' for '$55,500' in paragraph (2)(C)(ii).".

(3) The subsection heading for subsection (i) of section 469 of such Code is amended by striking "$25,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service on or after the date of the enactment of this Act, in taxable years ending on or after such date.

SEC. 202. REHABILITATION CREDIT ALLOWED TO OFFSET PORTION OF ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Section 38(c) of the Internal Revenue Code of 1986 (relating to limitation based on amount of tax) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) REHABILITATION INVESTMENT CREDIT MAY OFFSET PORTION OF MINIMUM TAX.—

"(A) IN GENERAL.—In the case of the rehabilitation investment tax credit—

"(i) this section and section 39 shall be applied separately with respect to such credit, and

"(ii) for purposes of applying paragraph (1) to such credit—

"(I) the tentative minimum tax under subparagraph (A) thereof shall be reduced by the minimum tax offset amount determined under subparagraph (B) of this paragraph, and

"(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the rehabilitation investment tax credit).

"(B) MINIMUM TAX OFFSET AMOUNT.—For purposes of subparagraph (A)(ii)(I), the minimum tax offset amount is an amount equal to—

"(i) in the case of a taxpayer not described in clause (ii), the lesser of—

"(I) 25 percent of the tentative minimum tax for the taxable year, or

"(II) $20,000, or

"(ii) in the case of a C corporation other than a closely held C corporation (as defined in section 469(j)(1)), 5 percent of the tentative minimum tax for the taxable year.

"(C) REHABILITATION INVESTMENT TAX CREDIT.—For purposes of this paragraph, the term 'regular investment tax credit' means the portion of the credit under subsection (a) which is attributable to the credit determined under section 47.".

(b) CONFORMING AMENDMENT.—Section 38(d) of the Internal Revenue Code of 1986 (relating to components of investment credit) is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR REHABILITATION CREDIT.—Notwithstanding paragraphs (1) and (2), the rehabilitation investment tax credit (as defined in subsection (c)(2)(C)) shall be treated as used last.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 203. COMMERCIAL INDUSTRIAL DEVELOPMENT BONDS.

(a) FACILITY BONDS.—

(1) IN GENERAL.—Subsection (a) of section 142 of the Internal Revenue Code of 1986 (relating to exempt facility bond) is amended by striking "or" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting a comma, and by adding at the end the following new paragraphs:

"(13) sports facilities,

"(14) convention or trade show facilities,

"(15) freestanding parking facilities,

"(16) air or water pollution control facilities, or

"(17) industrial parks.".

(2) INDUSTRIAL PARKS DEFINED.—Section 142 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(k) INDUSTRIAL PARKS.—A facility shall be treated as described in subsection (a)(17) only if all of the property to be financed by the net proceeds of the issue—

"(1) is—

"(A) land, and

"(B) water, sewage, drainage, or similar facilities, or transportation, power, or communication facilities incidental to the use of such land as an industrial park, and

"(2) is not structures or buildings (other than with respect to facilities described in paragraph (1)(B)).".

(3) CONFORMING AMENDMENTS.—

(A) Section 147(c) of the Internal Revenue Code of 1986 (relating to limitation on use for land acquisition) is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR INDUSTRIAL PARKS.—In the case of a bond described in section 142(a)(17), paragraph (1)(A) shall be applied by substituting '50 percent' for '25 percent'.".

(B) Section 147(e) of such Code (relating to no portion of bonds may be issued for skyboxes, airplanes, gambling establishments, etc.) is amended by striking "A private activity bond" and inserting "Except in the case of a bond described in section 142(a)(13), a private activity bond".

(b) SMALL ISSUE BONDS.—Section 144(a)(12) of the Internal Revenue Code of 1986 (relating to termination of qualified small issue bonds) is amended—

(1) by striking "any bond" in subparagraph (A)(i) and inserting "any bond described in subparagraph (B)",

(2) by striking "a bond" in subparagraph (A)(ii) and inserting "a bond described in subparagraph (B)", and

(3) by striking subparagraph (B) and inserting the following:

"(B) BONDS FOR FARMING PURPOSES.—A bond is described in this subparagraph if it is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any land or property not in accordance with section 147(c)(2).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 1996.

SEC. 204. INCREASE IN AMOUNT OF QUALIFIED SMALL ISSUE BONDS PERMITTED FOR FACILITIES TO BE USED BY RELATED PRINCIPAL USERS.

(a) IN GENERAL.—Clause (i) of section 144(a)(4)(A) of the Internal Revenue Code of 1986 (relating to $10,000,000 limit in certain cases) is amended by striking "$10,000,000" and inserting "$50,000,000".

(b) CLERICAL AMENDMENT.—The heading of paragraph (4) of section 144(a) of the Internal Revenue Code of 1986 is amended by striking "$10,000,000" and inserting "$50,000,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) obligations issued after the date of the enactment of this Act, and

(2) capital expenditures made after such date with respect to obligations issued on or before such date.

SEC. 205. SIMPLIFICATION OF ARBITRAGE INTEREST REBATE WAIVER.

(a) IN GENERAL.—Clause (ii) of section 148(f)(4)(C) of the Internal Revenue Code of 1986 (relating to exception from rebate for certain proceeds to be used to finance construction expenditures) is amended to read as follows:

"(ii) SPENDING REQUIREMENT.—The spending requirement of this clause is met if 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.".

(b) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 148(f)(4)(C) of the Internal Revenue Code of 1986 (relating to exception for reasonable retainage) is repealed.

(2) Subclause (II) of section 148(f)(4)(C)(vi) of such Code (relating to available construction proceeds) is amended by striking "2-year period" and inserting "3-year period".

(3) Subclause (I) of section 148(f)(4)(C)(vii) of such Code (relating to election to pay penalty in lieu of rebate) is amended by striking ", with respect to each 6-month period after the date the bonds were issued," and ", as of the close of such 6-month period,".

(4) Clause (viii) of section 148(f)(4)(C) of such Code (relating to election to terminate 1½ percent penalty) is amended by striking "to any 6-month period" in the matter preceding subclause (I).

(5) Clause (ii) of section 148(c)(2)(D) of such Code (relating to bonds used to provide construction financing) is amended by striking "2 years" and inserting "3 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 206. QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS PARTIALLY EXEMPT FROM STATE VOLUME CAP.

(a) IN GENERAL.—Section 146(g) of the Internal Revenue Code of 1986 (relating to exception for certain bonds) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by inserting after paragraph (4) the following:

"(5) 75 percent of any exempt facility bond issued as part of an issue described in section 142(a)(7) (relating to qualified residential rental projects).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 207. EXPANSION OF QUALIFIED WAGES SUBJECT TO WORK OPPORTUNITY CREDIT.

(a) INCREASE IN PERCENTAGE.—Section 51(a) of the Internal Revenue Code of 1986 (relating to determination of amount) is amended by striking "35 percent" and inserting "50 percent".

(b) FIRST 3 YEARS OF WAGES SUBJECT TO CREDIT.—Section 51 of the Internal Revenue Code of 1986 (relating to amount of credit) is amended—

(1) in subsections (a) and (b)(3), by striking "first-year"; and

(2) in subsection (b)—

(A) by striking paragraphs (1) and (2) and inserting the following:

"(1) IN GENERAL.—The term 'qualified wages' means the wages paid or incurred by the employer during the taxable year—

"(A) with respect to an individual who is a member of a targeted group, and

"(B) attributable to service rendered by such individual during the 3-year period beginning with the day the individual begins work for the employer."; and

(B) by redesignating paragraph (3) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

SEC. 208. EXCLUSION FOR CAPITAL GAINS ON CERTAIN INVESTMENTS WITHIN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.

(a) IN GENERAL.—Part II of subchapter U of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 1395. EXCLUSION FOR GAIN FROM ZONE OR COMMUNITY INVESTMENTS.

"(a) GENERAL RULE.—In the case of a taxpayer, gross income shall not include any qualified capital gain recognized on the sale or exchange of a qualified zone asset held for more than 3 years.

"(b) QUALIFIED ZONE ASSET.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified zone asset' means, with respect to any qualified small business—

"(A) any qualified zone stock,

"(B) any qualified zone property, and

"(C) any qualified zone partnership interest.

"(2) QUALIFIED SMALL BUSINESS.—

"(A) IN GENERAL.—The term 'qualified small business' means any entity or proprietorship the aggregate gross assets (within the meaning of section 1202(d)(2)) of which do not exceed $50,000,000.

"(B) APPLICATION OF RULES.—In determining if an entity or proprietorship is a qualified small business, rules similar to the rules of subsections (a) and (b) of section 52 shall apply.

"(3) QUALIFIED ZONE STOCK.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'qualified zone stock' means any stock in a domestic corporation if—

"(i) such stock is acquired by the taxpayer on original issue from the corporation solely in exchange for cash,

"(ii) as of the time such stock was issued, such corporation was an enterprise zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being an enterprise zone business), and

"(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as an enterprise zone business.

"(B) REDEMPTIONS.—The term 'qualified zone stock' shall not include any stock acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of this section.

"(4) QUALIFIED ZONE PROPERTY.—

"(A) IN GENERAL.—The term 'qualified zone property' has the meaning given to such term by section 1397C, except that references to empowerment zones shall be treated as including references to enterprise communities.

"(5) QUALIFIED ZONE PARTNERSHIP INTEREST.—The term 'qualified zone partnership interest' means any interest in a partnership if—

"(A) such interest is acquired by the taxpayer from the partnership solely in exchange for cash,

"(B) as of the time such interest was acquired, such partnership was an enterprise zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being an enterprise zone business), and

"(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as an enterprise zone business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

"(6) TREATMENT OF SUBSEQUENT PURCHASERS.—The term 'qualified zone asset' includes any property which would be a qualified zone asset but for paragraph (3)(A)(i), section 1397(a)(1)(B), or paragraph (5)(A) in the hands of the taxpayer if such property was a qualified zone asset in the hands of any prior holder.

"(7) 10-YEAR SAFE HARBOR.—If any property ceases to be a qualified zone asset by reason of paragraph (3)(A)(iii), section 1397(a)(1)(C), or paragraph (5)(C) after the 10-year period beginning on the date the taxpayer acquired such property, such property shall continue to be treated as meeting the requirements of such paragraph; except that the amount of gain to which subsection (a) applies on any sale or exchange of such property shall not exceed the amount which would be qualified capital gain had such property been sold on the date of such cessation.

"(8) TREATMENT OF ZONE OR COMMUNITY TERMINATIONS.—The termination of any designation of an area as an empowerment zone or enterprise community shall be disregarded for purposes of determining whether any property is a qualified zone asset.

"(c) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ENTERPRISE ZONE BUSINESS.—For purposes of this section, the term 'enterprise zone business' has the meaning given to such term by section 1394(b)(3).".

"(2) QUALIFIED CAPITAL GAIN.—Except as otherwise provided in this subsection, the term 'qualified capital gain' means any long-term capital gain.

"(3) CERTAIN GAIN ON REAL PROPERTY NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain which would be treated as ordinary income under section 1250 if section 1250 applied to all depreciation rather than the additional depreciation.

"(4) GAIN ATTRIBUTABLE TO PERIODS AFTER TERMINATION OF ZONE OR COMMUNITY DESIGNATION NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain attributable to periods after the termination of any designation of an area as an empowerment zone or enterprise community.

"(d) TREATMENT OF PASS-THRU ENTITIES.—

"(1) SALES AND EXCHANGES.—Gain on the sale or exchange of an interest in a pass-thru entity which is a qualified small business held by the taxpayer (other than an interest in an entity which was an enterprise zone business during substantially all of the period the taxpayer held such interest) for more than 3 years shall be treated as gain described in subsection (a) to the extent such gain is attributable to amounts which would be qualified capital gain on qualified zone assets (determined as if such assets had been sold on the date of the sale or exchange) held by such entity for more than 3 years and throughout the period the taxpayer held such interest. A rule similar to the rule of paragraph (2)(B) shall apply for purposes of the preceding sentence.

"(2) DISTRIBUTIONS.—

"(A) IN GENERAL.—Any amount included in income by reason of holding an interest in a pass-thru entity (other than an entity which was an enterprise zone business during substantially all of the period the taxpayer held the interest to which such inclusion relates) shall be treated as gain described in subsection (a) if such amount meets the requirements of subparagraph (B).

"(B) REQUIREMENTS.—An amount meets the requirements of this subparagraph if—

"(i) such amount is attributable to gain on the sale or exchange by the pass-thru entity of property which is a qualified zone asset in the hands of such entity and which was held by such entity for the period required under subsection (a), and

"(ii) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such asset and at all times thereafter before the disposition of such asset by such pass-thru entity.

"(C) LIMITATION BASED ON INTEREST ORIGINALLY HELD BY TAXPAYER.—Subparagraph (A) shall not apply to any amount to the extent such amount exceeds the amount to which subparagraph (A) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified zone asset was acquired.

"(3) PASS-THRU ENTITY.—For purposes of this subsection, the term 'pass-thru entity' means—

"(A) any partnership,

"(B) any S corporation,

"(C) any regulated investment company, and

"(D) any common trust fund.

"(e) SALES AND EXCHANGES OF INTERESTS IN PARTNERSHIPS AND S CORPORATIONS WHICH ARE QUALIFIED ZONE BUSINESSES.—In the case of the sale or exchange of an interest in a partnership, or of stock in an S Corporation, which was an enterprise zone business during substantially all of the period the taxpayer held such interest or stock) is an enterprise zone business, the amount of qualified capital gain shall be determined without regard to—

"(1) any intangible, and any land, which is not an integral part of any qualified business (as defined in section 1397B(d)), and

"(2) gain attributable to periods before the designation of an area as an empowerment zone or enterprise community.

"(f) CERTAIN TAX-FREE AND OTHER TRANSFERS.—For purposes of this section—

"(1) IN GENERAL.—In the case of a transfer of a qualified zone asset to which this subsection applies, the transferee shall be treated as—

"(A) having acquired such asset in the same manner as the transferor, and

"(B) having held such asset during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

"(2) TRANSFERS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any transfer—

"(A) by gift,

"(B) at death, or

"(C) from a partnership to a partner thereof of a qualified zone asset with respect to which the requirements of subsection (d)(2) are met at the time of the transfer (without regard to the 3-year holding requirement).

"(3) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.".

(b) CONFORMING AMENDMENTS.—

(1) Section 172(d)(2)(B) of the Internal Revenue Code of 1986 (relating to modifications with respect to net operating loss deduction) is amended by striking "section 1202" and inserting "sections 1202 and 1395B".

(2) Section 642(c)(4) of such Code (relating to adjustments) is amended by inserting "or 1395B(a)" after "section 1202(a)" and by inserting "or 1395B" after "section 1202".

(3) Section 643(a)(3) of such Code (defining distributable net income) is amended by striking "section 1202" and inserting "sections 1202 and 1395B".

(4) Section 691(c)(4) of such Code (relating to coordination with capital gain provisions) is amended by striking "1202, and 1211" and inserting "1202, 1395B, and 1211".

(5) The second sentence of section 871(a)(2) of such Code (relating to capital gains of aliens present in the United States 183 days or more) is amended by inserting "or 1395B" after "section 1202".

(6) Part II of subchapter U of chapter 1 of such Code is amended to read as follows:

"PART II—INCENTIVES FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.".

(7) The table of parts of subchapter U of chapter 1 of such Code is amended to read as follows:

"Part II. Incentives for empowerment zones and enterprise communities.".

(8) The table of sections of part II of subchapter U of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 1395. Exclusion for gain from zone or community investments.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

TITLE III—COMMUNITY-BASED HOUSING DEVELOPMENT

SEC. 301. BLOCK GRANT STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development shall conduct a study regarding—

(A) the feasibility of consolidating existing public and low-income housing programs under the United States Housing Act of 1937 into a comprehensive block grant system of Federal aid that—

(i) provides assistance on an annual basis;

(ii) maximizes funding certainty and flexibility; and

(iii) minimizes paperwork and delay; and

(B) the possibility of administering future public and low-income housing programs under the United States Housing Act of 1937 in accordance with such a block grant system.

(2) PUBLIC HOUSING/SECTION 8 MOVING TO WORK DEMONSTRATION.—In conducting the study described in paragraph (1), the Secretary of Housing and Urban Development shall consider data from and assessments of the demonstration program conducted under section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134, 110 Stat. 1321).

(b) REPORT TO COMPTROLLER GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Comptroller General of the United States a report that includes—

(1) the results of the study conducted under subsection (a); and

(2) any recommendations for legislation.

(c) REPORT TO CONGRESS.—Not later than 24 months after the date of enactment of this

Act, the Comptroller General of the United States shall submit to the Congress a report that includes—

(1) an analysis of the report submitted under subsection (b); and

(2) any recommendations for legislation.

SEC. 302. DEMOLITION AND DISPOSITION OF PUBLIC HOUSING.

Section 18(b) of the United States Housing Act of 1937 (42 U.S.C. 1437p(b)) is amended—

(1) in paragraph (1), by striking "and" at the end;

(2) in paragraph (2), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(3) the public housing agency develops a plan that provides, subject to the approval of both the unit of general local government in which the property on which the units to be demolished or disposed of are located and the local public housing agency, for—

"(A) the eventual reconstruction of units on the same property on which the units to be demolished or disposed of are located; and

"(B) the ultimate relocation of displaced tenants to that property.".

TITLE IV—RESPONSE TO URBAN ENVIRONMENTAL CHALLENGES

SEC. 401. RELEASE FROM LIABILITY OF PERSONS THAT FULFILL REQUIREMENTS OF STATE AND LOCAL LAW.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by section 2) is amended by adding at the end the following:

"(o) RELEASE FROM LIABILITY OF PERSONS THAT FULFILL REQUIREMENTS OF STATE AND LOCAL LAW.—

"(1) IN GENERAL.—Neither the President nor any other person may bring an administrative or judicial enforcement action under this Act with respect to a facility located in an urban area that is not listed or proposed for listing on the National Priorities List against a person that has fulfilled all requirements applicable to the person under State and local law to conduct response action at the facility, as evidenced by a release from liability issued by authorized State and local officials, to the extent that the administrative or judicial action would seek to require response action that is within the scope of the response action conducted in accordance with State and local law.

"(2) URBAN AREA DEFINED.—For purposes of paragraph (1), the term 'urban area' has the meaning given that term under section 1393(a)(3) of the Internal Revenue Code of 1986.".

SEC. 402. BROWNFIELD PROGRAM.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 127. BROWNFIELD PROGRAM.

"(a) DEFINITION OF BROWNFIELD FACILITY.—In this section, the term 'brownfield facility' means—

"(1) a parcel of land that contains an abandoned, idled, or underused commercial or industrial facility, the expansion or redevelopment of which is complicated by the presence or potential presence of a hazardous substance; but

"(2) does not include—

"(A) a facility that is the subject of a removal or planned removal under this title;

"(B) a facility that is listed or has been proposed for listing on the National Priorities List or that has been removed from the National Priorities List;

"(C) a facility that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h)) at the time at which an application for a grant or loan concerning the facility is submitted under this section;

"(D) a land disposal unit with respect to which—

"(i) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

"(ii) closure requirements have been specified in a closure plan or permit;

"(E) a facility with respect to which an administrative order on consent or judicial consent decree requiring cleanup has been entered into by the United States under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

"(F) a facility that is owned or operated by a department, agency, or instrumentality of the United States; or

"(G) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

"(b) MAINTENANCE OF BROWNFIELD PROGRAM.—The Administrator shall maintain the brownfield program established by the Administrator before the date of enactment of this section.

"(c) ELEMENTS OF PROGRAM.—In conducting the brownfield program, the Administrator may—

"(1) expend funds to identify and examine idle or underused industrial and commercial facilities for inclusion in the brownfield program; and

"(2) provide grants to State and local governments to clean up brownfields and return brownfields to productive use.

"(d) MAXIMUM GRANT AMOUNT.—A grant under subsection (c) shall not exceed $200,000 with respect to any brownfield facility.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated out of the Hazardous Substance Superfund to carry out this section—

"(1) $50,000,000 for fiscal year 1998;

"(2) $55,000,000 for fiscal year 1999; and

"(3) $60,000,000 for fiscal year 2000.".

By Mr. SPECTER:

S. 24. A bill to provide improved access to health care, enhance informed individual choice regarding health care services, lower health care costs through the use of appropriate providers, improve the quality of health care, improve access to long-term care, and for other purposes; to the Committee on Finance.

HEALTH CARE ASSURANCE ACT OF 1997

Mr. SPECTER. Mr. President, the start of the 105th Congress gives those of us in the Senate and the House a new opportunity to make a real difference in the lives of the American people. It is a chance for us to learn from the past concerning how to best respond to the challenges that are before us and forge important alliances to enable us to pass legislation that is important to the American people. One of our first priorities must be additional reforms of our Nation's health care system.

In the 104th Congress, I was pleased to cosponsor the Health Insurance Portability and Accountability Act of 1996, better known as the Kassebaum-Kennedy bill (S. 1028). There is no question that Kassebaum-Kennedy made significant steps forward in addressing troubling issues in health care. The bill's incremental approach to health care reform is what allowed it to generate consensus support in the Senate; we knew that it did not address every single problem in the health care delivery system, but it would make life better for millions of American men, women, and children.

There is much more that needs to be done. Accordingly, today I am introducing the Health Care Assurance Act of 1997, which, if enacted, will take us further down the path of incremental reforms started by Kassebaum-Kennedy. It is my firm belief that the best approach to addressing our Nation's health care problems is to enact reforms that improve upon our current market based health care system without completely overhauling our current system. My bill is intended to initiate and stimulate discussion in order to move the health care reform debate forward. I welcome any suggestions my colleagues may have concerning how the bill can be improved, as long as such suggestions are consistent with the incremental approach to reform that has proven to be the only way to obtain successful health care reform.

I want to note at the outset that through a State-run voucher system, my legislation would address health care coverage for the first time for the vast majority of the 10 million American children who lack health care insurance today. My proposal is compassionate and efficient and will preserve patient choice as its hallmark.

THE NEED FOR A BIPARTISAN APPROACH

Given the importance of succeeding in enacting this type of legislation, it is worth reviewing recent history. In particular, the debate over President Clinton's Health Security Act during the 103d Congress is replete with lessons concerning the pitfalls and obstacles that inevitably lead to legislative failure. Several times during the 103d Congress, I spoke on the Senate floor to address what seemed obvious to me to be the wisest course—to pass incremental health care reforms with which we could all agree. Unfortunately, what seemed obvious to me, based on comments and suggestions by a majority of Senators who favored a moderate approach, was not obvious at the time to the Senate's Democratic leadership.

This failure to understand the merits of an incremental approach was demonstrated during my attempts in April 1993 to offer a health care reform amendment based on the text of S. 631, an incremental reform bill I had introduced earlier in the session incorporating moderate, consensus principles. First, I attempted to offer the

bill as an amendment to debt ceiling legislation. Subsequently, I was informed that the consideration of this bill would be structured in a way that my offering an amendment would be impossible. Therefore, I prepared to offer my health care bill as an amendment to the fiscal year 1993 emergency supplemental appropriations bill. The majority leader, Senator Mitchell, and Senator BYRD worked together to ensure that I could not offer my amendment by keeping the Senate in a quorum call, a parliamentary tactic used to delay and obstruct. I was unable to obtain unanimous consent to end the quorum call, and thus could not proceed with my amendment.

Three years later, well after the behemoth Clinton health care reform bill was derailed, the Senate once again endured a lengthy political battle concerning the Kassebaum-Kennedy bill. We achieved a breakthrough in August 1996, when enough Senators sensed the growing frustration of the American people and finally passed health care insurance market reforms such as increased portability. I would note that the final version of the Health Insurance Portability and Accountability Act of 1996 contained many elements which were in S. 18, the incremental health care reform bill I had introduced when the 104th session of Congress began on January 4, 1995.

In retrospect, I urge my colleagues to note a most important fact—the Kassebaum-Kennedy bill was enacted only after the most liberal Democrats abandoned their hopes for passing a nationalized, big government health care scheme, and the most conservative Republicans abandoned their position that access to health care is really not a major problem in the United States demanding Federal action.

Although we succeeded in enacting incremental insurance market reforms, there is still much we need to do to improve our health care system. Additional reforms must be enacted if we are serious about our commitment to meet the needs of the American people. The bill I am introducing today is an updated version of the proposals I have introduced in the 102d, 103d, and 104th Congresses. I am hopeful that my colleagues understand how important it is to our constituents that we continue to reform the health care system. Looking back at our success with the Kassebaum-Kennedy bill, I am equally hopeful that my colleagues have come to realize that if we are to continue to be successful in meeting our constituents' needs, the solutions to our Nation's health care problems must come from the political center, not from the extremes.

Mr. President, there is no time to waste. Many of our Nation's health care problems are getting worse, not better. There is as much need now as ever before to correct the problems in our health care system for the 40.3 million or 17.4 percent of Americans for whom the system is not working. This is a group which, according to the Census Bureau, contained 900,000 more uninsured individuals in 1995 than the previous year. As I have said many times, we can fix the problem for these 40.3 million Americans without resorting to big government and turning the best health care system in the world, serving 82.6 percent of all Americans, on its head. The recent November elections reaffirmed the basic principle of limited government. Limited government, however, does not mean an uncaring or do-nothing government. Consistent with this principle, my legislation will fix the problem for many of the uninsured and underinsured while leaving intact what already works for those Americans with health insurance coverage.

To be sure, health care reform remains a very complex issue for Congress to address. But it is not so complex that we cannot act now and in a bipartisan way. As many of my colleagues will recall, in 1990 Congress passed Clean Air Act amendments that many said could not be achieved. That issue was brought to the Senate floor, and task forces were formed which took up the complex question of sulfuric acid in the air. We targeted the removal of 10 million tons in a year. We made significant changes in industrial pollution and in tailpipe emissions. We produced a balanced bill which protected the environment and retained jobs. Last year's enactment of Kassebaum-Kennedy is another example of such bipartisan success.

PREVIOUS EFFORTS ON REFORMING THE HEALTH CARE SYSTEM

I have advocated health care reform in one form or another throughout my 16 years in the Senate. My strong interest in health care dates back to my first term, when I sponsored the Health Care Cost Containment Act of 1983, S. 2051, which would have granted a limited antitrust exemption to health insurers, permitting them to engage in certain joint activities such as acquiring or processing information, and collecting and distributing insurance claims for health care services aimed at curtailing then escalating health care costs. In 1985, I introduced the Community Based Disease Prevention and Health Promotion Projects Act of 1985, S. 1873, directed at reducing the human tragedy of low birth weight babies and infant mortality. Since 1983, I have introduced and cosponsored numerous other bills concerning health care in our country. A complete list of the 21 health care bills that I have sponsored since 1983 is included for the RECORD.

During the 102d Congress, I pressed the Senate to take action on this issue. On July 29, 1992, I offered a health care amendment to legislation then pending on the Senate floor. This amendment included provisions from legislation introduced by Senator CHAFEE, which I cosponsored and which was previously proposed by Senators Bentsen and Durenberger. The amendment included a change from 25-percent to 100-percent deductibility for health insurance purchased by self-employed persons and small business insurance market reform to make health coverage more affordable for small businesses. When then-Majority Leader George Mitchell argued that the health care amendment I was proposing did not belong on that bill, I offered to withdraw the amendment if he would set a date certain to take up health care, just as product liability legislation had been placed on the calendar for September 8, 1992. The Majority Leader rejected that suggestion and the Senate did not consider comprehensive health care legislation during the balance of the 102d Congress. My July 29, 1992, amendment was defeated on a procedural motion by a vote of 35 to 60, along party lines.

The substance of that amendment, however, was adopted later by the Senate on September 23, 1992, when it was included in an amendment to broader tax legislation (H.R. 11), offered by Senators Bentsen and Durenberger and which I cosponsored. This amendment, which included substantially the same self-employed deductibility and small group reforms that I had proposed on July 29, passed the Senate by voice vote. Unfortunately, these provisions were later dropped from H.R. 11 in the House-Senate conference. It is worth noting for the RECORD that on January 23, 1994, when Senator Mitchell was asked on the television program "Face The Nation" about Senator Bentsen's bill from 1992, he stated that President Bush vetoed that provision as part of a broader bill. In fact, the legislation sent to President Bush never included that provision.

On August 12, 1992, I introduced legislation entitled the Health Care Affordability and Quality Improvement Act of 1992, S. 3176, that would have enhanced informed individual choice regarding health care services by providing certain information to health care recipients, lowered the cost of health care through use of the most appropriate provider, and improved the quality of health care.

On January 21, 1993, the first day of the 103d Congress, I introduced the Comprehensive Health Care Act of 1993, S. 18. This legislation was comprised of reform initiatives that our health care system could have adopted immediately. These reforms would have both improved access and affordability of insurance coverage and would have implemented systemic changes to lower the escalating cost of care in this country. S. 18, which is the principal basis of the legislation I am introducing today, melded the two health care reform bills I introduced and the one bill

that I cosponsored in the 102d Congress, and contained several new provisions.

On March 23, 1993, I introduced the Comprehensive Access and Affordability Health Care Act of 1993, S. 631, which was a composite of health care legislation introduced by Senators COHEN, KASSEBAUM, BOND, and MCCAIN, as well as my bill, S. 18. I introduced this legislation in an attempt to move ahead on the consideration of health care legislation and provide a critical mass as a starting point. As I noted earlier, I was precluded by Majority Leader Mitchell from obtaining Senate consideration of my legislation as a floor amendment on several occasions. Finally, on April 28, 1993, I offered the text of S. 631 as an amendment to the pending Department of Environment Act (S. 171) in an attempt to urge the Senate to act on health care reform. My amendment was defeated 65 to 33 on a procedural motion, but the Senate had finally been forced to contemplate action on health care reform.

On the first day of the 104th Congress, January 4, 1995, I introduced a slightly modified version of S. 18, the Health Care Assurance Act of 1995 (also S. 18), which contained provisions similar to those ultimately enacted in Kassebaum-Kennedy, including insurance market reforms, an extension of the tax deductibility of health insurance for the self employed, and deductibility of long term care insurance for employers.

In total, I have taken to this floor on 16 occasions over the past 4 years to urge the Senate to address health care reform and on two occasions, I offered health care reform amendments which were voted on by the Senate.

As my colleagues are aware, I can personally report on the miracles of modern medicine. Three years ago, an MRI detected a benign tumor (meningioma) at the outer edge of my brain. It was removed by conventional surgery, with five days of hospitalization and five more weeks of recuperation.

When a small regrowth was detected by a follow-up MRI in June 1996, it was treated with high powered radiation from the "Gamma Knife." I entered the hospital in the morning of October 11 and left the same afternoon, ready to resume my regular schedule. Like the MRI, the Gamma Knife is a recent invention, coming into widespread use in the past decade. I ask unanimous consent to insert in the RECORD an article from the Pittsburgh Post-Gazzette about my experience with the Gamma Knife as well as an essay I wrote for several Pennsylvania newspapers on this subject.

My own experience as a patient has given me deeper insights into the American health care system beyond the U.S. Senate hearings where I preside as chairman of the Appropriations Subcommittee with jurisdiction over the Department of Health and Human Services. I have learned: First, our health care system, the best in the world, is worth every cent we pay for it; second, patients sometimes have to press their own cases beyond the doctors' standard advice; third, greater flexibility must be provided on testing and treatment; fourth, our system has the resources to treat the 39 million Americans not now covered, but we must find the way to pay for it; and fifth, all Americans deserve the access to health care from which I and others with coverage have benefited.

I share the American people's frustration with government and their desire to have the problems addressed. Over the past four years, I believe we have learned a great deal about our health care system and what the American people are willing to accept from the Federal Government. The message we heard loudest was that Americans did not want a massive overhaul of the health care system. Instead, our constituents want Congress to proceed more slowly and to target what isn't working in the health care system while leaving in place what is working.

THE CLINTON HEALTH PLAN

As I have said both publicly and privately, I am willing to cooperate with President Clinton in solving the problems facing our country. However, in the past I have found many important areas where I differed with the President's approach and I did so because I believed that they were proposals that would have been deleterious to my fellow Pennsylvanians, to the American people, and to our health care system. Most importantly, I did not support creating a large new government bureaucracy because I believe that savings should go to health care services and not bureaucracies.

On this latter issue, I first became concerned about the potential growth in bureaucracy in September 1993 after reading the President's 239-page preliminary health care reform proposal. I was surprised by the number of new boards, agencies, and commissions, so I asked my legislative assistant to make me a list of all of them. Instead, she decided to make a chart. The initial chart depicted 77 new entities and 54 existing entities with new or additional responsibilities.

When the President's 1,342-page Health Security Act was transmitted to Congress on October 27, 1993, my staff reviewed it and found an increase to 105 new agencies, boards, and commissions and 47 existing departments, programs, and agencies with new or expanded jobs. This chart received national attention after being used by Senator Bob Dole in his response to the President's State of the Union Address on January 24, 1994.

The response to the chart was tremendous, with more than 12,000 people from across the country contacting my office for a copy. Numerous groups and associations, such as United We Stand America, the American Small Business Association, the National Federation of Republican Women, and the Christian Coalition, reprinted the chart in their publications—amounting to hundreds of thousands more in distribution. Bob Woodward of the Washington Post later stated that he thought the chart was the single biggest factor contributing to the demise of the Clinton health care plan. And, as recently as the November 1996 election, my chart was used by Senator Dole in his Presidential campaign to illustrate the need for incremental health care reform as opposed to a big government solution.

COMPONENTS OF THE HEALTH CARE ASSURANCE ACT OF 1997

As I begin to describe my new proposal, the Health Care Assurance Act of 1997, in greater detail, I want to reiterate that in creating solutions, it is imperative that we do not adversely affect the many positive aspects of our health care system which works for 82.6 percent of all Americans. It is more prudent to implement targeted reforms and then act later to improve upon what we have done. I call this trial and modification. We must be careful not to damage the positive aspects of our health care system upon which more than 224 million Americans justifiably rely.

The legislation I am introducing today has three objectives: First, to provide affordable health insurance for the 40.3 million Americans now not covered; second, to reduce health care costs for all Americans; and (3) to improve coverage for underinsured individuals and families. This legislation is comprised of initiatives that our health care system can readily adopt in order to meet these objectives, and it does not create an enormous new bureaucracy to meet them.

This bill builds and improves upon provisions put forth in my legislation from the 104th Congress, S. 18. That legislation included provisions to encourage the formation of small group purchasing arrangements, increase access to prenatal care and outreach for the prevention of low birth weight babies, facilitate the implementation of patients' rights regarding medical care at the end of life, improve health education, place greater emphasis on an expanded access to primary and preventive health services, utilize nonphysician providers, reform the COBRA law to extend the time period for employees who leave their jobs to maintain their health benefits until alternative coverage becomes available, and increase the availability and use of consumer information and outcomes research.

This year, I have added a new title I to provide vouchers to cover children who lack health insurance coverage. Preliminary data from the Census Bureau shows that in 1995, there were 10

million uninsured Americans under the age of 18 in the United States, representing 14 percent of all children. According to a July, 1996, General Accounting Office report, this vulnerable population reached an all time high number of uninsured in 1994. The number of children without health insurance coverage was greater in 1994 than any other time in the last 8 years. This is partly because the proportion of children with private insurance is decreasing as companies increasingly are covering only workers and not their spouses and children.

Children are our Nation's greatest resource and our most vulnerable population, along with our Nation's seniors. In 1965, we ensured that our Nation's seniors would have access to health care. In 1997, we should do no less for our Nation's children.

My approach is to give minimum federal directives and leave it to the States to determine how this health coverage would be delivered. The size of the benefits package would be keyed to the average cost in each State of providing insurance coverage for three basic types of services: First, preventive care; second, primary care; and third, acute care services. Full Federal subsidies would be provided to uninsured children living in families with incomes up to 185 percent of the poverty line. On average, a family of four living at 185 percent of the poverty level lives on $28,860 a year. Partial subsidies would be provided to uninsured children living in families with incomes between 185 and 235 percent of the poverty line. On average, a family of four living at 235 percent of the poverty level lives on $36,660 a year. Under this plan, more than 7.5 million children or 77 percent of all uninsured children would receive health care coverage.

The subsidy levels in my plan are modeled after our excellent programs in Pennsylvania that provide health care for needy children. A unique public-private partnership has enabled approximately 60,000 children to receive basic health care coverage under one of two programs: The Children's Health Insurance Program of Pennsylvania and the Caring Program for Children sponsored by Highmark Blue Cross/Blue Shield and Independence Blue Cross.

States have traditionally been the great laboratories for experimentation. Accordingly, I leave it to the States to work out the details on how this program should be run. My hope is that the subsidy program will be so successful it will be used as a model for reform of the Medicaid program. Savings through other health care reforms detailed later in this statement will provide the funds needed to implement the essential effort to take care of the health of our Nation's children.

I have also added a new title VIII to establish a national fund for health research within the Department of Treasury. This fund will supplement the moneys appropriated for the National Institutes of Health. It is to be on budget, but the financing mechanism is not specified. This proposal was first developed by my distinguished colleagues, Senators Mark Hatfield and TOM HARKIN. Senator Hatfield, who retired after the 104th Congress, worked closely with me on medical research funding issues. The concept of a national fund for health research was incorporated into the National Institutes of Health Revitalization Act of 1996, which was passed by the Senate, but not by the House.

Responding to decreases in discretionary funding, in the 104th Congress, Senators Hatfield and HARKIN introduced S. 1251, the National Fund for Health Research Act. They wisely anticipated that we cannot continue to look solely to the appropriations process for the necessary resources to sustain sufficient growth in biomedical research. The great advancements made by the United States in biomedical research are part of what makes this country among the best in the world when it comes to medical care. Their idea is a sound one and ought to be adopted. I look forward to working together with Senator HARKIN to enact a biomedical research fund this Congress.

Taken together, I believe the reforms proposed in this bill will both improve the quality of health care delivery and will bring down the escalating costs of health care in this country. These proposals represent a blueprint which can be modified, improved, and expanded. In total, I believe this bill can significantly reduce the number of uninsured Americans, improve the affordability of care, ensure the portability and security of coverage between jobs, and yield cost savings of billions of dollars to the Federal Government, which can be used to cover the remaining uninsured and underinsured Americans.

INCREASING COVERAGE

According to the U.S. Bureau of the Census, in 1995, 224 million Americans derived their health insurance coverage as follows: approximately 64 percent from employer plans; 14.3 percent from Medicare and Medicaid; 4 percent from other public sources; and about 7 percent from other private insurance. However, 40.3 million people were not covered by any type of health insurance.

Statistics from the Employment Benefit Research Institute November 1996 show that small businesses generally provide less health insurance coverage than larger businesses or the public sector. About 73 percent of employees in the public sector are provided with health insurance; while 55.5 percent of employees in the private sector are covered. Both levels are far higher than businesses with fewer than 10 employees—25.8 percent; with 10 to 24 employees—38.8 percent; or with 25 to 99 employees—54.4 percent.

As I mentioned previously, title I of the bill gives Federal subsidies to provide health care coverage for our Nation's children. Early estimates are that the total cost of these vouchers will be approximately $24 billion over 5 years. This $24 billion is a worthwhile investment because it will mean healthier children and substantially reduced anxiety for millions of parents who cannot afford to pay for needed medical care for their children.

Title II contains provisions to make it easier for small businesses to buy health insurance for their workers by establishing voluntary purchasing groups. It also obligates employers to offer, but not pay for, at least two health insurance plans that protect individual freedom of choice and that meet a standard minimum benefits package. It extends COBRA benefits and coverage options to provide portability and security of affordable coverage between jobs. While it is not possible to predict with certainty how many additional Americans will be covered as a result of the reforms in title II, a reasonable expectation would be that these reforms will cover approximately 10 million Americans. This estimate encompasses the provisions included in title II which I will discuss in further detail.

Specifically, title II extends the COBRA benefit option from 18 months to 24 months. COBRA refers to a measure which was enacted in 1985 as part of the Consolidated Omnibus Budget Reconciliation Act [COBRA '85] to allow employees who leave their job, either through a layoff or by choice, to continue receiving their health care benefits by paying the full cost of such coverage. By extending this option, such unemployed persons will have enhanced coverage options.

In addition, options under COBRA are expanded to include plans with lower premiums and higher deductibles of either $1,000 or $3,000. This provision is incorporated from legislation introduced in the 103d Congress by Senator PHIL GRAMM and will provide an extra cushion of coverage options for people in transition. According to Senator GRAMM, with these options, the typical monthly premium paid for a family of four would drop by as much as 20 percent when switching to a $1,000 deductible and as much as 52 percent when switching to a $3,000 deductible.

With respect to the uninsured and underinsured, my bill would permit individuals and families to purchase guaranteed, comprehensive health coverage through purchasing groups. Health insurance plans offered through the purchasing groups would be required to meet basic, comprehensive standards with respect to benefits.

Such benefits must include a variation of benefits permitted among actuarially equivalent plans to be developed by the National Association of Insurance Commissioners. The standard plan would consist of the following services when medically necessary or appropriate: First, Medical and surgical devices; second, medical equipment; third preventive services; and fourth, emergency transportation in frontier areas. It is estimated that for businesses with fewer than 50 employees, voluntary purchasing cooperatives such as those included in my legislation could cover up to 10 million people who are currently uninsured.

My bill would also create individual health insurance purchasing groups for individuals wishing to purchase health insurance on their own. In today's market, such individuals often face a market where coverage options are not affordable. Purchasing groups will allow small businesses and individuals to buy coverage by pooling together within purchasing groups, and choose from among insurance plans that provide comprehensive benefits, with guaranteed enrollment and renewability, and equal pricing through community rating adjusted by age and family size. Community rating will assure that no one small business or individual will be singularly priced out of being able to buy comprehensive health coverage because of health status. With community rating, a small group of individuals and businesses can join together, spread the risk, and have the same purchasing power that larger companies have today.

For example, Pennsylvania has the ninth lowest rate of uninsured in the Nation, with 90 percent of all Pennsylvanians enrolled in some form of health coverage. Lewin and Associates found that one of the factors enabling Pennsylvania to achieve this low rate of uninsured persons is that Pennsylvania's Blue Cross-Blue Shield plans provide guaranteed enrollment and renewability, an open enrollment period, community rating, and coverage for persons with preexisting conditions. My legislation seeks to enact reforms to provide for more of these types of practices. The purchasing groups, as developed and administered on a local level, will provide small businesses and all individuals with affordable health coverage options.

Unique barriers to coverage exist in both rural and urban medically underserved areas. Within my State of Pennsylvania, such barriers result from a lack of health care providers in rural areas, and other problems associated with the lack of coverage for indigent populations living in inner cities. This bill improves access to health care services for these populations by: First, expanding Public Health Service programs and training more primary care providers to serve in such areas; second, increasing the utilization of nonphysician providers, including nurse practitioners, clinical nurse specialists, and physician assistants, through direct reimbursements under the Medicare and Medicaid Programs; and third, increasing support for education and outreach.

Title II of my bill also includes an important provision to give the self-employed 100-percent deductibility of their health insurance premiums. The Kassebaum-Kennedy bill extended the deductibility of health insurance for the self-employed to 80 percent by 2006. My bill would extend this to 100 percent in 2007. Under current law, all other employers can deduct 100 percent of the cost of health care insurance for their workers. It is unfair not to give the self-employed the same tax benefit as other employers receive. The self-employed are every bit in need of this benefit and we should be doing everything we can to support this important group which is the backbone of the American economy.

While I reiterate the difficulty of making definitive conclusions regarding the reforms put forth under this legislation and accomplishing universal health coverage for all Americans, I believe this is a promising starting point. Admittedly, the figures are inexact, but by my rough calculations, potentially 17.6 million of the 40.3 million uninsured will be able to obtain affordable health care coverage under my bill. I arrive at this figure by estimating that at least 7.6 million children will receive health insurance under the title I voucher system. In addition, 10 million will be able to purchase insurance by encouraging individuals and small employers to purchase insurance through voluntary purchasing cooperatives.

I welcome any and all suggestions that make sense within our current constraints to increase coverage. I am committed to enacting reforms this year and would like to determine a time certain when Congress must revisit this issue. We should act on these reforms and correct problems related to coverage where they still exist.

COST SAVINGS

It is anticipated that the increased costs to employers electing to cover their employees as provided under title II in my bill would be offset by the administrative savings generated by development of the small employer purchasing groups. Such savings have been estimated at levels as high as $9 billion annually. In addition, by addressing some of the areas within the health care system that have exacerbated costs, significant savings can be achieved and then redirected toward direct health care services.

While examining the issues that have contributed to our health care crisis, I was struck by the fact that so much attention has been focused on treating symptoms and very little attention has been given to the root causes. Although our existing health care system suffers from very serious structural problems, commonsense steps can be taken to head off the remaining problems before they reach crisis proportions. Title III of my bill includes three initiatives which will enhance primary and preventive care services aimed at preventing disease and ill-health.

Each year about 7 percent, or 273,000, of the approximately 3.9 million babies born in the United States are born with a low birth weight, multiplying their risk of death and disability. Approximately 29,338 of those born die before their first birthday, but about 1,000 of those deaths are preventable. Although the infant mortality rate in the United States fell to an all-time low in 1989, an increasing percentage of babies still are born of low birth weight. The Executive Director of the National Commission To Prevent Infant Mortality put it this way: "More babies are being born at risk and all we are doing is saving them with expensive technology."

It is a human tragedy for a child to be born weighing 16 ounces with attendant problems which last a lifetime. I first saw 1-pound babies in 1984 when I was astounded to learn that Pittsburgh, PA, had the highest infant mortality rate of African-American babies of any city in the United States. I wondered how that could be true of Pittsburgh, which has such enormous medical resources. It was an amazing thing for me to see a 1-pound baby, about as big as my hand.

Beyond the human tragedy of a low birth weight, there are serious financial consequences which result. Although low birth weight infants represent only about 7 percent of all births, the National Center for Health Statistics reports that in 1994, the expenditures for their care totaled about 57 percent of costs incurred for all newborns. In addition, the Department of Health and Human Services states that care for each premature baby costs from $10,000 to $25,000 with a total national cost estimate of $2 billion a year. Low birth weight children, those who weigh less than 5.5 pounds, account for 16 percent of all costs for initial hospitalization, rehospitalization, and special services up to age 35.

The short- and long-term costs of saving and caring for infants of low birth weight is staggering. A study issued by the Office of Technology Assessment in 1988 concluded that $8 billion was expended in 1987 for the care of 262,000 low birth weight infants in excess of that which would have been spent on an equivalent number of babies born of normal birth weight, averted by earlier or more frequent prenatal care. If adequate prenatal care had been provided, especially to women at-risk for delivering low birth weight babies, the U.S. health care system

could have saved between $14,000 and $30,000 per child in the first year in addition to the projected savings over the lifetime of each child. The Department of Health and Human Services has also estimated that between $1.1 billion and $2.5 billion per year could be saved if the number of low birth weight children were reduced by 82,000 births.

We know that in most instances, prenatal care is effective in preventing low birth weight babies. Numerous studies have demonstrated that low birth weight that does not have a genetic link is most often associated with inadequate prenatal care or the lack of prenatal care. To improve pregnancy outcomes for women at risk of delivering babies of low birth weight, title III of my bill authorizes the Secretary of Health and Human Services to award grants to States for Healthy Start projects to reduce infant mortality and the incidence of low birth weight births, as well as to improve the health and well-being of mothers and their families, pregnant women and infants. The funds would be awarded to community-based consortia, made up of State and local governments, the private sector, religious groups, community health centers, and hospitals and medical schools, whose goal would be to develop and coordinate effective health care and social support services for women and their babies.

I initiated action that led to the creation of the Healthy Start Program in 1991, working with the Bush administration and Senator HARKIN. As chairman of the Appropriations Subcommittee with jurisdiction over the Department of Health and Human Services, I have worked with my colleagues to ensure the continued growth of this important program. In 1991, we allocated $25 million for the development of 15 demonstration projects. This number grew to 22 in 1994, and the Health Resources and Services Administration expects the number of projects to increase again in 1997. For fiscal year 1997, we secured $96 million for the program, which is currently undergoing a formal evaluation by Mathematica Policy Research, Inc. However, preliminary results from the projects themselves suggest these programs have been enormously successful. In Pennsylvania, our Pittsburgh Healthy Start project estimates that infant mortality has decreased 20 percent in the overall project area as a result of this program. For those women in Pittsburgh who have taken advantage of the case management offered by the program, infant mortality has been reduced by as much as 61 percent. Similarly, our Philadelphia project reports that infant mortality has been reduced by 25 percent.

The second initiative under title III involves the provision of comprehensive health education and prevention initiatives for our Nation's children. The Carnegie Foundation for the Advancement of Teaching recently conducted a survey of teachers. More than half of the respondents said that poor nourishment among students is a serious problem at their schools; 60 percent cited poor health as a serious problem. Another study issued in 1992 by the Children's Defense Fund reported that children deprived of basic health care and nutrition are ill-prepared to learn. Both studies indicated that poor health and social habits are carried into adulthood and often passed on to the next generation.

To interrupt this tragic cycle, our Nation must invest in proven preventive health education programs. My legislation provides increased support to local educational agencies to develop and strengthen comprehensive health education programs, and to Head Start resource centers to support health education training programs for teachers and other day care workers.

Title III further expands the authorization of a variety of public health programs, such as breast and cervical cancer prevention, childhood immunizations, family planning, and community health centers. These existing programs are designed to improve the public health and prevent disease through primary and secondary prevention initiatives. It is essential that we invest more resources in these programs now if we are to make any substantial progress in reducing the costs of acute care in this country.

As chairman of the Appropriations Subcommittee with jurisdiction over the Department of Health and Human Services, I have greatly encouraged the development of prevention programs which are essential to keeping people healthy and lowering the cost of health care in this country. In my view, no aspect of health care policy is more important. Accordingly, my prevention efforts have been widespread. Specifically, I joined my colleagues in efforts to ensure that funding for the Centers for Disease Control and Prevention [CDC] increased $1.3 billion or 132 percent since 1989. Fiscal year 1997 funding for the CDC totals $2.304 billion. We have also worked to elevate funding for CDC's breast and cervical cancer early detection program to $140 million in fiscal year 1997, a 40-percent increase in 2 years. In addition, I have supported providing funding to CDC to improve the detection and treatment of reemerging infectious diseases.

I have also supported programs at CDC which help children. CDC's childhood immunization program seeks to eliminate preventable diseases through immunization and to ensure that at least 90 percent of 2-year-olds are vaccinated. The CDC also continues to educate parents and care givers on the importance of immunization for children under 2 years. Along with my colleagues on the Appropriations Committee, I have helped to ensure that funding for this important program increased by $172 million, or 58 percent. The CDC's lead poisoning prevention program annually identifies about 50,000 children with elevated blood levels and places those children under medical management. The program prevents children's blood levels from reaching dangerous levels and is currently funded at over $38 million.

In recent years, we have also strengthened funding for community and migrant health centers, which provide immunizations, health advice, and health professions training. For fiscal year 1997, over $800 million was provided for these centers, an increase of about $44 million over fiscal year 1996.

As chairman of the Select Committee on Intelligence and chairman of the Appropriations Subcommittee with jurisdiction over the Department of Health and Human Services, I have worked to transfer CIA imaging technology to the fight against breast cancer. Through the Office of Women's Health within the Department of Health and Human Services, I secured a $2 million contract in fiscal year 1996 for the University of Pennsylvania and a consortium to perform the first clinical trials testing the use of intelligence community technology for breast cancer detection. For fiscal year 1997, an additional $2 million was appropriated to continue the clinical trials.

Finally, I have been a strong supporter of funding for AIDS research, education, and prevention programs. In fiscal year 1997, AIDS funding increased 14 percent, $392 million above the fiscal year 1996 level, for a total of $3.115 billion. Within this amount, $617 million was allocated for prevention, testing, and counseling at the CDC.

The proposed expansions in preventive health services included in title III of my bill are conservatively projected to save approximately $2.5 billion per year or $12.5 billion over 5 years. However, I believe the savings will be higher. Again, it is impossible to be certain of such savings—only experience will tell. For example, how do you quantify today the savings that will surely be achieved tomorrow from future generations of children that are truly educated in a range of health-related subjects including hygiene, nutrition, physical and emotional health, drug and alcohol abuse, and accident prevention and safety? I have suggested these projections, subject to future modification, to give a generalized perspective on the potential impact of this bill.

Title IV of my bill would establish a Federal standard and create uniform national forms concerning a patient's right to decline medical treatment. Nothing in my bill mandates the use of uniform forms, rather, the purpose of this provision is to make it easier for individuals to make their own choices

and determination regarding their treatment during this vulnerable and highly personal time. Studies have also indicated that advance directives do not increase health care costs. According to recent data from the Journal of the American Medical Association authored by Ezekiel Emmanuel of the Center for Outcomes and Policy Research of the Dana Farber Cancer Institute, end-of-life costs account for about 10-percent of total health care spending and 27 percent of total Medicare expenditures. It has been projected that a 10 percent savings made in the final days of life would result in approximately $10 billion of savings in medical costs per year, and about $4.7 billion in savings for Medicare alone.

However, economic considerations are not and should not be the primary reasons for using advance directives. They provide a means for patients to exercise their autonomy over end-of-life decisions. A study done at the Thomas Jefferson University Medical College in Philadelphia cited research which found that about 90 percent of the American population has expressed interest in discussing advance directives, but only 8 to 15 percent of adults have prepared a living will. My bill would provide information on an individual's rights regarding living wills and advanced directives, and would make it easier for people to have their wishes known and honored. In my view, no one has the right to decide for anyone else what constitutes appropriate medical treatment. Encouraging the use of advance directives will ensure that patients are not needlessly and unlawfully treated against their will. No health care provider would be permitted to treat an adult contrary to the adult's wishes as outlined in an advance directive. However, in no way would the use of advance directives condone assisted suicide or any affirmative act to end human life.

Incentives to improve the supply of generalist physicians and increase the utilization of nonphysician providers, such as nurse practitioners, clinical nurse specialists, and physician assistants, through direct reimbursement under the Medicare and Medicaid Programs are contained in title V of my bill. I believe these provisions will also yield substantial savings. A study of the Canadian health system utilizing nurse practitioners projected savings of 10 to 15 percent of all medical costs. While our system is dramatically different from that of Canada, it may not be unreasonable to project annual savings of 5 percent, or $55 billion, from an increased number of primary care providers in our system. Again, experience will raise or lower this projection. Assuming these savings, based on an average expenditure for health care of $3,821 per person in 1995, it seems reasonable that we could cover over 10 million uninsured persons with these savings.

Outcomes research, included in title VI of my bill, is another area where we can achieve considerable long-term health care savings while also improving the quality of care. According to most outcomes management experts, it is estimated that about 25 to 30 percent of medical care is inappropriate or unnecessary. Dr. Marcia Angell, former editor in chief of the New England Journal of Medicine, also stated that 20 to 30 percent of health care procedures are either inappropriate, ineffective, or unnecessary. In 1995, health care expenditures totaled $1.1 trillion annually. A cost of illness model published in the October 1995 issue of Archives of Internal Medicine estimated that $76.6 billion annually is for drug-related morbidity and mortality in the ambulatory setting. It is not unreasonable to anticipate that with the implementation of medical practice guidelines and enhanced appropriateness of care, 10 to 20 percent of costs could be eliminated, resulting in savings between $8 and $15 billion in drug-related morbidity and mortality alone. Ideally, if all inappropriate care could be removed, between $110 and $220 billion in savings could be realized annually for all health care expenditures. A reasonable estimate is that with the implementation of medical practice guidelines, we may achieve savings of 20 to 30 percent of the lower range end—$110 billion—which amounts to $22 to $33 billion in savings annually.

A well-funded program for outcomes research is therefore essential, and is supported by Dr. C. Everett Koop, former Surgeon General of the United States. Title V of my bill would establish such a program by imposing a one-tenth of one cent surcharge on all health insurance premiums. Based on the Health Care Financing Administration's 1995 health spending review, private health insurance premiums totaled $325.4 billion. As provided in my bill, a surcharge would generate $325.4 million for an outcomes research fund, in addition to the $144 million appropriated in this area for fiscal year 1997.

It is also vital to reduce the administrative costs incurred by our health care system. According to the Health Care Financing Administration, in 1994, about 6.2 percent of our total national health care expenditures were for administrative costs—over $58 billion annually. We can reasonably expect to reduce administrative costs by 5 percent, or $2.9 billion annually. While the development of a national electronic claims system to handle the billions of dollars in claims is complex and will take time to implement fully, I believe it is an essential component in the operation of a more efficient health care system, and for achieving the necessary savings to provide insurance for the remaining uninsured Americans. Title VI of my bill is intended to improve consumer access to health care information. True cost containment and competition cannot occur if purchasers of health care services do not have the information available to them to compare cost and quality.

Title VI also authorizes the Secretary of Health and Human Services to award grants to States to establish or improve a health care data information system. Currently, 38 States have a mandate to establish such a system, and 23 States are in various stages of implementation. In my own State, the Pennsylvania Health Care Cost Containment Council has received national recognition for the work it has done to help control health care costs through the promotion of competition in the collection, analysis and distribution of uniform cost and quality data for all hospitals and physicians in the Commonwealth. Consumers, businesses, labor, insurance companies, health maintenance organizations, and hospitals have utilized this important information. Specifically, hospitals have used this information to become more competitive in the marketplace; businesses and labor have used this data to lower their health care expenditures; health plans have used this information when contracting with providers; and consumers have used this information to compare costs and outcomes of health care providers and procedures.

The States have not yet produced any figures on statewide savings resulting from the implementation of health information systems, however, there are many examples of savings experienced by users of these systems across the country. For example, the Pennsylvania Health Care Cost Containment Council [PHC4] has been utilized by the Hershey Foods Corp., which provides health insurance coverage for its employees, their dependents, and retirees, totaling roughly 17,000 persons. Hershey has offered a flexible benefits package since 1988, but saw health care expenditures increase in the late 1980's and early 1990's. The company used the PHC4 data as part of its health care plan reengineering efforts and created its own Health Maintenance Organization [HMO] called HealthStyles as another alternative to the four traditional HMO's already offered to employees and retirees. The PHC4 data were used to help Hershey define its specialized hospital network within this new HMO. Hershey states that the company has seen costs decline for some of the services provided by the other HMO plans offered to its employees. This is just one example of how health data information can be used wisely to inform the public and consumers and allow the market to control costs. There are many other examples of savings being achieved, and I believe that if these systems were implemented in every State, the savings could be substantial.

Home nursing care is another significant issue which must be addressed. The cost of this care is exorbitant. Title VII of my bill therefore would provide a tax credit for premiums paid to purchase private long-term care insurance. It also proposes home and community-based care benefits as less costly alternatives to institutional care. The Joint Tax Committee estimates that the cost of this long term care tax credit to the Treasury would be approximately $14 billion over 5 years. Other tax incentives and reforms provided in my bill to make long term care insurance more affordable include: First, allowing employees to select long-term care insurance as part of a cafeteria plan and allowing employers to deduct this expense; second, excluding from income tax the life insurance savings used to pay for long term care; and third, setting standards for long term care insurance that reduce the bias that currently favors institutional care over community- and home-based alternatives.

While precision is again impossible, it is reasonable to project that my proposal could achieve a net annual savings of between $94 and $105 billion. I arrive at this sum by totaling the projected savings of $101 to $112 billion annually—$9 billion in small employer market reforms coupled with employer purchasing groups; $2.5 billion for preventive health services; $22 to $33 billion for reducing inappropriate care through outcomes research; $10 billion from advanced directives; $55 billion from increasing primary care providers; and $2.9 billion by reducing administrative costs and netting this against the $2.8 billion for long-term care; and $4.8 billion for increasing childrens' coverage. I ask unanimous consent that a list of anticipated savings and costs associated with the bill be included in the RECORD.

Although there are no precise savings estimates for each of these areas, I propose this bill as a starting point to address the remaining problems with our health care system. Experience will require modification of these projections, and I am prepared to work with my colleagues to develop implementing legislation and to press for further action in the important area of health care reform.

CONCLUSION

The provisions which I have outlined today contain the framework for providing affordable health care for all Americans. I am opposed to rationing health care. I do not want rationing for myself, for my family, or for America. The question is whether we have the essential resources—doctors and other health care providers, hospitals, and pharmaceutical products—to provide medical care for all Americans. I am confident that we do. The issue is how to pay for and deliver such health care.

In my judgment, we should not scrap, but rather we should build on our current health delivery system. We do not need the overwhelming bureaucracy that President Clinton and other Democratic leaders proposed in 1993 to accomplish this. I believe we can provide care for the 40.3 million Americans who are now not covered and reduce health care costs for those who are covered within the currently growing $1.1 trillion in health care spending.

With the savings projected in this bill, I believe it is possible to provide access to comprehensive affordable health care for 17.6 million Americans. This bill is a significant next step in obtaining that objective. It is obvious that reforming our health care system will not be achieved immediately or easily, but the time has come for concerted action in this arena.

I understand that there are several controversial issues presented in this bill and I am open to suggestions on possible modifications. I urge the congressional leadership, including the appropriate committee chairmen, to move this legislation and other health care bills forward promptly.

I ask unanimous consent that a summary and other material be printed in the RECORD.

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

HEALTH CARE ASSURANCE ACT OF 1997

SUMMARY OF THE BILL

Title I: Health Care Coverage for Children: Title I ensures health care coverage for all eligible children in the United States under the age of 18. States complying with rules approved by the Secretary shall receive federal funds to provide vouchers to families with eligible children. This will enable the states to enroll children in health plans that provide coverage for preventive, primary care, and acute care services. Payments to states will be calculated based upon the average annual cost of enrollment in a health care plan providing those types of services to children in the state. Children in families with a combined income of 185% of poverty level ($28,860 for a family of four) and not eligible for Medicaid will receive a full subsidy for enrollment in health plans, and children who are in families with incomes up to 235% of poverty level ($36,660 for a family of four) will receive a partial subsidy reduced on a sliding scale based on poverty level. States will have the flexibility to design and implement their programs as they see fit.

Title II: Health Care Insurance Coverage: Tax Equity for the Self-Employed: Provides self-employed individuals and their families 100 percent tax deductibility for the cost of health insurance coverage beginning in 2007. Under current law, beginning in 1997, self-employed persons may deduct 40 percent of cost; 45 percent in 1998 through 2002; 50 percent in 2003; 60 percent in 2004; 70 percent in 2005; and 80 percent in 2006 and thereafter. However, all other employers may deduct 100 percent of such costs. Title II corrects this inequity for the self-employed, 3.9 million of which are currently uninsured.

Small Employer and Individual Purchasing Groups: Establishes voluntary small employer and individual purchasing groups designed to provide affordable, comprehensive health coverage options for such employers, their employees, and other uninsured and underinsured individuals and families. Health plans offering coverage through such groups will: (1) provide a standard health benefits package; (2) adjust community rated premiums by age and family size in order to spread risk and provide price equity to all; and (3) meet certain other guidelines involving marketing practices.

Standard Benefits Package: The standard package of benefits would include a variation of benefits permitted among actuarially equivalent plans developed through the National Association of Insurance Commissioners (NAIC). The standard plan will consist of the following services when medically necessary or appropriate: (1) medical and surgical services; (2) medical equipment; (3) preventive services; and (4) emergency transportation in frontier areas.

COBRA Portability Reform: For those persons who are uninsured between jobs and for insured persons who fear losing coverage should they lose their jobs, Title II reforms the existing COBRA law by: (1) extending to 24 months the minimum time period in which COBRA covers individuals through their former employers' plans; and (2) expanding coverage options to include plans with a lower premium and a $1,000 deductible—saving a typical family of four 20 percent in monthly premiums—and plans with a lower premium and a $3,000 deductible—saving a family of four 52 percent in monthly premiums.

Title III: Primary and Preventive Care Services: Authorizes the Secretary of Health and Human Services to provide grants to States for projects (healthy start initiatives) to reduce infant mortality and low weight births and to improve the health and well-being of mothers and their families, pregnant women and infants. Title III also would provide assistance through a grant program to local education agencies and pre-school programs to provide comprehensive health education. In addition, Title III increases authorization of several existing preventive health programs such as, breast and cervical cancer prevention, childhood immunizations, and community health centers. In addition, Title II reauthorizes the Adolescent Family Life program (Title XX) for the first time since 1984. It has been funded annually in Labor, Health and Human Services and Education appropriations, but without authorization or reform. This program provides demonstration grants and contracts for initiatives focusing directly on issue of abstinence education.

Title IV: Patient's Right to Decline Medical Treatment: Improves the effectiveness and portability of advance directives by strengthening the federal law regarding patient self-determination and establishing uniform federal forms with regard to self-determination.

Title V: Primary and Preventive Care Providers: Utilizes non-physician providers such as nurse practitioners, physician assistants, and clinical nurse specialists by providing direct reimbursement without regard to the setting where services are provided through the Medicare and Medicaid programs. Title V also seeks to encourage students early on in their medical training to pursue a career in primary care and it provides assistance to medical training programs to recruit such students.

Title VI: Cost Containment: Cost containment provisions include: Outcomes Research: Expands funding for outcomes research necessary for the development of medical practice guidelines and increasing

consumers' access to information in order to reduce the delivery of unnecessary and overpriced care.

New Drug Clinical Trials Program: Authorizes a program at the National Institutes of Health to expand support for clinical trials on promising new drugs and disease treatments with priority given to the most costly diseases impacting the greatest number of people.

National Health Insurance Data and Claims System: Authorizes the development of a National Health Insurance Data System to curtail the escalating costs associated with paperwork and bureaucracy. The Secretary of Health and Human Services is directed to create a system to centralize health insurance and health outcomes information incorporating effective privacy protections. Standardizing such information will reduce the time and expense involved in processing paperwork, increase efficiency, and reduce costs.

Health Care Cost Containment and Quality Information Project: Authorizes the Secretary of Health and Human Services to award grants to States to establish a health care cost and quality information system or to improve an existing system. Currently 39 States have State mandates to establish an information system, and of those 39, approximately 20 States have information systems in operation. Information such as hospital charge data and patient procedure outcomes data, which the State agency or council collects is used by businesses, labor, health maintenance organizations, hospitals, researchers, consumers, States, etc. Such data has enabled hospitals to become more competitive, businesses to save health care dollars, and consumers to make informed choices regarding their care.

Title VII: Tax Incentives for Purchase of Qualified Long-Term Care Insurance: Increases access to long-term care by: (1) establishing a tax credit for amounts paid toward long-term care services of family members; (2) excluding life insurance savings used to pay for long-term care from income tax; (3) allowing employees to select long-term care insurance as part of a cafeteria plan and allowing employers to deduct this expense; (4) setting standards that require long-term care to eliminate the current bias that favors institutional care over community and home-based alternatives.

Title VIII: National Fund for Health Research: Authorizes the establishment of a National Fund for Health Research to supplement biomedical research through the National Institutes of Health. Funds will be distributed to each of the member institutes and centers in the same proportion as the amount of appropriations they receive for the fiscal year.

NET ANNUAL HEALTH CARE SYSTEM SAVINGS FROM THE HEALTH CARE ASSURANCE ACT OF 1997

[In billions of dollars]

Bill title	Annual savings	Annual cost
I—Increase health insurance coverage for children	.....	(4.8)
II—Small businesses group purchasing	9.0	
III—Preventive care services	2.5	
IV—Advanced directives	10	
V—Increase use of non-physician providers	55	
VI—Outcomes research	33	
—national electronic claims system	2.9	
VII—Long term care	.....	(2.8)
Net Annual Total Savings	104.	

[From the Pittsburgh Post Gazette, Oct. 12, 1996]

RAY ATTACKS NEW SPECTER BRAIN TUMOR

(By Steve Twedt)

U.S. Sen. Arlen Specter greeted well-wishers in spirited fashion yesterday, hours after undergoing a specialized radiation treatment at the University of Pittsburgh Medical Center to stop the regrowth of a benign brain tumor.

And, after answering reporters' questions at a hastily scheduled press conference, Specter, his wife, Joan, and son, Shanin, left the hospital, declining his doctor's suggestion that he stay overnight.

"I feel fine," he assured everyone. "I've had a tougher time when I've gone to the dentist."'

Specter, 66, revealed yesterday that, during a routine magnetic resonance imaging scan in June, doctors discovered that a tumor surgically removed three years earlier had reappeared at the left front part of his brain. He said he never felt any symptoms.

The tumor was one-tenth the size of the one found in 1993 and, because it grew slowly, Specter waited until the end of the congressional session to seek treatment.

He said he came to UPMC because of the experience and reputation of Dr. L. Dade Lunsford's gamma knife program, the first of its kind in North America when it began in 1987. The program has treated more than 2,000 patients during the past nine years.

The gamma knife is used to treat tumors and malformed blood vessels in sensitive areas of the brain. Without making a surgical cut, the machine precisely shoots 201 beams of cobalt-60 photon radiation at the tumor while the patient lies on a bed with a special helmet covering his head. Only a local anesthetic is used.

Specter's procedure took less than four hours. When the Philadelphia Republican met with reporters a few hours later, the only evidence of his treatment was a faint red mark on each side of his forehead from the pins used to hold his head still.

Lunsford, who is chief of neurosurgery at UPMC, said he saw no evidence that the tumor in Specter's brain, called a meningioma, was malignant, nor any indication of other tumors.

On the basis of his experience with other patients, Lunsford said, there's a 98 percent chance the gamma knife will accomplish its goal—halting the tumor's growth. Nearly half the time, the tumors will even shrink, he said.

Patients undergoing $12,000 gamma knife treatment usually do not experience nausea or headaches, and typically leave the hospital within 24 hours.

[From the East Penn Press, Nov. 4–10, 1996]

SOMETIMES PATIENTS SHOULD BE IMPATIENT

I can personally report on the miracles of modern medicine.

Three years ago, an MRI detected a benign tumor (meningioma) at the outer edge of my brain. It was removed by conventional surgery with five days of hospitalization and five more weeks of recuperation.

When a small regrowth was detected by a follow-up MRI this June, it was treated with high powered radiation from the "Gamma Knife." I entered the hospital in the morning and left the same afternoon, ready to resume my regular schedule. Like the MRI, the Gamma Knife is a recent invention, coming into widespread use in the past decade.

My own experience as a patient has given me deeper insights into the American health care system beyond the U.S. Senate hearings where I preside as chairman of the Appropriations Subcommittee with jurisdiction over health and human services. I have learned: (1) our health care system, the best in the world, is worth every cent we pay for it; (2) patients sometimes have to press their own cases beyond the doctors' standard advice; (3) greater flexibility must be provided on testing and treatment; and (4) our system has the resources to treat the 40 million Americans not now covered, but we must find the way to pay for it.

Health care in America costs $1 trillion out of our $7 trillion economy. The Senate and House Subcommittees on Health have taken the lead to raise funding for medical research for the National Institutes of Health.

Notwithstanding budget cuts generally, we added $820 million this year to bring the total research budget to $12.7 billion.

For that investment, we have seen dramatic breakthroughs in gene therapy and advances in treatment for heart disease, cancer, AIDS, diabetes, Alzheimers, etc. Scanning devices such as satellite imaging used by the CIA are now applied to detect breast cancer. Complex computerization assists MRIs to define the scope of treatment.

It isn't enough to have such machines. We have to use them more extensively.

In the spring of 1993, I complained to many doctors about a tightness in my collar and light pains running up the sides of my head. All tests proved negative. The symptoms persisted.

I asked for an MRI scan. The doctor said it wasn't indicated. I insisted. I got it. The MRI showed a benign tumor the size of a golf ball between my brain and skull.

While MRIs are expensive, those costs can be reduced by around-the-clock use of the machine. The marginal cost of operating it from midnight to 8 a.m. are small.

The inconvenience to the patient is worth it. The extra cost to insurance companies would be more than made up by preventing more serious illness and higher costs later.

While my June 1993 operation was performed by one of the finest surgeons at one of the best hospitals, I was among the approximately 15 percent where tiny cells at the margin apparently caused a small regrowth. The general recommendation was surgery.

A minority of doctors suggested consideration of a relatively new procedure known as the Gamma Knife. Since there was no urgency. I took some time to study the alternatives.

Most doctors, even some with extensive experience with the Gamma Knife, insisted on conventional surgery. Why? (1) Because that was the traditional approach; (2) because there was more long-term follow-up data on surgery even though successful Gamma Knife procedures were on record for more than 20 years; and (8) because the tumor was in a good location for surgery.

Somehow the Gamma Knife, it was argued, should be reserved for locations the surgeon's knife could not reach. But my tumor was also in a good spot for radiation.

My inquiries among doctors in the United States and Sweden (where the Gamma Knife was invented) disclosed almost universal agreement that the Gamma Knife, if unsuccessful, would not make the tumor more difficult to treat. Later surgery could always be utilized. The non-invasive Gamma Knife eliminated the risk of anesthesia and infection from surgery.

With a high success rate from the worldwide experience of 40,000 Gamma Knife procedures and 5,000 meningioma like my own,

it was hard to understand why it was not used more. I found Dr. Dade Lunsford at the University of Pittsburgh Presbyterian Hospital had to most experience in the United States with the Gamma Knife.

Since 1987, his team had used the procedure 2,100 times. Only one of his 270 memingioma patients had required later surgery. Dr. Lunsford estimated the overall success rate at 98 percent.

So I checked into the hospital at 6:15 one morning, had a brace attached to my head and took another MRI. All I required was local anesthesia before pins were pressed to my head to make the brace secure.

I then watched the computer calculate how much radiation should be applied to the tumor and its margins as shown on the MRI scan.

At about 9:30 a.m., my head was inserted into a 500 pound helmet with 201 holes which directed cobalt beams from all directions to focus on the meningioma. Each beam was relatively minute, but the confluence was high powered.

There were seven bombardments of radiation for three minutes or less. In between, my position was altered with one change of the helmet.

At about 10:50 a.m., the radiation was completed and a head compress was applied for two hours. After lunch and a brief conversation with Dr. Lunsford, we briefed the news media. I left the hospital in mid-afternoon to spend the night in a local hotel and then resume my schedule the next day.

Now, five days later, I feel fine. I am back on the squash court. I am back to my 14-hour days traveling across Pennsylvania.

An MRI will be taken in six months. I have some apprehension as to how it will all work out, but so far, so good. I feel very lucky!

Nothing is more important than a person's health. We have done a great job in the United States in producing the greatest health care system in the world. I am aware that it is better for some, like myself, than for others. I am convinced that America has the doctors, nurses, hospitals, medical equipment, pharmaceuticals, etc. to provide for all our people. My pending legislation provides a plan to do that with the current $1 trillion expenditure.

Informed, aggressive patients can do much to help themselves.

By Mr. MCCAIN (for himself, Mr. FEINGOLD, Mr. THOMPSON, Mr. WELLSTONE, Mr. GRAHAM, Mr. KERREY, Mr. DODD, Mr. KERRY, Mr. BINGAMAN, Mr. GLENN, Mrs. MURRAY, Mr. KOHL, Mr. WYDEN, Ms. MOSELEY-BRAUN, Mr. REID, Mr. FORD, Mr. LEAHY, Mr. CLELAND, Mr. JOHNSON, and Mr. DURBIN):

S. 25. A bill to reform the financing of Federal elections; to the Committee on Rules and Administration.

THE BIPARTISAN CAMPAIGN FINANCE BILL OF 1997

Mr. MCCAIN. Mr. President, I am pleased to be joined by Senators FEINGOLD, THOMPSON, and WELLSTONE in introducing the Bipartisan Campaign Finance Reform bill of 1997. This measure is similar to last year's bill that we introduced on the same subject. I will not lay out all the details of the bill at this time, but will submit for the record a summary of our bill at a later date.

Passage of campaign finance reform is necessary if we are to curb the public's growing cynicism for politics and Congress in particular. We can no longer wait to address this issue.

I am under no illusions that this will be an easy fight. No other issue is felt more personally by Members of this body. No other issue stirs the emotions of Members of the Senate more. But we were sent here to make tough decisions and we must address this subject.

The public demands that we achieve three goals: limit the role of money in politics, make the playing field more level between challengers and incumbents, and to pass a legislative initiative that will become law.

To pass a bill will require principled compromise and a great deal of work. I want the Members of my party to know that I am willing to work with you to address your concerns regarding this legislation. I want to let my friends know on the other side of the aisle that the offer also stands for them. The cosponsors for this bill are willing to negotiate technical aspects of the bill. The three principals I just outlined, however, are not negotiable.

Twenty-five years after Watergate, the electoral system is out of control. Our elections are awash in money which is flowing into the system at record levels. Some public interest groups estimate that when all is said and done, that nearly $1 billion will have been spent during this last election cycle. Something must be done.

Do we have the perfect solution? No. I do not know if a perfect solution even exists. But our bill, the McCain-Feingold-Thompson bill is a good first step toward reform. I hope that soon we will be on the floor debating this measure. I look forward to working with all my colleagues as we move forward. It is only in a bipartisan manner, putting parochial interests aside, that we will be able to do the people's business—that we will pass meaningful campaign finance reform.

Mr. FEINGOLD. I rise today to join with my colleague from Arizona [Mr. MCCAIN] in introducing the Bipartisan Campaign Reform Act.

I want to acknowledge the Democratic and Republican Senators who have agreed to join myself and the Senator from Arizona [Mr. MCCAIN] as original co-sponsors in introducing this historic legislation. Those co-sponsors include the Senator from Tennessee [Mr. THOMPSON], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Florida [Mr. GRAHAM], the Senator from Connecticut [Mr. DODD], the Senator from Nebraska [Mr. KERREY], the Senator from Massachusetts [Mr. KERRY], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Washington [Mrs. MURRAY], the Senator from Wisconsin [Mr. KOHL], the Senator from Oregon [Mr. WYDEN], the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from Kentucky [Mr. FORD], the Senator from Vermont [Mr. LEAHY], the Senator from Nevada [Mr. REID], the Senator from Georgia [Mr. CLELAND], the Senator from South Dakota [Mr. JOHNSON] and the Senator from Illinois [Mr. DURBIN].

I think it is clear Mr. President, that the few remaining pillars holding up our crumbling election system finally collapsed. According to the latest figures provided by the Federal Election Commission, congressional candidates spent a total of $742 million in the 1996 elections, a noticeable increase over the 1994 levels despite the absence of a single Senate contest in any of the largest States including California, New York, Florida, Pennsylvania, or Ohio. And that $742 million figure does not even include the record amounts of so-called "soft money" contributions raised and spent by the national political parties in the last election cycle.

Every campaign year we are hit with these astonishing spending figures and every year we acknowledge that a new record has been set. And just when the spending and abuses seem like they cannot get any worse, they do. Last November, our campaign finance system lurched out of control, filling the headlines and airwaves with charges and countercharges about which candidates and parties were abusing our laws and loopholes the worst. Another cadre of millionaires spent vast sums of personal wealth on their campaigns, 94 percent of House and Senate challengers lost their election bids, and the smallest percentage of Americans went to the ballot box in 72 years.

Coupled with the continued need to reduce the Federal budget deficit, there may be no more fundamentally important issue than the need to pass meaningful reform of our campaign finance system.

The bill we are introducing today has several components, but is centered primarily on what I believe are the two cornerstones of reform. The first cornerstone is the creation of a voluntary system that offers qualified candidates an opportunity to participate in the electoral process without being compelled to raise and spend outrageous sums of money.

This voluntary system merely says to candidates that if you agree to follow a set of ground rules, we will provide you with the tools that will not only reduce the high costs associated with campaigning, but at the same time enhance your ability to sufficiently convey your message to the voters of your State.

What are those ground rules and benefits, Mr. President.

First, candidates who elect to voluntarily participate in the system must agree to limit the overall amount of money they spend on their campaigns. This spending cap is based on the voting-age population in each State. For

example, in my State of Wisconsin the primary spending limit would be about $1 million while the general election cap would be about $1.5 million. In a larger State such as New York, the primary limit would be about $2.7 million while the general election limit would be about $4 million.

The second rule candidates must follow is to limit how much of their personal wealth they contribute to their campaigns. Again, this would be based on the size of each State. In Wisconsin, it would be about $150,000 and in no State would it be higher than $250,000.

Finally, candidates must agree to raise 60 percent of their contributions from individuals within their home States. This rule is grounded in our belief that anyone wishing to receive the benefits of the bill should be able to demonstrate a strong base of support from the people they intend to represent. Moreover, candidates and officeholders will be compelled to focus their campaign and fundraising activities on the people who matter most —the voters back home.

If candidates elect to participate in the system and follow these simple ground rules, they are entitled to certain benefits.

The first benefit is a postage discount. Eligible candidates would be given a special postage rate, currently only available to non-profit organizations and political parties, for a number of mailings equal to two times the voting-age population of the candidate's State.

Second, the bill provides each eligible candidate with up to 30 minutes of free television advertising time from the broadcast stations in the candidate's State and any adjoining States.

Third, and most importantly, the bill offers eligible candidates a 50-percent discount off of the lowest unit rate for their television advertising 60 days before their general election and 30 days before the primary. Current law merely provides Federal candidates with the lowest unit rate—our bill would cut the costs of television advertising for eligible candidates almost in half.

That, Mr. President, is the first foundation of meaningful reform, creating a voluntary system—purely voluntary—that provides candidates who agree to limit their campaign spending with the means to convey their ideas and message to the voters and also significantly reduce their campaign costs, therefore reducing the need to raise millions and millions of dollars.

The second foundation of reform is to ban so-called "soft money," those contributions to the national parties from corporations, labor unions and wealthy individuals that are unlimited and unregulated by federal election law and yet are funneled into federal campaigns around the country.

It was soft money, Mr. President, that garnered so much outrage in the last election. To illustrate how expansive of a loophole soft money has become, consider how much of this unregulated money the national parties have raised over the last two election cycles in which we had a presidential election. In 1992, the Republican National Committee raised $50 million in soft money while the Democratic National Committee raised $36 million. In 1996, the RNC raised $141 million while the DNC raised $122 million. Overall, soft money contributions to the two parties went from $86 million in 1992 to $263 million in 1996. That is a staggering increase.

In the wake of the countless media reports documenting this abuse, Americans were left wondering why an individual who is limited to contributing $1,000 to a federal candidate by federal election law is somehow able to contribute $100,000 or $1 million to the Democratic or Republican National Committees. They want to understand why labor unions and corporations, which are prohibited by law from using their treasury funds to make contributions or expenditures to advocate for or against a federal candidate, are able to funnel millions and millions of their treasury dollars directly into the two national parties and indirectly into various House and Senate elections. Clearly, a ban on soft money contributions to the political parties must be a part of a serious reform proposal.

The Supreme Court has spoken clearly on the constitutionality of limiting campaign contributions from individuals and organizations. They have upheld the statutes barring corporate and labor union direct contributions. They have upheld the statute limiting individuals to contributing $1,000 to federal candidates per election and $20,000 to national parties per year. And yet the soft money loophole has allowed interested parties to blow these limits away, leaving the average citizen who wishes to contribute $25 to their local congressman wondering just how much of a voice they have in the electoral process.

The McCain-Feingold proposal simply bans all soft money contributions to the national parties. Individuals can still contribute to the national parties, but they will have to abide by the current law $20,000 "hard money" limit. Corporations and labor unions will also be able to contribute to the national parties, but they too will have to follow the "hard money" limits. That means they will have to contribute through their separate segregate funds, also known as PAC's, rather than using their general treasury funds, and their contributions to the national parties will be limited to $15,000 per party committee per year.

We heard considerable debate in the last election about foreign money—both coming from foreign nationals oversees, which is clearly illegal, and from noncitizens residing in the United States, which is not. This is a problem and we have a new provision in our legislation to address this abuse. But I have always said that the problem is whether anyone should be permitted to contribute $400,000 in our election system, whether it is from Jakarta or Janesville, WI. And the soft money ban in our legislation will prohibit any future such contributions, regardless of their source.

The legislation includes a new proposal that bars anyone who is not eligible to vote in a federal election from contributing to a federal candidate. This will affect noncitizens, minors under 18 years of age and certain convicted felons. Simply put, if our laws and Constitution do not allow an individual to participate in the political process with their ballot, there is no reason the same individual should be permitted to participate with their checkbook.

The McCain-Feingold bill includes a number of other important provisions as well. For example, we propose a new definition of what constitutes "express advocacy" in a federal election. "Express advocacy" is the standard used to determine to what extent election activities may be limited and regulated. If a particular activity, such as an independent expenditure, is deemed to expressly advocate the election or defeat of a particular federal candidate, then that activity must be paid for with fully disclosed and limited "hard money" dollars. Labor unions, corporations and other political organizations would have to fund such activities through a PAC, comprised of voluntary, limited and disclosed contributions.

If on the other hand, an expenditure is used for an activity that does not expressly advocate the election or defeat of a particular candidate, such as a television ad that attempts to raise important issues without advocating a candidate, then that expenditure may be funded with "soft money" dollars—undisclosed and unlimited monies, such as corporation's profits or a labor union's member dues.

Unquestionably, the largest abuse in recent elections is the use of non-party soft money to fund huge electioneering activities under the guise that there is an absence of express advocacy. Current FEC regulations defining express advocacy are so weak that these organizations are able to channel unlimited resources into activities that are thinly veiled as "voter education" or "issue ads" when in truth they seek to directly advocate the election or defeat of a candidate.

These activities, outside the scope of federal election law, have come to dominate many House and Senate campaigns. And while political parties and outside organizations have poured unlimited resources into these "issue

ads," candidates have found their role in their own elections shockingly diminished.

If we are to have any control of our election process, we must have a clear standard in the law that defines what sort of activities are an attempt to influence the outcome of a federal election.

The McCain-Feingold proposal includes a new definition of what constitutes "express advocacy." Under this proposal, the definition of "express advocacy" will include any general public communication that advocates the election or defeat of a clearly identified candidate for federal office by using such expressions as "vote for", "support" or "defeat". Further, any disbursement aggregating $10,000 or more for a communication that is made within 30 days of a primary election or 60 days of a general election shall be considered express advocacy if the communication refers to a clearly identified candidate and a reasonable person would understand it as advocating the election or defeat of that candidate.

If such a communication is made outside of the 30 day period before the primary election or the 60 day period before the general election, it shall be considered express advocacy if the communication is made with the purpose of advocating the election or defeat of a candidate as shown by one or more factors including a statement or action by the person making the communication, the targeting or placement of the communication, or the use by the person making the communication of polling or other similar data relating to the candidate's campaign or election.

This will ensure that a much larger proportion of the expenditures made by political parties and independent organizations with the intent to influence the outcome of a federal election will be covered by federal law and subject to the appropriate restrictions and disclosure requirements.

The McCain-Feingold proposal will also protect candidates who are targeted by independent expenditures. First, the legislation requires groups who fund independent expenditures to immediately disclose those expenditures. The FEC would then be required to transmit a copy of that report to any candidate who has agreed to limit their spending and has been targeted by such an expenditure. This will give candidates advance notice that they have been targeted. The legislation also allows candidates to respond to such expenditures without these "response expenditures" counting against their overall spending limit. This will ensure that targeted candidates are not bound by the spending caps and unable to respond. And finally, the bill tightens statutory language to ensure that independent expenditures made by political parties are truly independent and not coordinated with campaigns in any way.

The legislation also includes a ban on Political Action Committee [PAC] contributions to federal candidates. In case such a ban is held to be unconstitutional by the Supreme Court, the legislation includes a "back-up" provision that lowers the PAC contribution limit from $5,000 to $1,000 and limits Senate candidates to accepting no more than 20% of the applicable overall spending limit in aggregate PAC contributions.

The bipartisan bill is further helpful to challengers in that it prohibits Senators from sending out taxpayer-financed, unsolicited franked mass mailings in the calendar year of an election. Often, these mass mailings are thinly disguised "newsletters" that help to bolster an incumbent's name recognition and inform constituents of their accomplishments. Such unsolicited activity by officeholders can be unfair in an election year.

The final major piece of this reform effort is our enhanced enforcement provisions. There is legitimate criticism that our federal election laws are not adequately enforced, and much of this problem can be directly attributed to Congress' unwillingness to provide adequate funding to what is supposed to be the government's watchdog agency, the Federal Election Commission. Regardless, there are reforms we can pass that will allow the FEC to better enforce the current laws we have on the books as well as the new laws enacted as part of this legislation.

First and foremost is a provision that will require all federal campaigns to file their disclosure reports with the FEC electronically. Currently, this is optional and the result is a disclosure system that is marginally reliable. We need a disclosure system that is readily accessible to the public and will allow the American people to know where from and to whom the money is flowing. The bill also requires candidates to disclose the name and address of every contributor who gives more than $50 to a candidate. Currently, that threshold is only for contributions over $200 and the result is millions of dollars of undisclosed contributor information.

Second, we allow the FEC to conduct random audits of campaigns. This will provide a mechanism to make sure candidates are complying with all of the limitations and restrictions in federal election law.

The bill toughens penalties for "knowing and willful" violations of the law. If such a standard is met, the FEC is permitted to triple the amount of the civil penalty. We must send a message to candidates and campaigns that deliberate attempts to evade the law will be met with serious penalties.

Mr. President, the support the McCain-Feingold proposal garnered last year was bipartisan and broad based. It was strongly supported by President Clinton, who first endorsed the McCain-Feingold proposal in his State of the Union Address almost one year ago and has recently reaffirmed his strong commitment to the legislation this year. It was endorsed by Ross Perot, Common Cause, Public Citizen, United We Stand America, the American Association of Retired Persons and some 30 other grassroots organizations. It received editorial support from over 60 newspapers nationwide.

This legislation is also bicameral. Republican Representative CHRIS SHAYS, Democratic Representative MARTY MEEHAN and a number of others will soon be introducing a House version of the McCain-Feingold proposal in the 105th Congress.

Recently, the Wall Street Journal conducted a poll on this issue. They found that 92 percent of the American people believe we spend too much money on political campaigns. This is consistent with numerous other polls that have found similar results. Coupled with the troubling fact that the smallest percentage of Americans went to the ballot box in 72 years, it is clear that the American people want meaningful reform of our electoral process. It is also clear that they want less polarization in the Congress, and for Democrats and Republicans to work together and find effective solutions to our common problems.

For years, campaign finance reform has stalled because of the inability of the two parties to join together and craft a reform proposal that was fair to both sides. We believed we have bridged those differences, and produced a proposal that calls for mutual disarmament and will lead to fair and competitive elections.

It is my hope that the distinguished majority leader will recognize how important this issue is to the American people and our democratic system and will allow this legislation to be considered in the coming weeks. I want to thank my friend from Arizona [Mr. MCCAIN] for his dedication to this issue.

Mr. THOMPSON. Mr. President I join my colleagues in introducing our campaign finance reform legislation with mixed emotions. On the one hand, I am more optimistic about the chances of our being able to enact reforms than I was when we introduced our bill over a year ago. On the other hand, I regret that it has taken another round of public disappointment and anger over the role of money in federal elections to bring us to this point.

The factors which led us to introduce this legislation in the last Congress have become even more prominent. Too much money is needed, too much time must be spent raising it, too much is asked of a limited number of special interests, and too much is going

on outside of the regulatory system we established—some within the bounds of the law, some allegedly not.

Most importantly, in my view, the public is increasingly concerned by what they see happening here. If they have no faith in the system which put us here, if they are turned off by what we do to get elected, how are they going to trust us to carry out our work in their best interests?

Next, money raising consumes an inordinate amount of office-holders' and candidates' time and effort. Candidates should be reaching out to as broad a spectrum of people and interests as possible, and not feel they must concentrate on those who can afford to make a donation.

Last, it is difficult for a challenger to raise sufficient funds to get his or her message out. Congress needs to move away from professionalism and more toward a citizen legislature. The process should be more open, instead of more closed. Because of the role money plays, unless a candidate has access to large sums of money, he or she is pretty much cut out of the process.

I believe the revised legislation I am joining my colleagues Senators MCCAIN and FEINGOLD in introducing provides some solutions to these problems. It doesn't provide all the solutions, or perfect solutions, but it is a good faith effort and, in my view, a good place to start.

This legislation reduces the appearance and reality of special interests buying and selling political favors by prohibiting federal PACs, restricting contribution "bundling", prohibiting so-called "soft money", and putting a cap on out-of-state fundraising. I do not believe PACs are inherently evil. There are other ways special interests can enhance their financial influence in a campaign. Contributions are bundled, or the word just goes out that a particular interest—be it business, or social, or labor—is concentrating donations on a particular race. PACs are a more formal association of people with common interests. Our test in legislating reforms should be whether the public feels they continue to serve an acceptable purpose.

Furthermore, in this revised bill we have tightened up on the definitions of independent and coordinated expenditures, as well as those for express advocacy. Today we have a system under which, in many cases, the majority of the expenditures in an election are outside the system and the candidate's control. In 1992, "soft money" expenditures by the Republican and Democratic parties totaled $86 million. In 1996, they totaled $263 million. It is little wonder that we are looking at where some of it came from.

I look forward to working with our colleagues on both sides of the aisle, in the House of Representatives, and with the President to fashion and pass meaningful reform. I believe a successful effort will renew the public's faith in our system and in us, and thus in our ability to do what they sent us here to do.

Mr. WELLSTONE. Mr. President. I am extremely pleased to be an original cosponsor of the McCain-Feingold-Thompson-Wellstone campaign finance reform bill. I hope the Senate will bring it to the floor very early in this Congress—preferably during the first three months of this year. Campaign finance reform is clearly one of the most crucial issues we face, and the public is more than ready for fundamental reform.

I have been working hard with my colleagues on this bipartisan bill, which we hope becomes the vehicle for genuine reform this year. I hope that public dissatisfaction with campaign politics-as-usual, especially as exemplified by the abuses of the campaign season just past, will push this Congress to act decisively. We should choose the best aspects of the various bills that will be introduced this year and fix the problems which have made themselves so apparent. We know there will opposition to any significant changes in the way we organize and finance campaigns for federal office, but if there is sufficient pressure from around the country, we can pass real reform.

So let us bring this bill to the floor and amend it. No reform bill is perfect. Let Republicans and Democrats offer their changes. As the only viable, bipartisan campaign finance reform bill, this proposal represents our best hope for taking a significant step toward genuine reform.

In some ways this bill does not go as far as I believe will be necessary in order to repair our damaged campaign finance system. But it would ban "soft money" contributions to parties. It would impose voluntary spending limits and require greater disclosure of independent expenditures. It would restrict PAC contributions and "bundling," and it would place more restrictions on foreign contributions. It is a good bill. Its enactment would be an excellent start toward restoring integrity to our political process.

We must enact comprehensive reform. But I am especially committed this year to addressing the striking abuses in the areas of "soft money" and issue-advocacy ads. A system which invites circumvention mocks itself.

Mr. President, I intend to speak at greater length in the coming days on the subject of campaign finance reform. Today, I enthusiastically endorse this bipartisan effort to move real reform and to begin to restore Americans' belief in our democratic institutions.

By Mr. DASCHLE (for himself, Mr. JOHNSON, Mr. DORGAN, Mr. CONRAD, Mr. KERREY, and Mr. BINGAMAN):

S. 26. A bill to provide a safety net for farmers and consumers and to promote the development of farmer-owned value added processing facilities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

AGRICULTURAL SAFETY NET ACT OF 1997

Mr. DASCHLE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 26

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 "Agricultural Safety Net Act of 1997".

SEC. 2. MARKETING ASSISTANCE LOANS.

(a) IN GENERAL.—Section 132 of the Agricultural Market Transition Act (7 U.S.C. 7232) is amended—

(1) in subsection (a)(1)—

(A) by striking "be—" and all that follows through "(A) not" and inserting "be not"; and

(B) by striking "; but" and all that follows through "per bushel";

(2) in subsection (b)(1)—

(A) by striking "be—" and all that follows through "(A) not" and inserting "be not"; and

(B) by striking "; but" and all that follows through "per bushel";

(3) in subsection (c)(2), by striking "or more than $0.5192 per pound";

(4) in subsection (d)—

(A) by striking "be—" and all that follows through "(1) not" and inserting "be not"; and

(B) by striking "; but" and all that follows through "per pound"; and

(5) in subsection (f)—

(A) in paragraph (1)(B), by striking "or more than $5.26"; and

(B) in paragraph (2)(B), by striking "or more than $0.093".

(b) TERM OF LOAN.—Section 133 of the Agricultural Market Transition Act (7 U.S.C. 7233) is amended by striking subsection (c) and inserting the following:

"(c) EXTENSIONS.—The Secretary may extend the term of a marketing assistance loan for any loan commodity for a period not to exceed 6 months.".

SEC. 3. EXPANSION OF CROP REVENUE INSURANCE.

Section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) is amended—

(1) in subsection (b)—

(A) by striking paragraph (9); and

(B) by redesignating paragraph (10) as paragraph (9); and

(2) by adding at the end the following:

"(o) CROP REVENUE INSURANCE.—

"(1) IN GENERAL.—The Secretary shall offer a producer of wheat, feed grains, soybeans, or such other commodity as the Secretary considers appropriate insurance against loss of revenue from prevented or reduced production of the commodity, as determined by the Secretary.

"(2) ADMINISTRATION.—Revenue insurance under this subsection shall—

"(A) be offered by the Corporation or through a re-insurance arrangement with a private insurance company;

"(B) offer at least a minimum level of coverage that is an alternative to catastrophic crop insurance; and

"(C) be actuarially sound".

SEC. 4. PRIORITY FOR FARMER-OWNED VALUE-ADDED PROCESSING FACILITIES.

Section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) is amended by adding at the end the following:

"(h) PRIORITY FOR FARMER-OWNED VALUE-ADDED PROCESSING FACILITIES.—In approving applications for loans and grants authorized under this section, section 306(a)(11), and other applicable provisions of this title (as determined by the Secretary), the Secretary shall give a high priority to applications for projects that encourage farmer-owned value-added processing facilities.".

By Mr. THURMOND:

S. 27. A bill to amend title 1 of the United States Code to clarify the effect and application of legislation; to the Committee on the Judiciary.

AN ACT TO CLARIFY THE APPLICATION AND EFFECT OF LEGISLATION

Mr. THURMOND. Mr. President, I rise today to introduce an act to clarify the application and effect of legislation which the Congress enacts. My act provides that unless future legislation expressly states otherwise, new enactments would be applied prospectively, would not create private rights of action, and would be presumed not to preempt existing State law. This will significantly reduce unnecessary litigation and court costs, and will benefit both the public and our judicial system.

The purpose of this legislation is quite simple. Many congressional enactments do not indicate whether the legislation is to be applied retroactively, whether it creates private rights of action, or whether it preempts existing State law. The failure or inability of the Congress to address these issues in each piece of legislation results in unnecessary confusion and litigation. Additionally, this contributes to the high cost of litigation and the congestion of our courts.

In the absence of action by the Congress on these critical threshold questions of retroactivity, private rights of action and preemption, the outcome is left up to the courts. The courts are frequently required to resolve these matters without any guidance from the legislation itself. Although these issues are generally raised early in a lawsuit, a decision that the lawsuit can proceed generally cannot be appealed until the end of the case. If the appellate court eventually rules that one of these issues should have prevented the trial, the litigants have been put to substantial burden and unnecessary expense which could have been avoided.

Trial courts around the country often reach conflicting and inconsistent results on these issues, as do appellate courts when the issues are appealed. As a result, many of these cases eventually make their way to the Supreme Court. This problem was dramatically illustrated after the passage of the Civil Rights Act of 1991. District courts and courts of appeal all over this Nation were required to resolve whether the 1991 act should be applied retroactively, and the issue ultimately was considered by the U.S. Supreme Court. However, by the time the Supreme Court resolved the issue in 1994, well over 100 lower courts had ruled on this question, and their decisions were split. Countless litigants across the country expended substantial resources debating this threshold procedural issue.

In the same way, the issues of whether new legislation creates a private right of action or preempts State law are frequently presented in courts around the country, yielding expensive litigation and conflicting results.

The bill I am introducing today eliminates this problem by providing the rule of construction that, unless future legislation specifies otherwise, newly enacted laws are not to be applied retroactively, do not create a private right of action, and are presumed not to preempt State law. Of course, my bill does not in any way restrict the Congress on these important issues. The Congress may override this ordinary rule by simply stating when it wishes legislation to be retroactive, create new private rights of action or preempt existing State law.

This act will eliminate uncertainty and provide rules which are applicable when the Congress fails to specify its position on these important issues in legislation it passes. One U.S. District Judge in my State informs me that he spends 10 to 15 percent of his time on these issues. It is clear that this legislation would save litigants and our judicial system millions and millions of dollars by avoiding much uncertainty and litigation which currently exists over these issues.

Mr. President, if we are truly concerned about relieving the backlog of cases in our courts and reducing the costs of litigation, we should help our judicial system to focus its limited resources, time and effort on resolving the merits of disputes, rather than deciding these preliminary matters.

By Mr. LUGAR:

S. 29. A bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers; to the Committee on Finance.

S. 30. A bill to increase the unified estate and gift tax credit to exempt small businesses and farmers from inheritance taxes; to the Committee on Finance.

S. 31. A bill to phase out and repeal the Federal estate and gift taxes and the tax on generation-skipping transfers; to the Committee on Finance.

ESTATE TAX LEGISLATION

Mr. LUGAR. Mr. President, I am pleased to introduce three bills aimed at eliminating the burden that estate and gift taxes place on our economy. My first bill would repeal the estate and gift taxes outright. My second bill would phase out the estate tax over 5 years by gradually raising the unified credit each year until the tax is repealed after the fifth year. My third bill would immediately raise the effective unified credit from $600,000 to $5 million in an effort to address the disproportionate burden that the estate tax places on farmers and small businesses.

I believe the best option is a simple repeal of the estate tax. I am hopeful that during this Congress, as Members become more aware of the effects of this tax, we can eliminate it from the Tax Code. However, even if the estate tax is not repealed, the unified credit must be raised. The credit has not been increased since 1987 when it was established at the $600,000 level. Since then, inflation has caused a growing percentage of estates to be subjected to the estate tax. My second bill is intended to highlight this point and provide a gradual path to repeal.

Finally, my third bill focuses on relieving the estate tax burden that falls disproportionately on farmers and small business owners. By raising the exemption amount from $600,000 to $5 million, 96 percent of estates with farm assets and 90 percent of estates with noncorporate business assets would not have to pay estate taxes, according to the IRS.

The estate tax began as a temporary tax in 1916, limited to 10 percent of one's inheritance. The tax intended to prevent the accumulation of wealth in the hands of a few families. Today, however, the effect is often the opposite. The estate tax forces many family-owned farms and small businesses to sell to larger corporations, further concentrating the wealth.

The estate tax has mushroomed into an exorbitant tax on death that discourages savings, economic growth and job formation by blocking the accumulation of entrepreneurial capital and by breaking up family businesses and farms. With the highest marginal rate at 55 percent, more than half of an estate can go directly to the government. By the time the inheritance tax is levied on families, their assets have already been taxed at least once. This form of double taxation violates perceptions of fairness in our tax system.

In addition to tax liabilities, families often must pay lawyers, accountants and planners to untangle one of the most complicated areas of our tax code. In 1996, a Gallup poll estimated that a small family-owned business spent an average of $33,138 for lawyers and accountants to settle estates with the IRS. Larger family-owned businesses averaged $70,000. Families averaged 167 hours complying with the Byzantine rules of the estate tax, and the

IRS estimates that they must audit nearly 40 percent of estate tax returns—a much higher rate than the 1.7 percent audit rate on incomes taxes.

Let us consider the consequences of the estate tax on the American economy. The estate tax is counterproductive because it falls so heavily on our most dynamic job creators—small businesses. About two out of every three new jobs in this country are created by small business. From 1989 to 1991, a period of unusually slow economic growth, virtually all new net jobs were created by firms with fewer than twenty employees.

Recent economic studies and surveys of small business owners support the thesis that the estate tax discourages economic growth. A 1994 study by the Tax Foundation concluded that the estate tax may have roughly the same effect on entrepreneurial incentives as would a doubling of income tax rates. A 1996 report prepared by Price Waterhouse found that even more family business owners were concerned about estate taxes than about capital gains taxes. A Gallup poll found that one-third of family-owned businesses expect to sell their family's firm to pay estate tax liability. Sixty-eight percent said the estate tax makes them less likely to make investments in their business, and 60 percent said that without an estate tax, they would have expanded their workforce.

If we are sincere about boosting economic growth, we must consider what effect the estate tax has on a business owner deciding whether to invest in new capital goods or hire a new employee. We must consider its affect on a farmer deciding whether to buy new land, additional livestock or a new tractor. If you know that when you die your children will probably have to sell the business you build up over your lifetime, does that make you more likely to take the risk of starting a new business or enlarging your present business? It is apparent that the estate tax does discourage business and farm investments.

One might expect that for all the economic disincentives caused by the estate tax, it must at least provide a sizable contribution to the U.S. Treasury. But in reality, the estate tax only accounts for about 1 percent of federal taxes. It cannot be justified as an indispensable revenue raiser. Given the blow delivered to job formation and economic growth, the estate tax may even cost the Treasury money. Our nation's ability to create new jobs, new opportunities and wealth is damaged as a result of our insistence on collecting a tax that earns less than 1 percent of our revenue.

But this tax affects more than just the national economy. It affects how we as a nation think about community, family and work. Small businesses and farms represent much more than assets. They represent years of toil and entrepreneurial risk taking. They also represent the hopes that families have for their children. Part of the American Dream has always been to build up a business, farm or ranch so that economic opportunities and a way of life can be passed on to one's children and grandchildren.

I have some personal experience in this area. My father died when I was in my early thirties, leaving his 604-acre farm in Marion County, Indiana, to his family. I managed the farm, which built up considerable debts during my father's illness at the end of his life. Fortunately, after a number of years, we were successful in working out the financial problems and repaying the money. We were lucky. That farm is profitable and still in the family. But many of today's farmers and small business owners are not so fortunate. Only about 30 percent of businesses are transferred from parent to child, and only about 12 percent of businesses make it to a grandchild.

The strongest negative effects of the estate tax are felt by the American family farmer. Currently, proprietorships and partnerships make up about 95 percent of farms and ranches. In the vast majority of cases, family farms do not produce luxurious lifestyles for their owners. Farmers have large assets but relatively little income. The income of a family-run farm depends on modest returns from sizable amounts of invested capital. Much of what the farmer makes after taxes in reinvested into the farm, bolstering the estate-tax-derived "paper value" even more.

As happens so often, family farms cannot maintain the cash assets necessary to pay estate taxes upon the death of the owner. Frequently, selling part of a farm is not an option, either because there is no suitable buyer or because reducing acreage would make the operation inviable. In these cases, a fire-sale of the family farm or business is required to pay the estate tax. Devastating to any business, such a forced sale hits farm families particularly hard because they frequently must sell at a price far below the invested value. Entire lifetimes of work are liquidated, and the skills of family members experienced in agriculture are lost to the American economy.

Mr. President, I introduce today a set of bills to repeal the estate tax in an effort to expand investment incentives and job creation and to reinvigorate an important part of the American Dream. I am hopeful that Senators will join me in the effort to free small businesses, family farms and our economy from this counterproductive tax.

By Mr. THURMOND:

S. 32. A bill to amend title 28 of the United States Code to clarify the remedial jurisdiction of inferior Federal courts; to the Committee on the Judiciary.

JUDICIAL TAXATION PROHIBITION ACT

Mr. THURMOND. Mr. President, I rise today to introduce legislation to prohibit Federal judges from ordering new taxes or ordering increases in existing tax rates as a judicial remedy.

In 1990, the Supreme Court decided in Missouri versus Jenkins to allow Federal judges to order new taxes or increases as a judicial remedy. It is my firm belief that this narrow 5 to 4 decision permits Federal judges to exceed their proper boundaries of jurisdiction and authority under the Constitution.

Mr. President, this ruling and congressional response raises two constitutional issues which warrant discussion. One is whether Federal courts have authority under the Constitution to inject themselves into the legislative area of taxation. The second constitutional issue arises in light of the Judicial Taxation Prohibition Act which I am now introducing to restrict the remedial jurisdiction of the Federal courts. This narrowly drafted legislation would prohibit Federal judges from ordering new taxes or ordering increases in existing tax rates. I believe it is clear under article III that the Congress has the authority to restrict the remedial jurisdiction of the Federal courts in this fashion.

First, I want to speak on the issue of judicial taxation. Not since Great Britain's ministry of George Grenville in 1765 have the American people faced the assault of taxation without representation as now authorized in the Jenkins decision.

As part of his imperial reforms to tighten British control in the colonies, Grenville pushed the Stamp Act through the Parliament in 1765. This Act required excise duties to be paid by the colonists in the forms of revenue stamps affixed to a variety of legal documents. This action came at a time when the colonies were in an uproar over the Sugar Act of 1764 which levied duties on certain imports such as sugar, indigo, coffee, linens and other items.

The ensuing firestorm of debate in America centered on the power of Britain to tax the colonies. James Otis, a young Boston attorney, echoed the opinion of most colonists stating that the Parliament did not have power to tax the colonies because Americans had no representation in that body. Mr. Otis had been attributed in 1761 with the statement that "taxation without representation is tyranny."

In October, 1765, delegates from nine states were sent to New York as part of the Stamp Act Congress to protest the new law. It was during this time that John Adams wrote in opposition to the Stamp Act, "We have always understood it to be a grand and fundamental principle . . . that no freeman shall be subject to any tax to which he has not

given his own consent, in person or by proxy." A number of resolutions were adopted by the Stamp Act Congress protesting the acts of Parliament. One resolution stated, "It is inseparably essential to the freedom of a people . . . that no taxes be imposed on them, but with their own consent, given personally or by their representatives." The resolutions concluded that the Stamp Act had a "manifest tendency to subvert the rights and liberties of the colonists."

Opposition to the Stamp Act was vehemently continued through the colonies in pamphlet form. These pamphlets asserted that the basic premise of a free government included taxation of the people by themselves or through their representatives.

Other Americans reacted to the Stamp Act by rioting, intimidating tax collectors, and boycotts directed against England. While Grenville's successor was determined to repeal the law, the social, economic and political climate in the colonies brought on the American Revolution. The principles expressed during the earlier crisis against taxation without representation became firmly embedded in our Federal Constitution of 1787.

Yet, the Supreme Court has overlooked this fundamental lesson in American history. The Jenkins decision extends the power of the judiciary into an area which has traditionally been reserved as a legislative function within the Federal, State, and local governments. In the Federalist No. 48, James Madison explained that in our democratic system, "the legislative branch alone has access to the pockets of the people."

This idea has remained steadfast in America for over 200 years. Elected officials with authority to tax are directly accountable to the people who give their consent to taxation through the ballot box. The shield of accountability against unwarranted taxes has been removed now that the Supreme Court has sanctioned judicially imposed taxes. The American citizenry lacks adequate protection when they are subject to taxation by unelected, life tenured Federal judges.

There are many programs and projects competing for a finite number of tax dollars. The public debate surrounding taxation is always intense. Sensitive discussions are held by elected officials and their constituents concerning increases and expenditures of scarce tax dollars. To allow Federal judges to impose taxes is to discount valuable public debate concerning priorities for expenditures of a limited public resource.

Mr. President, the dispositive issue presented by the Jenkins decision is whether the American people want, as a matter of national policy, to be exposed to taxation without their consent by an independent and insulated judiciary. I most assuredly believe they do not.

This brings us to the second Constitutional issue which we must address in light of this Jenkins decision. That issue is congressional authority under the Constitution to limit the remedial jurisdiction of lower Federal courts established by the Congress. Article III, Section 1, of the Constitution provides jurisdiction to the lower Federal courts as the "Congress may from time to time ordain and establish." There is no mandate in the Constitution to confer equity jurisdiction to the inferior Federal courts. Congress has the flexibility under Article III to "ordain and establish" the lower Federal courts as it deems appropriate. This basic premise has been upheld by the Supreme Court in a number of cases including Lockerty versus Phillips, Lauf versus E.G. Skinner and Co., Kline versus Burke Construction Co., and Sheldon versus Sill.

This legislation would preclude the lower Federal courts from issuing any order or decree requiring imposition of "any new tax or to increase any existing tax or tax rate." I firmly believe that this language is wholly consistent with Congressional authority under Article III, Section 1 of the Constitution.

There is nothing in this legislation which would restrict the power of the Federal courts from hearing constitutional claims. It accords due respect to all provisions of the Constitution and merely limits the availability of a particular judicial remedy which has traditionally been a legislative function. The objective of this legislation is straightforward, to prohibit Federal courts from increasing taxes. The language in this bill applies to the lower Federal courts and does not deny claimants judicial access to seek redress of any Federal constitutional right.

Mr. President, how long will it be before a Federal judge orders tax increases to build new highways or prisons? I do not believe the Founding Fathers had this type of activism in mind when they established the judicial branch of government. The role of the judiciary is to interpret the law. The power to tax is an exclusive legislative right belonging to the Congress and governments at the state level. We are accountable to the citizens and must justify any new taxes. The American people deserve a timely response to the Jenkins decision and we must provide protection against the imposition of taxes by an independent judiciary.

By Mr. THURMOND:

S. 33. A bill to provide that a Federal justice or judge convicted of a felony shall be suspended from office without pay, to amend the retirement age and service requirements for Federal justices and judges convicted of a felony, and for other purposes; to the Committee on the Judiciary.

FEDERAL JUDGE LEGISLATION

Mr. THURMOND. Mr. President, today I am introducing legislation which provides that a justice or judge convicted of a felony shall be suspended from office without pay pending the disposition of impeachment proceedings.

I believe that the citizens of the United States will agree that those who have been convicted of felonies should not be allowed to continue to occupy positions of trust and responsibility in our Government. Nevertheless, under current constitutional law it is possible for judges to continue to receive a salary and to still sit on the bench and hear cases even after being convicted of a felony. If they are unwilling to resign, the only method which may be used to remove them from the Federal payroll is impeachment.

Currently, the Congress has the power to impeach officers of the Government who have committed treason, bribery, or other high crimes and misdemeanors. Even when a court has already found an official guilty of a serious crime, Congress must then essentially retry the official before he or she can be removed from the Federal payroll. The impeachment process is typically very time consuming and can occupy a great deal of the resources of Congress.

Mr. President, one way to solve this problem would be to amend the Constitution. Today, I am also introducing a Senate resolution proposing a constitutional amendment providing for forfeiture of office by Government officials and judges convicted of felonies involving moral turpitude. While I believe that a constitutional amendment may be the best solution to the problem, I am also introducing this statutory remedy to address the current situation.

This legislation will provide that a judge convicted of a felony involving moral turpitude shall be suspended from office without pay. The legislation specifies that the suspension begins upon conviction and that no additional time accrues toward retirement from that date. However, the judge would be reinstated if the criminal conviction is reversed upon appeal or if articles of impeachment do not result in conviction by the Senate.

Mr. President, the framers of the Constitution could not have intended convicted felons to continue to serve on the bench and to receive compensation once they have seriously violated the law and the trust of the people. I urge my colleagues to carefully consider this legislation.

By Mr. FEINGOLD:

S. 34. A bill to phase out Federal funding of the Tennessee Valley Authority; to the Committee on Environment and Public Works.

TENNESSEE VALLEY AUTHORITY LEGISLATION

Mr. FEINGOLD. Mr. President, today I am introducing legislation, similar to that which I sponsored in the 104th Congress, to terminate funding for little known activities of the Tennessee Valley Authority [TVA], the TVA's nonpower programs, that are funded by appropriated funds. In fiscal year 1997, Congress appropriated a total of $106 million to support these programs.

The TVA was created in 1933 as a government-owned corporation for the unified development of a river basin comprised of parts of seven States. Those activities included the construction of an extensive power system, for which the region is now famous, and regional development or "nonpower" programs. TVA's responsibilities in the nonpower programs include maintaining its system of dams, reservoirs and navigation facilities, and managing TVA-held lands. In addition, TVA provides recreational programs, makes economic development grants to communities, promotes public use of its land and water resources, and operates an Environmental Research Center. Only the TVA power programs are intended to be self-supporting, by relying on TVA utility customers to foot the bill. The expense of these "nonpower" programs, on the other hand, are covered by appropriated taxpayer funds.

This legislation terminates funding for all appropriated programs of the TVA after fiscal year 2000. While I understand the role that TVA has played in our history, I also know that we face tremendous Federal budget pressure to reduce spending in many areas. I believe that TVA's discretionary funds should be on the table, and that Congress should act, in accordance with this legislation, to put the TVA appropriated programs on a glide path toward dependence on sources of funds other than appropriated funds. I think that this legislation is a reasonable phased-in approach to achieve this objective, and explicitly codifies both the fiscal year 1996 President's Budget and TVA's own recommendations regarding activities at the TVA's Environmental Research Center in Alabama.

I am introducing this legislation to terminate TVA'S appropriated programs because there are lingering concerns, brought to light in a 1993 Congressional Budget Office [CBO] report, that nonpower program funds subsidize activities that should be paid for by non-Federal interests. When I ran for the Senate in 1992, I developed an 82+ point plan to eliminate the Federal deficit and have continued to work on the implementation of that plan since that time. That plan includes a number of elements in the natural resource area, including the termination of TVA's appropriations-funded programs.

In its 1993 report, CBO focused on two programs: The TVA Stewardship Program and the Environmental Research Center. Stewardship activities receive the largest share of TVA's appropriated funds. The funds are used for dam repair and maintenance activities. According to 1995 testimony provided by TVA before the House Subcommittee on Energy and Water Appropriations, when TVA repairs a dam it pays 70 percent, on average, of repair costs with appropriated dollars and covers the remaining 30 percent with funds collected from electricity ratepayers.

This practice of charging a portion of dam repair costs to the taxpayer, CBO highlighted, amounts to a significant subsidy. If TVA were a private utility, and it made modifications to a dam or performed routine dredging, the ratepayers would pay for all of the costs associated with that activity.

TVA also runs an Environmental Research Center, formerly a Fertilizer Research Center, that received $15 million in funding in fiscal year 1997. The Center formerly developed and tested about 80 percent of commercial fertilizers developed in the United States, which CBO identified as a direct research cost subsidy to fertilizer companies. The measure I am introducing today phases out Federal funding for the Center by the year 2000.

In fiscal year 1996, I successfully sponsored an amendment to cap funding for the TVA Environmental Research Center. The amendment also required the Center to examine its research program, and evaluate how it could reduce its dependence on appropriated funds. Though the funding cap was eliminated in conference on the fiscal year 1996 Energy and Water Appropriations, TVA did complete an assessment of its research program. The Center proposes to make a complete transition to competing for Federal grants by fiscal year 2000. My measure would codify such a transition.

I have included specific language on the Environmental Research Center in this legislation because I believe that it is important certain regions do not receive earmarked preference over others in receiving scarce environmental research, natural resource management and economic development dollars from the Federal Government. In this time of tight budgets, I believe that all opportunities to decrease and supplement Federal support for projects and leverage additional private, local and State government funds should be examined and implemented when feasible.

Again, while I understand the important role that TVA played in the development of the Tennessee Valley, many other areas of the country have become more creative in Federal and State financing arrangements to address regional concerns. Specifically, in those areas where there may be excesses within TVA, I believe we can do better to curb subsidies and eliminate the burden on taxpayers without completely eliminating the TVA, as some in the other body have suggested.

Mr. President, I ask unanimous consent that the full text of this measure be printed in the RECORD.

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

S. 34

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TENNESSEE VALLEY AUTHORITY.

(a) DISCONTINUANCE OF APPROPRIATIONS.—Section 27 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831z) is amended—

(1) by inserting "for fiscal years through fiscal year 2000" before the period; and

(2) by adding at the end the following: "No appropriations may be made available for the Tennessee Vally Authority Environmental Research Center for fiscal year 2000.".

(b) PLAN.—No later than January 1, 1998, the Director of the Office of Management and Budget shall develop and submit a plan to Congress that—

(1) provides for the Tennessee Valley Authority Environmental Research Center to make a transition to sources of funds other than appropriated funds by fiscal year 2000; and

(2) recommends any legislation that may be appropriate to carry out the objectives of this Act.

By Mr. FEINGOLD:

S. 35. A bill to amend the Reclamation Reform Act of 1982 to clarify the acreage limitations and incorporate a means test for certain farm operations, and for other purposes; to the Committee on Energy and Natural Resources.

IRRIGATION SUBSIDY REDUCTION ACT OF 1997

Mr. FEINGOLD. Mr. President, I am introducing a measure that I sponsored in the 104th Congress to reduce the amount of Federal irrigation subsidies received by large agribusiness interests. I believe that reforming Federal water pricing policy by reducing subsidies is an important area to examine as a means to achieve our deficit reduction objectives. This legislation is also needed to curb fundamental abuses of reclamation law that cost the taxpayer millions of dollars every year.

In 1901, President Theodore Roosevelt proposed legislation, which came to be known as the Reclamation Act of 1902, to encourage development of family farms throughout the western United States. The idea was to provide needed water for areas that were otherwise dry and give small farms—those no larger than 160 acres—a chance, with a helping hand from the Federal Government, to establish themselves. According to a 1996 General Accounting Office report, since the passage of the Reclamation Act, the Federal Government has spent $21.8 billion to construct 133 water projects in the west which provide water for irrigation. Irrigators, and other project beneficiaries, are required under the law to repay to the

Federal Government their allocated share of the costs of constructing these projects.

However, as a result of the subsidized financing provided by the Federal Government, some of the beneficiaries of Federal water projects repay considerably less than their full share of these costs. According to the 1996 GAO report, irrigators generally receive the largest amount of Federal financial assistance. Since the initiation of the irrigation program in 1902, construction costs associated with irrigation have been repaid without interest. The GAO further found, in reviewing the Bureau of Reclamation's financial reports, that $16.9 billion, or 78 percent, of the $21.8 billion of Federal investment in water projects is considered to be reimbursable. Of the reimbursable costs, the largest share—$7.1 billion—is allocated to irrigators. As of September 30, 1994 irrigators have repaid only $941 million of the $7.1 billion they owe. GAO also found that the Bureau of Reclamation will likely shift $3.4 billion of the debt owed by irrigators to other users of the water projects for repayment.

There are several reasons why irrigators continue to receive such significant subsidies. Under the Reclamation Reform Act of 1982, Congress acted to expand the size of the farms that could receive subsidized water from 160 acres to 960 acres. The RRA of 1982 expressly prohibits farms that exceed 960 acres in size from receiving federally-subsidized water. These restrictions were added to the reclamation law to close loopholes through which Federal subsidies were flowing to large agribusinesses rather than the small family farmers that reclamation projects were designed to serve. Agribusinesses were expected to pay full cost for all water received on land in excess of their 960 acre entitlement. Despite the express mandate of Congress, regulations promulgated under the Reclamation Reform Act of 1982 have failed to keep big agricultural water users from receiving federal subsidies. The General Accounting Office and the Inspector General of the Department of the Interior continue to find that the acreage limits established in law are circumvented through the creation of arrangements such as farming trusts. These trusts, which in total acreage will exceed the 960 acre limit, are comprised of smaller units that are not subject to the reclamation acreage cap. These smaller units are farmed under a single management agreement often through a combination of leasing and ownership.

In a 1989 GAO report, the activities of six agribusiness trusts were fully explored. According to GAO, one 12,345 acre cotton farm (roughly 20 square miles), operating under a single partnership, was reorganized to avoid the 960 acre limitation into 15 separate land holdings through 18 partnerships, 24 corporations, and 11 trusts which were all operated as one large unit. A seventh very large trust was the sole topic of a 1990 GAO report. The Westhaven Trust is a 23,238 acre farming operation in California's Central Valley. It was formed for the benefit of 326 salaried employees of the J.G. Boswell Company. Boswell, GAO found, had taken advantage of section 214 of the RRA, which exempts from its 960 acre limit land held for beneficiaries by a trustee in a fiduciary capacity, as long as no single beneficiary's interest exceeds the law's ownership limits. The RRA, as I have mentioned, does not preclude multiple land holdings from being operated collectively under a trust as one farm while qualifying individually for federally subsidized water. Accordingly, the J.G. Boswell Company reorganized 23,238 acres it held as the Boston Ranch by selling them to the Westhaven Trust, with the land holdings attributed to each beneficiary being eligible to receive federally subsidized water.

Before the land was sold to Westhaven Trust, the J.G. Boswell Company operated the acreage as one large farm and paid full cost for the Federal irrigation water delivered for the 18-month period ending in May 1989. When the trust bought the land, due to the loopholes in the law, the entire acreage became eligible to receive federally subsidized water because the land holdings attributed to the 326 trust beneficiaries range from 21 acres to 547 acres—all well under the 960 acre limit.

In the six cases the GAO reviewed in 1989, owners or lessees paid a total of about $1.3 million less in 1987 for Federal water than they would have paid if their collective land holdings were considered as large farms subject to the Reclamation Act acreage limits. Had Westhaven Trust been required to pay full cost, GAO estimated in 1990, it would have paid $2 million more for its water. The GAO also found, in all seven of these cases, that reduced revenues are likely to continue unless Congress amends the Reclamation Act to close the loopholes allowing benefits for trusts.

The legislation that I am introducing today combines various elements of proposals introduced during previous attempts by other Members of Congress to close loopholes in the 1982 legislation and to impose a $500,000 means test. This new approach limits the amount of subsidized irrigation water delivered to any operation in excess of the 960 acre limit which claimed $500,000 or more in gross income, as reported on their most recent IRS tax form. If the $500,000 threshold were exceeded, an income ratio would be used to determine how much of the water should be delivered to the user at the full-cost rate, and how much at the below-cost rate. For example, if a 961 acre operation earned $1 million dollars, a ratio of $500,000 (the means test value) divided by their gross income would determine the full cost rate, thus the water user would pay the full cost rate on half of their acreage and the below cost rate on the remaining half.

This means testing proposal will be featured, for the second year in a row, in this year's 1997 Green Scissors report which is scheduled for release next month. This report is compiled by Friends of the Earth and Taxpayers for Common Sense and supported by a number of environmental and consumer groups, including the Concord Coalition, and the Progressive Policy Institute. The premise of the report is that there are a number of subsidies and projects that could be cut to both reduce the deficit and benefit the environment. This report underscores what I and many others in the Senate have long known: we must eliminate practices that can no longer be justified in light of our enormous annual deficit and national debt. The Green Scissors recommendation on means testing water subsidies indicates that if a test is successful in reducing subsidy payments to the highest grossing 10% of farms, then the Federal Government would recover between $440 million and $1.1 billion per year, or at least $2.2 billion over 5 years.

When countless Federal programs are subjected to various types of means tests to limit benefits to those who truly need assistance, it makes little sense to continue to allow large business interests to dip into a program intended to help small entities struggling to survive. Taxpayers have legitimate concerns when they learn that their hard earned tax dollars are being expended to assist large corporate interests in select regions of the country who benefit from these loopholes, particularly in tight budgetary times. Other users of Federal water projects, such as the power recipients, should also be concerned when they learn that they will be expected to pick up the tab for a portion of the funds that irrigators were supposed to pay back. The Federal water program was simply never intended to benefit these large interests, and I am hopeful that legislative efforts, such as the measure I am introducing today, will prompt Congress to fully reevaluate our Federal water pricing policy.

In conclusion, Mr. President, it is clear that the conflicting policies of the Federal Government in this area are in need of reform, and that Congress should act. Large agribusinesses should not be able to continue to soak the taxpayers, and should make their fair share of payments to the Federal Government. We should act to close these loopholes and increase the return to the Treasury from irrigators as soon as possible.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 35

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 "Irrigation Subsidy Reduction Act of 1997".

SEC. 2. FINDINGS.

Congress finds that—

(1) the Federal reclamation program has been in existence for over 90 years, with an estimated taxpayer investment of over $70,000,000,000;

(2) the program has had and continues to have an enormous effect on the water resources and aquatic environments of the western States;

(3) irrigation water made available from Federal water projects in the West is a very valuable resource for which there are increasing and competing demands;

(4) the justification for providing water at less than full cost was to benefit and promote the development of small family farms and exclude large corporate farms, but this purpose has been frustrated over the years by inadequate implementation of subsidy and acreage limits;

(5) below-cost water prices tend to encourage excessive use of scarce water supplies in the arid regions of the West, and reasonable price increases to the wealthiest western farmers would provide an economic incentive for greater water conservation;

(6) the Federal Government has increasingly applied eligibility tests based on income for Federal entitlement and subsidy programs, measures that are consistent with the historic approach of the reclamation program's acreage limitations that seek to limit water subsidies to smaller farms; and

(7) including a means test based on gross income in the reclamation program will increase the effectiveness of carrying out the family farm goals of the Federal reclamation laws.

SEC. 3. AMENDMENTS.

(a) DEFINITIONS.—Section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb) is amended—

(1) in paragraph (6), by striking "owned or operated under a lease which" and inserting "that is owned, leased, or operated by an individual or legal entity and that";

(2) by redesignating paragraphs (7), (8), (9), (10), and (11) as paragraphs (8), (10), (11), (12), and (13), respectively;

(3) by inserting after paragraph (6) the following:

"(7) LEGAL ENTITY.—The term 'legal entity' includes a corporation, association, partnership, trust, joint tenancy, or tenancy in common, or any other entity that owns, leases, or operates a farm operation for the benefit of more than 1 individual under any form of agreement or arrangement.";

(4) by inserting after paragraph (8) (as redesignated by paragraph (2)) the following:

"(9) OPERATOR.—

"(A) IN GENERAL.—The term 'operator'—

"(i) means an individual or legal entity that operates a single farm operation on a parcel (or parcels) of land that is owned or leased by another person (or persons) under any form of agreement or arrangement (or agreements or arrangements); and

"(ii) if the individual or legal entity—

"(I) is an employee of another individual or legal entity, includes each such other individual or legal entity; or

"(II) is a legal entity that controls, is controlled by, or is under common control with another legal entity, includes each such other legal entity.

"(B) OPERATION OF A FARM OPERATION.—For the purposes of subparagraph (A), an individual or legal entity shall be considered to operate a farm operation if the individual or legal entity is the person that performs the greatest proportion of the decisionmaking for, and supervision of, the farm operation on land served with irrigation water."; and

(5) by adding at the end the following:

"(14) SINGLE FARM OPERATION.—

"(A) IN GENERAL.—The term 'single farm operation' means the total acreage of land served with irrigation water for which an individual or legal entity is the operator.

"(B) RULES FOR DETERMINING WHETHER SEPARATE PARCELS ARE OPERATED AS A SINGLE FARM OPERATION.—

"(i) EQUIPMENT- AND LABOR-SHARING ACTIVITIES.—The conduct of equipment- and labor-sharing activities on separate parcels of land by separate individuals or legal entities shall not by itself serve as a basis for concluding that the farm operations of the individuals or legal entities constitute a single farm operation.

"(ii) PERFORMANCE OF CERTAIN SERVICES.—The performance by an individual or legal entity of an agricultural chemical application, pruning, or harvesting for a farm operation on a parcel of land shall not by itself serve as a basis for concluding that the farm operation on that parcel of land is part of a single farm operation operated by the individual or entity on other parcels of land.".

(b) IDENTIFICATION OF OWNERS, LESSEES, AND OPERATORS OF SINGLE FARM OPERATIONS.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) is amended by inserting after section 202 the following:

"SEC. 202A. IDENTIFICATION OF OWNERS, LESSEES, AND OPERATORS OF SINGLE FARM OPERATIONS.

"(a) IN GENERAL.—Subject to subsection (b), for each parcel of land to which irrigation water is delivered or proposed to be delivered, the Secretary shall identify a single individual or legal entity as the owner, lessee, or operator.

"(b) SHARED DECISIONMAKING AND SUPERVISION.—If the Secretary determines that no single individual or legal entity is the owner, lessee, or other individual that performs the greatest proportion of decisionmaking for, and supervision of, the farm operation on a parcel of land—

"(1) all individuals and legal entities that own, lease, or perform a proportion of decisionmaking and supervision that is equal as among themselves but greater than the proportion performed by any other individual or legal entity shall be considered jointly to be the owner, lessee, or operator; and

"(2) all parcels of land of which any such individual or legal entity is the owner, lessee, or operator shall be considered to be part of the single farm operation of the owner, lessee, or operator identified under paragraph (1).".

(c) PRICING.—Section 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390ee) is amended by adding at the end the following:

"(d) SINGLE FARM OPERATIONS GENERATING MORE THAN $500,000 IN GROSS FARM INCOME.—

"(1) IN GENERAL.—Notwithstanding subsections (a), (b), and (c), in the case of—

"(A) a qualified recipient that reports gross farm income from a single farm operation in excess of $500,000 for a taxable year; or

"(B) a limited recipient that received irrigation water on or before October 1, 1981, and that reports gross farm income from a single farm operation in excess of $500,000 for a taxable year;

irrigation water may be delivered to the single farm operation of the qualified recipient or limited recipient at less than full cost to a number of acres that does not exceed the number of acres determined under paragraph (2).

"(2) MAXIMUM NUMBER OF ACRES TO WHICH IRRIGATION WATER MAY BE DELIVERED AT LESS THAN FULL COST.—The number of acres determined under this paragraph is the number equal to the number of acres of the single farm operation multiplied by a fraction, the numerator of which is $500,000 and the denominator of which is the amount of gross farm income reported by the qualified recipient or limited recipient in the most recent taxable year.

"(3) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—For any taxable year beginning in a calendar year after 1997, the $500,000 amount under paragraphs (1) and (2) shall be equal to the product of—

"(i) $500,000; and

"(ii) the inflation adjustment factor for the taxable year.

"(B) INFLATION ADJUSTMENT FACTOR.—The term 'inflation adjustment factor' means, with respect to any calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for 1996. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

"(C) GDP IMPLICIT PRICE DEFLATOR.—In subparagraph (B), the term 'GDP implicit price deflator' means the first revision of the implicit price deflator for the gross domestic product as computed and published by the Secretary of Commerce.

"(D) ROUNDING.—If any adjustment of the $500,000 amount determined under subparagraph (A) is not a multiple of $100, the adjustment shall be rounded to the next lowest multiple of $100.".

(d) CERTIFICATION OF COMPLIANCE.—Section 206 of the Reclamation Reform Act of 1982 (43 U.S.C. 390ff) is amended to read as follows:

"SEC. 206. CERTIFICATION OF COMPLIANCE.

"(a) IN GENERAL.—As a condition to the receipt of irrigation water for land in a district that has a contract described in section 203, each owner, lessee, or operator in the district shall furnish the district, in a form prescribed by the Secretary, a certificate that the owner, lessee, or operator is in compliance with this title, including a statement of the number of acres owned, leased, or operated, the terms of any lease or agreement pertaining to the operation of a farm operation, and, in the case of a lessee or operator, a certification that the rent or other fees paid reflect the reasonable value of the irrigation water to the productivity of the land.

"(b) DOCUMENTATION.—The Secretary may require a lessee or operator to submit for the Secretary's examination—

"(1) a complete copy of any lease or other agreement executed by each of the parties to the lease or other agreement; and

"(2) a copy of the return of income tax imposed by chapter 1 of the Internal Revenue Code of 1986 for any taxable year in which the single farm operation of the lessee or operator received irrigation water at less than full cost.".

(e) TRUSTS.—Section 214 of the Reclamation Reform Act of 1982 (43 U.S.C. 390nn) is repealed.

(f) ADMINISTRATIVE PROVISIONS.—

(1) PENALTIES.—Section 224(c) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww(c)) is amended—

(A) by striking "(c) The Secretary" and inserting the following:

"(c) REGULATIONS; DATA COLLECTION; PENALTIES.—

"(1) REGULATIONS; DATA COLLECTION.—The Secretary"; and

(B) by adding at the end the following:

"(2) PENALTIES.—Notwithstanding any other provision of law, the Secretary shall establish appropriate and effective penalties for failure to comply with any provision of this Act or any regulation issued under this Act.".

(2) INTEREST.—Section 224(i) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww(i)) is amended by striking the last sentence and inserting the following: "The interest rate applicable to underpayments shall be equal to the rate applicable to expenditures under section 202(3)(C).".

(g) REPORTING.—Section 228 of the Reclamation Reform Act of 1982 (43 U.S.C. 390zz) is amended by inserting "operator or" before "contracting entity" each place it appears.

(h) MEMORANDUM OF UNDERSTANDING.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) is amended—

(1) by redesignating sections 229 and 230 as sections 230 and 231, respectively; and

(2) by inserting after section 228 the following:

"SEC. 229. MEMORANDUM OF UNDERSTANDING.

"The Secretary, the Secretary of the Treasury, and the Secretary of Agriculture shall enter into a memorandum of understanding or other appropriate instrument to permit the Secretary, notwithstanding section 6103 of the Internal Revenue Code of 1986, to have access to and use of available information collected or maintained by the Department of the Treasury and the Department of Agriculture that would aid enforcement of the ownership and pricing limitations of Federal reclamation law.".

By Mr. FEINGOLD:

S. 37. A bill to terminate the Uniformed Services University of the Health Sciences; to the Committee on Armed Services.

THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES TERMINATION AND DEFICIT REDUCTION ACT OF 1997

Mr. FEINGOLD. Mr. President, I am today introducing legislation terminating the Uniformed Services University of the Health Sciences [USUHS], a medical school run by the Department of Defense. The measure is one I proposed when I ran for the U.S. Senate, and was part of a larger, 82 point plan to reduce the Federal budget deficit. The Congressional Budget Office [CBO] estimates that terminating the school would save $369 million over the next six years.

USUHS was created in 1972 to meet an expected shortage of military medical personnel. Today, however, USUHS accounts for only a small fraction of the military's new physicians, less than 12 percent in 1994 according to CBO. This contrasts dramatically with the military's scholarship program which provided over 80 percent of the military's new physicians in that year.

Mr. President, what is even more troubling is that USUHS is also the single most costly source of new physicians for the military. CBO reports that based on figures from 1995, USUHS trained physicians cost the military $615,000 per person. By comparison, the scholarship program cost about $125,000 per person, with other sources providing new physicians at a cost of $60,000. As CBO noted in their Spending and Revenue Options publication, even adjusting for the lengthier service commitment required of USUHS trained physicians, the cost of training them is still higher than that of training physicians from other sources, an assessment shared by the Pentagon itself. Indeed, CBO's estimate of the savings generated by this measure also includes the cost of obtaining physicians from other sources.

The other body has voted to terminate this program on several occasions, and the Vice President's National Performance Review joined others, ranging from the Grace Commission to the CBO, in raising the question of whether this medical school, which graduated its first class in 1980, should be closed because it is so much more costly than alternative sources of physicians for the military.

Mr. President, the real issue we must address is whether USUHS is essential to the needs of today's military structure, or if we can do without this costly program. The proponents of USUHS frequently cite the higher retention rates of USUHS graduates over physicians obtained from other sources as a justification for continuation of this program, but while a greater percentage of USUHS trained physicians may remain in the military longer than those from other sources, the Pentagon indicates that the alternative sources already provide an appropriate mix of retention rates. Testimony by the Department of Defense before the Subcommittee on Force Requirements and Personnel noted that the military's scholarship program meets the retention needs of the services.

And while USUHS only provides a small fraction of the military's new physicians, it is important to note that relying primarily on these other sources has not compromised the ability of military physicians to meet the needs of the Pentagon. According to the Office of Management and Budget, of the approximately 2,000 physicians serving in Desert Storm, only 103, about 5 percent, were USUHS trained.

Mr. President, let me conclude by recognizing that USUHS has some dedicated supporters in the U.S. Senate, and I realize that there are legitimate arguments that those supporters have made in defense of this institution. The problem, however, is that the federal government can no longer afford to continue every program that provides some useful function.

In the face of our staggering national debt and annual deficits, we must prioritize and eliminate programs that can no longer be sustained with limited Federal dollars, or where a more cost-effective means of fulfilling those functions can be substituted. The future of USUHS continues to be debated precisely because in these times of budget restraint it does not appear to pass the higher threshold tests which must be applied to all Federal spending programs.

Mr. President, I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 37

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 "Uniformed Services University of the Health Sciences Termination and Deficit Reduction Act of 1997".

SEC. 2. TERMINATION OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.

(a) TERMINATION.—

(1) IN GENERAL.—The Uniformed Services University of the Health Sciences is terminated.

(2) CONFORMING AMENDMENTS.—

(A) Chapter 104 of title 10, United States Code, is repealed.

(B) The table of chapters at the beginning of subtitle A of such title, and at the beginning of part III of such subtitle, are each amended by striking out the item relating to chapter 104.

(b) EFFECTIVE DATE.—The termination referred to in subsection (a), and the amendments made by such subsection, shall take effect on the date of the graduation from the Uniformed Services University of the Health Sciences of the last class of students that enrolled in such university on or before the date of the enactment of this Act.

By Mr. FEINGOLD (for himself and Mr. MCCAIN):

S. 38. A bill to reduce the number of executive branch political appointees; to the Committee on Governmental Affairs.

PRESIDENTIAL APPOINTEES LEGISLATION

Mr. FEINGOLD. Mr. President, I am pleased to be joined by my good friend the senior Senator from Arizona [Mr. MCCAIN] in introducing legislation to reduce the number of presidential political appointees. Specifically, the bill caps the number of political appointees at 2,000. The Congressional Budget Office [CBO] estimates this measure would save $392 million over the next 6 years.

The bill is based on the recommendations of a number of distinguished panels, including most recently, the Twentieth Century Fund Task Force on the Presidential Appointment Process. The task force findings, released last fall,

are only the latest in a long line of recommendations that we reduce the number of political appointees in the executive branch. For many years, the proposal has been included in CBO's annual publication Reducing the Deficit: Spending and Revenue Options, and it was one of the central recommendations of the National Commission on the Public Service, chaired by former Federal Reserve Board Chairman Paul Volcker.

Mr. President, this proposal is also consistent with the recommendations of the Vice President's National Performance Review, which called for reductions in the number of federal managers and supervisors, arguing that "over-control and micro management" not only "stifle the creativity of line managers and workers, they consume billions per year in salary, benefits, and administrative costs."

Those sentiments were also expressed in the 1989 report of the Volcker Commission, when it argued the growing number of presidential appointees may "actually undermine effective presidential control of the executive branch." The Volcker Commission recommended limiting the number of political appointees to 2,000, as this legislation does.

Mr. President, it is essential that any administration be able to implement the policies that brought it into office in the first place. Government must be responsive to the priorities of the electorate. But as the Volcker Commission noted, the great increase in the number of political appointees in recent years has not made government more effective or more responsive to political leadership.

Between 1980 and 1992, the ranks of political appointees grew 17 percent, over three times as fast as the total number of executive branch employees and looking back to 1960 their growth is even more dramatic. In his recently published book Thickening Government: Federal Government and the Diffusion of Accountability, author Paul Light reports a startling 430 percent increase in the number of political appointees and senior executives in Federal Government between 1960 and 1992.

In recommending a cap on political appointees, the Volcker Commission report noted that the large number of Presidential appointees simply cannot be managed effectively by any President or White House. This lack of control is aggravated by the often competing political agendas and constituencies that some appointees might bring with them to their new positions. Altogether, the commission argued that this lack of control and political focus "may actually dilute the President's ability to develop and enforce a coherent, coordinated program and to hold cabinet secretaries accountable."

The Volcker Commission also reported that the excessive number of appointees are a barrier to critical expertise, distancing the President and his principal assistants from the most experienced career officials. Though bureaucracies can certainly impede needed reforms, they can also be a source of unbiased analysis. Adding organizational layers of political appointees can restrict access to important resources, while doing nothing to reduce bureaucratic impediments.

Author Paul Light says, "As this sediment has thickened over the decades, presidents have grown increasingly distant from the lines of government, and the front lines from them." Light adds that "Presidential leadership, therefore, may reside in stripping government of the barriers to doing its job effectively* * *"

Finally, the Volcker Commission also asserted that this thickening barrier of temporary appointees between the President and career officials can undermine development of a proficient civil service by discouraging talented individuals from remaining in Government service or even pursuing a career in Government in the first place.

Mr. President, former Attorney General Elliot Richardson put it well when he noted:

> But a White House personnel assistant sees the position of deputy assistant secretary as a fourth-echelon slot. In his eyes that makes it an ideal reward for a fourth-echelon political type—a campaign advance man, or a regional political organizer. For a senior civil servant, it's irksome to see a position one has spent 20 or 30 years preparing for preempted by an outsider who doesn't know the difference between an audit exception and an authorizing bill.

Mr. President, the report of the Twentieth Century Fund Task Force on the Presidential Appointment Process identified another problem aggravated by the mushrooming number of political appointees, namely the increasingly lengthy process of filling these thousands of positions. As the task force reported, both President Bush and President Clinton were into their presidencies for many months before their leadership teams were fully in place. The task force noted that "on average, appointees in both administrations were confirmed more than eight months after the inauguration—one-sixth of an entire presidential term." By contrast, the report noted that in the presidential transition of 1960, "Kennedy appointees were confirmed, on average, two and a half months after the inauguration."

In addition to leaving vacancies among key leadership positions in Government, the appointment process delays can have a detrimental effect on potential appointees. The Twentieth Century Fund Task Force reported that appointees can "wait for months on end in a limbo of uncertainty and awkward transition from the private to the public sector."

Mr. President, a story in the National Journal in November of 1993, focusing upon the delays in the Clinton administration in filling political positions, noted that in Great Britain, the transition to a new government is finished a week after it begins, once 40 or so political appointments are made. That certainly is not the case in the United States, recognizing, of course, that we have a quite different system of government from the British parliament form of government.

Nevertheless, there is little doubt that the vast number of political appointments that are currently made creates a somewhat cumbersome process, even in the best of circumstances. The long delays and logjams created in filling these positions under the Bush and Clinton administrations simply illustrates another reason why the number of positions should be cut back.

Mr. President, let me also stress that the problem is not simply the initial filling of a political appointment, but keeping someone in that position over time. In a recent report, the General Accounting Office reviewed a portion of these positions for the period of 1981 to 1991, and found high levels of turnover—7 appointees in 10 years for one position—as well as delays, usually of months but sometimes years, in filling vacancies.

Mr. President, while I recognize that this legislative proposal is not likely to be popular with some in both parties, I want to stress that this effort to reduce the number of political appointees is bipartisan. The sponsorship of this bill reflects this, and the bill itself applies not only to the current Democratic administration, but to all future administrations as well, whatever their party affiliation.

The sacrifices that deficit reduction efforts require must be spread among all of us. This measure requires us to bite the bullet and impose limitations upon political appointments that both parties may well wish to retain. The test of commitment to deficit reduction, however, is not simply to propose measures that impact someone else.

As we move forward to implement the NPR recommendations to reduce the number of government employees, streamline agencies, and make government more responsive, we should also right size the number of political appointees, ensuring a sufficient number to implement the policies of any administration without burdening the Federal budget with unnecessary, possibly counterproductive political jobs.

Mr. President, when I ran for the U.S. Senate in 1992, I developed an 82 point plan to reduce the Federal deficit and achieve a balanced budget. Since that time, I have continued to work toward enactment of many of the provisions of that plan and have added new provisions on a regular basis.

The legislation I am introducing today reflects one of the points included on the original 82 point plan

calling for streamlining various Federal agencies and reducing agency overhead costs. I am pleased to have this opportunity to continue to work toward implementation of the elements of the deficit reduction plan.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 38

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDUCTION IN NUMBER OF POLITICAL APPOINTEES.

(a) DEFINITION.—In this section, the term "political appointee" means any individual who—

(1) is employed in a position on the executive schedule under sections 5312 through 5316 of title 5, United States Code;

(2) is a limited term appointee, limited emergency appointee, or noncareer appointee in the senior executive service as defined under section 3132(a) (5), (6), and (7) of title 5, United States Code, respectively; or

(3) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under Schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(b) LIMITATION.—The President, acting through the Office of Management and Budget and the Office of Personnel Management, shall take such actions as necessary (including reduction in force actions under procedures established under section 3595 of title 5, United States Code) to ensure that the total number of political appointees shall not exceed 2,000.

(c) EFFECTIVE DATE.—This section shall take effect on October 1, 1997.

Mr. MCCAIN. Mr. President, I am pleased to join with my good friend, the junior Senator from Wisconsin [Mr. FEINGOLD] to introduce legislation that will limit the number of political appointees in the executive branch a total of 2,000. This legislation could save an estimated $400 million over the next five years.

There is no doubt that our Government is bloated. In recent years, the number of political appointees has grown exponentially. Author Paul Light, in his book Thickening Government: Federal Government and the Diffusion of Accountability, reports a 430 percent increase in the number of political appointees and senior executives in the Federal Government between 1960 and 1992. The Congressional Research Service also found that from 1980 to 1992, the number of political appointees in the executive branch grew 3 times faster than the total number of executive branch employees 17 percent compared to 5.6 percent.

The Government must continue to tighten its belt, and the executive branch must not protect itself from needed cuts. Our current $5 trillion debt and our efforts to reach a balanced budget by the year 2002 call for immediate action. No area of Government spending should be overlooked, not the least of which is funding for Government employees. I am hopeful that this administration will live up to their rhetoric about reducing the deficit and balancing the budget by supporting this and other measures that get us closer to a balanced budget.

Since this measure is consistent with the recommendations of the Vice President's National Performance Review [NPR], the administration should not have a problem endorsing this legislation. NPR called for reducing Federal managers and supervisors, arguing that "over-control and micromanagement" not only "stifle the creativity of line managers and workers, they consume billions per year in salary, benefits, and administrative costs."

Limiting the number of political appointees to 2,000 was recommended by former Federal Reserve Board Chairman Paul Volcker who chaired The National Commission on Public Service. His report supported reducing the number of Presidential appointees, stating that the number of political appointees may "actually undermine effective presidential control of the executive branch."

Despite all this compelling evidence, Senator FEINGOLD and I have yet to be successful in actually getting this legislation enacted. Last year, we passed an amendment to the Treasury-Postal appropriations bill that would have placed a 2,300 cap on political appointees. Unfortunately, however, the cap was dropped in conference. Given the new era of bipartisanship and the President's repeated statements that he wants to balance the budget, I am hopeful that we will be successful in this Congress.

I look forward to working with my friend from Wisconsin to enact this important legislation that will streamline Government operations and save the taxpayers money.

By Mr. STEVENS (for himself, Mr. BREAUX, Mr. THURMOND, and Mr. MURKOWSKI):

S. 39. A bill to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

Mr. STEVENS. Mr. President, during the 104th Congress, Senators BREAUX, CHAFEE, MOSELEY-BRAUN, MURKOWSKI, THURMOND, SIMPSON and I introduced legislation (S. 1420) to implement the "Panama Declaration," an agreement under which twelve nations would comply with a new regime to reduce dolphin mortality and conserve marine resources in the Eastern Tropical Pacific Ocean (ETP). Our bill was approved by voice vote in the Senate Commerce Committee, and its companion (H.R. 2823) was passed overwhelmingly in the House of Representatives.

Because of our focus in the second session of the 104th Congress on reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act, we were not able to turn to the International Dolphin Conservation Program Act until the closing weeks, and opponents of the measure were able to prevent its passage simply by objecting on the Senate floor. We believe the bill would have passed in the Senate by a large majority if they had not objected.

I am pleased today to be joined by Senators BREAUX, THURMOND, and MURKOWSKI in reintroducing the bill. On September 30, 1996, Majority Leader LOTT committed to us that he will do everything he can to provide time on the Senate floor if it is necessary to pass this important measure.

The Panama Declaration would cap dolphin mortality in the ETP at 5,000 dolphin per year and set a goal of eventually eliminating dolphin mortality altogether in that area. Only twenty years ago, hundreds of thousands of dolphin were being killed each year in the ETP. The Declaration presents the opportunity to lock in a maximum of 5,000 dolphin mortalities per year and strengthen other conservation measures, including measures relating to fishery observers, bycatch reduction, and the protection of specific stocks of dolphins in the ETP.

The dolphin mortality cap and new conservation measures under the Panama Declaration will only take effect if specific changes are made to U.S. law. The two key changes are: (1) a change to allow tuna caught in compliance with the Panama Declaration (including through the encirclement of dolphins) to be imported into the United States; and (2) a change so that "dolphin Safe" in the U.S. will mean tuna caught in a set in which no dolphin mortality occurred (rather than through non-encirclement). Our bill would make these changes and allow the new regime under the Panama Declaration to go forward. If the U.S. does not make the changes, other nations will move forward without adequate conservation measures and significant increases in dolphin mortality may occur.

Our legislation would guarantee U.S. consumers that no dolphin were killed during the harvest of tuna that is labeled as "dolphin safe." Under existing law, dolphins may have been killed, but as long as the tuna was not harvested by intentionally encircling dolphins, it can be labeled as "dolphin safe." To avoid consumer confusion and increase confidence in the "dolphin safe" label, other labels with respect to marine mammals will not be allowed. Only ETP tuna caught without killing any dolphins would be labeled as "dolphin safe."

The Administration helped negotiate the Panama Declaration, and the President and Vice President strongly support our legislation to implement it. The bill is also supported by the U.S. tuna boat owners, mainstream environmental groups such as Greenpeace, the Center for Marine Conservation, the Environmental Defense Fund, the National Wildlife Federation, and the World Wildlife Fund, the American Sportfishing Association, the National Fisherman's Union, Seafarers International, and United Industrial Workers, the 12 nations who signed the Panama Declaration (Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela), and the editorial boards of a number of the major U.S. newspapers.

Mr. President, I ask for unanimous consent that the following material related to the bill be printed in the RECORD immediately following my statement: First, the Panama Declaration; second, letter from President Clinton to the President of Mexico supporting the legislation; third, letter from Vice President GORE supporting the legislation; fourth, article by State Department Under Secretary Tim Wirth supporting the legislation; and fifth, editorials, op-eds, and opinion pieces from USA Today, the Washington Post, the Dallas Morning News, the Houston Chronicle, the New York Times, and the Christian Science Monitor supporting the legislation; sixth, letters from numerous environmental, fishing, and labor organizations supporting the legislation.

I look forward to working with the Chairman and Ranking Member of the Senate Commerce Committee to secure the expeditious approval of the Committee of this important bill, and with the majority leader once the bill has been reported by the Committee.

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

DECLARATION OF PANAMA

The Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, United States of America, Vanuatu and Venezuela, meeting in Panama City, Republic of Panama on October 4, 1995, hereby reaffirm the commitments and objectives of the La Jolla Agreement of (1) progressively reducing dolphin mortality in the eastern Pacific Ocean (EPO) fishery to levels approaching zero through the setting of annual limits and (2) with a goal of eliminating dolphin mortality in this fishery, seeking ecologically sound means of capturing large yellowfin tunas not in association with dolphins.

Recognizing the strong commitments of nations participating in the La Jolla Agreement and the substantial successes realized through multilateral cooperation and supporting national action under that Agreement, the Governments meeting in Panama, including those which are, or have announced their intention to become, members of the Inter-American Tropical Tuna Commission (IATTC), announce their intention to formalize by January 31, 1996, the La Jolla Agreement as a binding legal instrument which shall be open to all nations with coastlines bordering the EPO or with vessels fishing for tuna in this region. This shall be accomplished by adoption of a binding resolution of the IATTC or other legally binding instrument. The adoption of the IATTC resolution or other legally binding instrument, that utilizes to the maximum extent possible the existing structure of the IATTC, is contingent upon the enactment of changes in United States law as envisioned in Annex I to this Declaration. The binding legal instrument shall build upon the strengths and achievements of the La Jolla Agreement, the working groups established under it, and the actions of the Governments participating in that Agreement. This binding legal instrument shall consist of the La Jolla Agreement, its appendices, and the decisions of the governments under that Agreement as modified to achieve the objectives and commitments contained herein.

The Governments meeting in Panama agree that in concluding, adopting, and implementing this binding legal instrument, they will:

Commit to the conservation of ecosystems and the sustainable use of living marine resources related to the tuna fishery within the EPO. Adopt conservation and management measures that ensure the long-term sustainability of tuna stocks and other stocks of living marine resources in the EPO. Such measures shall be based on the best scientific evidence, including that based on a precautionary methodology, and shall be designed to maintain or restore the biomass of harvested stocks at or above levels capable of producing maximum sustainable yield, and with the goal to maintain or restore the biomass of associated stocks at or above levels capable of producing maximum sustainable yield. These measures and methodology should take into consideration, and account for, natural variation, recruitment rate, natural mortality rate, population growth rate, individual growth rate, population parameters K and r, and scientific uncertainty.

Commit, according to their capacities and in coordination with the IATTC, to the assessment of the catch and bycatch of juvenile yellowfin tuna and other stocks of living marine resources related to the tuna fishery in the EPO and the establishment of measures to, inter alia, avoid, reduce and minimize the bycatch of juvenile yellowfin tuna and bycatch of non-target species, in order to ensure the long-term sustainability of all these species, taking into consideration of the interrelationships among species in the ecosystem.

Commit in the exercise of their national sovereignty to enact and enforce this instrument through domestic legislation and/or regulation, as appropriate.

Adopt cooperative measures to ensure compliance with this instrument, building upon decision IGM 6/93, Appendix IV, "Guiding Principles Respecting Relationships between States Both Party and Non-Party to the Agreement," taken by the nations participating in the La Jolla Agreement Working Group in Vanuatu in June 1993, and advance the work of the Working Group on Compliance, building upon decision IGM 6/93, Appendix V, "Options for Action Against Nations Not Complying With the Agreement." (Annex II)

Enhance the practice of reviewing and reporting on compliance with this instrument, building upon past practices under the La Jolla Agreement.

Establish a per-stock per-year cap of between 0.2% of the Minimum Estimated Abundance (Nmin) (as calculated by the U.S. National Marine Fisheries Service or equivalent calculation standard) and 0.1% of Nmin, but in no event shall the total annual mortality exceed 5000 consistent with the commitments and objectives stated in the preamble above. In the year 2001, the per-stock, per-year cap shall be 0.1% of Nmin.

Conduct in 1998 a scientific review and assessment of progress toward the year 2001 objective, and consider recommendations as appropriate. Up to the year 2001, in the event that annual mortality of 0.2% of Nmin is exceeded for any stock, all sets on that stock and on any mixed schools containing members of that stock shall cease for that fishing year. Beginning in the year 2001, in the event that annual mortality of 0.1% of Nmin for any stock is exceeded, all sets on that stock and on any mixed schools containing members of that stock shall cease for that fishing year. In the event that annual mortality of 0.1% of Nmin is exceeded for either Eastern Spinner or Northeastern Spotted dolphin stocks, the governments commit to conduct a scientific review and assessment and consider further recommendations.

Establish a per-vessel maximum annual DML consistent with the established per-year mortality caps.

Establish a system that provides incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality in the EPO.

Establish or strengthen National Scientific Advisory Committees (NATSAC), or the equivalent, of qualified experts, operating in their individual capacities, which shall advise their respective governments on mechanisms to facilitate research, and on the formulation of recommendations for achieving the objectives and commitments contained herein, or strengthen existing structures in order to conform with the requirements delineated herein. Membership to NATSACs shall include, inter alia, qualified scientists from the public and private sector and NGOs. The NATSACs shall:

1. Receive and review data, including data provided to national authorities by the LATTC;

2. Advise and recommend to their governments measures and actions that should be undertaken to conserve and manage the stocks of living marine resources of the EPO;

3. Make recommendations to their governments regarding research needs, including ecosystems; fishing practices; and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear; and the coordination and facilitation of such research;

4. Conduct scientific reviews and assessments by the year 1998 regarding progress toward the year 2001 objective stated above, and make appropriate recommendations to their governments concerning these reviews and assessments, as well as additional assessments in the year 2001 as provided above;

5. Consult other experts as needed;

6. Assure the regular and timely full exchange of data among the parties and the NATSACs on catch of tuna and associated species and bycatch, including dolphin mortality data, for the purposes of developing conservation and management recommendations to their governments as well as recommendations for enforcement and scientific research while not violating the confidentiality of business-confidential data;

7. Establish procedures to, inter alia, hold public meetings and maintain the confidentiality of business-confidential data.

Reports of the NATSACs, including of their cooperative meetings, shall be available to the parties and the public.

The NATSACs shall cooperate, through regular and timely meetings, including at a minimum in conjunction with the meetings of the LATTC, in the review of data and the status of stocks, and in the development of advice for achieving the objectives and commitments contained herein.

Promote transparency in their implementation of this Declaration, including through public participation as appropriate.

As soon as possible, the nations of the Intergovernmental Group convened under the auspices of the LATTC will initiate discussions related to formulation of a new, permanent, binding instrument.

ANNEX I

Envisioned changes in United States law:

1. Primary and Secondary Embargoes. Effectively lifted for tuna caught in compliance with the La Jolla Agreement as formalized and modified through the processes set forth in the Panama Declaration.

2. Market Access. Effectively opened to tuna caught in compliance with the La Jolla Agreement as formalized and modified through the processes set forth in the Panama Declaration with respect to States to include: IATTC Member States and other States that have initiated steps, in accordance with Article 5.3 of the IATTC Convention, to become members of that organization.

3. Labeling. The term "dolphin safe" may not be used for any tuna caught in the EPO by a purse seine vessel in a set in which a dolphin mortality occurred as documented by observers by weight calculation and well location.

ANNEX II

Guiding Principles respecting relationships between States both Party and Non-Party to the Agreement.

The Parties to the Agreement incorporate into the Agreement a guiding principle that no Party shall act in a manner that assists non-parties to avoid compliance with the objectives of the Agreement.

When a coastal state that is a Party issues a license to engage in fishing in its Exclusive Economic Zone portion of the eastern Pacific Ocean (EPO), either directly or through a licensing agreement, to a vessel of a non-party, the license should be subject to the provisions of the Agreement.

The Parties should consider prohibiting persons under their jurisdiction from assisting in any way vessels of non-complying Parties or non-parties operating in the fishery.

Any state whose vessels are conducting purse-seine tuna-fishing operations in the EPO should be invited to join the Agreement. The Parties should draw the attention of any state that is not a party to the Agreement to any activity undertaken by its nationals or vessels which, in the opinion of the Parties, affects the implementation of the objectives of the Agreement.

Options for Action With Respect to Nations Party to the Agreement

Diplomatic actions:

Collective representation to the non-complying nation. This would constitute a communication emanating from plenary meeting of the participating nations after consultation with the non-complying nation.

Diplomatic communication. Each participating nation, acting individually or in concert with other nations, would undertake a diplomatic demarche to the non-complying nation.

Public opinion actions:

Dissemination of information regarding the non-compliance of the nation to the public through appropriate media, e.g., a press conference.

Operational restrictions:

Denial of access to the Exclusive Economic Zones of nations party to the agreement for fishing operations by tuna fishing vessels of the non-complying nation. The scope of this action would have to be determined by the International Review Panel (IRP) by defining what constitutes a tuna-fishing vessel, i.e., vessels covered by the Agreement, or other tuna-fishing vessels as well. This action should not restrict freedom of navigation or other rights of vessels under international law.

Restriction of access to ports and port servicing facilities for tuna fishing vessels of the non-complying nation. This would not apply to vessels in distress.

Refusal of logistical support and/or supplies to tuna-fishing vessels of the non-complying nation. Reduction of Dolphin Mortality Limits (DMLs) to all vessels of the non-complying Party by specified percentages. DMLs would be restored immediately upon a determination that the nation is in compliance.

Economic sanctions:

Trade measures. The Working Group discussed at length trade measures against non-complying nations. These might include embargoes or other restrictions on the imports of, for example, tuna, other fish products, other marine products, or other products.

The consideration of such measures was recognized to be an extremely delicate and evolving policy issue for which few guidelines exist in international law. The Working Group noted ongoing discussions concerning this issue in other international fora. In light of these considerations, the Working Group agreed that trade measures should receive further review by the Parties prior to making any recommendation in this respect.

Fines (monetary penalties). The Working Group considered that the IRP should identify procedures for imposing fines, including defining the value of the fines (this could be based on a percentage of the amount of the commercial value of the catch), and the destination of the fines (e.g., an international trust fund) as issues that the Parties should discuss. The Working Group noted that there apparently is no precedent for such fines.

B. Options for Action With Respect to Nations Not Party to the Agreement

Diplomatic actions:

Collective representation to the non-party. This would constitute a communication emanating from a plenary meeting of the participating nations after consultations with the non-party.

Diplomatic communication. Each participating nation, acting individually or in concert with other nations, would undertake a diplomatic demarche to the non-party.

Public opinion actions:

Dissemination of information regarding the non-compliance of the non-party to the public through appropriate media, e.g., a press conference.

Operational restrictions:

Restriction of access to ports and port servicing facilities for tuna-fishing vessels of the non-party. The scope of this action would have to be determined by the IRP by defining what constitutes a tuna-fishing vessel, i.e., solely vessels covered by the Agreement, or other tuna-fishing vessels as well. This action should not restrict freedom of navigation and other rights of vessels under international law, and particularly would not apply to vessels in distress.

Refusal of logistical support and/or supplies to tuna fishing vessels of the non-party nation.

Prohibiting nationals from assisting in any way vessels of the non-party operating in the fishery.

Economic sanctions:

The Working Group noted that economic sanctions with respect to non-parties call into consideration all the issues raised above with respect to the imposition of such sanctions on Parties, and noted that the imposition of such sanctions with respect to non-parties involves additional complex legal considerations. The Working Group recommends that the Parties consider whether such sanctions against non-parties are an appropriate means of promoting compliance with the objectives of the Agreement and whether they are consistent with international law.

THE WHITE HOUSE,
Washington, October 7, 1996.

His Excellency, ERNESTO ZEDILLO PONCE DE LEON,
President of the United Mexican States, Mexico, D.F.

DEAR MR. PRESIDENT: As you know, our governments have been working diligently for several years to protect dolphins and other marine life in the Eastern Tropical Pacific. The adoption of the Panama Declaration last year brought with it the promise of further international cooperation in these efforts.

This year, the United States Congress considered legislation to implement the Panama Declaration. The House of Representatives passed such legislation by a large majority. However, despite the considerable efforts of my Administration and many others in our country who support the Panama Declaration, we were unable to secure final passage of the legislation.

I wanted to express my deep disappointment with the failure to enact legislation to implement the Panama Declaration this year. Let me assure you that passing such legislation is a top priority for my Administration and for me personally. We will work with members of the bipartisan coalition supporting the Panama Declaration to introduce implementing legislation in the first 30 days of the new Congress and to pass such legislation as soon as possible thereafter.

I believe it is important for us to continue to work together on this issue.

Sincerely,

BILL CLINTON.

THE VICE PRESIDENT,
Washington, June 3, 1996.

Hon. TED STEVENS,
Chairman, Subcommittee on Oceans and Fisheries, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR TED: I am writing to thank you for your leadership on the International Dolphin Conservation Program Act, S. 1420. As you know, the Administration strongly supports this legislation, which is essential to the protection of dolphins and other marine life in the Eastern Tropical Pacific.

In recent years, we have reduced dolphin mortality in the Eastern Tropical Pacific tuna fishery far below historic levels. Your legislation will codify an international agreement to lock these gains in place, further reduce dolphin mortality, and protect other marine life in the region. This agreement was signed last year by the United

States and 11 other nations, but will not take effect unless your legislation is enacted into law.

As you know, S. 1420 is supported by major environmental groups, including Greenpeace, the World Wildlife Fund, the National Wildlife Federation, the Center for Marine Conservation, and the Environmental Defense Fund. The legislation is also supported by the U.S. fishing industry, which has been barred from the Eastern Tropical Pacific tuna fishery.

Opponents of this legislation promote alternative fishing methods, such as "log fishing" and "school fishing," but these are environmentally unsound. These fishing methods involve unacceptably high by-catch of juvenile tunas, billfish, sharks, endangered sea turtles and other species, and pose long-term threats to the marine ecosystem.

I urge your colleagues to support this legislation. Passage of this legislation this session is integral to ensure implementation of an important international agreement that protects dolphins and other marine life in the Eastern Tropical Pacific.

Sincerely,

AL GORE.

[From the Christian Science Monitor]

TAKE THE FINAL STEP TO PROTECT DOLPHINS

(By Timothy E. Wirth)

One of the sharpest criticisms of the environmental movement is that it is forever emphasizing major ecological ailments while refusing to acknowledge even the slightest environmental progress.

Make no mistake, the magnitude of the world's environmental challenges is as immense as it is ominous. Yet in only a flash of human history, we have begun to take on these challenges. There are successes about which we can be optimistic; and they demonstrate that reason and resolve, partnership and passion, can get the better of dangerous ecologist trends.

Almost 10 years ago, horrific footage of dolphins being slaughtered in large numbers drove home the need for efforts to prevent dolphin mortality in the tuna fishing industry. Having adopted a Marine Mammal Protection Act for domestic fishing operations, the US began working with international partners through the Inter-American Tropical Tuna Commission (IATTC), with the aim of reducing dolphin mortality. Congress also enacted legislation that included a domestic ban on the sale of tuna not caught in a manner deemed "dolphin safe."

The results: Dolphin mortality has been virtually eliminated, cut by more than 90 percent in what is known as the Eastern Tropical Pacific tuna fishery. This dramatic decline in dolphin mortality is attributable to American leadership and international cooperation. The IATTC has evolved into one of the best and most rigorously enforced conservation regimes in the world.

It's time the United States and all conservationists recognize the enormous drop in dolphin mortality, strengthen this international program, and set the stage for further progress. To do this we must reopen our market to trade in tuna with cooperative nations in the hemisphere.

Fortunately, last fall a coalition of environmental groups and Latin American countries reached an agreement in Panama that will accomplish these goals. The "Panama Declaration," endorsed by Greenpeace, the Center for Marine Conservation, the Environmental Defense Fund, National Wildlife Federation, and the World Wildlife Fund, is a model agreement not only for international cooperation, but also as a way to acknowledge our accomplishments even as we aim to do better in the future.

The Panama Declaration sets a goal of eliminating dolphin mortality altogether, establishes a binding program to protect a wide variety of species throughout the Eastern Tropical Pacific ecosystem, and requires that internationally trained observers are on all tuna vessels, as well as additional measures to ensure compliance.

The US will enable the Panama agreements to take effect by reopening the US market to tuna caught in compliance with the IATTC program, lifting the tuna embargo, and requiring that labels for "dolphin safe" tuna define fish caught without incidental deaths of dolphins. A bipartisan coalition—led by Sens. John Breaux (D) of Louisiana and Ted Stevens (R) of Alaska—has introduced legislation to implement these agreements, and the Clinton administration is working with Congress to ensure their immediate passage.

Gains of this magnitude in the conservation of marine mammals are difficult enough for one nation to achieve. Brokering resolution to these challenges on an international scale is far more challenging. It means persuading other nations, particularly those less fortunate than our own, to sacrifice short-term political and economic interests in the name of long-term ecological and economic health. This is particularly true with dolphin conservation. Without the Panama Declaration, most observers say, the IATTC will collapse.

There are some environmental organizations who understandably say we should aim for an even higher moral standard, one where no dolphins are killed during tuna fishing (the Panama agreements would allow incidental deaths totalling less than one-tenth of 1 percent of all dolphins in the Eastern Tropical Pacific). Yet the Panama Declaration is more than a moral victory. It celebrates an environmental success story and rewards international partners for their cooperation and commitment in conserving marine mammals. It aims for no dolphin deaths in the future.

There is little alternative to the agreements signed in Panama. Countries throughout the hemisphere have made it clear they are losing patience with what they see as an unfair trade barrier—particularly in light of the progress made in reducing dolphin mortalities. If the US fails to take the steps necessary to implement the Panama Declaration, these countries intend to return to fishing methods that kill more dolphins.

At a time when our environmental laws and commitments are under attack, it is essential that we consolidate gains made in protecting the global environment. It's time to declare victory with swift congressional enactment of legislation that will implement the Panama Declaration.

[From USA Today, Jan. 6, 1997]

HELP SAVE DOLPHINS

I was pleased to see your Dec. 27 editorial supporting enactment of legislation for the protection of dolphins accidentally caught during fishing operations for tuna ("Dolphin law has served its purpose; reform it," Our View, Debate).

This legislation would implement a strong international agreement among the nations fishing for tuna in the eastern Pacific—one of the best international marine resource agreements in the world.

The agreement locks into place the dramatic reduction in dolphin mortalities, which is highlighted in the editorial, and includes a commitment by the nations involved in the fishery to work toward a goal of eliminating all dolphin deaths. The agreement also provides for comprehensive monitoring by observers and strict penalties for violations.

Because the tuna fishery in the eastern Pacific Ocean is conducted almost entirely by foreign vessels on the high seas or in their own waters, it can be regulated effectively only by international agreement. Yet, as your editorial recognizes, the dolphin protection agreement is in jeopardy because tuna trade embargoes imposed before the agreement was negotiated continue against those nations participating in the program. The administration strongly supports your call for legislative reform to remove the trade embargoes and implement this important international program.

[From USA Today, Jan. 3, 1997]

INTERNATIONAL COOPERATION NEEDED TO PROTECT DOLPHINS, OTHER OCEAN LIFE

The editorial "Dolphin law has served its purpose; reform it" (Our View, Debate, Dec. 27) hit the nail on the head by pointing out that so-called dolphin-safe fishing methods are harmful to other wildlife including sharks, billfish and sea turtles, which are as much a part of the oceans as dolphins.

That is a major reason the Center for Marine Conservation (CMC), Environmental Defense Fund, Greenpeace, National Wildlife Federation and World Wildlife Fund all support legislation in Congress to implement the Panama Declaration, a binding international agreement signed by the United States and 11 Latin American nations. The agreement will ensure continued reduction of dolphin deaths in the Eastern Tropical Pacific (ETP) tuna fishery and also protect other ocean wildlife.

As one of the organizations that led the fight for dolphin-safe labeling, CMC agrees with USA TODAY that we should benefit from experience and recognize that the current law is having some unintended and unacceptably harmful impacts on ocean life.

Our commitment to conserving dolphins and all ocean creatures leads us to support legislation to implement the Panama Declaration. The legislation would lock in the dramatic progress that has been made in reducing dolphin deaths in the ETP by more than 95 percent. It would reduce unintended catches of sharks, billfish and sea turtles in tuna nets and assure U.S. consumers no dolphins died, regardless of fishing method, in capturing the tuna found on the shelves.

While those who oppose the agreement might like to live in a world where the U.S. dictates international environmental policy, the reality is far different. Increasingly, we are seeing the need to promote international cooperation, which can be a tremendous boon to environmental protection.

Failure to adopt this legislation could result in loss of controls on dolphin deaths. The choice is between the rule of law and anarchy on the seas.

[From USA Today, Dec. 27, 1996]

DOLPHIN LAW HAS SERVED ITS PURPOSE; REFORM IT

Last year, fewer than 3,300 dolphins died in the gigantic nets used to catch yellowfin tuna in the eastern tropical Pacific Ocean. That sounds like a lot, but it's down from more than 130,000 in 1986, and it's compelling evidence that it's time to reform the federal ban on tuna that is not "dolphin safe."

For some unknown reason, tuna swim beneath dolphins. So for years, fishers set their tuna nets around dolphins. Unfortunately, the dolphins would get tangled in the nets with the tuna. Hundreds of thousands drowned each year.

That slaughter inspired Congress to begin passing laws to protect marine mammals as early as 1972. And the tuna industry has responded, designing dolphin-friendly nets and developing tactics for herding dolphins out before winching tuna in. Most recently, in 1992, Congress embargoed all tuna caught by encircling dolphins and made the "dolphin-safe" label a condition for all tuna sold in the country.

The result has been both satisfying and troubling. The industry has developed safe ways of netting the tuna that run with dolphins. But the embargo also encourages fishers to set their nets around ocean debris and schools of smaller tuna. This is "dolphin safe," but it nets and kills thousands of tons a year of other creatures—sharks, marlin, even endangered sea turtles.

That's a fast way to trash an ecosystem. Yet the practice continues because otherwise—no label. And no label, no market.

It's time to sing a different tuna. First, lift the embargo, which applies only to tuna caught by encircling dolphins, even though other tactics may kill some dolphins, too. Instead, embargo fish when strict dolphin mortality rates are exceeded. And redefine "dolphin safe" to mean fish caught without a single dolphin death. This will:

Help ease testy trade relations with countries like Mexico, which has lost market share because of the embargo.

Give the industry a reason to fish with methods that are "ocean safe" as well as dolphin safe.

And help recover some of the American jobs that fled to Asia when the embargo made it difficult to compete.

Contrary to some claims, the reforms would not put dolphins in greater peril. In fact, without these changes, nations that now voluntarily follow dolphin-safe practices have threatened to stop. That *would* increase dolphin mortality.

There's another reason to reform the law. To be effective, the nation's enviroregs need to harness market forces. And to be credible, they must also acknowledge success. Tuna reform would satisfy both requirements while proving to skeptics that Congress can indeed capitalize on and reward compliance. Doing so should be at the top of the new Congress' fish-list.

DOLPHINS SAFER

The number of dolphins killed in tuna nets in the eastern tropical Pacific Ocean has fallen steeply.

1989	96,979
1990	52,531
1991	27,292
1992	15,539
1993	3,601
1994	4,096
1995	[1]3,274

[1]Estimated. Source: Marine Mammal Commission.

[From the Washington Post, Dec. 16, 1995]

SAVING DOLPHINS

American law tries to protect dolphins even in international waters, and the time has come to revise that law. In its present form, it will be much less effective in the future. But the opposed revisions now moving through Congress sharply divide environmentalists.

Tuna have the habit of swimming under the dolphins, and to get the tuna, fishermen encircle the dolphins with their nets. In the past this has led to an immense slaughter of dolphins—three decades ago, more than 700,000 a year died in those nets in the great fishing grounds of the eastern Pacific. American law now bans the importation not only of tuna caught by encirclement but tuna from any country that permits its fishermen to use those nets. That includes Mexico, but Mexican fishermen, hoping to regain access to the U.S. market, have greatly improved their practices. The dolphin kill last year was under 5,000—a triumph of conservation.

But it won't last. For one thing, the alternative methods of catching tuna, while sparing the dolphins, are wasteful of other valuable and sometimes rare marine life. More important, admission to the U.S. market is becoming less effective as an incentive. Other markets are opening up rapidly in Asian and Latin American countries that have no rules whatever on the tuna catch.

To lock in the recent progress, the United States has negotiated a binding agreement among all the countries that have fishing fleets in the eastern Pacific. It would continue to press for lower dolphin mortality, but it would permit the use of the encircling nets. They can be manipulated to spill out the dolphin before the tuna are hauled aboard, and international observers are on every tuna boat in the eastern Pacific. The new agreement would allow into this country tuna taken in any supervised haul that did not result in the death of dolphins.

Some environmental organizations object vehemently to encircling nets on any terms and point out that, while the number of dolphin deaths would be small, it wouldn't be zero. They demand zero. Other environmentalists reply that if Congress doesn't accept this deal, the new international agreement will come unraveled and old-style fishing, cruder and cheaper, will reappear along with much higher dolphin deaths. They're right. This agreement, carried out by the bill that Sens. Ted Stevens (R-Alaska) and John Breaux (D-La.) are sponsoring, can provide permanent protection—as present law does not—to the Pacific's dolphins.

[From the Dallas Morning News, July 30, 1996]

FOUL FISHING

U.S. SHOULD ACT TO MAKE TUNA TRULY "DOLPHIN-SAFE"

Congratulations, Flipper!

Your chances of surviving to old age have improved greatly since the United States began to embargo tuna caught in dolphin-killing nets and the food industry began to entice environmentally conscious consumers with "dolphin-safe" tuna.

The proof is in the numbers: Dolphin deaths related to tuna fishing in the eastern Pacific Ocean fell to fewer than 5,000 in 1994 from 600,000 in 1972.

However, you probably think that 5,000 dolphin deaths are still too many. And you're probably concerned that the methods used to trap tuna still end up killing hundreds of thousands of pounds of other species, including sharks, marlins and endangered sea turtles.

Furthermore, you probably worry that the "dolphin-safe" label on tuna cans is misleading. The label means only that dolphins were not encircled by nets in the eastern Pacific. It does not mean that no dolphins were killed, or that dolphin-deadly methods were not used elsewhere in the Pacific or in other waters.

So, you probably like the new international agreement designed to drastically reduce the killing. So do we. Emphatically.

The Panama Declaration, which was signed last year by the United States and 11 other countries, would allow fleets to return to the old encirclement method of catching tuna. But it would require signatories to use techniques that allow dolphins to escape. Those countries also would investigate ways to avoid killing other species.

The best thing about the new agreement is that it is multilateral rather than unilateral. In other words, it involves many countries rather than just the United States.

Current U.S. law is well meaning, but it puts the heaviest burden on U.S. fleets by forbidding them alone from using the ancirclement method. And it puts the United States in the awkward position of heavy-handedly denying its market to foreigners to compel good behavior.

Bills to approve the agreement have passed unanimously in Senate and House committees. They have President Clinton's support. Despite opposition from some environmental groups, who cling to the outdated notion that unilateral action by the United States is best, there is no good reason why both houses of Congress should not pass the bills and send them to Mr. Clinton for his signature.

[From the Houston Chronicle, July 13, 1996]

DOLPHIN SAFE

Consumers who choose only tuna marked "dolphin safe" because they believe it means these highly intelligent mammals are not being harmed in the tuna fishing process may not be getting what they are paying for.

A bill now before Congress that has broad support from environmental groups and the tuna fishing industry will ensure that "dolphin safe" means what it implies. The bill would also help safeguard the delicate ecosystem of prime tuna fishing waters, ensuring a healthy tuna fishery to future generations.

The pending legislation in the House and Senate would undo damage from a well-intentioned 1988 embargo that banned tuna from any nation that fished in the Eastern Tropic Pacific Ocean (ETP) that killed dolphin at rates higher than did the U.S. fleet. The hope was to stop the annual drowning of hundreds of thousands of dolphins in nets cast around them for the tuna that tend to swim with dolphins. It backfired. Within two years, all foreign nations had been embargoed.

Then, in 1990, Congress said any fishing boats that stopped using the dangerous encircling net technology in the ETP could label their product "dolphin safe." This too has been a disaster because other fishing methods tend to kill great numbers of other animals, such as endangered sea turtles, sharks, billfish and juvenile tuna.

Moreover, these attempts to protect dolphins in the ETP prompted a mass exodus of the U.S. tuna fleet in those waters, leaving foreign fishing boats, which were embargoed in the U.S. anyway to continue their harmful fishing practices in the ETP and the U.S. fleet to continue ensnaring dolphins elsewhere.

Under the proposal before Congress, only tuna catches that involved no dolphin kills whatsoever—and that fact must be certified by an independent inspector aboard ship—could be labeled "dolphin safe." Such observers are already aboard many ships as a result of voluntary measures adopted by 12 countries, including the United States and Mexico. The bill also seeks to lift the tuna embargo to give foreign fishermen the incentive to continue those voluntary measures.

The voluntary agreement, which induced tuna fishermen to actually free ensnared dolphins by hand, are set to expire in 1999. Best estimates show only 5,000 dolphins were killed under the voluntary protection measures. Congress should continue this progress by passing this vital legislation.

[From the New York Times, July 7, 1996]

THE BEST WAY TO SAVE DOLPHINS

The environmental community is engaged in a rare and bitter brawl over competing Congressional bills aimed at protecting a beloved environmental symbol—the bottlenosed dolphin. Each side thinks it has the better scheme to protect dolphins that are incidentally trapped and killed by the giant nets used by tuna fleets. This is a complex, emotional issue and all the disputants are animated by the best of intentions. But the approach contained in a measure sponsored by Representative Wayne Gilchrest, a Maryland Republican, and supported by the Clinton Administration, offers the dolphin a better chance than the alternatives.

Mr. Gilchrest's bill rubs a lot of people the wrong way because it seems to endorse the very fishing methods that got the dolphin in trouble in the first place. For reasons that are not fully understood by scientists, adult tuna in the rich fishing grounds of the eastern Pacific tend to congregate underneath dolphins. Tuna vessels follow a school of dolphins, cast their mile-long nets and haul in the tuna below. Until a few years ago, thousands of dolphins routinely drowned in the nets or were crushed when the boats winched them in.

In 1990, Congress placed an embargo on all tuna caught by this method, known as "encirclement," costing big tuna-fishing countries like Mexico, Ecuador and Costa Rica hundreds of millions of dollars. In 1992, these countries convened in La Jolla, Calif., with United States officials and pledged to adopt safer fishing methods. They did not abandon the encirclement method, but they vastly improved it. They installed dolphin "safety panels" in their nets, which acted as escape hatches. They deployed divers to assist dolphins who could not find their way out. They learned how to dip their nets deeper into the water to allow dolphins to escape while retaining the tuna. These new techniques led to a stunning drop in dolphin mortality in the eastern Pacific—from 133,000 killed in 1986 to 3,274 last year, a figure calculated by independent monitors on boats that used the improved encirclement techniques. Even so, the tuna caught by encirclement have remained embargoed.

Mr. Gilchrest's bill, which has the endorsement of Vice President Al Gore, would reward these efforts by lifting the embargo. The bill would also reward any batch of tuna caught without a single dolphin death—a fact to be verified by on-board monitors—with the coveted and commercially important "dolphin-safe" label.

The Gilchrest measure has the support of Greenpeace, the Environmental Defense Fund and several other advocacy groups. It is opposed by the Sierra Club and the Defenders of Wildlife, and by the Earth Island Institute in San Francisco, which has done more than any other group to call attention to dolphin mortality. Earth Island's champion in the Senate is Barbara Boxer, the California Democrat, whose bill would continue to ban all tuna caught by the encirclement method.

Unfortunately, the other methods of trapping tuna carry serious disadvantages. Under one approach, fishermen cast their nets around logs and other debris floating near the shoreline, which often attract tuna. That is safe for dolphins, but it kills a huge "bycatch" of sharks, turtles and other valuable marine life, not to mention tons of juvenile tuna whose demise imperils future tuna stocks.

Senator John Chafee, a Republican environmentalist who is sponsoring a Senate bill comparable to Mr. Gilchrest's, believes that not just the dolphin but an entire marine ecosystem is at stake. He has concluded, rightly, that the best response is the once-reviled but much-improved encirclement method.

[From the Washington Post, July 4, 1996]

SAVE MOST OF THE DOLPHINS

For reasons humans have yet to understand, dolphins in the eastern Pacific Ocean often swim above schools of yellowfin tuna. This made them for years the unintended victims of tuna fishermen, innocent bystanders killed at a rate of perhaps half a million per year. In 1990, when American consumers saw videotape of dolphins suffering in giant tuna nets, an outcry led to a movement for "dolphin-safe" tuna. The largest canneries pledged not to buy any fish captured alongside dolphin, and Congress enacted an embargo against countries engaging in the kind of fishing that endangers these highly intelligent animals.

Since then, an international effort led by the United States has led to a remarkable change in the behavior of the fishing fleet. Boats in the eastern Pacific still use circle nets that capture dolphins, but their operators have developed gear and methods that allow most of the dolphins to escape. During the past two years, the number of dolphins killed has fallen to about 4,000 per year. International observers posted on every boat makes these figures credible. The dolphin population of 9.5 million is believed to be stable or increasing.

Now the Clinton administration, with bipartisan backing in Congress and the support of Greenpeace, the World Wildlife Fund and other environmental groups, wants the embargo lifted. The argument is simple: If fleets do not receive some reward for their changed behavior soon, they will revert to their old and easier ways of fishing, and dolphin casualties will rise. Under the proposal, the international monitoring program would remain in effect.

But opponents in Congress may stall any action. The opponents are backed by other environmental groups, such as the Sierra Club and Earth Island Institute. They argue for zero-tolerance in dolphin-killing, and they also believe that the chasing and encirclement may harm dolphins without killing them.

Unfortunately, alternative methods of tuna fishing appear to produce large "bycatches" of immature tuna, thus raising questions of depletion, and of other species, including endangered turtles. More to the point, an insistence on zero dolphin deaths could squander the progress made so far, since virtually all of the fishing in question takes place in international waters by foreign fleets. And alternative markets exist.

Sen. Barbara Boxer (D-Calif.), who helped lead the campaign for dolphin-free tuna, is right to insist on research on the effects on the dolphin population of circle-net fishing. Further studies also should be conducted on the bycatch dangers of alternative methods. But this is one case where a quest for perfection could unravel the substantial progress that has been achieved.

ATTENTION REPRESENTATIVES—OPEN LETTER TO REPRESENTATIVES ON H.R. 2823, THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT AND THE PANAMA DECLARATION, JANUARY 3, 1996

DEAR REPRESENTATIVE: Recently, twelve nations, including the United States, signed the Declaration of Panama, an historic international agreement to protect dolphins and biodiversity in the Eastern Tropical Pacific Ocean. The Panama Declaration, endorsed by the Clinton Administration, the Center for Marine Conservation, Environmental Defense Fund, Greenpeace, National Wildlife Federation, and World Wildlife Fund, will continue progress in reducing dolphin deaths in these waters and will extend protection to other marine life as well.

Further, the Center for Marine Conservation, the Environmental Defense Fund, Greenpeace, National Wildlife Federation, and World Wildlife Fund support H.R. 2823, the International Dolphin Conservation Protection Act. H.R. 2823, if enacted, will implement the Panama Declaration which will:

Achieve a legally binding agreement on all fishing nations, mandating progressive reductions in dolphin mortality toward zero through the setting of annual limits;

Build upon recent gains in dolphin protection, accelerate the current schedule for reducing dolphin mortality by several years, impose mortality limits that are more restrictive than those currently in place, and lock in the goal of eliminating dolphin mortality in the tuna fishery;

Establish mortality limits and protection for individual dolphin stocks to ensure their growth and recovery;

Preserve and strengthen the existing dolphin conservation program which makes it illegal to set nets around dolphins after dark or use explosives to disorient dolphins;

Expand and further develop enforceable onboard observer programs and tracking systems that guarantee that no dolphins died to catch "dolphin-safe" tuna from the Eastern Tropical Pacific Ocean;

Prevent the dismantlement of existing international agreements and the Inter-American Tropical Tuna Commission which have effectively reduced dolphin mortality and managed the tuna fishery in the Eastern Tropical Pacific;

Link enforcement of the binding international agreement to strong embargo provisions;

Protect the ecosystem of the Eastern Tropical Pacific Ocean by reducing bycatch of other marine species such as juvenile tuna, sharks, and endangered sea turtles in the tuna fishery; and

Strengthen the scientific basis for the conservation and management of the tuna fishery, as well as research into assessing the impact of chase and encirclement on dolphins and developing gear and techniques that do not require setting nets around dolphins to catch tuna.

In short, the current voluntary international regime is not durable. Accordingly, it is essential that we act now to lock in long term protections for dolphin populations, rather than wait until the international commitments for dolphin conservation unravel. This legislation will resolve the long-standing tuna/dolphin controversy and establish measures that will protect dolphins and the ecosystem. We urge you to cosponsor H.R. 2823. If you have questions, please contact: Rodrigo Prudencio, National Wildlife Federation, 202-797-6603; Nina Young, Center for Marine Conservation, 202-857-3276; Annie Petsonk, Environmental Defense Fund, 202-387-3500; Gerry Leape,

Greenpeace, 202–462–1177; Scott Burns/David Schorr, World Wildlife Fund, 202–293–4800.

CENTER FOR MARINE CONSERVATION, ENVIRONMENTAL DEFENSE FUND GREENPEACE, NATIONAL WILDLIFE FEDERATION, WORLD WILDLIFE FUND

"GREEN" POINTS IN SUPPORT OF H.R. 2823

From a conservation and environmental perspective, H.R. 2823 (the International Dolphin Conservation Program Act) merits full House passage because (not prioritized):

1. It's Better for Dolphins:

Locks into place binding international legal protections for dolphins in the Eastern Tropical Pacific (ETP) Ocean. The current ETP dolphin protection is entirely voluntary, based on the 1992 "La Jolla" program. In October 1995, all of the ETP fishing nations signed the "Panama Declaration." That Declaration strengthens further the "La Jolla" program, and sets in motion a process to make the program legally binding, contingent on changes in U.S. law that are part and parcel of H.R. 2823's reforms, including observers and other monitoring, verification and tracking of catch; research and enforcement.

Allows dolphin stocks to recover. The remarkable success of the MMPA and the voluntary La Jolla agreement have resulted in an almost 99 percent reduction in dolphin mortality in the ETP. Up until the early 1990s, though, many dolphin species in the ETP suffered annual mortality rates high enough to hamper or retard their recovery. But now, those stocks are stable, with mortality rates (for all stocks) below 0.2% of the population abundance—a level more than four times lower than that recommended by the National Research Council to allow recovery. Moreover, H.R. 2823 requires that these annual mortality rates be further reduced to less than 0.1% of the population abundance, with the goal of eliminating mortality entirely. These new levels of protection for dolphins have been endorsed by leading scientists.

Addresses effectively the issue of "chase and encirclement" of dolphins, establishing a process for investigation and further action, as merited, regarding the health-related impacts of capture stress. Concerns have been raised that the chase and encirclement of dolphins causes harm and stress levels that can impede dolphin reproduction or result in dolphin deaths. While dolphins that are chased and encircled probably experience some level of stress, there is no conclusive scientific evidenced that chase and encirclement reduces reproductive capacity, causes dolphins to die after release, or develop stress-related diseases. In fact, there is evidence that some dolphins have habituated to encirclement and have developed behaviors that reduce their risks in the net. Nevertheless, the stress issue should be further investigated, followed by a report and recommendations to Congress—as called for in H.R. 2823 (Sec. 302(d)(4)).

2. It's Better for Other Sea Life:

Contains tough provisions that require fishers to protect not only the dolphins, but also the tuna stocks on which the fishery depends, as well as other species, like sharks, bill fish and sea turtles that get caught in the purse seine nets used in the ETP fishery. One of the MMPA's stated objectives is to maintain the health and stability of marine ecosystems, but to date little attention has been given to this objective. H.R. 2823 requires observers stationed on every vessel to record bycatch of all species, and requires fishers to minimize that bycatch.

Recognizes that "dolphin-safe" and "ecosystem-safe" fishing go hand-in-hand. Recent data indicate that fishing methods that do not involve setting nets around dolphins, such as setting nets on schools of tuna or logs, have 10 to 100 times greater bycatch of other sea life. This bycatch is alarming, especially for species that reproduce slowly, such as sharks, sea turtles and billfish. In addition, the IATTC estimates that, if sets on dolphin were replaced by school and log sets, from 10 to 25 million juvenile tuna would be discarded. Domestic and international fisheries conservation efforts have made bycatch reduction a priority. H.R. 2823 provides the best vehicle to develop immediate measures to avoid, reduce, and minimize bycatch of juvenile yellowfin tuna and other marine life. In contrast, the Miller substitute (H.R. 2856) unfortunately promotes a substantial increase in the waste of immature tuna and other bycatch species, by encouraging shifts to those non-encirclement fishing methods.

3. It's Better for Consumers:

Strengthens the popular "dolphin-safe" label, assuring consumers that no dolphins died in the catch of labelled tuna. Under the current definition (carried forward in the Miller substitute), consumers are misled into believing the current "dolphin-safe" label has solved the tuna-dolphin issue, and that dolphins no longer die in tuna sets. Sadly, this is not the case. Fishers continue to encircle dolphins at the same rate as prior to the establishment of the "dolphin-safe" label. Truth-in-labeling lies in the passage of H.R. 2823, because it tells the consumer whether or not a dolphin died, and not just about what fishing technique was used. It gives consumers the ability to choose tuna caught without killing dolphins, and that power of choice, in turn, gives fishers the incentive to reduce dolphin mortality further toward zero.

4. It's Better for International Environmental Policy:

Raises other countries' environmental performance to the U.S. level, and to more sustainable levels, by ensuring that foreign-caught tuna sold in foreign countries will meet the same strong dolphin and other species/ecosystem protection requirements that we apply to tuna sold in our country. Moreover, H.R. 2823 provides that if ETP fishing nations fail to meet the multilaterally-agreed standards, their tuna will be banned from import into the United States—a trade sanction that serves as one of the means of ensuring compliance with and enforcement of the proposed legally binding agreement called for in the Panama Declaration.

Makes possible stronger international conservation policy for dolphins, as well as other marine species impacted in the ETP fishery. The Panama Declaration, and the resulting multilateral environmental agreement (MEA) made possible by H.R. 2823's passage, will result in strengthened conservation and enforcement measures applicable to all ETP fishing nations. At the same time, that MEA, once agreed by all ETP fishing nations, will be far less vulnerable to a WTO-type trade challenge than have been the unilateral MMPA sanctions like those challenged by Mexico in 1991.

A Dolphin-Safe Label That Really Means It

What's in a label? Well, if you have eaten tuna in the past five years, take note: the "dolphin-safe" label you have grown to trust is neither as dolphin-safe nor ecologically-sound as you may think. Our nation's landmark dolphin protection and product labeling laws have resulted in unintended consequences which have actually exacerbated some marine resource problems, while failing to guarantee that dolphins were not killed when harvesting your tuna.

The campaign to save dolphins had all the right intentions. Combined with the 25-year effort to enact and strengthen the Marine Mammal Protection Act (MMPA), the campaign educated the public about a serious problem. Since its 1972 passage, the MMPA went on to spur a reduction in dolphin mortalities in the Eastern Tropical Pacific ocean (ETP) from as many as 600,000 a year to fewer than 5,000 by 1994.

The effort to continue this success resulted in the landmark 1992 dolphin-safe laws, which encompassed three key elements: disallowing the common fishing practice of encircling dolphins to catch the tuna that migrate with them, monitoring and reporting of any dolphin deaths that did occur, and an embargo on imports of non-dolphin-safe tuna. These principles were the backbone of what American consumers recognize as the "dolphin-safe" label.

More than three years later, however, the failings of the 1992 law are evidenced not only in the continuing deaths of dolphins, but of the damage to the ocean ecosystem as a whole. To understand why this destruction of marine life persists, it is necessary to examine the shortcomings of the 1992 laws—and the recent and most promising attempt to address these problems on an international level, the Panama Declaration.

At the root of the problem is the fact that while tuna is caught around the world, U.S. dolphin protection laws are applicable only in the ETP. As strong as the laws may be, they do not uniformly apply in other regions, which yield as much as 80 percent of the world's tuna. Unfortunately, this policy is based on the unproven assumption that tuna outside the ETP do not migrate with marine mammals. Hence, tuna sold in the U.S. from other regions are also afforded the "dolphin-safe" label, amounting to little more than a p.r. gimmick here and abroad.

Furthermore, the "dolphin-safe" label only means that no dolphins were "encircled" by fishing nets in the ETP; it does not mean that no dolphins or other marine mammals were harmed or killed during tuna harvests. The prohibition of dolphin encirclement by American vessels in the ETP sparked a mass exodus of more than 95 percent of the U.S. fleet. Most vessels headed for the Southern Pacific, while some owners simply sold their boats to citizens of other nations. So while few if any recent dolphin deaths are attributable to U.S. tuna vessels, these deaths continue in regions where U.S. law is irrelevant.

Disallowing encirclement of dolphins, with whom adult tuna migrate, put fishermen in the position of focusing their effort or juvenile tuna which tend to congregate near shore in schools, or under floating debris such as logs. This breaks the cardinal rule of successful fisheries management; harvest only mature fish which have spawned at least once. Biologists are concerned that a currently well-managed, healthy fishery will begin to decline if efforts continue to focus on young tuna.

Equally alarming is a Greenpeace study showing that methods considered "dolphin-safe" under U.S. law have resulted in hundreds of thousands of pounds of by-catch (incidental harvest) of other species in the past 3 years alone. Sharks, sea turtles, other fish, and yes, even dolphins, congregate with juvenile tuna and are unavoidably killed in the fishery. From an ecosystem perspective, this is intolerable.

So what needs to be done to protect dolphins? Switching from one fishing method to another in a small section of the world's ocean has not solved the problem. And simply shutting down the tuna fishery altogether would threaten the survival of fishing communities and the ability to feed a growing world population. Tuna is the leading seafood product consumed in America, and a renewable protein source for poor and low-income persons the world over.

Unilateral embargoes by the U.S. alone also have proved unable to save the world's dolphins. Indeed, the unilateral embargo on imports of "dolphin-unsafe" tuna has led to a trade dispute under the General Agreement on Tariffs and Trade (GATT).

Clearly, there has long been a need for a strong international approach. Recognizing this, international negotiators began developing an alternative, multilateral agreement which put observers on all tuna vessels fishing in the ETP, regardless of nationality and method of fishing. That program also set progressively declining caps on dolphin mortality.

This plan has now been strengthened and extended in a recent accord known as the "Panama Declaration." Supported by Greenpeace, the Seafarers International Union (SIU), the Clinton administration and a growing contingent in Congress, this accord take a significant step towards achieving the twin goals of saving dolphins and other marine species from extinction while insuring a sustainable and healthy tuna fishery.

Hammered out through difficult negotiations between government representatives, environmentalists, and fishermen, this agreement would legally bind countries to require mandatory enforcement measures and reporting internationally, while rewarding fishermen who do not kill dolphins. The agreement would mandate continued reductions of dolphin deaths, and would bring many new boats under a regulatory framework to reduce by-catch of all marine species.

To take the next step, U.S. laws on dolphin-safe labeling requirements must be rewritten in accord with the Panama Declaration. Also, the current unilateral embargo must be replaced with internationally agreed upon enforcement measures which allow the U.S. to impose trade sanctions on nations failing to live up to their commitment to dolphins. Congress is now considering these changes. Greenpeace and the SIU strongly opposed passage of the NAFTA and GATT treaties last year. We believed then as now that those agreements fundamentally weaken a nation's ability to pass and enforce strong environmental, health, safety, and labor protection laws.

At the same time, many environmental crises know no borders, and the unnecessary killing of marine mammals is one such crisis. One country acting alone cannot save the oceans and protect their bounty. Once we succeed in getting governments and fishermen to agree to a goal of zero dolphin deaths, we will achieve real truth in labeling, and more importantly, a package dolphins can truly live with.

BARBARA DUDLEY,
Executive Director, Greenpeace U.S.
JOSEPH SACCO,
Executive Vice President, Seafarers International Union of North America.
STEVE EDNEY,
National Director, United Industrial Workers.
TERRY HOINSKY,
President, Fishermen's Union of America.

Mr. BREAUX. Mr. President, today, along with Senator STEVENS and others, I am introducing legislation that will implement the Panama Declaration for the protection of dolphins in the tuna fishery of the eastern tropical Pacific Ocean. The United States signed the Panama Declaration on October 4, 1995, along with the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela. by agreeing to the Panama Declaration, these countries have demonstrated their commitment to the conservation of ecosystems and the sustainable use of living resources related to the tuna fishery in the eastern tropical Pacific.

By implementing the Panama Declaration, we will strengthen the Inter-American Tropical Tuna Commission [IATTC], which has proven to be an extremely effective international resource management organization. Implementing the Panama Declaration will ensure the reduction of dolphin mortalities associated with tuna fishing in the eastern tropical Pacific Ocean. In addition, we will enable American tuna fishermen to re-enter that tuna fishery on the same footing as foreign fishermen.

Since 1949, the IATTC has served as the regional fishery management organization for the tuna fishery of the eastern tropical Pacific Ocean, managing that fishery in an exemplary manner. Managing migratory species requires a multilateral approach, one which the IATTC is well-suited to perform. The yellowfin tuna fishery of the eastern tropical Pacific Ocean, which the Panama Declaration addresses, falls under the auspices of the IATTC. In that fishery, tuna fishermen use dolphins to locate schools of large, mature yellowfin tuna which, for unknown reasons, associate with schools of dolphin. Once the schools of dolphin have been located, the fishermen use purse seine nets to encircle the dolphins with the objective of catching the tuna swimming below. The dolphins are then safely released before the tuna is hauled abroad.

In recent years, there has been some concern about these fishing practices which, in the past, have resulted in excessive incidental mortality to dolphins. In 1992, in an effort to address this problem, 10 nations with tuna vessels operating in the eastern tropical Pacific signed an agreement known as the La Jolla Agreement. The La Jolla Agreement established the International Dolphin Conservation Program [IDCP], which is administered by the IATTC.

The regional objective of the IDCP is to reduce dolphin mortalities to insignificant levels approaching zero, with a goal of eliminating them entirely. Pursuant to that program, the number of dolphins killed accidentally in the tuna fishery has been reduced to less than 4,000. annually from a previous average of over 300,000 killed annually. The current dolphin mortality represents approximately four one-hundredths of 1 percent of the 9.5 million dolphins of the eastern tropical Pacific. Thus, the IDCP has been remarkably successful in achieving its goal of reducing unintended dolphin mortalities to biologically insignificant levels approaching zero.

This legislation will implement the Panama Declaration, formalize the 1992 La Jolla Agreement and make it a legal agreement binding on the member countries of the IATTC. The Panama Declaration strengthens the IDCP and furthers its goals by placing a cap of 5,000 per year on dolphin mortalities.

Although U.S. fishermen developed the techniques now used in capturing tuna and safely releasing dolphins, they effectively have been forced from fishing in the eastern tropical Pacific since the 1992 amendments to the Marine Mammal Protection Act, which prohibit the encirclement of dolphins. The legislation to implement the Panama Declaration will eliminate the inequitable treatment of United States tuna fishermen and enable them to re-enter this important fishery on an equal footing with foreign fishermen.

The 1992 ban on encirclement of dolphins has required fishermen to use alternative fishing practices which have serious environmental consequences. Alternative fishing practices lead to excessive bycatch of endangered sea turtles, sharks, billfish, and great numbers of immature tuna and other fish species. In an attempt to manage a single species, in this case dolphins, we have caused serious harm to the entire ecosystem. This legislation will result in a reduction of this bycatch problem as well as permit fishermen to encircle dolphins as long as they comply with the stringent regulations imposed by the IATTC.

The purpose of this bill is to improve and solidify efforts to protect dolphins in the eastern tropical Pacific Ocean, eliminate the bycatch problems caused by alternative fishing methods, and recognize the tremendous gains by other countries in reducing dolphin mortality. The Panama Declaration establishes a common environmental standard for all countries fishing in the region. By formalizing the La Jolla Agreement, U.S. and foreign fishermen in the eastern tropical Pacific will be subject to the most stringent fishery regulations in the world.

The Panama Declaration represents a tremendous environmental achievement, and it enjoys support from such diverse interests as major, mainstream environmental groups, the U.S. tuna

fishing fleet, the Clinton administration, and other countries whose fishermen operate in the eastern tropical Pacific.

Mr. President, I ask unanimous consent that a letter of support from Vice President GORE be entered into the RECORD.

I am encouraged that the majority leader, on the Senate floor on September 30, 1996, had promised to provide floor time at the beginning of this Congress to vote on this legislation. I urge my colleagues to join me in supporting this legislation in order that we may implement this important international agreement.

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

THE VICE PRESIDENT,
Washington, June 3, 1996.

Hon. JOHN B. BREAUX,
U.S. Senate,
Washington, DC.

DEAR JOHN: I am writing to thank you for your leadership on the International Dolphin Conservation Program Act, S. 1420. As you know, the Administration strongly supports this legislation, which is essential to the protection of dolphins and other marine life in the Eastern Tropical Pacific.

In recent years, we have reduced dolphin mortality in the Eastern Tropical Pacific tuna fishery far below historic levels. Your legislation will codify an international agreement to lock these gains in place, further reduce dolphin mortality, and protect other marine life in the region. This agreement was signed last year by the United States and 11 other nations, but will not take effect unless your legislation is enacted into law.

As you know, S. 1420 is supported by major environmental groups, including Greenpeace, the World Wildlife Fund, the National Wildlife Federation, the Center for Marine Conservation, and the Environmental Defense Fund. The legislation is also supported by the U.S. fishing industry, which has been barred from the Eastern Tropical Pacific tuna fishery.

Opponents of this legislation promote alternative fishing methods, such as "log fishing" and "school fishing," but these are environmentally unsound. These fishing methods involve unacceptably high by-catch of juvenile tunas, billfish, sharks, endangered sea turtles and other species, and pose long-term threats to the marine ecosystem.

I urge your colleagues to support this legislation. Passage of this legislation this session is integral to ensure implementation of an important international agreement that protects dolphins and other marine life in the Eastern Tropical Pacific.

Sincerely,

AL GORE.

By Mr. HELMS:

S. 41. A bill to prohibit the provision of Federal funds to any State or local educational agency that denies or prevents participation in constitutional prayer in schools; read twice and placed on the calendar.

VOLUNTARY SCHOOL PRAYER PROTECTION

Mr. HELMS. Mr. President, this year marks the 200th anniversary of George Washington's departure from public life. A few months before the end of his Presidency, in his farewell address to the Nation, he included a parting word of advice—and a final warning—that is just as significant and relevant today as it was then. Washington counseled the new Nation:

> Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute to patriotism who should labor to subvert these great pillars of human happiness.

Our Founding Fathers understood well the intricate relationship between freedom and responsibility. They knew that the blessings of liberty engendered certain obligations on the part of a free people—namely, that citizens conduct their actions in such a way that society can remain cohesive without excessive government intrusion. The American experiment would never have succeeded without the traditional moral and spiritual values of the American people—values that allow people to govern themselves, rather than be governed.

Not long ago, my friend, Margaret Thatcher, highlighted for us the words of another of our Nation's founders, John Adams, who said, "Our Constitution was designed only for a moral and religious people. It is wholly inadequate for the government of any other." Yet over the last 30 years, our society has evidenced increasing apathy—and, in some cases, outright hostility—toward the spiritual principles upon which our Nation was founded.

Mr. President, Bill Bennett once observed to me that America has become the kind of country that civilized countries once dispatched missionaries to centuries ago. If we care about cleaning up the streets and classrooms, if we care about the long-term survival of our Nation—how could there be anything more important for Congress to protect than the right of America's children to participate in voluntary, constitutionally protected prayer in their schools?

Mr. President, the legislation I am introducing today will ensure that student-initiated prayer is treated the same as all other student-initiated free speech—which the U.S. Supreme Court has upheld as constitutionally protected as long as it is done in an appropriate time, place, and manner such that it "does not materially disrupt the school day". [*Tinker* v. *Des Moines School District*, 393 U.S. 503.]

Under this bill, school districts could not continue—in constitutional ignorance—enforcing blanket denials of students' rights to voluntary prayer and religious activity in the schools. For the first time, schools would be faced with real consequences for making uninformed and unconstitutional decisions prohibiting all voluntary prayer. The bill creates a complete system of checks and balances to ensure that school districts do not short-change their students one way or the other.

This proposal, Mr. President, prevents public schools from prohibiting constitutionally protected voluntary student-initiated prayer. It does not mandate school prayer and suggestions to the contrary are simply in error. Nor does it require schools to write any particular prayer, or compel any student to participate in prayer. It does not prevent school districts from establishing appropriate time, place, and manner restrictions on voluntary prayer—the same kind of restrictions that are placed on other forms of speech in the schools.

What this proposal will do is prevent school districts from establishing official policies or procedures with the intent of prohibiting students from exercising their constitutionally protected right to lead, or participate in, voluntary prayer in school.

Mr. President, this bill is especially noxious to school prayer opponents because it explodes the myth popular among school administrators and bureaucrats—a myth perpetuated by liberal groups such as the American Civil Liberties Union—that the U.S. Constitution somehow prohibits every last vestige of religion from the public schools.

Seldom is it heard on the issue of school prayer that the Constitution also forbids governmental restrictions on the free exercise of religion, or that the Constitution protects students' free speech—whether religious or not—and that student-initiated, voluntary prayer expressed at an appropriate time, place and manner, has never been outlawed by the Supreme Court.

Mr. President, I find it more than a little ironic that I am forced to revisit this issue on the floor of the Senate. I remind Senators that in 1994, this same proposal—offered in amendment form by Senator LOTT and myself—passed this body overwhelmingly, 75 to 22. In the House of Representatives, this language was approved on two different occasions by similar 3-to-1 margins. Yet this simple protection of constitutional rights was dropped in the closing 60 seconds of a conference with no debate, no discussion, and no vote—just a wink and a nod between the senior Senator from Massachusetts and his counterpart on the House side.

So I am obliged to offer this measure once again to protect the constitutional rights of America's children to participate in voluntary school prayer. Indeed, standing here brings to mind the words of the legendary New York Yankee catcher, manager, and philosopher Yogi Berra: "it's deja vu all over again."

Well, this time, Mr. President, I hope Congress will accede to the wishes of a huge majority of the American people, and enact this legislation. A Wirthlin

poll reported in Reader's Digest indicates that 75 percent of our citizens favor prayer in public schools. My legislation ensures that the American people's will to protect constitutionally sanctioned prayer in our Nation's schools is accomplished—and shows Congress's respect for the moral and spiritual values that make our Nation whole.

By Mr. HELMS:

S. 42. A bill to protect the lives of unborn human beings; read twice, and placed on the calendar.

THE UNBORN CHILDREN'S CIVIL RIGHTS ACT

Mr. HELMS. Mr. President, 2 years ago—and on five occasions prior to that—I have offered the Unborn Children's Civil Rights Act, proposing that the Senate go on record in favor of reversing the Roe versus Wade decision. That wrongful U.S. Supreme Court decision, handed down 24 years ago tomorrow, paved the way for the destruction of more than 35 million innocent children—1.5 million little innocent, helpless lives every year.

An enormous number of men and women of all ages will descend upon Washington tomorrow—as they have every year since the fateful Roe versus Wade decision—pleading with Congress to remember that a nation which fails to value the God-given gifts of life and liberty will one day find itself in the dustbin of history.

So, as the 105th Congress begins its work, I do hope that all Senators will give thought to the need to put an end to the legalized deliberate destruction of the lives of innocent, helpless little human beings.

The Unborn Children's Civil Rights Act proposes four things:

First, to put Congress clearly on record as declaring that one, every abortion destroys deliberately, the life of an unborn child; two, that the U.S. Constitution sanctions no right to abortion; and three, that Roe versus Wade was improperly decided.

Second, this legislation will prohibition Federal funding to pay for, or to promote, abortion. Further, this legislation proposes to defund abortion permanently, thereby relieving Congress of annual legislative battles about abortion restrictions in appropriation bills.

Third, the Unborn Children's Civil Rights Act proposes to end indirect Federal funding for abortions by one, prohibiting discrimination, at all federally funded institutions, against citizens who as a matter of conscience object to abortion and two, curtailing attorney's fees in abortion-related cases.

Fourth, this legislation proposes that appeals to the Supreme Court be provided as a right if and when any lower Federal court declares restrictions on abortion unconstitutional, thus effectively assuring Supreme Court reconsideration of the abortion issue.

Mr. President, it has become fashionable today for America's courts to discard the Constitution in order to create rights and protect freedoms founded upon mankind's depraved nature instead of God's eternal and moral truths.

Yet, never has a court handed down such a misguided decision than when it created the right of a woman to choose to terminate the life of her child. Roe versus Wade has no foundation whatsoever in the text or history of the Constitution. It was a callous invention. Justice White said it best in his dissent: Roe, he declared, was an exercise in raw judicial power.

Why has this Supreme Court's exercise in raw judicial power been allowed to stand? Why has Congress stood idly by for 24 years while 4,000 unborn babies are deliberately, intentionally destroyed every day as a result of legalized abortion?

The answer is simple, Mr. President. Even though Roe versus Wade was and is an unconstitutional decision, Congress has been unwilling to exercise its powers to check and balance a Supreme Court that deliberately allows the destruction of the most defenseless, most innocent humanity imaginable.

So, Mr. President, Roe versus Wade still stands; millions of children continue to be deprived of their right to live, to love, and to be loved. It is not a failure of the U.S. Constitution. It is a failure of both the Supreme Court and the Congress for 24 years to overturn Roe versus Wade.

By Mr. HELMS (for himself, Mr. DEWINE, Mr. HATCH, Mr. NICKLES, Mr. ABRAHAM, and Mr. FAIRCLOTH):

S. 43. A bill to throttle criminal use of guns; read twice and placed on the calendar

THROTTLE CRIMINAL USE OF GUNS

Mr. HELMS. Mr. President, on December 6, 1995, the U.S. Supreme Court handed down an opinion that has undermined the prosecution of literally hundreds of violent and drug trafficking criminals. There could not have been a worse time to go soft on criminals, but when the Supreme Court's decision was announced, hardened convicts across America were overjoyed by the prospect of prison doors swinging open for them.

Sure enough, since the Court's decision just over 1 year ago, hundreds of criminals have indeed been set free.

The bill I am introducing today will correct the Supreme Court's blunder, and it will crack down on gun-toting thugs who commit all manner of unspeakable crimes. I am advised that my bill is being numbered S. 43, and it provides that a 5-year mandatory minimum sentence shall be imposed upon any criminal possessing a gun during and in relation to the commission of a violent or drug trafficking crime. If the criminal fires the weapon, the mandatory penalty is elevated to 10 years. If there is a killing during the crime, the punishment is life imprisonment or the death penalty.

This is just common sense, Mr. President; violent felons who possess firearms are demonstrably more dangerous than those who do not. This legislation, of course, does not apply to anyone lawfully possessing a gun.

Current Federal law provides that a person who, during a Federal crime of violence or drug trafficking crime, uses or carries a firearm shall be sentenced to 5 years in prison. That law has been used effectively by Federal prosecutors across the country to add 5 additional years to the prison sentences of criminals who use or carry firearms.

But along came the Supreme Court's unwise decision thwarting prosecutors' effective use of this statute. The Court, in Bailey versus United States, interpreted the law to require that a violent felon actively employ a firearm as a precondition of receiving an additional 5-year sentence. The Court held that the firearm must be brandished, fired or otherwise actively used; so if a criminal merely possesses a firearm, but doesn't fire or otherwise use it, he escapes the additional 5 year penalty.

Someone put it this way: As a result of the Court's decision, any thug who hides a gun under the back seat of his car, or who stashes a gun with his drugs, may now get off with a slap on the wrist. The fact is, Mr. President, that firearms are the tools of the trade of most drug traffickers. Weapons clearly facilitate the criminal transactions and embolden violent thugs to commit their crimes.

Mr. President, this Supreme Court decision poses serious problems for law enforcement. It has weakened the Federal criminal law and has already led to the early release of hundreds of violent criminals.

After the word got out about the Bailey decision, prisoners frantically began preparing and filing motions to get out of jail as fast as they could write. Prosecutors were inundated with petitions from criminals. One example is a man named Lancelot Martin, who ran a Haitian drug trafficking operation out of Raleigh, my hometown, the capital city of North Carolina. Martin used the U.S. Postal Service to receive and sell drugs. Police seized his drugs and recovered a 9 mm semiautomatic pistol that Martin used to protect his drug business.

Lancelot Martin was convicted of drug trafficking charges and received a 5-year sentence for using the gun. But on March 11 of last year, years before his sentence expired, Martin walked free, simply because while his gun and a hefty supply of drugs were found—the gun was not actively employed at the time he was caught.

So, Mr. President, this bill will ensure that future criminals possessing

guns, like Lancelot Martin, serve real time when they possess a gun in furtherance of a violent or drug trafficking crime.

The Supreme Court, recognizing the consequences of its decision, issued this invitation to us: "Had Congress intended possession alone to trigger liability * * * it easily could have so provided." That, Mr. President, is precisely the intent of this legislation—to make clear that possession alone does indeed trigger liability.

Mr. President, a modified version of this legislation passed the Senate last year, only to be blocked in the House of Representatives. This bill is a necessary and appropriate response to the Supreme Court's judicial limitation of the mandatory penalty for gun-toting criminals. According to Sentencing Commission statistics, more than 9,000 armed violent felons were convicted from April 1991, through October 1995. In North Carolina alone, this statute was used to help imprison over 800 violent criminals. We must strengthen law enforcement's ability to use this strong anticrime provision.

Fighting crime is, and must be, a prime concern in America. It has been estimated that in the United States one violent crime is committed every 16 seconds. We must fight back with the most severe punishment possible for those who terrorize law-abiding citizens. Enactment of this legislation is a necessary step toward recommitting our Government and our citizens to a real honest-to-God war on crime.

Mr. ABRAHAM. Mr. President, I rise to cosponsor Senator HELMS' bill to amend section 924 of title 18 of the United States Code. This bill would ensure that stiff, mandatory sentences are imposed on criminals who possess firearms while committing a crime of violence or drug trafficking offense.

As currently written, title 18 of section 924(c) already mandates that a sentence of 5 years or more be imposed on any defendant who uses or carries a firearm while committing a crime of violence or drug trafficking offense. Over the past several years, however, courts have struggled with the issue of whether a defendant uses a weapon for purposes of section 924(c) if he technically possesses the weapon but does not actually employ it in committing the underlying offense.

This issue was recently taken up by the Supreme Court in the case of Bailey versus United States. Hewing closely to the ordinary meaning of "use," the Court unanimously held that "use" in section 924(c) signifies "an active employment of the firearm by the defendant." After observing that the term "possess" is frequently used elsewhere in Federal gun-crime statutes, the Court reasoned that, "[h]ad Congress intended possession alone to trigger liability under section 924(c)(1), it easily could have so provided."

The bill I cosponsor today does so provide, as it would amend section 924(c)(1) to apply to any defendant who "uses, carries, or possesses" a firearm while committing a crime of violence or drug trafficking offense. This is a worthwhile change. Any crime becomes far more dangerous when committed by a criminal who controls a firearm. Such a criminal should not be rewarded if, in a particular case, it turns out that he has no need actually to employ the weapon. The fact that he so augmented the danger attending his crime is reason enough to impose the stiff sentences set forth in section 924.

Thus, in short, this bill closes a dangerous loophole in current law. I applaud the Senator from North Carolina for his leadership on this issue, and look forward to the bill's speedy enactment.

By Mr. HELMS:

S. 44. A bill to make it a violation of a right secured by the Constitution and laws of the United States to perform an abortion with the knowledge that the abortion is being performed solely because of the gender of the fetus; read twice and placed on the calendar.

CIVIL RIGHTS OF INFANTS ACT

Mr. HELMS. Mr. President, the distinguished Senator from New Hampshire, Mr. ROBERT SMITH, introduced legislation in the 104th Congress prohibiting the destruction of helpless, unborn babies by a procedure called partial-birth abortions.

Congress heeded the outcry of the American people against this shameful abuse of the most innocent humans imaginable; the Partial-Birth Abortion Ban Act was passed by both the House and the Senate only to have it vetoed by President Clinton.

Mr. President, another stalwart Senator of New Hampshire, Mr. Humphrey brought to the attention of the Senate in 1989 incredibly brutal practice in America—abortions performed solely because prospective mothers prefer a child of a gender from the babies in their womb.

Senator Humphrey, in the 1989 debate called attention to the New York Times article published Christmas morning the year before. It was titled "Fetal Sex Test Used as Step to Abortion." Sadly, Senator Humphrey's remarks and subsequent legislation were met with general disinterest among those who sanctimoniously defend what they regard as a woman's right to destroy her unborn child. Those holding such views never discuss an unborn child's right to live, to love and be loved.

Mr. President, it was typical for the New York Times, that the Times article which Senator Humphrey deplored beganas follows:

In a major change in medical attitudes and practices, many doctors are providing prenatal diagnoses to pregnant women who want to abort a fetus on the basis of the gender of the unborn child.

Geneticists say that the reasons for this change in attitude are an increased availability of diagnostic technologies, a growing disinclination of doctors to be paternalistic, deciding for patients what is best, and an increasing tendency for patients to ask for the tests. Many geneticists and ethicists say they are disturbed by the trend.

Mr. President, this rhetorical horseradish is simply another measurement of how far the moral and spiritual priorities of America have fallen. Professor George Annas of the Boston University School of Medicine was quoted as saying:

I think the [medical] profession should set limits and I think most people would be outraged, and properly so, at the notion that you would have an abortion because you don't want a boy or you don't want a girl. If you are worried about a woman's right to an abortion, the easiest way to lose it is not set any limits on this technology.

Mr. President, how sad it is that any mother in a civilized society would be willing to destroy the unborn female child she is carrying simply because she happens to prefer a male child—or vice-versa. But believe it. It is happening without the Government of the United States lifting an eyebrow, let alone a finger.

And that, Mr. President, is why I am again offering legislation to limit this incredibly inhumane practice.

As I mentioned at the outset of my remarks, the 104th Congress acted on legislation to outlaw the brutal killings of unborn babies subjected to partial-birth abortions. I pray the 105th Congress will take action to end another callous cruelty against the unborn—gender-selection abortions.

Specifically, the legislation I have sent to the desk proposes to amend title 42 of the United States Code governing civil rights. Anyone who administers an abortion for the purpose of choosing the gender of the infant will protect unborn children as title 42 presently protects any other citizen who is a victim of discrimination.

Mr. President, the American people are clearly opposed to this practice. A Boston Globe poll reports that 93 percent of the American people reject the taking of life as a means of gender selection. Another poll conducted by Newsweek/Gallup showed that four out of every five Americans oppose gender selection abortions.

Even radical feminists cannot ignore the absurdity of denying a child the right to life simply because the parents happened to prefer a child of the opposite gender. The Associated Press reported on August 22, 1996, that the platform adopted by last year's U.N. women's conference in Beijing included a provision condemning sex-selection abortions.

Of course, feminists proclaim that gender selection abortions are atrocities in China—or in India where a survey was taken 7 years ago which revealed that of 8,000 abortions, 7,999 were female.

Now, Mr. President, I do not believe—even for a minute—that the pro-abortion crowd and its amen corner in Congress would want to see action on this legislation. I deliberately stated that the feminists in Beijing—led by the American coalition—could not ignore this cruel practice. But lipservice is all that will be paid to this violent practice by most of those who call themselves pro-choice.

Just as they did during debate on the Partial-Birth Abortion Ban Act, I suspect NOW and NARAL supporters in the Senate will do their best to stop the Civil Rights of Infants Act. Cries will go up and the charge will be made that the Senate is somehow trying to take away the freedom of American women. In the meantime, the freedoms of life and liberty are being denied to thousands of unborn children.

Nonetheless, those of us who support the rights of the unborn must do our best. Hopefully, this 105th Congress will take early action to fulfill the desires of the overwhelming majority of the American people who rightfully believe it is immoral to destroy unborn babies simply because the mother demands freedom-of-gender choice.

By Mr. HELMS:

S. 45. A bill to amend title X of the Public Health Service Act to permit family planning projects to offer adoption services; read twice and placed on the calendar.

FEDERAL ADOPTION SERVICES ACT OF 1997

Mr. HELMS. Mr. President, there's a significant question about the use of the American taxpayers' money.

Should State and local health departments, hospitals, and other family planning organizations funded under title X of the Public Health Service Act, be specifically allowed to offer adoption services to pregnant women?

The answer, Mr. President, is: Absolutely.

And Congress should be unmistakably clear in expressing our judgment that public and private health facilities can and should offer adoption services.

The vast majority of the American people agree. Many polls have shown that people approve of their tax dollars being used by clinics to promote and encourage adoptions instead of the heinous destruction of unborn children.

Statistics emphasize the merit of the proposal that clinics and agencies receiving title X funding should explicitly be authorized to offer adoption services. The National Council for Adoption asserts that an estimated 2 million couples are today hopefully and prayerfully waiting to adopt a child. Yet, 1.5 million babies are refused the right to live every year.

Mr. President, if every abortion in this country could be prevented this year there would still be 500,000 couples ready and waiting to adopt children. Small wonder that adoption is called "the loving option."

But it is even more tragic, Mr. President, that women with unplanned or unwanted pregnancies are unaware of the wonderful opportunities available to their child through adoption. These women, states Jeff Rosenberg, formerly of the National Council for Adoption, "are not hearing about adoption, and thus [are] not considering it as a possibility. Young pregnant women are frequently not told by counselors and social workers that adoption is an alternative."

With this in mind, I offer today the Federal Adoption Services Act of 1997, a bill that proposes to amend title X of the Public Health Services Act to permit federally-funded planning services to provide adoption services based on two factors: No. 1, the needs of the community in which the clinic is located, and No. 2, the ability of an individual clinic to provide such services.

Mr. President, those familiar with the many Senate debates of the past regarding title X will recall the excessive emphasis placed on preventing and/or spacing of pregnancies, and limiting the size of the American family.

I hope that this year, we can refocus this debate, emphasizing the need to affirm life rather than preventing or terminating it.

Sure, the radical feminists and other pro-abortionists will voice their hysterical objections. So before they raise their voices, let's make clear what this legislation will not do. For example:

No woman will be threatened or cajoled into giving up her child for adoption. Family planning clinics will not be required to provide adoption services. Rather, this legislation will make it clear that Federal policy will allow, or even encourage adoption as a means of family planning. Women who use title X services—one-third of whom are teenagers—will be in a better position to make informed, compassionate judgments about the unborn children they are carrying.

Mr. President, I contend that it is not the responsibility of civilized society to protect the rights of the most innocent and most helpless human beings imaginable. Furthermore, shouldn't we do our best to provide couples willing to love and care for these children an opportunity to do so? That question, Mr. President, answers itself—in the affirmative.

By Mr. HELMS:

S. 46. A bill to amend the Civil Rights Act of 1964 to make preferential treatment an unlawful employment practice, and for other purposes; read twice and placed on the calendar.

CIVIL RIGHTS RESTORATION ACT OF 1997

Mr. HELMS. Mr. President, I send to the desk legislation I first submitted in amendment form on June 25, 1991—which I subsequently introduced as a bill in both the 103d and 104th Congresses. But as I introduce once more the Civil Rights Restoration Act, I recall that similar antidiscrimination legislation passed this body long before 1973, when I first became a Member of the Senate.

Thirty-three years ago, Congress passed the historic Civil Rights Act of 1964. The intent of that legislation was to prohibit discrimination based on race in a broad variety of circumstances, including hiring practices. Proponents of the Civil Rights Act proclaimed that there was nothing in the bill that would require any quotas or preferential treatment.

Well, three decades later, the Federal Government's quota establishment—aided and abetted by an activist Federal judiciary—have so perverted the plain language and intent of the Civil Rights Act that it is unrecognizable. My proposal today is intended to ensure that all civil rights laws are consistent with the goal of a color-blind society.

Specifically, this legislation prevents Federal agencies, and the Federal courts, from interpreting title VII of the Civil Rights Act of 1964 to allow an employer to grant preferential treatment in employment to any group or individual on account of race.

This proposal prohibits the use of racial quotas once and for all. During the past several years, almost every Member of the Senate—and the President of the United States—have proclaimed that they are opposed to quotas. This bill will give Senators an opportunity to reinforce their statements by voting in a rollcall vote against quotas.

Mr. President, this legislation emphasizes that from here on out, employers must hire on a race neutral basis. They can reach out into the community to the disadvantaged and they can even have businesses with 80 or 90 percent minority workforces as long as the motivating factor in employment is not race.

This bill clarifies section 703(j) of title VII of the Civil Rights Act of 1964 to make it consistent with the intent of its authors, Hubert Humphrey and Everett Dirksen. Let me state it for the RECORD:

It shall be an unlawful employment practice for any entity that is an employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or group with respect to selection for, discharge from, compensation for, or the terms, conditions, or privileges of, employment or union membership, on the basis of the race, color, religion, sex, or national origin of such individual or group, for

any person, except as provided in subsection (e) or paragraph (2).

It shall not be an unlawful employment practice for an entity described in paragraph (1) to recruit individuals of an underrepresented race, color, religion, sex, or national origin, to expand the applicant pool of the individuals seeking employment or union membership with the entity.

Specifically, this bill proposes to make part (j) of section 703 of the 1964 Civil Rights Act consistent with subsections (a) and (d) of that section. It contains the identical language used in those subsections to make preferential treatment on the basis of race—that is, quotas—an unlawful employment practice.

Mr. President, I want to be clear that this legislation does not make outreach programs an unlawful employment practice. Under language suggested years ago by the distinguished Senator from Kansas, Bob Dole, a company can recruit and hire in the inner city, prefer people who are disadvantaged, create literacy programs, recruit in the schools, establish day care programs, and expand its labor pool in the poorest sections of the community. In other words, expansion of the employee pool is specifically provided for under this act.

Mr. President, this legislation is necessary because in the 33 years since the passage of the Civil Rights Act, the Federal Government and the courts have combined to corrupt the spirit of the act as enumerated by both Hubert Humphrey and Everett Dirksen, who made clear that they were unalterably opposed to racial quotas. Yet in spite of the clear intent of Congress, businesses large and small must adhere to hiring quotas in order to keep the all-powerful Federal Government off their backs.

Several times before, I have directed the attention of Senators to the Daniel Lamp Co., a small Chicago lamp factory harassed by investigators from the Equal Employment Opportunity Commission. The CBS news program, "60 Minutes," did a story several years back that exposed the mentality of the quota-enforcing bureaucrats at the EEOC to the Nation.

The Daniel Lamp Co. was a small, struggling business which employed 28 people when "60 Minutes" began its investigation—8 of whom were black and 18 of whom were Hispanic. But this obviously nondiscriminatory hiring practice was simply not enough for the EEOC. According to the "60 Minutes" reporter, Morley Safer, the EEOC told the owner of the Daniel Lamp Co. that "based on other larger companies' personnel, Daniel Lamp should employ 8.45 blacks." In other words, this small company—which had never had over 30 people on its payroll—had failed to meet the Federal Government's hiring quotas.

The Daniel Lamp Co., which was justifiably proud of its mostly minority workforce, decided to stand up to the EEOC. For their troubles, they were forced to pay a fine of $148,000, meet the quota set by the agency, and spend $10,000 on newspaper advertisements to tell other job applicants that they might have been discriminated against—and to please contact the Daniel Lamp Co. for a potential financial windfall.

Yet through all of this outrageous conduct, the EEOC continued to insist that the agency does not set hiring quotas. And although one would have reasonably expected that "60 Minutes" exposure of the Daniel Lamp Co.'s predicament would embarrass the Federal Government's quota establishment into mending its ways, it is still business as usual among the bureaucrats.

For example, on November 21, 1996, my office received an unsolicited facsimile transmission from the Department of Labor's Office of Federal Contract Compliance Program [OFCCP]. For those unfamiliar with the OFCCP, this is the branch of the Department of Labor that engages in race and gender nose-counting for private businesses who have contracts with the Federal Government.

This facsimile was titled "OFCCP Egregious Discrimination Cases." Curious as to what constituted egregious in the eyes of the Labor Department bureaucrats, I reviewed this document—and one particular case caught my eye.

During June 1993, OFCCP investigators conducted a so-called compliance review of the San Diego Marriott and Marina. In the course of their walkthrough, the OFCCP officers believed they did not see enough African-American women in visible jobs to satisfy their notion of an acceptable workplace.

This unscientific observation prompted a massive investigation of the San Diego Marriott's hiring practices. After a year-long inquiry—paid for by the American taxpayer, I might add—the OFCCP uncovered only this unremarkable revelation: that of the hotel's 1,579 employees, 950 were minorities and/or women, including 101 African-Americans.

Instead of being satisfied that over 60 percent of the workforce were minorities or women, the OFCCP found this an egregious case of race discrimination—because not enough black women were employed to suit their idea of diversity. In the view of the OFCCP, a 60 percent minority workforce is insufficient unless the "right" kind of minorities are represented. Mr. President, if that is not a quota, I don't know what is.

In any event, rather than trying to fight the Department of Labor, the San Diego Marriott settled to the tune of $627,000. And Mr. President, the Marriott Corporation could at least afford such an extravagant settlement. Thousands of small businesses across the country would be bankrupt by such a fine—and all it would take is one Federal bureaucrat failing to see what he or she considers the right kind of faces in the workplace.

Well, this bill is designed to put an end to all this nonsense bandied about by the Federal Government's power-hungry quota establishment.

Mr. President, as I have said at outset, this legislation should be familiar to students of history. This legislation will bring our civil rights laws full circle, putting America back on the course that Everett Dirksen and Hubert Humphrey envisioned when they sponsored the Civil Rights Act of 1964.

Speaking of Hubert Humphrey, Mr. President—he was a man admired by all of us who served with him. Senator Humphrey was one of the principal authors of the Civil Rights Act of 1964. He hated the idea of quotas and preferential treatment based on race. Senator Humphrey stood right here on the floor of this chamber and said in the strongest terms possible that the Act could not possibly be interpreted to permit quotas:

"if there is any language [in the Civil Rights Act of 1964] which provides that any employer will have to hire on the basis of percentages or quotas related to color, race, or religion or national origin, I will start eating the pages one after another because it is not there."

Those words have become so familiar to us during the course of our debates regarding this issue, that they perhaps need a little added emphasis. The authors of the Civil Rights Act explicitly stated that the bill was not to be interpreted to require any quotas or percentage-based hiring.

Well, Mr. President, tell that to the Daniel Lamp Company. Tell that to the San Diego Marriot. Tell that to all the policemen, firemen, or small businessmen across this country who have found that, in the United States of America, merit and achievement is sometimes not good enough.

Mr. President, after 30 years, it is obvious that the social experiment known as affirmative action has outlived its usefulness. It is time for the Congress to return the civil rights laws to their original intent of preventing discrimination, and restore the principles upon which our country was built—personal responsibility, self-reliance, and hard work. The Civil Rights Restoration Act aims to do just that.

Mr. President, I ask unanimous consent that a March 20, 1995 article by Paul Craig Roberts and Lawrence M. Stratton, Jr. in National Review be printed in the RECORD.

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

[From the National Review, March 20, 1995]

HOW WE GOT QUOTAS—COLOR CODE

(By Paul Craig Roberts and Lawrence M. Stratton, Jr.)

Bureaucrats and judges have turned the 1964 Civil Rights Act on its head, creating a

system of preferences based on race and sex. Can we restore equality before the law?

Forty years after *Brown* v. *Board of Education*, the civil-rights movement has strayed far from the color-blind principles of Martin Luther King Jr.. Public outrage over preferential treatment for "protected minorities" has taken the place of guilt over segregation. Americans who supported desegration and equal rights are astonished to find themselves governed by quotas, which were prohibited by the Civil Rights Act of 1964.

In California momentum is building for a 1996 initiative, modeled on the 1964 Civil Rights Act, that would amend the state's constitution to prohibit the use of quotas by state institutions. Polls indicate that the initiative's objective of ending affirmative action is enormously popular, even in traditionally liberal bastions such as Berkeley and San Francisco. Citizens in other states are organizing to place similar measures on the ballot. The prospects for such measures are bright: surveys find that some 80 per cent of Americans oppose affirmative action in employment and education.

The hostility to race and gender preferments reflects a general sense that reverse discrimination violates fundamental norms of justice and fair play. Thomas Wood, a co-drafter of the California initiative and executive director of the California Association of Scholars, says he has been denied a teaching job because he is a white male: "I was told by a member of a search committee at a university, 'You'd walk into this job if you were the right gender.'" Glynn Custred, a California State University anthropology professor, says he decided to join Wood in drafting the initiative because he was concerned about the destructive impact racial quotas were having on higher education, where "diversity" overshadows academic merit.

The California initiative has drawn support from across the political spectrum. Charles Geshekter, a teacher of African history at Chico State University and a supporter of the initiative, wrote in the August 14 *Chico Enterprise Record*: "As a liberal Democrat, I despise those who advocate preferential treatment based on genitalia or skin color. Having taught university classes on the history of European racism toward Africa for 25 years, I am appalled to watch sexist and racist demands for equality of outcomes erode the principle of affirmative equality of opportunity." University of California Regent Ward Connerly, a black businessman who supports the initiative, lamented in the August 10 *Sacramento Bee* that "we have institutionalized this preferential treatment."

THE PERVASIVENESS OF PREFERENCES

Opposition to quotas was initially unfocused, because their impact was not widely felt. The public was aware of a few celebrated cases, but they seemed to be the exception rather than the rule. This is no longer the case. Preferential treatment based on race and sex pervades private and public employment, university admissions and hiring, and the allocation of government contracts, broadcast licenses, and research grants. Consider a few examples:

A 1989 survey by *Fortune* magazine found that only 14 per cent of Fortune 500 companies hired employees based on talent and merit alone; 18 per cent admitted that they had racial quotas, while 54 per cent used the euphemism "goals."

—A Defense Department memo cited on the November 18 broadcast of ABC's *20/20* declares, "In the future, special permission will be required for the promotion of all white men without disabilities."

—The Federal Aviation Administration officially recognizes the Council of African American Employees, the National Asian Pacific American Association, the Gay, Lesbian, or Bisexual Employees group, and the Native American/Alaska Native Coalition, granting them access to bulletin boards, photocopiers, electronic mail, voice mail, and rooms in government buildings for meetings on government time. By contrast, the Coalition of Federal White Aviation Employees has been seeking recognition from the FAA since 1992 without success; FAA employees are even forbidden to read the group's literature.

—In the 1994 case *Hapwood* v. *State of Texas*, U.S. District Court Judge Sam Sparks found that the constitutional rights of four white law-school applicants had been violated by quota policies at the University of Texas. However, he awarded them each only $1 in damages and refused to order them admitted ahead of protected minorities with substantially lower scores.

A case that came before the U.S. Supreme Court in January shows even more clearly how preferential policies have warped basic concepts of fairness. Randy Pech, owner of Adarand Constructors, lost in the bidding for a guard-rail construction project in Colorado's San Juan National Forest because of his skin color. Pech put in the lowest bid. However, the prime contractor was eligible for a bounty of $10,000 in taxpayers' money from the U.S. Department of Transportation for hiring minority-owned subcontractors, and the bounty was greater than the difference in the bids submitted by Pech and his competitor, a Hispanic-owned firm.

Pech filed a discrimination lawsuit. When it reached the Supreme Court, U.S. Solicitor General Drew S. Days III argued that Pech had no standing to sue, even though the U.S. Government had paid the prime contractor $10,000 to discriminate against him. Whatever the technical merits of the solicitor general's argument, it reveals the system of racial preferments that today passes for civil rights. "Protected minorities" have standing to sue without any requirement of showing that they themselves have ever suffered from an act of discrimination. Today's college-aged protected minorities have never suffered from legal discrimination, yet U.S. policy assumes they are victims and provides remedies in the form of preferments. In contrast, victims of reverse discrimination have no remedy and no legal standing.

The political repercussions of this double standard are by no means restricted to California. In November's congressional elections, white males deserted the Democratic Party in droves, voting Republican by a margin of 63 per cent to 37 per cent. The *Wall Street Journal* has identified "angry white males" as an important new political group.

But more is at stake than the plight of white males and the relative fortunes of political parties. At issue is equality before the law and the democratic process itself. As freedom of conscience, goodwill, and persuasion are supplanted by regulatory and judicial coercion, privilege reappears in open defiance of Justice John Marshall Harlan's dictum: "There is no caste here. Our Constitution is color-blind."

Color-blindness was the guiding principle of the 1964 Civil Rights Act. The basic act was full of language prohibiting quotas, and various amendments to it defined discrimination as an intentional act, insulated professionally developed employment tests from attack for disproportionately screening out racial minorities, and restricted the Equal Employment Opportunity Commission (EEOC) from issuing any substantive interpretive regulations. Senator Hubert H. Humphrey (D., Minn.), the chief sponsor of the act, confidently declared that if anyone could find "any language which provides that an employer will have to hire on the basis of percentage or quota related to color, race, religion, or national origin, I will start eating the pages one after another, because it is not in there." In less than a decade, federal bureaucrats and judges had cast aside Congress's rejection of preferential treatment for minorities and stuffed the pages of the 1964 Civil Rights Act down Hubert Humphrey's throat.

TWO MODELS OF DISCRIMINATION

The Civil Rights Act of 1964 undertook to put millions of employer decisions through a government filter. Such a massive intrusion into private life had not previously occurred in a free society. Congress assumed that the EEOC, the agency created by the act to run the filter, would be like the state Fair Employment Practice (FEP) commissions that had been created in some Northern states after World War II.

Civil-rights activists regarded these commissions, many of which had more power than the EEOC, as ineffective. As University of Chicago economist Gary Becker observed, however, there was an explanation for the paucity of enforcement actions by the FEP commissions: discrimination doesn't pay. In his 1957 book, *The Economics of Discrimination*, Becker showed that racial discrimination is costly to those who practice it and therefore sets in motion forces that inexorably reduce it. Meritorious employees who are underpaid and underutilized because of their race will move to firms where they get paid according to their contributions. An employer who hires a less qualified white because of prejudice against blacks will disadvantage himself in competition against those who hire the best employees they can find.

Indeed, scholars who studied the cases handled by FEP commissions found that the complainant's problem was usually his job qualifications, not his race. Sociologist Leon Mayhew, who studied employment-discrimination complaints filed with the Massachusetts FEP commission from 1946 to 1962, found that most complaints were based on "mere suspicion" and usually resulted in a finding that the employer had not discriminated. He pointed out that most complainants were poor and lacked job skills. Thus, ordinary, profit-oriented business decisions "regularly produced experiences that could be interpreted as discrimination." This phenomenon "permits Negroes to blame discrimination for their troubles. Hence, some complaints represent a projection of one's own deficiencies onto the outside world."

This argument did not appeal to those who wanted to achieve racial integration through government policy. Activists such as Rutgers law professor Alfred W. Blumrosen, who as the EEOC's first compliance chief became the de facto head of the commission in its formative years, rejected the complaint-based, "retail" model of FEP enforcement and envisioned a "wholesale" model attacking the entrenched legacy of discrimination. In 1965 Blumrosen wrote in the *Rutgers Law Review* that FEP commissions focused too much on individual acts of discrimination and "did not remedy the broader social problems" by reducing the disparity between black and white unemployment. Seeking to

redefine discrimination in terms of statistical disparity, he dismissed other explanations of economic differences between blacks and whites, such as education and illegitimacy, as harmful "attempt[s] to shift focus." Blumrosen disdained the Civil Rights Act's definition of discrimination as an intentional act, preferring a definition that Congress had rejected. In his 1971 book, *Black Employment and the Law*, he wrote:"

"If discrimination is narrowly defined, for example, by requiring an evil intent to injure minorities, then it will be difficult to find that it exists. If it does not exist, then the plight of racial and ethnic minorities must be attributable to some more generalized failures in society, in the fields of basic education, housing, family relations, and the like. The search for efforts to improve the condition of minorities must then focus in these general and difficult areas, and the answers can come only gradually as basic institutions, attitudes, customs, and practices are changed. We thus would have before us generations of time before the effects of subjugation of minorities are dissipated.

"But if discrimination is broadly defined, as, for example, by including all conduct which adversely affects minority group employment opportunities . . . then the prospects for rapid improvement in minority employment opportunities are greatly increased. Industrial relations systems are flexible; they are in control of defined individuals and institutions; they can be altered either by negotiation or by law. If discrimination exists within these institutions, the solution lies within our immediate grasp. It is not embedded in the complications of fundamental sociology but can be sharply influenced by intelligent, effective, and aggressive legal action.

"This is the optimistic view of the racial problem in our nation. This view finds discrimination at every turn where minorities are adversely affected by institutional decisions, which are subject to legal regulation. In this view, we are in control of our own history. The destruction of our society over the race question is not inevitable."

BLUMROSEN'S AGENDA

Blumrosen figured that a redefinition of discrimination to include anything that yielded statistical disparities between blacks and whites would force employers to give preferential treatment to blacks in pursuit of proportional representation, so as to avoid liability in class-action suits. He set out to "liberally construe" Title VII of the Civil Rights Act, which prohibited discrimination in employment, in order to advance "the needs of the minorities for whom the statute had been adopted." By promoting quotas, he could "maximize the effect of the statute on employment discrimination without going back to the Congress for more substantive legislation."

Blumrosen's EEOC colleagues kidded him that he was working on a textbook entitled *Blumrosen on Loopholes*. He took pride in his reputation for "free and easy ways with statutory construction." He later praised the agency for being like "the proverbial bumble bee" that flies "in defiance of the laws governing its operation." Blumrosen's strategy was based on his bet that "most of the problems confronting the EEOC could be solved by creative interpretation of Title VII which would be upheld by the courts, partly out of deference to the administrators." History has proved Blumrosen right.

As inside-the-Beltway lore expresses it, "Personnel is policy." Blumrosen had a free hand because Franklin Delano Roosevelt Jr., the EEOC's first chairman, spent most of his time yachting. Staffers jokingly changed the lyrics of the song "Anchors Aweigh" and sang "Franklin's Away" during his frequent absences. Roosevelt resigned before a year was out, and his successors stayed little longer. The EEOC had four chairmen in its first five years, which enhanced Blumrosen's power.

The White House Conference on Equal Employment Opportunity in August 1965 indicated what was to come. Speaker after speaker described "deeply rooted patterns of discrimination" and "under-representation" of minorities that the EEOC should counter in order to promote "equal employment opportunity." The conference report stressed on its first page that the "conferees were eager to move beyond the letter of the law to a sympathetic discussion of those affirmative actions required to make the legal requirement of equal opportunity an operating reality." Another telling line said that "it is not enough to obey the technical letter of the law; we must go a step beyond in order to assure equal employment opportunity." One panel concluded that "it is possible that the letter of the law can be obeyed to the fullest extent *without* eliminating discrimination in hiring and promotion. For the legislative intent of Title VII to be met, the law will have to be obeyed in spirit as well as in letter."

The report noted that many panelists shared Blumrosen's suspicion that if the EEOC limited its activities to responding to complaints of discrimination, the agency would never "reach the extent of discriminatory patterns." Blumrosen inserted a paragraph into the report suggesting that the agency should initiate proceedings against employers even in the absence of complaints of discrimination. Underutilizers of minority workers could be identified by using "employer reports of the racial composition of the work force as a sociological 'radar net' to determine the existence of patterns of discrimination."

Blumrosen succeeded in setting up a national reporting system of racial employment statistics despite the Civil Rights Act's specific prohibition of such data collection. An amendment introduced by Senator Everett Dirksen (R., Ill.), said employers did not have to report statistics to the EEOC if they were already reporting them to local or state FEP commissions. Blumrosen later admitted that the requirement he imposed on employers to report the racial composition of their work forces was based on "a reading of the statute contrary to the plain meaning." But what was a mere statute?

Columbia University law professor Michael Sovern predicted that the EEOC would be called on the carpet for exceeding its authority. In a study for the Twentieth Century Fund, *Legal Restraints on Racial Discrimination*, he wrote that Title VII "cannot possibly be stretched to permit the Commission to insist on the filing of reports" and predicted that Blumrosen would "encounter resistance." But no resistance materialized. As Hugh Davis Graham observed in *The Civil Rights Era*, "In 1965 Congress was distracted by debates over voting rights and Vietnam and Watts and inflation and scores of other issues more pressing than agency records."

After Blumrosen got his way in forcing employers to submit reports, the agency developed the confidence to dispense with other statutory restrictions on its mission. The EEOC saw the reporting requirement as a "calling card" that "gives credibility to an otherwise weak statute." Blumrosen knew that "with the aid of a computer," the EEOC could now get "lists of employers who, prima facie, may be underutilizing minority-group persons" and eventually force them to engage in preferential hiring of blacks.

In mid 1965 Blumrosen sent EEOC investigators to Newport News, Virginia, to solicit discrimination complaints against the Newport News Shipbuilding & Dry Dock Company, one of the world's largest shipyards, employing 22,000 workers. Knocking on doors in black neighborhoods, the investigators found 41 complainants, later narrowed down to 4. Blumrosen then successfully pressured the company, which received 75 per cent of its business from Navy contracts, to promote 3,890 of its 5,000 black workers, designate 100 blacks as supervisors, and adopt a quota system in which the ratio of black to white apprentices in a given year would match the region's ratio of blacks to whites. One shipyard worker told *Barron's* that the EEOC had done its worst to "set black against white, labor against management, and disconcert everybody."

Armed with the national reporting system's racial data and the victory at Newport News, Blumrosen and his colleagues decided to build a body of case law under Title VII to impose minority-preference schemes on employers across the country. The barrier to this strategy was Title VII itself. An internal EEOC legal memorandum concluded: "Under the literal language of Title VII, the only actions required by a covered employer are to past notices, and not to discriminate subsequent to July 2, 1965. By the explicit terms of Section 703(j), an employer is not required to redress an imbalance in his work force which is the result of past discrimination." Fearing a storm over quotas like the one that had occurred during the congressional debates on the Civil Rights Act, the EEOC ruled out trying to amend the Act itself. The memorandum instead urged the agency to rewrite the statute on its own and influence the courts to embrace the EEOC's "affirmative theory of nondiscrimination," under which compliance with Title VII requires that "Negroes are recruited, hired, transferred, and promoted in line with their ability and numbers."

THE ASSAULT ON EMPLOYMENT TESTS

To implement the "affirmative theory of non-discrimination," the EEOC decided to assault employment tests that failed blacks at a higher rate than whites. Commissioner Samuel Jackson told members of the NAACP that the EEOC had decided to interpret Title VII as banning not only racial discrimination per se but also employment practices "which prove to have a demonstrable racial effect." EEOC lawyers formed an alliance with civil-rights attorneys at the NAACP and began a litigation drive to redefine discrimination in terms of statistical effects.

Summer riots and Vietnam protests helped activists target employment tests. The Kerner Commission's report on civil disorders described employment tests as "artificial barriers to employment and promotion." The Kerner Commission blamed these "artificial barriers" and the "explosive mixture which has been accumulating in our cities" on racism and concluded, "Our nation is moving toward two societies, one black, one white—separate and unequal."

The EEOC's chief psychologist, William H. Enneis, attacked "irrelevant and unreasonable standards for job applicants and upgrading of employees, [which] pose serious threats to our social and economic system. The results will be denial of employment to qualified and trainable minorities and

women." Enneis said the EEOC would not "stand idle in the face of this challenge. The cult of credentialism is one of our targets," to be fought "in whatever form it occurs."

The EEOC issued guidelines in 1966 and 1970 designed to abrogate the pro-testing amendment to the Civil Rights Act introduced by Senator John Tower (R., Tex.) by defining the phrase "professionally developed ability tests" as tests that either passed blacks and whites at an equal rate or met complex "validation" requirements for "fairness" and "utility." Under the validation requirements that Enneis designed, employers had to prove that the tests measured skills they needed. The objective was to make tests so difficult to defend in court that employers would simply abandon them and hire by racial quota. Enneis testified before Congress in 1974 that he knew of only three or four test-validation studies that satisfied his guidelines. As a 1971 *Harvard Law Review* survey of developments in employment law deduced, the EEOC guidelines "appear designed to scare employers away from any objective standards which have a differential impact on minority groups, because, applied strictly, the testing requirements are impossible for many employers to follow." As a result, the guidelines "encourage many employers to use a quota system of hiring." An EEOC staffer told the *Harvard Law Review* that "the anti-preferential-hiring provisions [of Title VII] are a big zero, a nothing, a nullity. They don't mean anything at all to us."

The EEOC's attack on tests gutted not only Senator Tower's amendment but also the statutory definition of discrimination as an intentional act. The commission was well aware that it was treading on legal thin ice. A history of the EEOC during the Johnson Administration, prepared by the EEOC for the Johnson Library under the direction of Vice Chairman Luther Holcomb, detailed the EEOC's strategy of redefining discrimination and suggested that it was on a collision course with the text and legislative intent of Title VII. The history said the EEOC had rejected the "traditional meaning" of discrimination as "one of intent in the state of mind of the actor" in favor of a "constructive proof of discrimination" that would "disregard intent as crucial to the finding of an unlawful employment practice" and forbid employment criteria that have a "demonstrable racial effect without clear and convincing business motive."

Noting that this redefinition would conflict with Senator Dirksen's insertion of the word "intentional" into the statute, the history said "courts cannot assume as a matter of statutory construction that Congress meant to accomplish an empty act by the amendment" defining discrimination as intentional. The history predicted that "the Commission and the courts will be in disagreement as to the basis on which they find an unlawful employment practice" and conclude that "eventually this will call for the reconsideration of the amendment by Congress or the reconsideration of its interpretation by the Commission."

As things turned out neither the EEOC nor Congress had to reconsider the meaning of discrimination, because the courts also ignored the law. In the 1971 case *Griggs* v. *Duke Power*, the Supreme Court accepted the EEOC's rewrite of the Civil Rights Act. The opinion was written by Chief Justice Warren Burger, President Richard Nixon's first appointee to the Supreme Court. Coveting the fame of his predecessor, Earl Warren, Chief Justice Burger told his clerks that he wanted to "confuse his detractors in the press" by writing some "liberal opinions."

BLUMROSEN WINS HIS BET

When Burger declared that "the administrative interpretation of the Act by the enforcing agency is entitled to great deference," Professor Blumrosen won his bet that the EEOC's "creative interpretation of Title VII would be upheld by the courts, partly out of deference to the administrators." Burger got the acclaim he coveted. Blumrosen cheered the Chief Justice's opinion as a "sensitive, liberal interpretation of Title VII" that "has the imprimatur of permanence."

In *Griggs* the Court ignored clear statutory language and unambiguous legislative history. In fact, *Griggs* paralleled a 1964 Illinois case, *Myart* v. *Motorola*, that had troubled many of the legislators who approved the Civil Rights Act. *Myart* struck down Motorola Corporation's use of an employment test that blacks failed at a higher rate than whites. The EEOC's history for the Johnson Library noted that "many members of Congress were concerned about this issue because the court order against Motorola was handed down during the debates. The record establishes that the use of professionally developed ability tests would not be considered discriminatory." Nevertheless, the Supreme Court ruled that Duke Power Company was discriminating against blacks by requiring employees seeking promotions to have a high-school diploma or a passing grade on intelligence and mechanical-comprehension tests.

The Supreme Court agreed with the lower courts that Duke Power had not adopted the requirement with any intention to discriminate against blacks. Burger admitted that the company's policy of financing two-thirds of the cost of adult high-school education for its employees suggested good intent. But the lack of a racist motive did not make any difference to the Chief Justice. He decreed that the "absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups." Burger was mistaken when he wrote, "Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation." It was precisely this misinterpretation of the statute that the Dirksen Amendment was crafted to prevent.

Burger viewed the promotion requirements as "built-in-headwinds" against blacks because blacks were less likely than whites to have completed high school or to do well on aptitude tests. He cited 1960 census statistics showing that 34 percent of white males in North Carolina had completed high school, compared to 12 percent of black males, and EEOC findings that 58 percent of whites passed the tests used by Duke Power, compared to 6 percent of blacks. Blaming these disparities on segregation, Burger said that "under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices." Burger destroyed job testing when he declared, "The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation."

Burger's casuistry was to be given a name. In the 1976 book *Employment Discrimination Law*, EEOC District Counsel Barbara Lindemann Schlei and co-author Paul Grossman called the new emphasis on consequences "disparate impact" analysis. One year later, the Supreme Court used the phrase for the first time in the case *International Brotherhood of Teamsters* v. *United States*, which dealt with burdens of proof in Title VII cases attacking union seniority systems. "Proof of discriminatory motive," the Court said, "is not required under a disparate-impact theory." Henceforth, any requirement that had a disparate impact on the races, regardless of intent or the reasonableness of the requirement, constituted discrimination. In employment and promotions, unequals had to be treated as equals. The same was soon to follow in university admissions testing. Race-based privileges had found their way into law.

In *Griggs* Chief Justice Burger said employers could escape prima facie Title VII liability only if test requirements are "demonstrably a reasonable measure of job performance." Pulling a phrase out of thin air, Burger said "the touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited." Burger invented a statutory hook for his ruling by asserting, falsely, that "Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question." It was precisely this heavyhanded intrusion into job requirements that the Tower Amendment was designed to prevent.

Burger's deference to the EEOC meant that the agency would become the national arbiter of job tests. Following *Griggs*, the agency immediately issued manuals warning employers that unless they "voluntarily" increased their minority statistics, they risked costly liability. Ultimately, it became prohibitively expensive to use job tests unless they were race-normed so that blacks could qualify with lower scores.

THE IMPACT OF DISPARATE IMPACT

In a subsequent case interpreting *Griggs*, Justice Harry Blackmun expressed his concern that the EEOC's guidelines would lead to hiring based on race rather than merit. He warned that "a too-rigid application of the EEOC guidelines will leave the employer little choice, save an impossibly expensive and complex validation study, but to engage in a subjective quota system of employment selection. This, of course, is far from the intent of Title VII."

By then it was too late. *Griggs* had killed four birds with one stone: Senator Tower's amendment on tests, Senator Dirksen's amendment on intent, Senator Humphrey's guarantee that the Civil Rights Act could not be used to induce quotas, and the amendment introduced by Representative Emanuel Celler (D., N.Y.) prohibiting the EEOC from issuing substantive regulatory interpretations of Title VII. The EEOC wanted quotas, and thanks to *Griggs* it would get them. "At the EEOC we believe in numbers," Chairman Clifford Alexander declared in 1968. In pursuit of its goal, the agency assumed powers it did not have. In 1972 Blumrosen boasted in the *Michigan Law Review* that the EEOC's power to issue guidelines "does not flow from any congressional grant of authority."

When Burger created what would come to be known as disparate-impact analysis he did not realize its quota implications. He thought he was just attacking "credentialism." As the holder of a law degree from an obscure night school in St. Paul, Minnesota, Burger may have been thinking of himself when he wrote that "history is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees." Surrounded by Court

colleagues and clerks with prestigious Ivy League degrees. Burger might have tasted credential discrimination. He thought that the Court could take away the "headwind" of credentialism that blew against blacks without creating a privileged position for minorities.

Yet before *Griggs*, any employer who was so inclined could take the measure of prospective employees and make bets on people with obscure backgrounds who may not have had the best chances in life. After *Griggs*, no employer could risk hiring a white male from William Mitchell Law School in St. Paul over a black from Harvard. *Griggs* made race a critical factor in employment decisions. High-school diplomas, arrest records, wage garnishments, dishonorable military discharges, and grade-point averages all became forbidden considerations in hiring decisions, because they are criteria that could have a disparate impact on blacks. Farmers have even been sued for asking prospective farm hands whether they could use a hoe, on the grounds that blacks have a greater propensity to back problems. Perfectly sensible height and weight requirements for prison guards and police officers have also been struck down for having a disparate impact on women.

The EEOC strategy that led to *Griggs* was not created in a vacuum. Civil-rights activists needed a new cause, and preferences that would enable blacks to attain equality of result became the new goal. In January 1965, *Playboy* asked Martin Luther King Jr., "Do you feel it's fair to request a multibillion-dollar program of preferential treatment for the Negro, or for any other minority group?" King replied, "I do indeed." In 1969, the U.S. Court of Appeals for the Fifth Circuit, the same court that had initiated school busing in the name of "racial balance," cast aside the prohibition of quotas in Section 703(j) of the Civil Rights Act by upholding a court order that every other person admitted to a Louisiana labor union must be black. Responding to the argument that this order clearly violated Section 703(j), the three judge panel simply wrote, "We disagree."

President Johnson was the most prominent proponent of the shift away from the color-blind ideal. At his commencement speech at Howard University on June 4, 1965, Johnson said the disappearance of legal segregation was not enough:

"You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race, and then say, "You are free to compete with all the others," and still justly believe that you have been completely fair.

"Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to work through those gates.

"This is the next and the more profound state of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result."

To back up his speech with action, Johnson issued Executive Order 11246, which put the phrase "affirmative action" into common parlance. The order required all Federal Government contractors and subcontractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."

Johnson's equality-of-results rhetoric and his metaphor of helping a hobbled runner have provided the main emotional justification for "affirmative action," but the quotas that now web federal contractors under Executive Order 11246 were not implemented by his Administration. Facing strong opposition from the Department of Defense, labor unions, members of Congress, and Comptroller General Elmer Staats, Johnson's labor secretary, Willard Wirtz, dropped his plans to impose quotas on federal construction projects in Philadelphia.

That task fell to George P. Shultz, Richard Nixon's labor secretary. Just as Burger considered *Griggs* a blow against credentialism, Shultz, a labor economist from the University of Chicago, saw the Philadelphia Plan as a way of making an end run around the Davis-Bacon Act, which inflated the cost of federal construction contracts by setting wages at "prevailing union levels." Davis-Bacon meant non-union contractors and laborers (many of whom were black) could not get government contract work. Sensitive to charges that he was hostile to civil rights, Nixon wrote in his memoirs that he accepted Shultz's proposal to revive the Philadelphia Plan in order to demonstrate to blacks "that we *do* care."

On June 27, 1969, Assistant Secretary of Labor Arthur A. Fletcher, a black former businessman who had been a professional football player, announced the Philadelphia Plan in the City of Brotherly Love. He said that while "visible, measurable goals to correct obvious imbalances are essential," the plan did not involve "rigid quotas." The *Congressional Quarterly* disagreed with Fletcher's scholastic distinction, calling the Philadelphia Plan a "nonnegotiable quota system."

Under the plan, the Labor Department's Office of Federal Contract Compliance (OFCC) would assess conditions in the five-county Philadelphia area and set a target percentage of minorities to be employed in several construction trades, with the aim of attaining a racially proportionate work force. Potential federal contractors would have to submit complex plans detailing goals and timetables for hiring blacks within each trade to satisfy the OFCC's "utilization" targets. Arthur Fletcher said the Philadelphia Plan "put economic flesh and bones on Dr. King's dream."

In 1971 the U.S. Court of Appeals for the Third Circuit accepted the Nixon Administration's argument that "goals and timetables" were not quotas and that, even if they were, the Civil Rights Act's ban on quotas applied to Title VII remedies, not to executive orders. The Supreme Court avoided the controversial quota issue by refusing to review the case. Although the appeals court's ruling had no force outside the Third Circuit, the Nixon Administration interpreted the Supreme Court's lack of interest as a green light. As Laurence H. Silberman, who was undersecretary of labor at the time, later wrote, the Nixon Administration went on to spread Philadelphia Plans "across the country like Johnny Appleseed." The Labor Department quickly issued Order #4, which required all federal contractors to meet "goals and timetables" to "correct any identifiable deficiencies" of minorities in their work forces. The carrot of government contracts and the stick of disparate-impact liability under *Griggs* quickly established quotas. For many corporate managers, hiring by the numbers was the only protection against discrimination lawsuits and the loss of lucrative government contracts. Contractors hired minorities to guard against the sin of "underutilization," and racial proportionality became a precondition of government largesse. Arthur Fletcher estimated that the new quota regime covered "from one-third to one-half of all U.S. workers."

The Section 703(j) prohibition of quotas in the Civil Rights Act remained in the law but meant nothing. Reverse discrimination was in. When the liberal William O. Douglas, the only remaining member of the *Brown* Court, tried to get his Supreme Court colleagues to review the case of a white who was refused admission to the Arizona bar to make room for blacks with lower bar-exam scores, he argued that "racial discrimination against a white was as unconstitutional as racial discrimination against a black." Douglas failed to persuade his fellow Justices. He reports in his autobiography that Thurgood Marshall replied: "You guys have been practicing discrimination for years. Now it is our turn."

THE SPREAD OF QUOTAS

Although the phrase "federal contractor" conjures up images of workers in hard hats busy with construction projects or weapons systems, colleges and universities are also federal contractors, receiving federal funds through research grants and financial aid to students. Following the Labor Department's lead, Nixon's Department of Health, Education, and Welfare soon required similar "goals and timetables" for faculty hiring. Before long the practice had spread to student admissions as well.

In 1974 Douglas tried to get the Court to address quotas in this area. Marco DeFunis challenged the University of Washington Law School's 20 per cent quota for blacks. The school had rejected DeFunis though his GPA and test scores surpassed those of 36 of the 37 admitted blacks. Using his powers as a Circuit Justice, Douglas stayed the Washington Supreme Court's ruling against DeFunis and ordered his admission.

By the time DeFunis's case came before the Supreme Court, however, he was about to receive his degree. This let the Court avoid the quota issue by declaring the case moot. Douglas dissented on the mootness ruling and addressed the case's merits. He viewed *DeFunis* just as he had *Brown:* "There is no superior person by constitutional standards. A DeFunis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter what his race or color. Whatever his race, he had a constitutional right to have his application consideration on its individual merits in a racially neutral manner."

But time had passed Douglas by. In Douglas's mind, discrimination was still connected with merit. DeFunis's scores showed that he met a higher objective standard than those admitted in his place. But by this time any standard that had disparate impact was ipso facto discriminatory. In the eyes of Douglas's colleagues, DeFunis was simply a beneficiary of a discriminatory standard. Douglas, who had supported the *Griggs* decision, obviously did not comprehend its implications.

The quota issue re-emerged in 1978, when Allan Bakke, a white male refused admission to the University of California Medical School, challenged the school's policy of reserving 16 per cent of its slots for minorities. Each of the accepted minorities had academic credentials inferior to Bakke's. In a 156-page opinion with 167 footnotes, the Justices reached the schizophrenic conclusion that Bakke should be admitted, but that certain skin colors could nevertheless be considered grounds for college admissions if the goal was to enhance "educational diversity."

A year later the Supreme Court ruled that companies could "voluntarily" impose

quotas on themselves to avoid liability. Pressured by OFCC affirmative-action requirements and the need to forestall Title VII liability under *Griggs*, Kaiser Aluminum, like many other companies, had entered into a quota agreement with its union, the United Steelworkers of America, in 1974. The agreement stipulated that "not less than one minority employee will enter" apprentice and craft training programs "for every non-minority employee" until the percentage of minority craft workers approximated the percentage of minorities in the regions surrounding each Kaiser plant. Two seniority lists were drawn up, one white and one black, and training openings were filled alternately from the two lists.

Brian Weber, a 32-year-old white blue-collar worker who had ten years' seniority as an unskilled lab technician at Kaiser Aluminum's plant in Gramercy, Louisiana, applied for a training-program slot but was denied in favor of two blacks with less seniority. After his union denied his grievance, Weber wrote the local EEOC office requesting a copy of the 1964 Civil Rights Act. When the Civil Rights Act arrived in the mail, Weber read it through and found that it said "exactly what I thought. Everyone should be treated the same, regardless of race or sex." Encouraged by the statute's words, he filed a class-action suit representing his plant's white workers and won before district and appellate courts.

During Supreme Court oral arguments in *United Steelworkers* v. *Weber* Justice Potter Stewart quipped that the Justices had to determine whether employers may "discriminate against some white people." Justice William Brennan's answer, for a 5 to 2 majority, was an emphatic "yes." Brennan said the meaning of the 1964 Civil Rights Act could not be found in its statutory language but resided in its spirit, which Brennan had divined. He asserted that the Act's clear statutory language and the Dirksen, Tower, and Celler amendments conveyed a meaning that was the opposite of what Congress had really intended. A literal reading of Title VII, he said, would "bring about an end completely at variance with the purpose of the statute." In enacting the Civil Rights Act, Brennan continued, "Congress's primary concern" was with the plight of the Negro in our economy. Anything that helped minorities was broadly consistent with this purpose. This included racial quotas, as long as they were voluntarily adopted by companies and not required by the Federal Government under Title VII. Brennan denied that Kaiser's plan would lead to quotas: "The plan is a temporary measure; it is not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance."

BURGER HAS SECOND THOUGHTS

Chief Justice Burger had created disparate-impact analysis in his *Griggs* opinion without realizing its quota implications. Now that quotas were upon him, he found himself joining in dissent with Justice William Rehnquist. Brennan's *Weber* opinion, they said, was "Orwellian." In *Griggs*, the Court had declared that "discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." But eight years had passed, and the Civil Rights Act had been fully reconstructed. Burger and Rehnquist's alarm showed in their dissenting language: "By a tour de force reminiscent not of jurists such as Hale, Holmes, and Hughes, but of escape artists such as Houdini, the Court eludes clear statutory language, uncontradicted legislative history, and uniform precedent in concluding that employers are, after all, permitted to consider race in making employment decisions." The Court "introduces into Title VII a tolerance for the very evil that the law was intended to eradicate," Rehnquist said. Moreover, Brennan's reading of Section 703(j) was "outlandish" in the light of Title VII's other "flat prohibitions" against racial discrimination and is "totally belied by the Act's legislative history." Rehnquist cited a congressional interpretative memorandum clearly stating that "Title VII *does not permit* the ordering of racial quotas in businesses or unions and does not permit interferences with seniority rights of employees or union members." But Burger had set the stage for *Weber* with *Griggs*, and it was the pot calling the kettle black when he accused Brennan of amending the Civil Rights Act "to do precisely what both its sponsors and its opponents agreed the statute was not intended to do."

Having ruled in *Weber* that reverse discrimination was "benign discrimination," the Supreme Court upheld other quota schemes in subsequent cases. In the 1980 case *Fullilove* v. *Klutznick*, the Court said a federal spending program setting aside 10 per cent of public-works money for minority businesses violated neither the Constitution's guarantee of equal protection of the laws nor the 1964 Civil Rights Act.

In the 1987 case *Johnson* v. *Transportation Agency Santa Clara County*, the issue was the maleness rather than the whiteness of white males. The Court ruled that job discrimination against a white male in favor of a woman with lower performance ratings was perfectly legal under Title VII, even though the county's transportation agency had no record of prior discrimination requiring remedies. Rehnquist, Byron White, and Antonin Scalia didn't like the decision. Scalia said, "We effectively replace the goal of a discrimination-free society with the quite incompatible goal of proportionate representation by race and by sex in the workplace." He noted that civil rights had become a cynical numbers game played by politicians, lobbyists, corporate executives, lawyers, and government bureaucrats.

In 1989 there was a brief retrenchment when the Supreme Court, with its Reagan appointees, confronted the quota implications of *Griggs* and the decisions that had followed it. In *Wards Cove* v. *Atonio*, the Court ruled that statistical disparities were insufficient to establish a prima facie case of discrimination. In this case, the racial minorities who made up a majority of the unskilled work force at two Alaskan salmon canneries brought a discrimination lawsuit based on the fact that whites held a majority of skilled office positions. The suit claimed that this constituted underutilization of preferred minorities in office positions and was evidence of racial discrimination. The majority opinion, written by Justice White, rejected the discrimination claim. White noted that:

"Any employer who had a segment of his work force that was—for some reason—racially imbalanced, could be hauled into court and forced to engage in the expensive and time-consuming task of defending the 'business necessity' of the methods used to select the other members of his work force. The only practicable option for many employers will be to adopt racial quotas, ensuring that no portion of his work force deviates in racial composition from the other portions thereof; this is a result that Congress expressly rejected in drafting Title VII."

A week after *Wards Cove*, the Court ruled in *Martin* v. *Wilks* that victims of reverse discrimination due to consent decrees that imposed quotas had the right to challenge the decrees in court. The Court noted that victims of reverse discrimination found their rights affected by lawsuits to which they were not parties. Citing a long-standing legal tradition, the majority held that "a person cannot be deprived of his legal rights in a proceeding to which he is not a party."

These rulings caused an uproar among civil-rights activists, who charged that the new Reagan Court was racist. The illegal privileges that had evolved in the 18 years since *Griggs* was decided had become a squatter's right, and Congress and the Bush Administration were bullied into enacting the new inequality into law. The 1991 Civil Rights Act in effect repealed the 1964 Act by legalizing racial preferences as the core of civil-rights law. The new Act was designed to overturn the *Wards Cove* and *Wilks* rulings and to codify the disparate-impact standard of *Griggs*.

The statute also slammed shut the courthouse doors on white male victims of reverse discrimination. If statistical disparities or racial imbalance is proof of discrimination, white males adversely affected by quotas can have no standing in court. To give them standing would necessarily imperil the quota remedies for racial imbalance. You cannot simultaneously declare that anything short of proportional racial representation is discrimination and recognize the adverse impact of the "remedy" on white males. Under the 1991 Civil Rights Act, white makes have no grounds for discrimination lawsuits until they are statistically underrepresented in management and line positions. They have no claims to be statistically represented as hirees, trainees, and promotees until preferred minorities are proportionately represented in management and line positions. Indeed,under Brennan's interpretation of the Civil Rights Act, which says that anything that helps preferred minorities is broadly consistent with the law, the disparate-impact standard could one day be ruled inapplicable to whites.

The 1991 Civil Rights Act added the threat of compensatory and punitive damages to the pressure for quotas. In "Understanding the 1991 Civil Rights Act," an article in *The Practical Lawyer*, Irving M. Geslewitz recommended that corporations apply cost-benefit analysis to determine whether "they are safer in hiring and promoting by numbers reflecting the percentages in the surrounding community than in risking disparate-impact lawsuits they are likely to lose." To counter charges of "hostile work environments," company lawyers want to be able to tell juries that their clients have many minority and women employees at all levels.

The day after the Civil Rights Act of 1991 became law, a *New York Times* article, "Affirmative Action Plans Are Part of Business Life," observed that quota policies are as "familiar to American businesses as tally sheets and bottom lines." A 1991 *Business Week* article entitled "Race in the Workplace: Is Affirmative Action Working?" reported that affirmative action is "deeply ingrained in American corporation culture.

. . . The machinery hums along, nearly automatically, at the largest U.S. corporations. They have turned affirmative action into a smoothly running assembly line, with phalanxes of lawyers and affirmative-action managers."

The 1964 Civil Rights Act, which undertook to eliminate race and sex from private employment decisions, has instead been used to make race and sex the determining factors.

Reverse discrimination is now a fact of life. Indeed, in strictly legal terms, the situation for white males today is worse than the situation for blacks under *Plessy* v. *Ferguson's* separate-but-equal doctrine. In practice, blacks suffered unequal treatment under *Plessy*, but the decision officially required equal treatment. Under today's civil-rights regime, by contrast, whites can be legally discriminated against in university admissions, employment, and the allocation of government contracts.

In his famous dissent from *Plessy*, Justice John Marshall Harlan worried that the Louisiana law requiring racial segregation on public transportation would allow class distinctions to enter the legal system, since blacks and whites were economically as well as racially distinct. Harlan was certain that he wanted no status-based distinctions in the law. Our Constitution, he said, "is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful." Today, civil-rights activists reject Harlan's color-blind views. Privilege before the law has replaced equality before the law.

By Mr. HELMS:

S. 47. A bill to prohibit the executive branch of the Federal Government from establishing an additional class of individuals that is protected against discrimination in Federal employment, and for other purposes; read twice and placed on the calendar.

FREEDOM OF SPEECH ACT

Mr. HELMS. Mr. President, many readers of the Washington Times on December 31, 1996, were offended when they read an article, "Postal Inspectors' Bias Code Seen as Silencing Anti-Gay Views." The article reported that the U.S. Postal Service's law enforcement branch had recently issued a new code of conduct forbidding employees from expressing their personal and religious beliefs regarding homosexuality—even during off-duty hours.

When asked about the Postal Service's decision, Robert Maginnis, an analyst at the Family Research Council, asserted correctly that "People who have deeply-held moral beliefs * * * need not apply for the Federal jobs. Talk about discrimination! This is reverse discrimination of the worst kind."

Mr. Maginnis was right on target: Freedom of speech is not permitted to those who deplore the favoritism shown people who have the morals of alley cats. I recall the 1994 episode in which the Senate came to the defense of a faithful and longtime employee of the Department of Agriculture, Dr. Karl Mertz, whose freedom of speech was callously violated after he dared to stand up against sodomy. Dr. Mertz did so on his own time, when he opposed his government's giving special rights to homosexuals.

Mr. President, during the incident involving Dr. Mertz, it because abundantly clear, at least to me, that the Clinton Administration had conducted and continues to conduct a concerted effort to give homosexuals special rights, privileges, and protections throughout the Federal agencies—rights not accorded to most other groups and individuals.

The fact is, no other group in America is given special rights based on its sexual behavior. To grant special rights to homosexuals would be redundant—the 1964 Civil Rights Act already protects every American from discrimination.

Moreover, the Senate, on September 10, 1996, defeated attempts by Senator KENNEDY and others to amend the Civil Rights Act in order to extend special rights to employees based exclusively on the employees' sexual preferences.

Mr. President, after Dr. Mertz's plight was brought to light in 1994, my office began to hear from Federal Government employees throughout Washington and the country who were personally concerned about the Administration's attempts to defend and promote special rights for homosexuals in the workplace.

And we continue to hear from them. These are not hate-filled or mean-spirited; they are understandably disturbed by the government's attempts to sanction and protect a lifestyle they—and many Americans—regard as immoral.

Mr. President, let's look at statements issued by three of the Administration's cabinet members regarding efforts by the Clinton Administration to confer special rights and protections upon homosexuals and lesbians.

On April 15, 1993, then-Secretary of Agriculture, Mike Espy, issued a Civil Rights Policy Statement in which he stated that the USDA would "create a work environment free of discrimination and harassment based on gender or sexual orientation."

On December 6, 1993, the Secretary of Health and Human Services, Donna Shalala, issued her agency's directive to celebrate cultural "diversity" in a workplace free of discrimination against gays and lesbians.

On August 30, 1994, Henry Cisneros, the Secretary of the Department of Housing and Urban Development, likewise informed all HUD employees that his department would not tolerate discrimination on the basis of sexual orientation.

In fact, Mr. President, Leonard Hirsch, president of Gay, Lesbian and Bisexual Employees of the Federal Government (GLOBE), told the Washington Times that every Cabinet-level department, excluding the Pentagon, now has rules barring discrimination based on sexual orientation.

Which brings us to the issue of whether the Federal Government intends to expand the definition of discrimination to include suppression of the constitutional rights of its employees to voice personal and religious beliefs regarding homosexuality. The fact is, it is already happening.

To the delight of the homosexual community, Federal employees are required to leave their moral and spiritual views at home every morning since Federal agencies and departments have unilaterally adopted a policy to treat homosexuals as a special class protected under various titles of the Civil Rights Act of 1964.

Congress must not remain silent as the executive branch creates special protections for homosexuals without regard to the constitutional right of freedom of speech enjoyed by all Federal employees. That is the purpose of the legislation I offer today.

Under this bill, no Federal department or agency shall implement or enforce any policy creating a special class of individuals in Federal employment discrimination law. This bill will also prevent the Federal government from trampling the first amendment rights of Federal employees to express their moral and spiritual values in the workplace.

Finally, this bill will turn back the tide of the homosexual community in its efforts to force Americans to accept, and even legitimize, moral perversion.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

By Mr. HELMS:

S. 48. A bill to abolish the National Endowment for the Arts and the National Council on the Arts; read twice placed on the calendar.

THE NATIONAL ENDOWMENT OR THE ARTS TERMINATION ACT OF 1997

Mr. HELMS. Mr. President, something more than 7 years ago, I first reported to the Senate some evidence that a war was then being waged against America's standards of decency by some self-proclaimed "artists" funded by the national Endowment for the Arts.

When I came to the Senate floor that day, July 26, 1989, and suggested that Senators should examine some examples of the material that the taxpayers were being required to subsidize, and that I had an amendment to put an end to it, the distinguished manager of the bill took one look and said, "We" take your amendment."

And that's when the battle began. Since that time some of the know-it-all media have tried in vain to make a silk purse out of the NEA's sow's ear. They failed miserably to persuade the American people that such so-called "art" deserved the taxpayers' money allocated to the arrogant artists whose minds belonged in the sewer.

The names of these self-proclaimed "artists" consist of a wide range of curious individuals who have no regard for decency—Annie Sprinkle, Holly Hughes, and Karen Finley performing their live sex acts; Andres Serrano sticking a crucifix in a jar filled with

his urine, taking a picture of it, and choosing for its title a mockery of Jesus Christ. Then there was Robert Mapplethorpe, who became noted for his filthy homosexual photographs; Joel-Peter Witken who used bodies of dead men and women to produce stomach-churning photographs; and many others.

From burning the American flag to flouting their own bodies and those of others, such depravity knows no bounds. The only religiously-oriented "art" funded by the NEA were scurrilous attacks on the Catholic church or blasphemous insults to the deity of Jesus Christ.

More recently, The Washington Times, in an article last June, reported that the National Endowment for the Arts had, in 1995, awarded $31,500 to a lesbian film director for her production of the film titled, "Watermelon Woman". In her description of the film to the NEA, the film's director boasted that with the NEA's support, she would "be one of the first African American lesbian film makers who promotes our rarely seen lifestyles."

Mr. President, I will not waste the Senate's time further detailing the outrageous abuse of Federal tax dollars by the National Endowment for the Arts. But it continues, despite the efforts by those in Congress to reform the agency. Sadly, the real travesty is found in the efforts of a few misguided souls to defend requiring the American taxpayers to finance the attempted to glorify perversion and immorality.

When I came to the Senate floor that day in 1989, I told Senators that the arts community and the media—because they balked at any restriction on Federal funding—had left Congress with two choices: First, absolutely no Federal presence in the arts; or second, granting artists the absolute freedom to use tax dollars as they wish, regardless of how vulgar, blasphemous, or despicable their works may be. I said at the time that if we indeed must make this choice, then the Federal Government should get out of the arts. But, I felt then that Congress could make another choice—to clean up the NEA, and merely prevent the use of Federal funds to support the creation or production of vulgar or sacrilegious works.

Well, Mr. President, as Paul Harvey says, now you know the rest of the story. For more than 7 years, I offered numerous amendments to put an end to the taxpayer-subsidized obscenity I've detailed today. But without fail, every year, the American people are shocked to hear of another instance in which the NEA has given its blessing—and the taxpayers' money—to an organization or individual determined to cross the lines of decency and morality.

The last card was played out, Mr. President, when a liberal Federal appeals court, on November 5, 1996, usurped the right of Congress to put any semblance of restrictions on the way the NEA uses the money granted to it by Congress. The U.S. 9th Circuit Court thumbed its nose at Congress—and the American people—when it upheld the right of so-called "artists" such as Karen Finley and Holly Hughes to continue to be subsidized for their decadent acts.

Mr. President, no more choices or compromises remain. I have concluded, as have so many Americans, that the only way Congress can stop the irresponsible use of the taxpayers' money by the NEA is to abolish it.

Moreover, there is much to be said for the priority to confront the existing $5.3 trillion Federal debt and the effect that it will have on the futures of today's young people. The sky will not fall if the Congress votes to privatize the NEA as the arts already swim in an ocean of private funds—more than $9 billion annually. Bruce Fein wrote in his editorial, "Dollars for Depravity," that "NEA funds are but a tiny fraction of national art expenditures. Thus, a denial of an NEA grant is far from tantamount to a professional death sentence."

For these reasons, I today introduce The National Endowment for the Arts Termination Act of 1997. The bill mirrors the legislation offered in the House of Representatives this year by Phil Crane, Sam Johnson, and Charlie Norwood.

This bill finally alleviates the burden, shouldered by the American taxpayers, of allocating money every year to an agency whose mission has been sorely mistreated. The strings will be cut and the Federal government will no longer be in the business of propping up "artists" such as Robert Mapplethorpe and Andres Serrano. Furthermore, Congress will rid itself of the annual fight to defend the cultural high ground against a group of people who are in a lifelong crusade to destroy the Judeo-Christian foundations of this country.

Mr. President, this bill is the only solution to end the irresponsible use of the taxpayers' money by this agency. Efforts to reform it have failed. It is time to put the National Endowment for the Arts to rest.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the Record, as follows:

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S. 49. A bill to amend the wetlands regulatory program under the Federal Water Pollution Control Act to provide credit for the low wetlands loss rate in Alaska and recognize the significant extent of wetlands conservation in Alaska, to protect Alaskan property owners, and to ease the burden on overly regulated Alaskan cities, boroughs, municipalities, and villages; to the Committee on Environment and Public Works.

THE ALASKA WETLANDS CONSERVATION ACT

Mr. STEVENS. Mr. President, I am pleased to introduce the Alaska Wetlands Conservation Act, a bill to conform wetlands protection to the unique conditions found throughout Alaska.

My State contains more wetlands than all other States combined. Since 1780 we have developed less than 1/10 of one percent of those wetlands. According to the United States Fish and Wildlife Service, about 170.2 million acres of wetlands existed in Alaska in the 1780's and about 170 million acres exist today. That represents a negligible loss rate over a period of 217 years. Furthermore almost ninety percent of our wetlands are publicly owned, protected by strict land use designations that guarantee these wetlands will remain intact permanently.

We Alaskans have substantially conserved our wetlands. Unfortunately Federal policies established to protect and restore wetlands in the southern forty-eight States do not recognize our unique circumstances nor do these policies provide an appropriate level of flexibility in managing the roughly one percent of land available for private or commercial development in Alaska.

My bill continues to require Alaskans who apply for discharge permits under section 404 of the Clean Water Act to avoid or minimize adverse impacts on wetlands, but it would eliminate requirements to mitigate for unavoidable impacts. It also removes the burden for an applicant to prove that no alternative sites are available. Most of Alaska's communities are surrounded by literally millions of acres of wetland. These areas are made unaccessible under the law for mitigation purposes since they are already protected. In Alaska, mitigation makes no sense except to extort compensatory concessions from applicants which would otherwise not be justified.

The threat of mitigation sends a chilling message to potential investors by artificially raising the costs of doing business in Alaska. In turn, this contributes to unemployment and weakening the economic self sufficiency of our far flung communities. In the long run, the current program wastes taxpayer money in an ill advised attempt to protect abundant wetlands that are already more than adequately protected in Alaska. The resources at risk in Alaska are not our wetlands, they are our people.

The blind application of legislation written to protect wetlands elsewhere inhibits reasonable growth by our Native villages and local governments. In effect, the section 404 program has a life threatening choke hold on Native Alaskans. It is difficult to place a stake in the ground in Alaska without impacting a wetland, let alone to build

critical infrastructure. Compounding the problem, we have recently seen the Administration begin to phase out nationwide permits. This makes it increasingly difficult to address the huge task facing our local and State officials in providing safe drinking water, sanitation systems, electric power and other critical services to far flung Alaskan communities. Without this bill, the Federal wetlands bureaucracy simply lacks the authority to apply common sense.

Mr. President, many rural Alaskans are trapped living under third world conditions by well-meaning outsiders and bureaucrats narrowly focused on environmental protection. Unfortunately for Alaska, in this case the problem is larger than protecting our over abundance of wetlands. Wetlands policies conflict with other laws which were passed to promote the economic self sufficiency of Alaskans. My bill would require approval of permit applications with reasonable safeguards for "economic base lands" meaning those lands conveyed under the Alaska Native Claims Settlement Act or Alaska Statehood Act, both acts intended to provide the means for Alaskans to achieve economic self sufficiency.

The Alaska Wetlands Conservation Act is a common sense approach to Alaska's circumstances. It maintains flexibility to protect wetlands without hurting people. With respect to existing activities related to airport safety, logging, mining, ice pads and roads, and snow removal or storage, the bill prevents Alaskans from having to obtain section 404 permits to continue those activities. The bill would also require the Army Corps of Engineers to approve general wetlands permits with reasonable safeguards for specific categories of activities if the general permit is requested by the State of Alaska.

There has been negligible benefit to the environment in Alaska as a result of the expansive wetlands regulations issued by bureaucrats inside the beltway. On the other hand, the harm caused by overzealous Federal wetlands police is documented in many examples of bureaucratic delay, expense and irrational decision making. Ask the Mayor of Juneau how the Federal Government handled that city's application for a general permit. It is a national disgrace simply because laws intended to protect scarce wetlands elsewhere were strictly applied in an area of abundance. This bill restores rational decision making authority to those closest to the wetlands situation of Alaska. I encourage my colleagues in the Senate and the House to act expeditiously on my proposed remedy.

By Mr. FEINGOLD:

S. 51. A bill to amend the Internal Revenue Code of 1986 to eliminate the percentage depletion allowance for certain minerals; to the Committee on Finance.

DEPLETION ALLOWANCES LEGISLATION

Mr. FEINGOLD. Mr. President, I am pleased to introduce legislation to eliminate percentage depletion allowances for four mined substances—asbestos, lead, mercury, and uranium—from the Federal tax code. This measure is based on language passed as part of the Energy Policy Act of 1992 by the other body during the 102d Congress.

Analysis by the Joint Committee on Taxation on the similar legislation that passed the House estimated that, under that bill, income to the Federal treasury from the elimination of percentage depletion allowances in just these four mined commodities would total $83 million over 5 years, $20 million in this year alone. These savings are calculated as the excess amount of federal revenues above what would be collected if depletion allowances were limited to the actual costs in capital investments.

These four allowances are only a few of the percentage depletion allowances contained in the tax code for extracted fuel, minerals, metal and other mined commodities—with a combined value, according to 1994 estimates by the Joint Committee on Taxation, of $4.8 billion.

Mr. President, unlike depreciation or cost depletion, the ability to use so-called percentage depletion allows companies to deduct far more than their actual costs. The result is a generous loophole for the company, and an expensive subsidy for the taxpayer.

Historically, percentage depletion allowances were placed in the tax code to reduce the effective tax rates in the mineral and extraction industries far below tax rates on other industries, providing incentives to increase investment, exploration and output. However, unlike cost depletion or even accelerated depreciation, percentage depletion also makes it possible to recover more than the amount of the original investment. As noted in the Budget Committee's report on tax expenditures, this makes percentage depletion essentially a mineral production subsidy.

There are two methods of calculating a deduction to allow a mining companies to recover the costs of their capital investment: cost depletion, and percentage depletion. Cost depletion allows for the recovery of the actual capital investment over the period which the reserve produces income. Using cost depletion, a company deducts a portion of their original capital investment minus any previous deductions, in an amount that is equal to the fraction of the remaining recoverable reserves. Under this method, the total deductions cannot exceed the original capital investment.

However, under percentage depletion, the deduction for recovery of a company's investment is a fixed percentage of "gross income"—namely, sales revenue—from the sale of the mineral. According to the Budget Committee's summary of tax expenditures, under this method, total deductions typically exceed the capital that the company invested.

Mr. President, given the need to reduce the deficit and balance the budget, there is just as clear a need to review the spending done through the tax code as there is to scrutinize discretionary spending and entitlement programs. All of these forms of spending must be asked to justify themselves, and be weighed against each other in seeking to reach the broader goal of a balanced budget.

In the case of these particular tax expenditures, we must decide who should bear the costs of exploration, development, and production of natural resources: all taxpayers, or the users and producers of the resource. The current tax break provided to the users and producers of these resources increases pressure on the budget deficit, and shifts a greater tax burden onto other businesses and individuals to compensate for the special treatment provided to the few.

Mr. President, the measure I am introducing is straightforward. It eliminates the percentage depletion allowance for asbestos, lead, mercury, and uranium while continuing to allow companies to recover reasonable cost depletion.

Even as a production subsidy, the percentage depletion tax loophole is inefficient. As the Budget Committee summary of tax expenditures notes, it encourages excessive development of existing properties rather than the exploration of new ones.

Moreover, Mr. President, the four commodities covered by my bill are among some of the most environmentally adverse. The percentage depletion allowance makes a mockery of conservation efforts. The subsidy effectively encourages mining regardless of the true economic value of the resource. The effects of such mines on U.S. lands, both public and private, has been significant—with tailings piles, scarred earth, toxic by-products, and disturbed habitats to prove it.

Ironically, the more toxic the commodity, the greater the percentage depletion received by the producer. Mercury, lead, uranium, and asbestos receive the highest percentage depletion allowance, while less toxic substances receive lower rates.

Mr. President, particularly in the case of the four commodities covered by my bill, these tax breaks create absurd contradictions in government policy. While Federal public health and environmental agencies are struggling to come to grips with a vast children's health crisis caused by lead poisoning, spending millions each year to prevent

lead poisoning, test young people, and research solutions, the tax code is providing a subsidy for lead production—a subsidy that is not provided for the lead recycling industry.

Asbestos, too, has posed massive public health problems, and it is indefensible that this commodity, the use of which the Federal Government will effectively ban before the year 2000, continues to receive a massive tax subsidy.

Mr. President, the time has come for the Federal Government to get out of the business of subsidizing business in ways it can no longer afford—both financially and for the health of its citizens. This legislation is one step in that direction.

Mr. President, in 1992, I developed an 82+ plan to eliminate the Federal deficit and have continued to work on implementation of the elements of that plan since that time. Elimination of special tax preferences for mining companies was part of that 82+ point plan. Just as we must cut direct spending programs, if we are to balance that budget, we must also curtail these special taxpayer subsidies to particular industries that can no longer be justified.

Finally, Mr. President, in conclusion I want to pay tribute to several elected officials from Milwaukee, Mayor John Norquist and Milwaukee Alderman Michael Murphy, who have brought to my attention the incongruity of the federal government continuing to provide taxpayer subsidies for the production of toxic substances like lead while our inner cities are struggling to remove lead-based paint from older homes and buildings where children may be exposed to this hazardous material. I deeply appreciate their support and encouragement for my efforts in this area.

Mr. President, I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 51

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN MINERALS NOT ELIGIBLE FOR PERCENTAGE DEPLETION.

(a) IN GENERAL.—Section 613(b)(1) of the Internal Revenue Code of 1986 (relating to percentage depletion rates) is amended—

(A) in subparagraph (A), by striking "and uranium"; and

(B) in subparagraph (B), by striking "asbestos,", "lead,", and "mercury,".

(b) CONFORMING AMENDMENTS.—

(1) Section 613(b)(3)(A) of the Internal Revenue Code of 1986 is amended by inserting "other than lead, mercury, or uranium" after "metal mines".

(2) Section 613(b)(4) of such Code is amended by striking "asbestos (if paragraph (1)(B) does not apply),".

(3) Section 613(b)(7) of such Code is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by inserting after subparagraph (C) the following:

"(D) mercury, uranium, lead, and asbestos."

(4) Section 613(c)(4)(D) of such Code is amended by striking "lead," and "uranium,".

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1996.

By Mr. FEINGOLD:

S. 52. A bill to amend the Agricultural Adjustment Act to prohibit the Secretary of Agriculture from basing minimum prices for Class I milk on the distance or transportation costs from any location that is not within a marketing area, except under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 55. A bill to amend the Dairy Production Stabilization Act of 1983 to prohibit bloc voting by cooperative associations of milk producers in connection with the program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 56. A bill to amend the Dairy Production Stabilization Act of 1983 to ensure that all persons who benefit from the dairy promotion and research program contribute to the cost of the program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

DOMESTIC DAIRY POLICY LEGISLATION

Mr. FEINGOLD. Mr. President, today I rise to introduce three bills which attempt to rectify three different problems with domestic dairy policy. My State of Wisconsin is home to more than 26,000 dairy farmers. Over the past 4 years during the more than 288 listening sessions I've held in Wisconsin counties, I have heard from many of those dairy farmers on the issues addressed by the legislation I am introducing today.

The first bill I am introducing today, if enacted, will be a first step towards rectifying the inequities in the Federal Milk Marketing Order system. The Federal Milk Marketing Order system, created 60 years ago, establishes minimum prices for milk paid to producers throughout various marketing areas in the United States.

My legislation is very simple. It identifies the single most inequitable and injurious provision in the current system, and corrects it. That provision—known as single basing point pricing—is USDA's practice of basing prices for fluid milk—Class I milk—in all marketing areas east of the Rocky Mountains on the distance from Eau Claire, WI, when there is little economic justification for doing so.

In general, the price for fluid milk increases at a rate of 21 cents per 100 miles from Eau Claire, WI. Fluid milk prices, as a result, are $2.98 cents higher in Florida than in Wisconsin, more than $2 higher in New England, and more than $1 higher in Texas.

While this system has been around since 1937, the practice of basing fluid milk price differentials on the distance from Eau Claire was formalized in the 1960's, when arguably the Upper Midwest was the primary reserve for additional supplies of milk. The idea was to encourage local supplies of fluid milks in areas of the country that did not traditionally produce enough fluid milk to meet their own needs. At that time, this was important because our transportation infrastructure made long distance bulk shipments of milk difficult. Thus, the only way to ensure consumers a fresh local supply of fluid milk was to provide dairy farmers in those distant regions with a milk price high enough to encourage local production. Mr. President, the system worked too well. Ultimately, it has worked to the disadvantage of the Upper Midwest, and in particular, Wisconsin dairy farmers.

The artificially inflated Class I prices have provided production incentives beyond those needed to ensure a local supply of fluid milk in some regions, leading to an increase in manufactured products in those marketing orders. Those manufactured products directly compete with Wisconsin's processed products, eroding our markets and driving national prices down.

Under the provisions of the 1996 farm bill, the U.S. Department of Agriculture is currently undergoing an informal rulemaking process to consolidate the number of Federal Milk Marketing Orders from 32 to 10. USDA is also looking at how to set prices for milk in those consolidated orders. By statute USDA is prohibited from basing the new prices on the structure of the existing milk differentials set by the 1985 farm bill. The reforms must be completed by spring, 1999. Secretary of Agriculture Dan Glickman will no doubt be pressured by many supporters of the status quo to maintain the overall price structure that has discriminated against Wisconsin farmers for so many years. I will do everything I can to prevent that from happening. Wisconsin farmers need real Class I price reform that removes the artificial competitive advantages provided to other regions to other regions of the country and allows Upper Midwest farmers to compete on a level playing field.

The legislation that I am introducing today identifies the one change that is absolutely necessary in any outcome—the elimination of single basing point pricing. It prohibits the Secretary of Agriculture from using distance or transportation costs from any location as the basis for pricing milk, unless significant quantities of milk are actually transported from that location into the recipient market. The Secretary will have to comply with the

statutory requirement that supply and demand factors be considered as specified in the Agricultural Marketing Agreement Act when setting milk prices in marketing orders.

This legislation sends a very simple message to the Secretary of Agriculture—that among all the Class I pricing reform options from which the Secretary must choose, he should in no case select on option that either by intent or effect sets prices based on distance from a single location. I will work toward enactment of this legislation prior to the completion the proposed rule on class I pricing reform.

Mr. President, my next two bills address inequities to dairy producers throughout the country under the Dairy Promotion and Research Order—also known as the dairy checkoff. I am pleased to be joined by Senator KOHL today on these two very important bills.

The National Dairy Promotion and Research Program collect roughly $225 million every year from dairy farmers each paying a mandatory 15 cents for every 100 pounds of milk they produce. The program is designed to promote dairy products to consumers and to conduct research relating to milk processing and marketing.

While 15 cents may appear to be a small amount of money, multiplied by all the milk marketed in this country, it adds up to thousands of dollars each year for the average producer. Given the magnitude of this program, it is critical that Congress take seriously the concerns producers have about their promotion program.

Since participation in the checkoff is mandatory and producers are not allowed refunds, Congress required that producers vote in a referendum to approve the program after it was authorized. The problem is that Congress didn't provide for a fair and equitable voting process in the original act and it's time to correct our mistake. My bill does that by eliminating a process known as bloc voting by dairy cooperatives.

Under current law, dairy cooperatives are allowed to cast votes in producer referenda en bloc for all of their farmer-members, either in favor of or against continuation of the National Dairy Board. While individual dissenters from the cooperative's position are allowed to vote individually, many farmers and producer groups claim the process stacks the deck against those seeking reform of the program.

Mr. President, the problem bloc voting creates is best illustrated by the results of the August 1993 producer referendum on continuation of the National Dairy Promotion and Research Board, called for by a petition of 16,000 diary farmers. In that referendum, 59 dairy cooperatives voting en bloc, cast 49,000 votes in favor of the program. Seven thousand producers from those cooperatives went against co-op policy and voted individually against continuing the program.

While virtually all of the votes in favor of the program were cast by cooperative bloc vote, nearly 100 percent of the votes in opposition were cast by individuals. Bloc voting allows cooperatives to cast votes for every indifferent or ambivalent producer in their membership, drowning out the voices of dissenting producers. It biases the referendum in favor of the Dairy Board's supporters, whose votes should not have greater weight than the dissenters.

The inappropriate nature of bloc voting in Dairy Board referendum is even clearer given that none of the 17 other commodity promotion programs allow cooperatives to bloc vote despite the existence of marketing cooperatives for many of those commodities.

Mr. President, it is time to give dairy farmers a fair voting process for their promotion program. I urge my colleagues to support this very important legislation.

My last bill, Mr. President, provides equity to domestic producers who have been paying into the promotion program for over 10 years while importers have gotten a free ride. Since the National Dairy Promotion and Research Board conducts generic promotion and general product research, domestic farmers and importers alike benefit from these actions. The Dairy Promotion Program Equity Act requires that all dairy product importers contribute to the Dairy Promotion Program for all dairy products imported at the same rate as domestic dairy farmers. This is not an unusual proposal, Mr. President. Many of our largest generic promotion programs in agriculture already assess importers for their fair share of the program, including programs for pork, beef, and cotton.

This legislation is particularly important in light of the passage of the General Agreement on Tariffs and Trade which will result in greater imports of dairy products over the next several years. An assessment of this type on importers would also be allowed under the GATT since our own milk producers are already paying the same assessment.

We have put our own producers at a competitive disadvantage for far too long. It's high time importers paid for their fair share of the program.

I am also pleased to be an original cosponsor of the National Dairy Promotion Board Reform Act introduced today by Senator KOHL. That bill further enhances producer representation on the National Dairy Board by providing for the direct election of National Dairy Board members, rather than appointment by the Secretary. That process will allow producers to elect members to the board that represent their views on promotion and eliminates the divisive impact of the political appointment process on the Dairy Board. Direct producer election of board members should also increase the accountability to their fellow dairy farmers.

I believe that these bills together comprise a sound reform package for the National Dairy Promotion and Research Board by providing a stronger voice to dairy farmers. These reforms will create a stronger, more effective and more representative Dairy Board. I urge my colleagues to support this important legislation.

Mr. President, I ask unanimous consent that the text of all three bills be printed in the RECORD.

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

S. 52

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LOCATION ADJUSTMENTS FOR MINIMUM PRICES FOR CLASS I MILK.

Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (A)—

(A) in clause (3) of the second sentence, by inserting after "the locations" the following: "within a marketing area subject to the order"; and

(B) by striking the last 2 sentences and inserting the following: "Notwithstanding subsection (18) or any other provision of law, when fixing minimum prices for milk of the highest use classification in a marketing area subject to an order under this subsection, the Secretary may not, directly or indirectly, base the prices on the distance from, or all or part of the costs incurred to transport milk to or from, any location that is not within the marketing area subject to the order, unless milk from the location constitutes at least 50 percent of the total supply of milk of the highest use classification in the marketing area. The Secretary shall report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the criteria that are used as the basis for the minimum prices referred to in the preceding sentence, including a certification that the minimum prices are made in accordance with the preceding sentence."; and

(2) in paragraph (B)(c), by inserting after "the locations" the following: "within a marketing area subject to the order".

S. 55

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON BLOC VOTING.

Section 117 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4508) is amended—

(1) in the first sentence, by striking "Secretary shall" and inserting "Secretary shall not"; and

(2) by striking the second through fifth sentences.

S. 56

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 "Dairy Promotion Equity Act".

SEC. 2. FUNDING OF DAIRY PROMOTION AND RESEARCH PROGRAM.

(a) DECLARATION OF POLICY.—The first sentence of section 110(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501(b)) is amended—

(1) by inserting after "commercial use" the following: "and on imported dairy products"; and

(2) by striking "products produced in" and inserting "products produced in or imported into".

(b) DEFINITIONS.—Section 111 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502) is amended—

(1) in subsection (k), by striking "and" at the end;

(2) in subsection (l), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(m) the term 'imported dairy product' means any dairy product that is imported into the United States, including—

"(1) milk and cream and fresh and dried dairy products;

"(2) butter and butterfat mixtures;

"(3) cheese;

"(4) casein and mixtures; and

"(5) other dairy products; and

"(n) the term 'importer' means a person that imports an imported dairy product into the United States.".

(c) FUNDING.—

(1) REPRESENTATION ON BOARD.—Section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)) is amended—

(A) by designating the first through ninth sentences as paragraphs (1) through (5) and paragraphs (7) through (10), respectively;

(B) in paragraph (1) (as so designated), by striking "thirty-six" and inserting "38";

(C) in paragraph (2) (as so designated), by striking "Members" and inserting "Of the members of the Board, 36 members"; and

(D) by inserting after paragraph (5) (as so designated) the following:

"(6) IMPORTERS.—

"(A) IN GENERAL.—Of the members of the Board, 2 members shall be representatives of importers of imported dairy products.

"(B) APPOINTMENT.—The importer representatives shall be appointed by the Secretary from nominations submitted by importers under such procedures as the Secretary determines to be appropriate.".

(2) ASSESSMENT.—Section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)) is amended—

(A) by designating the first through fifth sentences as paragraphs (1) through (5), respectively; and

(B) by adding at the end of the following:

"(6) IMPORTERS.—

"(A) IN GENERAL.—The order shall provide that each importer of imported dairy products shall pay an assessment to the Board in the manner prescribed by the order.

"(B) RATE.—The rate of assessment on imported dairy products shall be determined in the same manner as the rate of assessment per hundredweight or the equivalent of milk.

"(C) VALUE OF PRODUCTS.—For the purpose of determining the assessment on imports under subparagraph (B), the value to be placed on imported dairy products shall be established by the Secretary in a fair and equitable manner.".

(3) RECORDS.—The first sentence of section 113(k) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(k)) is amended by striking "person receiving" and inserting "importer of imported dairy products, each person receiving".

(4) REFERENDUM.—Section 116 of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4507) is amended by adding at the end the following:

(d) REFERENDUM ON DAIRY PROMOTION EQUITY ACT.—

"(1) IN GENERAL.—On the request of a representative group comprising 10 percent or more of the number of producers subject to the order, the Secretary shall—

"(A) conduct a referendum to determine whether the producers favor suspension of the application of the amendments made by section 2 of the Dairy Promotion Equity Act; and

"(B) suspend the application of the amendments until the results of the referendum are known.

"(2) CONTINUATION OF SUSPENSION.—The Secretary shall continue the suspension of the application of the amendments referred to in paragraph (1)(A) only if the Secretary determines that suspension of the application of the amendments is favored by a majority of the producers voting in the referendum who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use.".

By Mr. HATCH (for himself, Mr. LEAHY, Mr. THURMOND, and Mr. MOYNIHAN):

S. 53. A bill to require the general application of the antitrust laws to major league baseball, and for other purposes; to the Committee on the Judiciary.

THE CURT FLOOD ACT OF 1997

Mr. HATCH. Mr. President, I am introducing today, along with Senators LEAHY, THURMOND, and MOYNIHAN, the Curt Flood Act of 1997, clarifying the applicability of antitrust law to major league baseball. This legislation, which is basically the same bill that was approved by the Judiciary Committee last Congress, marks what I hope will be the final chapter in a long and, at times, frustrating effort to correct a mistaken decision by the Supreme Court.

As was true before, the bill simply makes clear that major league baseball, like all other professional sports, is subject to our Nation's antitrust laws, except with regard to team relocation, the minor leagues, and sports broadcasting. It overturns the Court's mistaken premise that baseball is not a business involved in interstate commerce, and it eliminates the unjustifiable legal precedent that individuals who play professional baseball should be treated differently from those who participate in other professional sports.

In 1922, in *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), the Supreme Court ruled that professional baseball was immune from the reach of the Federal antitrust laws because baseball was not a business in interstate commerce. Obviously, the Court at that time could not have imagined the modern game or a 1993 World Series where Canada's Toronto Blue Jays defeated the Philadelphia Phillies in games that were televised literally around the world.

Fifty years after the Supreme Court's decision in *Federal Baseball Club*, the Court rendered its decision in *Flood* v. *Kuhn*, which repudiated the legal basis of its prior decision as an "anomaly" and "aberration confined to baseball" but, because of its reluctance to overturn long-standing decisions, left the job of remedying its mistake to Congress.

Unfortunately, Congress has been reluctant to follow the Court's instruction. In the past, it has been argued that this issue was not ripe, that it should not be considered too close to a labor dispute or, as was the case most recently, that it should not be discussed during a labor dispute. Fortunately, that now infamous dispute, which has done so much to tarnish the game, is resolved. The time has come to pass this legislation.

Moreover, for the first time, the primary impediment to passage has been eliminated. In the new collective bargaining agreement the owners have pledged to work with the players to pass legislation that makes clear that professional baseball is subject to the antitrust laws with regard to labor relations.

It is our hope that this year, Congress will finally rectify the Court's mistake and make clear once and for all that baseball no longer has any claim to antitrust immunity. It has been 25 years since Curt Flood jeopardized his career by unsuccessfully challenging baseball's reserve clause, a suit which resulted in the unfortunate decision mentioned above.

Yesterday, Curt Flood tragically died of throat cancer at the age of 59. The hearts of baseball fans all over the country go out to Mr. Flood's family. I join these fans in expressing my deepest regrets to the Flood family, and let me suggest today that the time has come to finish what Curt Flood so courageously began.

Let me emphasize that our bill does not impose a big government solution to baseball's problems. On the contrary, it would get government out of the way by eliminating a serious government-made obstacle to resolution of the labor difficulties in baseball. Baseball's antitrust immunity has distorted labor relations in major league baseball and has sheltered baseball from the market forces that have allowed the other professional sports, such as football and basketball, to thrive.

I should note that comparable legislation has been introduced in the other body by Mr. CONYERS of Michigan, the ranking member of the House Judiciary Committee, whose bill bears Mr. Flood's number.

Mr. President, I ask unanimous consent that the full text of our bill be printed in the RECORD.

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

S. 53

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 "Curt Flood Act of 1997".

SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO PROFESSIONAL MAJOR LEAGUE BASEBALL.

The Clayton Act (15 U.S.C. 12 et seq.) is amended by adding at the end the following new section:

"SEC. 27. (a) Subject to subsection (b), the antitrust laws shall apply to the business of professional major league baseball.

"(b) Nothing in this section shall be construed to affect—

"(1) the applicability or nonapplicability of the antitrust laws to the amateur draft of professional baseball, the minor league reserve clause, the agreement between professional major league baseball teams and teams of the National Association of Baseball, commonly known as the 'Professional Baseball Agreement', or any other matter relating to the minor leagues;

"(2) the applicability or nonapplicability of the antitrust laws to any restraint by professional baseball on franchise relocation; or

"(3) the application of Public Law 87–331 (15 U.S.C. 1291 et seq.) (commonly known as the 'Sports Broadcasting Act of 1961').".

Mr. THURMOND. Mr. President, I rise today in support of the Curt Flood Act of 1997, which I am cosponsoring with Senator HATCH, Senator LEAHY, and others. Our legislation would repeal the antitrust exemption which shields major league baseball from the antitrust laws that apply to all other sports and unregulated businesses in our Nation. This bill is virtually identical to S. 627 in the last Congress which was the result of discussions between myself and Senators HATCH and LEAHY following the February 1995 hearing I chaired on this important issue. The bill is a compromise which has been carefully drafted to ensure that it achieves its purpose without imposing any unnecessary hardship on major league baseball.

It is fitting that this bill is named after Curt Flood, who died yesterday, for the Supreme Court denied Mr. Flood the relief he sought by upholding the antitrust exemption which we now seek to change. In his 1972 Supreme Court case, Mr. Flood challenged baseball's reserve clause which bound players to teams for their entire careers. Although unsuccessful because of the judicially-created antitrust exemption, Mr. Flood's selfless actions paved the way for the success of other players through arbitration. It is now time for us to resolve the antitrust exemption.

The bill we are introducing today eliminates baseball's antitrust exemption, with two exceptions. The legislation maintains the status quo for franchise location, and for the relationship with the minor leagues. It is important to protect the existing minor league relationships in order to avoid disruption of the more than 170 minor league teams which exist throughout our Nation. Continuing to shield franchise relocation decisions from the antitrust laws resolves the uncertainty facing team owners in other professional sports.

Mr. President, it is my belief that the Congress should repeal the court-imposed antitrust exemption and restore baseball to the same level playing field as other professional sports and unregulated businesses. In the last Congress, we were successful in passing S. 627 in the Antitrust, Business Rights, and Competition Subcommittee and in the Committee on the Judiciary. In this Congress we should make a concerted effort to enact the Curt Flood Act.

Mr. LEAHY. Mr. President, I join today in introducing the Curt Flood Act of 1997. Like the earlier version of this legislation that I sponsored in the last Congress, this bill is intended to cut back on the unjustified, judicially created exemption from the antitrust laws. In my view no one is or should be above the law.

Last Congress for the first time in our history, the Senate Judiciary Committee favorably reported language designed to cut back baseball's judicially mandated and aberrational antitrust exemption. We did so with the support of the Clinton administration and a bipartisan coalition of Senators. This bill reflects that language.

The Senate refused to consider the measure over the last 2 years. In part that may be explained by the opposition from major league baseball team owners and perhaps by a feeling among some that we should not legislate during a time in which there was a labor-management impasse. Both those concerns have now been removed with the recent, 5-year agreement between the major league baseball team owners and the Major League Baseball Players Association. Indeed, a provision in that agreement calls for the owners to lobby Congress in support of the repeal of the antitrust exemption, at least to the extent it relates to labor-management relations.

It is time to build on the progress we made last year and long past time for the Senate to act. Congress may not be able to solve every problem or heal baseball's self-inflicted wounds, but we can do this: We can pass legislation that will declare that professional baseball can no longer operate above the law.

Our antitrust laws protect competition and benefit consumers. We are faced with an anomalous situation where the Federal antitrust laws have not applied to certain major league baseball functions and operations for over 70 years.

I hope that we will, at long last, take up the issue of major leagues baseball's antitrust exemption. The burden of proof is on those who seek to justify this exemption from the law. No other business or professional or amateur sport is possessed of the exemption from law that major league baseball has enjoyed and abused.

One of the players who testified at our hearings last Congress asked a most perceptive question: If baseball were coming to Congress today to ask us to provide a statutory exemption, would such a bill be passed? I believe the answer to that question is a resounding no.

In addition, there is and has been no independent commissioner who could look out for the best interests of baseball and its fans. Despite repeated assurances, there has been no action to restore a strong, independent commissioner to oversee the game and it has suffered the consequences. It is only now beginning to emerge from a 4-year struggle without a labor-management agreement. I see that the owners last week authorized their executive committee to begin a search for a new commissioner. In my view baseball would be well served by making a serious commitment to a strong, independent commissioner. Neither fans nor Congress will be inspired by delay, drift or lack of direction.

In Vermont when I was growing up virtually everyone was a Red Sox fan. Now loyalties are split among teams and among various sports. We have a successful minor league team, the Vermont Expos, the champions of the New York-Penn League last season. We also have businesses and jobs that depend on baseball and fans who have been hurt by its shortsightedness and mismanagement over the past several years. There is a strong public interest in baseball and it reverberates throughout the country.

I am concerned about the interests of the public and, in particular, the interests of baseball fans. To reiterate the words of baseball's last commissioner, Fay Vincent: "Baseball is more than ownership of an ordinary business. Owners have a duty to take into consideration that they own a part of America's national pastime—in trust. This trust sometimes requires putting self-interest second." Baseball's fans feel that this trust had been violated over the last several years.

It is the public that is being shortchanged by the policies and practices of major league baseball and by disregard for the interests of the fans. I look forward to moving ahead thoughtfully to reconsider major league baseball's exemption from legal requirements to which all other businesses must conform their behavior. Since the multi-billion dollar businesses that have grown from what was once our national pastime are now being run accordingly to a financial bottom line, a healthy injection of competition may be just what is needed.

I want to be reassured, for example, that the minor league teams will not be abandoned or exploited by major league owners and that the negotiations concerning the Professional Baseball Agreement proceed to a fair conclusion without being skewed by some notion of antitrust exemption. I want to consider whether there are measures we in Congress might take to strengthen the hands of cities, taxpayers and fans against the extortionate demands for new stadiums at public expense. I want to revisit the issues of antitrust immunity in connection with sports broadcasting rights and restrictions on viewers' access to programming imposed by major league owners. If I had my way, we would make progress in clarifying each of these matters.

In an effort to act expeditiously, I am cosponsoring this consensus measure. I look forward to our prompt hearings, Committee and Senate consideration and to working with others to forge a legal framework in which the public will be better served.

I am delighted and encouraged that the ranking Democratic member of the House Judiciary Committee, Rep. JOHN CONYERS, JR., also acted on the first day of legislative activity in the House to introduce H.R. 21, companion baseball antitrust legislation based on what we reported last Congress. It is right and fitting that he chose Curt Flood's number for this bill.

Mr. Flood passed away yesterday. His contributions to the game of baseball went well beyond his all star play and outstanding statistics. He was a critical part of championship teams during his years patrolling center field for the St. Louis Cardinals in the late 50's and 60's. He was an outstanding hitter, fielder and all around player in an era of great players.

His part in baseball history has even more to do with his resolve to stand up for what he knew was the right thing and his legal challenge to the reserve clause, which had bound players to teams for life. He was the plaintiff who sacrificed his career and a place in baseball's Hall of Fame by taking the matter all the way to the United States Supreme Court where, in 1972, the Court challenged Congress to correct the aberration that baseball's antitrust immunity represents in our law. There would be no more fitting tribute to Curt Flood's courage than for this Congress finally to answer that 25-year-old call to action. I hope that we will do so without further delay.

Mr. MOYNIHAN. Mr. President, I am pleased to be an original cosponsor of the Curt Flood Act of 1997, a bill drafted by the distinguished chairman of the Judiciary Committee, Senator HATCH.

This bill is designed to be a partial repeal of major league baseball's antitrust exemption. It would leave the exemption in place as it pertains to minor league baseball and the ability of major league baseball to control the relocation of franchises.

In 1922, the Supreme Court of the United States, in *Federal Baseball Club* v. *National League*, held that "exhibitions of base ball" were not interstate commerce and thus were exempt from the antitrust laws. Fifty years later, in *Flood* v. *Kuhn* in 1972, the Court concluded that the antitrust exemption was an "anomaly" and an "aberration confined to baseball" and that "professional baseball is a business and it is engaged in interstate commerce." Even so, the Court refused to reverse its 1922 decision in *Federal Baseball*. Justice Blackmun, delivering the opinion of the Court in *Flood*, wrote:

> If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.

This decision clearly laid responsibility for baseball's antitrust exemption on Congress. It also explicitly recognized baseball's evolution into a major industry. Clearly, baseball is a business engaged in interstate commerce, and should be subject to the antitrust laws to the same extent that all other businesses are. So now, in 1997, on the 75th anniversary of *Federal Baseball*, the time has come for Congress to act.

On the first day of the 104th Congress, I introduced my own legislation on the subject. My bill, S. 15, the National Pastime Preservation Act of 1995, would have applied the antitrust laws to major league baseball without the exceptions suggested by my friend from Utah.

At this time, I am pleased to support any efforts that will provide a more level playing field for baseball's labor negotiations and that should help to prevent future strikes like the one we experienced in 1994 and 1995 from interrupting the fans enjoyment of the game of baseball itself. While I am happy that both the owners and the players agreed to support this limited repeal of baseball's antitrust exemption, it is important to keep in mind that the players and owners do not write the labor laws, Congress does.

It is most appropriate that this bill has been named in honor of Curt Flood, the man responsible for the second significant challenge to baseball's antitrust immunity. Curt Flood was a battler. Sadly, he lost a different battle yesterday, to throat cancer. He was only 59.

Mr. Flood hit over .300 six times playing for the St. Louis Cardinals and he finished his 15-year career with a lifetime batting average of .293. he was also a seven-time Gold Glove winner, a three-time all-star, and he helped lead the Cardinals to their World Series titles in 1964 and 1967.

After the 1969 season, however, at the age of 32, Curt Flood was traded to the Phillies. Mr. Flood did not want to move. St. Louis was his home (he had played for the Cardinals for 11 years) and he was concerned about the racial politics in Philadelphia at the time. He sent a letter to Commissioner Bowie Kuhn asking him to nullify the trade, but his request was denied. It was in response to this denial that Mr. Flood initiated his historic suit challenging baseball's antitrust exemption.

Curt Flood put his career on the line by sitting out the 1970 season as he challenged baseballs' reserve clause—rules that prohibited players from choosing which teams they wished to play for. While he resumed playing in 1971 after St. Louis and Philadelphia made a deal with the Washington Senators, the year off hurt Mr. Flood. his level of play was not the same and he retired after playing only 13 games for the Senators. The head of the players' union, Don Fehr, called Mr. Flood "a man of quiet dignity." He added, "Curt Flood conducted his life in a way that set an example for all who had the privilege to know him. When it came time to take a stand, at great personal risk and sacrifice, he proudly stood firm for what he believe was right."

I thank my friend from Utah for inviting me to cosponsor this legislation, and hope other Senators agree with us that the time has come to act.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. D'AMATO, Mr. HARKIN, and Mr. REID):

S. 54. A bill to reduce interstate street gang and organized crime activity, and for other purposes; to the Committee on the Judiciary.

THE FEDERAL GANG VIOLENCE ACT OF 1997

Mr. HATCH. Mr. President, I rise today to introduce the Federal Gang Violence Act. I am pleased to be joined in this important effort by Senator FEINSTEIN, as well as by Senators D'AMATO, HARKIN, and REID.

Gang violence in many of our communities is reaching frightening levels. Last year, my hometown of Salt Lake City was shocked by a particularly awful example. Asipeli Mohi, a 17-year-old Utahn, was tried and convicted of the gang-related beating and shooting death of another teenager, Aaron Chapman. Why was Aaron Chapman murdered? He was wearing red, apparently the color of a rival gang. Ironically, Mr. Chapman was on his way home from attending an anti-gang benefit concert when he was killed. Before committing this murder, the killer had racked up a record of five felonies and fifteen misdemeanors in juvenile court. Sadly, this example of senseless gang violence is not an isolated incident in my State or elsewhere. It is a scene replayed with disturbing frequency.

Gang violence is now common even in places where this would have been unthinkable several years ago. Indeed, many people find it hard to believe

that Salt Lake City or Ogden could have such a problem—gangs, they think, are a problem in cities like New York, Chicago, and Los Angeles, but not in our smaller cities.

However, reality is much grimmer. Since 1992, gang activity in Salt Lake City has increased tremendously. For instance, the number of identified gangs has increased fifty-five percent, from 185 to 288, and the number of gang members has increased 146 percent, from 1,438 to 3,545.

The number of gang-related crimes has increased a staggering 196 percent, from 1,741 in 1992 to 5,158 in the first eleven months of 1996. In 1995, there were 174 gang-related drive-by shootings, and in the first eleven months of 1996, this dismaying statistic increased to 207.

Our problem is severe. Moreover, there is a significant role the Federal Government can play in fighting this battle. I am not one to advocate the unbridled extension of Federal jurisdiction. Indeed, I often think that we have federalized too many crimes. However, in the case of criminal street gangs, which increasingly are moving interstate to commit crimes, there is a very proper role for the Federal Government to play.

This bill will strengthen the coordinated, cooperative response of Federal, State, and local law enforcement to criminal street gangs by providing more flexibility to the Federal partners in this effort. It provides the Federal prosecutorial tools needed to combat gang violence. Violent crimes committed by youth continue to be the fastest growing type of crime. Indeed, even as the general crime rate has leveled off, or even declined slightly over the last couple of years, violent youth crime, much of it committed by gangs, has increased. As my colleagues know, the sophistication and the interstate nature of these gangs has increased as well.

This bill puts teeth into the Federal gang statute, by adding tough penalties based on the existing Continuing Criminal Enterprise statute in title 21 [21 U.S.C. 848]. Federal prosecutors will be able to charge gang leaders or members under this section if they engage in two or more criminal gang offenses.

These offenses include violent crimes, serious drug crimes, drug money laundering, extortion, and obstruction of justice—all offenses commonly committed by gangs.

Our bill adds a one to ten year sentence for the recruitment of persons into a gang. Importantly, there are even tougher penalties for recruiting a minor into a gang, including a four year mandatory minimum sentence.

The bill adds the use of a minor in a crime to the list of offenses for which a person can be prosecuted under the federal racketeering laws, known as RICO.

It enhances the penalties for transferring a handgun to a minor, knowing that it will be used in a crime of violence, and adds a new federal sentencing enhancement for the use of body armor in the commission of a federal crime.

Finally, the legislation we introduce today adds serious juvenile drug offenses to the list of predicates under the federal Armed Career Criminal Act, and authorizes $20 million over five years to hire federal prosecutors to crack down on criminal gangs.

Mr. President, these are common sense, needed provisions. They're tough. We need to get tough with gangs who recruit kids with the lure of easy money and glamour. This legislation is not a panacea for our youth violence crisis. But it is a large and critical step in addressing this issue. I look forward to working with my colleagues on this bill, and urge their support.

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

S. 54

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 "Federal Gang Violence Act".

SEC. 2. INCREASE IN OFFENSE LEVEL FOR PARTICIPATION IN CRIME AS A GANG MEMBER.

(a) DEFINITION.—In this section, the term "criminal street gang" has the same meaning as in section 521(a) of title 18, United States Code, as amended by section 3 of this Act.

(b) AMENDMENT OF SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate enhancement, increasing the offense level by not less than 6 levels, for any offense, if the offense was both committed in connection with, or in furtherance of, the activities of a criminal street gang and the defendant was a member of the criminal street gang at the time of the offense.

(c) CONSTRUCTION WITH OTHER GUIDELINES.—The amendment made pursuant to subsection (b) shall provide that the increase in the offense level shall be in addition to any other adjustment under chapter 3 of the Federal sentencing guidelines.

SEC. 3. AMENDMENT OF TITLE 18 WITH RESPECT TO CRIMINAL STREET GANGS.

(a) IN GENERAL.—Section 521 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "(a) DEFINITIONS.—" and inserting the following:

"(a) DEFINITIONS.—In this section:", and

(B) by striking "'conviction" and all that follows through the end of the subsection and inserting the following:

"(1) CRIMINAL STREET GANG.—The term 'criminal street gang' means an ongoing group, club, organization, or association of 3 or more persons, whether formal or informal—

"(A) a primary activity of which is the commission of 1 or more predicate gang crimes;

"(B) any members of which engage, or have engaged during the 5-year period preceding the date in question, in a pattern of criminal gang activity; and

"(C) the activities of which affect interstate or foreign commerce.

"(2) PATTERN OF CRIMINAL GANG ACTIVITY.—The term 'pattern of criminal gang activity' means the commission of 2 or more predicate gang crimes committed in connection with, or in furtherance of, the activities of a criminal street gang—

"(A) at least 1 of which was committed after the date of enactment of the Federal Gang Violence Act;

"(B) the first of which was committed not more than 5 years before the commission of another predicate gang crime; and

"(C) that were committed on separate occasions.

"(3) PREDICATE GANG CRIME.—The term 'predicate gang crime' means an offense, including an act of juvenile delinquency that, if committed by an adult, would be an offense that is—

"(A) a Federal offense—

"(i) that is a crime of violence (as that term is defined in section 16) including carjacking, drive-by-shooting, shooting at an unoccupied dwelling or motor vehicle, assault with a deadly weapon, and homicide;

"(ii) that involves a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the penalty is imprisonment for not less than 5 years;

"(iii) that is a violation of section 844, section 875 or 876 (relating to extortion and threats), section 1084 (relating to gambling), section 1955 (relating to gambling), chapter 44 (relating to firearms), or chapter 73 (relating to obstruction of justice);

"(iv) that is a violation of section 1956 (relating to money laundering), insofar as the violation of such section is related to a Federal or State offense involving a controlled substance (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

"(v) that is a violation of section 274(a)(1)(A), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A), 1327, or 1328) (relating to alien smuggling);

"(B) a State offense involving conduct that would constitute an offense under subparagraph (A) if Federal jurisdiction existed or had been exercised; or

"(C) a conspiracy, attempt, or solicitation to commit an offense described in subparagraph (A) or (B).

"(3) STATE.—The term 'State' includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory of possession of the United States."; and

(2) by striking subsections (b), (c), and (d) and inserting the following:

"(b) CRIMINAL PENALTIES.—Any person who engages in a pattern of criminal gang activity—

"(1) shall be sentenced to—

"(A) a term of imprisonment of not less than 10 years and not more than life, fined in accordance with this title, or both; and

"(B) the forfeiture prescribed in section 413 of the Controlled Substances Act (21 U.S.C. 853); and

"(2) if any person engages in such activity after 1 or more prior convictions under this section have become final, shall be sentenced to—

"(A) a term of imprisonment of not less than 20 years and not more than life, fined in accordance with this title, or both; and

"(B) the forfeiture prescribed in section 412 of the Controlled Substances Act (21 U.S.C. 853).".

(b) CONFORMING AMENDMENT.—Section 3663(c)(4) of title 18, United States Code, is amended by inserting before "chapter 46" the following: "section 521 of this title,".

SEC. 4. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF CRIMINAL STREET GANGS.

(a) TRAVEL ACT AMENDMENTS.—

(1) PROHIBITED CONDUCT AND PENALTIES.—Section 1952(a) of title 18, United States Code, is amended to read as follows:

"(a) PROHIBITED CONDUCT AND PENALTIES.—

"(1) IN GENERAL.—Any person who—

"(A) travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

"(i) distribute the proceeds of any unlawful activity; or

"(ii) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity; and

"(B) after travel or use of the mail or any facility in interstate or foreign commerce described in subparagraph (A), performs, attempts to perform, or conspires to perform an act described in clause (i) or (ii) of subparagraph (A),

shall be fined under this title, imprisoned not more than 10 years, or both.

"(2) CRIMES OF VIOLENCE.—Any person who—

"(A) travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to commit any crime of violence to further any unlawful activity; and

"(B) after travel or use of the mail or any facility in interstate or foreign commerce described in subparagraph (A), commits, attempts to commit, or conspires to commit any crime of violence to further any unlawful activity,

shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be sentenced to death or be imprisoned for any term of years or for life.".

(2) DEFINITIONS.—Section 1952(b) of title 18, United States Code, is amended to read as follows:

"(b) DEFINITIONS.—In this section:

"(1) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the same meaning as in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

"(2) STATE.—The term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(3) UNLAWFUL ACTIVITY.—The term 'unlawful activity' means—

"(A) predicate gang crime (as that term is defined in section 521);

"(B) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances, or prostitution offenses in violation of the laws of the State in which the offense is committed or of the United States;

"(C) extortion, bribery, arson, robbery, burglary, assault with a deadly weapon, retaliation against or intimidation of witnesses, victims, jurors, or informants, assault resulting in bodily injury, possession of or trafficking in stolen property, illegally trafficking in firearms, kidnapping, alien smuggling, or shooting at an occupied dwelling or motor vehicle, in each case, in violation of the laws of the State in which the offense is committed or of the United States; or

"(D) any act that is indictable under section 1956 or 1957 of this title or under subchapter II of chapter 53 of title 31.".

(b) AMENDMENT OF SENTENCING GUIDELINES.—

(1) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend chapter 2 of the Federal sentencing guidelines so that—

(A) the base offense level for traveling in interstate or foreign commerce in aid of a criminal street gang or other unlawful activity is increased to 12; and

(B) the base offense level for the commission of a crime of violence in aid of a criminal street gang or other unlawful activity is increased to 24.

(2) DEFINITIONS.—In this subsection—

(A) the term "crime of violence" has the same meaning as in section 16 of title 18, United States Code;

(B) the term "criminal street gang" has the same meaning as in 521(a) of title 18, United States Code, as amended by section 3 of this Act; and

(C) the term "unlawful activity" has the same meaning as in section 1952(b) of title 18, United States Code, as amended by this section.

SEC. 5. SOLICITATION OR RECRUITMENT OF PERSONS IN CRIMINAL GANG ACTIVITY.

(a) PROHIBITED ACTS.—Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"§ 522. Recruitment of persons to participate in criminal street gang activity

"(a) PROHIBITED ACT.—It shall be unlawful for any person to—

"(1) use any facility in, or travel in, interstate or foreign commerce, or cause another to do so, to recruit, solicit, request, induce, counsel, command, or cause another person to be a member of a criminal street gang, or conspire to do so; or

"(2) recruit, solicit, request, induce, counsel, command, or cause another person to engage in a predicate gang crime for which such person may be prosecuted in a court of the United States, or conspire to do so.

"(b) PENALTIES.—A person who violates subsection (a) shall—

"(1) if the person recruited—

"(A) is a minor, be imprisoned for a term of not less than 4 years and not more than 10 years, fined in accordance with this title, or both; or

"(B) is not a minor, be imprisoned for a term of not less than 1 year and not more than 10 years, fined in accordance with this title, or both; and

"(2) be liable for any costs incurred by the Federal Government or by any State or local government for housing, maintaining, and treating the minor until the minor reaches the age of 18.

"(c) DEFINITIONS.—In this section—

"(1) the terms 'criminal street gang' and 'predicate gang crime' have the same meanings as in section 521; and

"(2) the term 'minor' means a person who is younger than 18 years of age.".

(b) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend chapter 2 of the Federal sentencing guidelines to provide an appropriate enhancement for any offense involving the recruitment of a minor to participate in a gang activity.

(c) TECHNICAL AMENDMENT.—The chapter analysis for chapter 26 of title 18, United States Code, is amended by adding at the end the following:

"522. Recruitment of persons to participate in criminal street gang activity.".

SEC. 6. CRIMES INVOLVING THE RECRUITMENT OF PERSONS TO PARTICIPATE IN CRIMINAL STREET GANGS AND FIREARMS OFFENSES AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(F)"; and

(2) by inserting before the semicolon at the end the following: ", (G) an offense under section 522 of this title, or (H) an act or conspiracy to commit any violation of chapter 44 of this title (relating to firearms)".

SEC. 7. PROHIBITIONS RELATING TO FIREARMS.

(a) PENALTIES.—Section 924(a)(6) of title 18, United States Code, is amended—

(1) by striking subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (A);

(3) in subparagraph (A), as redesignated—

(A) by striking "(B) A person other than a juvenile who knowingly" and inserting "(A) A person who knowingly";

(B) in clause (i), by striking "not more than 1 year" and inserting "not less than 1 year and not more than 5 years"; and

(C) in clause (ii), by inserting "not less than 1 year and" after "imprisoned"; and

(4) by adding at the end the following:

"(B) Notwithstanding subparagraph (A), no mandatory minimum sentence shall apply to a juvenile who is less than 13 years of age.".

(b) SERIOUS JUVENILE DRUG OFFENSES AS ARMED CAREER CRIMINAL PREDICATES.—Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by adding "or" at the end; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be an offense described in clause (i) or (ii);".

(c) TRANSFER OF FIREARMS TO MINORS FOR USE IN CRIME.—Section 924(h) of title 18, United States Code, is amended by striking "10 years, fined in accordance with this title, or both" and inserting "10 years, and if the transferee is a person who is under 18 years of age, imprisoned for a term of not less than 3 years, fined in accordance with this title, or both".

SEC. 8. AMENDMENT OF SENTENCING GUIDELINES WITH RESPECT TO BODY ARMOR.

(a) DEFINITIONS.—In this section—

(1) the term "body armor" means any product sold or offered for sale as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment; and

(2) the term "law enforcement officer" means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(b) SENTENCING ENHANCEMENT.—The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate sentencing enhancement, increasing the offense level not less than 2 levels, for any crime in which the defendant used body armor.

(c) APPLICABILITY.—No Federal sentencing guideline amendment made pursuant to this section shall apply if the Federal crime in

which the body armor is used constitutes a violation of, attempted violation of, or conspiracy to violate the civil rights of a person by a law enforcement officer acting under color of the authority of such law enforcement officer.

SEC. 9. ADDITIONAL PROSECUTORS.

There are authorized to be appropriated $20,000,000 for each of the fiscal years 1998, 1999, 2000, 2001, and 2002 for the hiring of Assistant United States Attorneys and attorneys in the Criminal Division of the Department of Justice to prosecute juvenile criminal street gangs (as that term is defined in section 521(a) of title 18, United States Code, as amended by section 3 of this Act).

By Mr. FEINGOLD (for himself and Mr. REID):

S. 57. A bill 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, to limit soft money of political party committees, and for other purposes; to the Committee on Rules and Administration.

THE SENATE CAMPAIGN FINANCING AND SPENDING REFORM ACT

Mr. FEINGOLD. Mr. President, I rise today to introduce the proposed Senate Campaign Financing and Spending Reform Act of 1997, legislation that would provide public financing for Senate elections.

The need for comprehensive campaign finance reform is unquestionable. Each election year continues to set new records for campaign spending by federal candidates, with 1996 campaign expenditures expected to surpass $1.6 billion. This explosion in campaign spending has alienated the American people from the election process, discouraged thousands of qualified yet underfunded candidates from seeking public office, and heightened public disgust with the ways of Washington to levels not seen since the dark days of Watergate.

I have long believed that we need to sever the nexus between money and politics, and end as a prerequisite for elected office a candidate's ability to raise and spend millions of dollars. The most straightforward way to achieve that result is through a system of public financing.

The legislation I am introducing today, which I also introduced at the outset of the 104th Congress, would provide qualified candidates with the means to run a credible, competitive and issue-based campaign without having to raise the average $5 million it takes to win a Senate election.

This bill will establish voluntary spending limits based on each State's individual voting age population. With the cooperation of the candidates, this will finally curtail the skyrocketing spending that has plagued political campaigns in recent years. Just as important, these spending limits will allow Members of Congress to focus on their duties and responsibilities as elected officials rather than spending substantial amounts of time raising money. For those candidates that do abide by the spending limits, there will be matching funds in the primary election for contributions under $250, once a candidate has raised 15 percent of that State's spending limit in contributions of $250 or less, half of which must come from within the candidate's state. There will be a 100 percent match for contributions under $100, and a 50 percent match for contributions between $101 and $250.

These provisions, along with only providing matching funds for in-state contributions, will encourage candidates to focus on smaller contributions from their home States. I believe this focus upon raising money within our home States is critical. General election candidates will become eligible for public financing benefits equal to the general election spending limit for their State.

In addition to agreeing to limit their overall campaign spending, candidates who receive the public benefits must agree to not spend more than $25,000 of their own money.

Opponents of campaign finance reform have often suggested that voluntary spending limits are unconstitutional. That is unfounded. In fact, in the landmark Supreme Court decision in *Buckley* v. *Valeo*, the Court noted that "Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forego private fundraising and accept public funding."

The legislation also bans so-called "soft money" that has allowed corporations, labor unions, and wealth individuals to contribute unlimited funds, up to millions of dollars, to the political parties outside the scope of Federal election law. The legislation restricts Political Action Committee (PAC) contributions to Federal candidates, prohibits lawmakers from sending out franked mass mailings during the calendar year of an election, bars lobbyists from contributing to elected officials they have lobbied in a 12-month period, and codifies a recent ruling by the Federal Election Commission that bars candidates from using campaign funds for personal purposes, such as mortgage payments, country club memberships, and vacations.

Public financing of campaigns will give challengers a legitimate opportunity to run a competitive campaign, will allow incumbents to focus on their legislative responsibilities, and will help to extinguish public perceptions that the United States Congress is under the control of the Washington special interests.

Public support for this sort of reform is strong. According to a recent poll by the Mellman Group, 59 percent of the American people—the highest level since Watergate—support full public financing for congressional campaigns. Just 29 percent of the American people oppose this proposal. The Mellman Group even found two out of every three self-described Republicans supported public financing. A Gallup poll found similar results, finding 64 percent overall support for a public financing system.

And perhaps most revealing, a very recent Wall Street Journal/NBC News poll found 92 percent of the American people simply believe too much money is spent in Federal elections.

I have no illusions that a public financing proposal would win approval in the 105th Congress. I believe that one day those who have opposed public financing will finally get the message the voters are trying to send us and there will be wider support within the Congress for this approach to cleaning up election campaigns.

In the meantime, I do believe there are meaningful reforms that can be considered and enacted with bipartisan support. That is why I have joined with a number of my colleagues on both sides of the aisle, including Senators MCCAIN, THOMPSON, WELLSTONE and others in co-authoring the first bipartisan campaign finance reform proposal offered in a decade.

That legislation, strongly supported by President Clinton, Common Cause, and numerous grassroots organizations and newspapers nationwide, would begin the process of fundamentally changing and reducing the role of money in our political system. It also encourages candidates to limit their campaign spending, but instead of offering direct public financing it provides substantial discounts on broadcast media and postage rates to candidates who agree to limit their overall spending, who agree to limit their own personal spending, and who agree to raise 60 percent of their campaign funds from their home States. I look forward to working with my colleagues on passing such meaningful reform, and will press for action in the first 100 days of this new Congress.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 57

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Senate Campaign Financing and Spending Reform Act".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Findings and declarations of the Senate.
TITLE I—CONTROL OF CONGRESSIONAL CAMPAIGN SPENDING
Subtitle A—Senate Election Campaign Expenditure Limits and Benefits
Sec. 101. Senate expenditure limits and benefits.
Sec. 102. Political action committees.
Sec. 103. Reporting requirements.
Sec. 104. Disclosure by candidates other than eligible Senate candidates.
Subtitle B—General Provisions
Sec. 131. Broadcast rates and preemption.
Sec. 132. Extension of reduced third-class mailing rates to eligible Senate candidates.
Sec. 133. Campaign advertising amendments.
Sec. 134. Definitions.
Sec. 135. Provisions relating to franked mass mailings.
TITLE II—INDEPENDENT EXPENDITURES
Sec. 201. Definitions.
Sec. 202. Reporting requirements for certain independent expenditures.
TITLE III—EXPENDITURES
Subtitle A—Personal Funds; Credit
Sec. 301. Contributions and loans from personal funds.
Sec. 302. Extensions of credit.
Subtitle B—Soft Money of Political Party Committees
Sec. 311. Soft money of political party committees.
Sec. 312. Reporting requirements.
TITLE IV—CONTRIBUTIONS
Sec. 401. Contributions through intermediaries and conduits; prohibition on certain contributions by lobbyists.
Sec. 402. Contributions by dependents not of voting age.
Sec. 403. Contributions to candidates from State and local committees of political parties to be aggregated.
Sec. 404. Limited exclusion of advances by campaign workers from the definition of the term "contribution".
TITLE V—REPORTING REQUIREMENTS
Sec. 501. Change in certain reporting from a calendar year basis to an election cycle basis.
Sec. 502. Personal and consulting services.
Sec. 503. Contributions of $50 or more.
Sec. 504. Computerized indices of contributions.
TITLE VI—FEDERAL ELECTION COMMISSION
Sec. 601. Use of candidates' names.
Sec. 602. Reporting requirements.
Sec. 603. Provisions relating to the general counsel of the Commission.
Sec. 604. Penalties.
Sec. 605. Random audits.
Sec. 606. Prohibition of false representation to solicit contributions.
Sec. 607. Regulations relating to use of non-Federal money.
Sec. 608. Filing of reports using computers and facsimile machines.
TITLE VII—MISCELLANEOUS
Sec. 701. Prohibition of leadership committees.
Sec. 702. Polling data contributed to candidates.
Sec. 703. Restrictions on use of campaign funds for personal purposes.
TITLE VIII—EFFECTIVE DATES; AUTHORIZATIONS
Sec. 801. Effective date.
Sec. 802. Severability.
Sec. 803. Expedited review of constitutional issues.

SEC. 2. FINDINGS AND DECLARATIONS OF THE SENATE.

(a) NECESSITY FOR SPENDING LIMITS.—The Senate finds and declares that—

(1) the current system of campaign finance has led to public perceptions that political contributions and their solicitation have unduly influenced the official conduct of elected officials;

(2) permitting candidates for Federal office to raise and spend unlimited amounts of money constitutes a fundamental flaw in the current system of campaign finance, and has undermined public respect for the Senate as an institution;

(3) the failure to limit campaign expenditures has caused individuals elected to the Senate to spend an increasing proportion of their time in office as elected officials raising funds, interfering with the ability of the Senate to carry out its constitutional responsibilities;

(4) the failure to limit campaign expenditures has damaged the Senate as an institution, due to the time lost to raising funds for campaigns; and

(5) to prevent the appearance of undue influence and to restore public trust in the Senate as an institution, it is necessary to limit campaign expenditures, through a system which provides public benefits to candidates who agree to limit campaign expenditures.

(b) NECESSITY FOR ATTRIBUTING COOPERATIVE EXPENDITURES TO CANDIDATES.—The Senate finds and declares that—

(1) public confidence and trust in the system of campaign finance would be undermined should any candidate be able to circumvent a system of caps on expenditures through cooperative expenditures with outside individuals, groups, or organizations;

(2) cooperative expenditures by candidates with outside individuals, groups, or organizations would severely undermine the effectiveness of caps on campaign expenditures, unless they are included within such caps; and

(3) to maintain the integrity of the system of campaign finance, expenditures by any individual, group, or organization that have been made in cooperation with any candidate, authorized committee, or agent of any candidate must be attributed to that candidate's cap on campaign expenditures.

TITLE I—CONTROL OF CONGRESSIONAL CAMPAIGN SPENDING

Subtitle A—Senate Election Campaign Expenditure Limits and Benefits

SEC. 101. SENATE EXPENDITURE LIMITS AND BENEFITS.

(a) AMENDMENT OF FECA.—Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

"TITLE V—EXPENDITURE LIMITS AND BENEFITS FOR SENATE ELECTION CAMPAIGNS

"SEC. 501. DEFINITIONS.

"In this title:

"(1) ELIGIBLE SENATE CANDIDATE.—The term 'eligible Senate candidate' means a candidate who is certified under section 505 as being eligible to receive benefits under this title.

"(2) EXCESS EXPENDITURE AMOUNT.—The term 'excess expenditure amount', with respect to an eligible Senate candidate, means the amount applicable to the eligible Senate candidate under section 504(c).

"(3) EXPENDITURE.—The term 'expenditure' has the meaning given in paragraph (9) of section 301, excluding subparagraph (B)(ii) of that paragraph.

"(4) FUND.—The term 'Fund' means the Senate Election Campaign Fund established by section 509.

"(5) GENERAL ELECTION EXPENDITURE LIMIT.—The term 'general election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 503(b).

"(6) PERSONAL FUNDS EXPENDITURE LIMIT.—The term 'personal funds expenditure limit' means the limit stated in section 503(a).

"(7) PRIMARY ELECTION EXPENDITURE LIMIT.—The term 'primary election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 502(d)(1)(A).

"(8) RUNOFF ELECTION EXPENDITURE LIMIT.—The term 'runoff election expenditure limit', with respect to an eligible Senate candidate, means the limit applicable to the eligible Senate candidate under section 502(d)(1)(B).

"SEC. 502. ELIGIBLE SENATE CANDIDATES.

"(a) IN GENERAL.—For purposes of this title, a candidate is an eligible Senate candidate if the candidate—

"(1) files a primary election eligibility certification and declaration under subsection (b) and is in compliance with the representations made in the certification and declaration; and

"(2) files a general election eligibility certification and declaration under subsection (c) and is in compliance with the representations made in the certification and declaration.

"(b) PRIMARY ELECTION ELIGIBILITY CERTIFICATION AND DECLARATION.—

"(1) IN GENERAL.—The requirements of this subsection are met if the candidate files with the Secretary of the Senate—

"(A) a certification, under penalty of perjury, that the candidate has met the threshold contribution requirement of subsection (e); and

"(B) a declaration that the candidate and the candidate's authorized committees—

"(i)(I) will not exceed the primary election expenditure limit or runoff election expenditure limits; and

"(II) will accept only an amount of contributions for the primary election and any runoff election that does not exceed the primary election expenditure limit and, if there is a runoff election, the runoff election expenditure limit;

"(ii)(I) will not exceed the primary and runoff election multicandidate political committee contribution limits of subsection (f); and

"(II) will accept only an amount of contributions for the primary election and any runoff election from multicandidate political committees that does not exceed those limits;

"(iii) will not accept contributions for the primary or runoff election that would cause the candidate to exceed the limitation on contributions from out-of-State residents under subsection (g);

"(iv) will not exceed the personal funds expenditure limit; and

"(v) will not exceed the general election expenditure limit.

"(2) DEADLINE FOR FILING DECLARATION.—The declaration under paragraph (1) shall be filed not later than the date on which the candidate files as a candidate for the primary election.

"(c) GENERAL ELECTION ELIGIBILITY CERTIFICATION AND DECLARATION.—

"(1) IN GENERAL.—The requirements of this subsection are met if the candidate files with the Secretary of the Senate—

"(A) a certification, under penalty of perjury, that—

"(i) the candidate and the candidate's authorized committees—

"(I) did not exceed the primary election expenditure limit or runoff election expenditure limit;

"(II) did not accept contributions for the primary election or runoff election in excess of the primary election expenditure limit or runoff election expenditure limit, reduced by any amounts transferred to the current election cycle from a preceding election cycle;

"(III) did not accept contributions for the primary or runoff election in excess of the multicandidate political committee contribution limits under subsection (f);

"(IV) did not accept contributions for the primary election or runoff election that caused the candidate to exceed the limitation on contributions from out-of-State residents under subsection (g); and

"(ii) at least 1 other candidate has qualified for the same general election ballot under the law of the candidate's State; and

"(B) a declaration that the candidate and the authorized committees of the candidate—

"(i) except as otherwise provided by this title, will not make expenditures that exceed the general election expenditure limit;

"(ii) except as otherwise provided by this title, will not accept any contribution for the general election to the extent that the contribution—

"(I) would cause the aggregate amount of contributions to exceed the sum of the amount of the general election expenditure limit, reduced by any amounts transferred to the current election cycle from a previous election cycle and not taken into account under subparagraph (A)(ii);

"(II) would cause the candidate to exceed the limitation on contributions from out-of-State residents under subsection (g);

"(III) would be in violation of section 315;

"(iii) will deposit all payments received under this title in an account insured by the Federal Deposit Insurance Corporation from which funds may be withdrawn by check or similar means of payment to third parties;

"(vi) will furnish campaign records, evidence of contributions, and other appropriate information to the Commission; and

"(v) will cooperate in the case of any audit and examination by the Commission under section 506 and will pay any amounts required to be paid under that section.

"(2) DEADLINE FOR FILING DECLARATION AND CERTIFICATION.—The declaration and certification under paragraph (1) shall be filed not later than 7 days after the earlier of—

"(A) the date on which the candidate qualifies for the general election ballot under State law; or

"(B) if, under State law, a primary or runoff election to qualify for the general election ballot occurs after September 1, the date on which the candidate wins the primary or runoff election.

"(d) PRIMARY AND RUNOFF ELECTION EXPENDITURE LIMITS.—

"(1) IN GENERAL.—The requirements of this subsection are met if—

"(A) the candidate or the candidate's authorized committees did not make expenditures for the primary election in excess of the lesser of—

"(i) 67 percent of the general election expenditure limit; or

"(ii) $2,750,000;

"(B) the candidate and the candidate's authorized committees did not make expenditures for any runoff election in excess of 20 percent of the general election expenditure limit.

"(2) INDEXING.—The $2,750,000 amount under paragraph (1)(A)(ii) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c), except that, for purposes of subsection (d)(1) and section 503(b)(3), the base period shall be calendar year 1996.

"(3) INCREASE.—The limitations under subparagraphs (A) and (B) of paragraph (1) with respect to any candidate shall be increased by the aggregate amount of independent expenditures in opposition to, or on behalf of any opponent of, the candidate during the primary or runoff election period, whichever is applicable, that are required to be reported to the Secretary of the Senate or to the Commission with respect to that period under section 304.

"(4) EXCESS AMOUNT OF CONTRIBUTIONS.—

"(A) IN GENERAL.—If the contributions received by a candidate or the candidate's authorized committees for the primary election or runoff election exceed the expenditures for either election—

"(i) the excess amount of contributions shall be treated as contributions for the general election; and

"(ii) expenditures for the general election may be made from the excess amount of contributions.

"(B) LIMITATION.—Subparagraph (A) shall not apply to the extent that treatment of excess contributions in accordance with subparagraph (A)—

"(i) would result in the violation of any limitation under section 315; or

"(ii) would cause the aggregate amount of contributions received for the general election to exceed the limits under subsection (c)(1)(D)(iii).

"(e) THRESHOLD CONTRIBUTION REQUIREMENT.—

"(1) IN GENERAL.—The requirement of this subsection is met if the candidate and the candidate's authorized committees have received allowable contributions during the applicable period in an amount at least equal to the lesser of—

"(A) 10 percent of the general election expenditure limit; or

"(B) $250,000.

"(2) DEFINITIONS.—In this section and subsections (b) and (c) of section 504:

"(A) ALLOWABLE CONTRIBUTION.—

"(i) IN GENERAL.—The term 'allowable contribution' means a contribution that is made as a gift of money by an individual pursuant to a written instrument identifying the individual as the contributor.

"(ii) EXCLUSIONS.—The term 'allowable contribution' does not include—

"(I) a contribution from any individual during the applicable period to the extent that the aggregate amount of such contributions from the individual exceeds $250; or

"(II) a contribution from an individual residing outside the candidate's State to the extent that acceptance of the contribution would bring a candidate out of compliance with subsection (g).

"(iii) APPLICABILITY.—Items subclauses (I) and (II) of clause (ii) shall not apply for purposes of section 504(a).

"(B) APPLICABLE PERIOD.—The term 'applicable period' means—

"(i) the period beginning on January 1 of the calendar year preceding the calendar year of a general election and ending on—

"(I) the date on which the certification and declaration under subsection (c) is filed by the candidate; or

"(II) for purposes of subsection (a) of section 503, the date of the general election; or

"(ii) in the case of a special election for the office of United States Senator, the period beginning on the date on which the vacancy in the office occurs and ending on the date of the general election.

"(f) MULTICANDIDATE POLITICAL COMMITTEE CONTRIBUTION LIMITS.—The requirements of this subsection are met if the candidate and the candidate's authorized committees have accepted from multicandidate political committees allowable contributions that do not exceed—

"(1) during the primary election period, an amount equal to 20 percent of the primary election spending limit; and

"(2) during the runoff election period, an amount equal to 20 percent of the runoff election spending limit.

"(g) LIMITATION ON OUT-OF-STATE CONTRIBUTIONS.—

"(1) REQUIREMENTS.—The requirements of this subsection are met if at least 50 percent of the total amount of contributions accepted by the candidate and the candidate's authorized committees are from individuals who are legal residents of the candidate's State.

"(2) PERSONAL FUNDS.—For purposes of paragraph (1), amounts consisting of funds from sources described in section 503(a) shall be treated as contributions from individuals residing outside the candidate's State.

"(3) TIME FOR DETERMINATION.—A determination whether the requirements of paragraph (1) are met shall be made each time a candidate is required to file a report under section 304 and shall be made on an aggregate basis.

"SEC. 503. LIMITS ON EXPENDITURES.

"(a) PERSONAL FUNDS EXPENDITURE LIMIT.—

"(1) IN GENERAL.—The aggregate amount of expenditures that may be made during an election cycle by an eligible Senate candidate or the candidate's authorized committees from the sources described in paragraph (2) shall not exceed $25,000.

"(2) SOURCES.—A source is described in this paragraph if it is—

"(A) personal funds of the candidate or a member of the candidate's immediate family; or

"(B) proceeds of indebtedness incurred by the candidate or a member of the candidate's immediate family.

"(b) GENERAL ELECTION EXPENDITURE LIMIT.—

"(1) IN GENERAL.—Except as otherwise provided in this title, the aggregate amount of expenditures for a general election by an eligible Senate candidate and the candidate's authorized committees shall not exceed the lesser of—

"(A) $5,500,000; or

"(B) the greater of—

"(i) $950,000; or

"(ii) $400,000; plus

"(I) 30 cents multiplied by the voting age population not in excess of 4,000,000; and

"(II) 25 cents multiplied by the voting age population in excess of 4,000,000.

"(2) EXCEPTION.—In the case of an eligible Senate candidate in a State that has not more than 1 transmitter for a commercial Very High Frequency (VHF) television station licensed to operate in that State, paragraph (1)(B)(ii) shall be applied by substituting—

"(A) '80 cents' for '30 cents' in subclause (I); and

"(B) '70 cents' for '25 cents' in subclause (II).

"(3) INDEXING.—The amount otherwise determined under paragraph (1) for any calendar year shall be increased by the same percentage as the percentage increase for the calendar year under section 502(d)(2).

"(c) PAYMENT OF TAXES ON EARNINGS.—The limitation under subsection (b) shall not apply to any expenditure for Federal, State, or local income taxes on the earnings of a candidate's authorized committees.

"(d) EXPENDITURES.—For purposes of this title, the term 'expenditure' has the meaning given such term by section 301(9), except that in determining any expenditures made by, or on behalf of, a candidate or a candidate's authorized committees, section 301(9)(B) shall be applied without regard to clause (ii) or (vi).

"(e) EXPENDITURES IN RESPONSE TO INDEPENDENT EXPENDITURE.—If an eligible Senate candidate is notified by the Commission under section 304(c)(4) that independent expenditures totaling $10,000 or more have been made in the same election in favor of another candidate or against the eligible candidate, the eligible candidate shall be permitted to spend an amount equal to the amount of the independent expenditures, and any such expenditures shall not be subject to any limit applicable under this title to the eligible candidate for the election.

"SEC. 504. BENEFITS FOR ELIGIBLE SENATE CANDIDATES.

"(a) IN GENERAL.—An eligible Senate candidate shall be entitled to—

"(1) the broadcast media rates provided under section 315(b) of the Communications Act of 1934;

"(2) the mailing rates provided in section 3626(e) of title 39, United States Code; and

"(3) payments in an amount equal to—

"(A) the public financing amount determined under subsection (b);

"(B) the excess expenditure amount determined under subsection (c); and

"(C) the independent expenditure amount determined under subsection (d).

"(b) PUBLIC FINANCING AMOUNT.—

"(1) DETERMINATION.—The public financing amount is—

"(A) in the case of an eligible candidate who is a major party candidate and has met the threshold requirement of section 502(e)—

"(i)(I) during the primary election period, the public financing an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less; plus

"(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 50 percent of the primary election expenditure limit; reduced by

"(III) the threshold requirement under section 502(e);

(ii)(I) during the runoff election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less; plus

"(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 10 percent of the general election expenditure limit; and

"(III) during the general election period, an amount equal to the general election expenditure limit; and

"(B) in the case of an eligible candidate who is not a major party candidate and who has met the threshold requirement of section 502(e)—

"(i)(I) during the primary election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less; plus

"(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 50 percent of the primary election expenditure limit; reduced by

"(III) the threshold requirement under section 502(e);

"(ii)(I) during the runoff election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less; plus,

"(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 10 percent of the general election expenditure limit; and

"(iii)(I) during the general election period, an amount equal to 100 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of $100 or less, plus;

"(II) an amount equal to 50 percent of the amount of contributions received during that period from individuals residing in the candidate's State in the aggregate amount of more than $100 but less than $251, up to 50 percent of the general election expenditure limit.

"(c) EXCESS EXPENDITURE AMOUNT.—

"(1) DETERMINATION.—The excess expenditure amount is—

"(A) in the case of a major party candidate, an amount equal to the sum of—

"(i) if the opponent's excess is less than 33⅓ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; plus

"(ii) if the opponent's excess equals or exceeds 33⅓ percent but is less than 66⅔ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; plus

"(iii) if the opponent's excess equals or exceeds 66⅔ percent of the general election expenditure limit, an amount equal to one-third of the general election expenditure limit; and

"(B) in the case of an eligible Senate candidate who is not a major party candidate, an amount equal to the least of—

"(i) the amount of allowable contributions accepted by the eligible Senate candidate during the applicable period in excess of the threshold contribution requirement under section 502(e);

"(ii) 50 percent of the general election expenditure limit; or

"(iii) the opponent's excess.

"(2) DEFINITION OF OPPONENT'S EXCESS.—In this subsection, the term 'opponent's excess' means the amount by which an opponent of an eligible Senate candidate in the general election accepts contributions or makes (or obligates to make) expenditures for the election in excess of the general election expenditure limit.

"(d) INDEPENDENT EXPENDITURE AMOUNT.—The independent expenditure amount is the total amount of independent expenditures made, or obligated to be made, during the general election period by 1 or more persons in opposition to, or on behalf of an opponent of, an eligible Senate candidate that are required to be reported by the persons under section 304(c) with respect to the general election period and are certified by the Commission under section 304(c).

"(e) WAIVER OF EXPENDITURE AND CONTRIBUTION LIMITS.—

"(1) RECIPIENTS OF EXCESS EXPENDITURE AMOUNT PAYMENTS AND INDEPENDENT EXPENDITURE AMOUNT PAYMENTS.—

"(A) IN GENERAL.—An eligible Senate candidate who receives payments under subsection (a)(3) that are allocable to the independent expenditure or excess expenditure amounts described in subsections (c) and (d) may make expenditures from the payments for the general election without regard to the general election expenditure limit.

"(B) NONMAJOR PARTY CANDIDATES.—In the case of an eligible Senate candidate who is not a major party candidate, the general election expenditure limit shall be increased by the amount (if any) by which the excess opponent expenditure amount exceeds the amount determined under subsection (b)(2)(B) with respect to the candidate.

"(2) ALL BENEFIT RECIPIENTS.—

"(A) IN GENERAL.—An eligible Senate candidate who receives benefits under this section may make expenditures for the general election without regard to the personal funds expenditure limit or general election expenditure limit if any 1 of the eligible Senate candidate's opponents who is not an eligible Senate candidate raises an amount of contributions or makes or becomes obligated to make an amount of expenditures for the general election that exceeds 200 percent of the general election expenditure limit.

"(B) LIMITATION.—The amount of the expenditures that may be made by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit.

"(3) ACCEPTANCE OF CONTRIBUTION WITHOUT REGARD TO SECTION 502(C)(1)(B)(iv).—

"(A) A candidate who receives benefits under this section may accept a contribution for the general election without regard to section 502(c)(1)(B)(iv) if—

"(i) a major party candidate in the same general election is not an eligible Senate candidate; or

"(ii) any other candidate in the same general election who is not an eligible Senate candidate raises an amount of contributions or makes or becomes obligated to make an amount of expenditures for the general election that exceeds 75 percent of the general election expenditure limit applicable to such other candidate.

"(B) LIMITATION.—The amount of contributions that may be received by reason of subparagraph (A) shall not exceed 100 percent of the general election expenditure limit.

"(e) USE OF PAYMENTS.—

"(1) PERMITTED USE.—Payments received by an eligible Senate candidate under subsection (a)(3) shall be used to make expenditures with respect to the general election period for the candidate.

"(2) PROHIBITED USE.—Payments received by an eligible Senate candidate under subsection (a)(3) shall not be used—

"(A) except as provided in subparagraph (D), to make any payments, directly or indirectly, to the candidate or to any member of the immediate family of the candidate;

"(B) to make any expenditure other than an expenditure to further the general election of the candidate;

"(C) to make an expenditure the making of which constitutes a violation of any law of the United States or of the State in which the expenditure is made; or

"(D) subject to section 315(i), to repay any loan to any person except to the extent that proceeds of the loan were used to further the general election of the candidate.

"SEC. 505. CERTIFICATION BY COMMISSION.

"(a) CERTIFICATION OF STATUS AS ELIGIBLE SENATE CANDIDATE.—

"(1) IN GENERAL.—The Commission shall certify to any candidate meeting the requirements of section 502 that the candidate is an eligible Senate candidate entitled to benefits under this title.

"(2) REVOCATION.—The Commission shall revoke a certification under paragraph (1) if the Commission determines that a candidate fails to continue to meet the requirements of section 502.

"(b) CERTIFICATION OF ELIGIBILITY TO RECEIVE BENEFITS.—

"(1) IN GENERAL.—Not later than 7 business days after an eligible Senate candidate files a request with the Secretary of the Senate to receive benefits under section 504, the Commission shall issue a certification stating whether the candidate is eligible for payments under this title and the amount of such payments to which such candidate is entitled.

"(2) CONTENTS OF REQUEST.—A request under paragraph (1) shall—

"(A) contain such information and be made in accordance with such procedures as the Commission may provide by regulation; and

"(B) contain a verification signed by the candidate and the treasurer of the principal campaign committee of the candidate stating that the information furnished in support of the request, to the best of their knowledge, is correct and fully satisfies the requirements of this title.

"(c) DETERMINATIONS BY THE COMMISSION.—All determinations made by the Commission under this title (including certifications under subsections (a) and (b)) shall be final and conclusive, except to the extent that a determination is subject to examination and audit by the Commission under section 506 and judicial review under section 507.

"SEC. 506. EXAMINATIONS AND AUDITS; REPAYMENTS; CIVIL PENALTIES.

"(a) EXAMINATIONS AND AUDITS.—

"(1) AFTER A GENERAL ELECTION.—After each general election, the Commission shall conduct an examination and audit of the campaign accounts of 10 percent of all candidates for the office of United States in which there was an eligible Senate candidate on the ballot, as designated by the Commission through the use of an appropriate statistical method of random selection, to determine whether the candidates have complied with the conditions of eligibility and other requirements of this title. If the Commission selects a candidate, the Commission shall examine and audit the campaign accounts of all other candidates in the general election for the office the selected candidate is seeking.

"(2) WITH REASON TO BELIEVE THERE MAY HAVE BEEN A VIOLATION.—The Commission may conduct an examination and audit of the campaign accounts of any eligible Senate candidate in a general election if the Commission determines that there exists reason to believe that the eligible Senate candidate may have failed to comply with this title.

"(b) EXCESS PAYMENT.—If the Commission determines any payment was made to an eligible Senate candidate under this title in excess of the aggregate amounts to which the eligible Senate candidate was entitled, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the excess.

"(c) REVOCATION OF STATUS.—If the Commission revokes the certification of an eligible Senate candidate as an eligible Senate candidate under section 505(a)(1), the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the payments received under this title.

"(d) MISUSE OF BENEFIT.—If the Commission determines that any amount of any benefit made available to an eligible Senate candidate under this title was not used as provided for in this title, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay the amount of that benefit.

"(e) EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate who received benefits under this title made expenditures that in the aggregate exceed the primary election expenditure, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall notify the eligible Senate candidate, and the eligible Senate candidate shall pay an amount equal to the amount of the excess expenditures.

"(f) CIVIL PENALTIES.—

"(1) MISUSE OF BENEFIT.—If the Commission determines that an eligible Senate candidate has committed a violation described in subsection (d), the Commission may assess a civil penalty against the eligible Senate candidate in an amount not greater than 200 percent of the amount of the benefit that was misused.

"(2) EXCESS EXPENDITURES.—

"(A) LOW AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by 2.5 percent or less the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to the amount of the excess expenditures.

"(B) MEDIUM AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by more than 2.5 percent and less than 5 percent the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to 3 times the amount of the excess expenditures.

"(C) LARGE AMOUNT OF EXCESS EXPENDITURES.—If the Commission determines that an eligible Senate candidate made expenditures that exceeded by 5 percent or more the primary election expenditure limit, the runoff election expenditure limit, or the general election expenditure limit, the Commission shall assess a civil penalty against the eligible Senate candidate in an amount equal to the sum of 3 times the amount of the excess expenditures plus an additional amount determined by the Commission.

"(g) UNEXPENDED FUNDS.—

"(1) RETENTION FOR PURPOSES OF LIQUIDATION OF OBLIGATIONS.—An eligible Senate candidate may retain for a period not exceeding 120 days after the date of a general election any unexpended funds received under this title for the liquidation of all obligations to pay expenditures for the general election incurred during the general election period.

"(2) REPAYMENT.—At the end of the 120-day period, any unexpended funds received under this title shall be promptly repaid.

"(h) LIMIT ON PERIOD FOR NOTIFICATION.—No notification shall be made by the Commission under this section with respect to an election more than 3 years after the date of the election.

"(i) DEPOSITS.—The Secretary shall deposit all payments received under this section into the Senate Election Campaign Fund.

"SEC. 507. JUDICIAL REVIEW.

"(a) JUDICIAL REVIEW.—Any agency action by the Commission under this title shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in that court within 30 days after the date of the agency action.

"(b) APPLICATION OF TITLE 5, UNITED STATES CODE.—Chapter 7 of title 5, United States Code, shall apply to judicial review of any agency action by the Commission under this title.

"(c) AGENCY ACTION.—For purposes of this section, the term 'agency action' has the meaning given the term in section 551(13) of title 5, United States Code.

"SEC. 508. PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS.

"(a) APPEARANCES.—The Commission may appear in and defend against any action instituted under this section and under section 507 by attorneys employed in the office of the Commission or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to chapter 51 and subchapter III of chapter 53 of that title.

"(b) ACTIONS FOR RECOVERY OF AMOUNT OF BENEFITS.—The Commission, by attorneys and counsel described in subsection (a), may bring an action in United States district court to recover any amounts determined under this title to be payable to any entity that afforded a benefit to an eligible Senate candidate under this title.

"(c) ACTION FOR INJUNCTIVE RELIEF.—The Commission, by attorneys and counsel described in subsection (a), may petition the courts of the United States for such injunctive relief as is appropriate in order to implement any provision of this title.

"(d) APPEALS.—The Commission, on behalf of the United States, may appeal from, and may petition the Supreme Court for certiorari to review, any judgment or decree entered with respect to actions in which the Commission under this section.

"SEC. 509. REPORTS TO CONGRESS; REGULATIONS.

"(a) REPORTS.—

"(1) IN GENERAL.—As soon as practicable after each general election, the Commission shall submit a full report to the Senate setting forth—

"(A) the expenditures (shown in such detail as the Commission determines to be appropriate) made by each eligible Senate candidate and the authorized committees of the candidate;

"(B) the amounts certified by the Commission under section 505 as benefits available to each eligible Senate candidate;

"(C) the amount of repayments, if any, required under section 506 and the reason why each repayment was required; and

"(D) the balance in the senate Election Campaign Fund, and the balance in any account maintained by the Fund.

"(2) PRINTING.—Each report under paragraph (1) shall be printed as a Senate document.

"(b) REGULATIONS.—

"(1) IN GENERAL.—The Commission may issue such regulations, conduct such examinations and investigations, and require the keeping and submission of such books, records, and information, as the Commission considers necessary to carry out the functions and duties of the Commission under this title.

"(2) STATEMENT TO SENATE.—Not less than 30 days before issuing a regulation under paragraph (1), the Commission shall submit to the Senate a statement setting forth the proposed regulation and containing a detailed explanation and justification for the regulation.

"SEC. 510. PAYMENTS TO ELIGIBLE CANDIDATES.

"(a) SENATE ELECTION CAMPAIGN FUND.—

"(1) ESTABLISHMENT OF CAMPAIGN FUND.—There is established on the books of the Treasury of the United States a special fund to be known as the 'Senate Election Campaign Fund'.

"(2) APPROPRIATIONS.—

(A) IN GENERAL.—There are appropriated to the Fund for each fiscal year, out of amounts in the general fund of the Treasury not otherwise appropriated, amounts equal to—

"(i) any contributions by persons which are specifically designated as being made to the Fund;

"(ii) amounts collected under section 506(i); and

"(iii) any other amounts that may be appropriated to or deposited into the Fund under this title.

"(B) TRANSFERS.—The Secretary of the Treasury shall, from time to time, transfer to the Fund an amount not in excess of the amounts described in subparagraph (A).

"(C) FISCAL YEAR.—Amounts in the Fund shall remain available without fiscal year limitation.

"(3) USE OF FUND.—Amounts in the Fund shall be available only for the purposes of—

"(A) making payments required under this title; and

"(B) making expenditures in connection with the administration of the Fund.

"(4) FUND ACCOUNT.—The Secretary shall maintain such accounts in the Fund as may be required by this title or which the Secretary determines to be necessary to carry out the provisions of this title.

"(b) PAYMENTS ON CERTIFICATION.—On receipt of a certification from the Commission under section 505, except as provided in subsection (c), the Secretary shall, subject to the availability of appropriations, promptly pay the amount certified by the Commission to the candidate out of the Senate Election Campaign Fund.

"(c) INSUFFICIENT FUNDS.—

"(1) WITHHOLDING.—If, at the time of a certification by the Commission under section 505 for payment to an eligible Senate candidate, the Secretary determines that the monies in the Senate Election Campaign Fund are not, or may not be, sufficient to satisfy the full entitlement of all eligible candidates, the Secretary shall withhold from the amount of the payment any amount that the Secretary determines to be necessary to ensure that each eligible Senate candidate will receive the same pro rata share of the candidate's full entitlement.

"(2) SUBSEQUENT PAYMENT.—Amounts withheld under paragraph (1) shall be paid when the Secretary determines that there are sufficient monies in the Senate Election Campaign Fund to pay all or a portion of the funds withheld from all eligible Senate candidates, but, if only a portion is to be paid, the portion shall be paid in such a manner that each eligible candidate receives an equal pro rata share.

"(3) NOTIFICATION OF ESTIMATED WITHHOLDING.—

"(A) ADVANCE ESTIMATE OF AVAILABLE FUNDS AND PROJECTED COSTS.—Not later than December 31 of any calendar year preceding a calendar year in which there is a regularly scheduled general election, the Secretary, after consultation with the Commission, shall make an estimate of—

"(i) the amount of funds that will be available to make payments under this title in the general election year; and

"(ii) the costs of implementing this title in the general election year.

"(B) NOTIFICATION.—If the Secretary determines that there will be insufficient funds under subparagraph (A) for any calendar year, the Secretary shall notify by registered mail each candidate for the Senate on January 1 of that year (or, if later, the date on which an individual becomes such a candidate) of the amount that the Secretary estimates will be the pro rata withholding from each eligible Senate candidate's payments under this subsection.

"(C) INCREASE IN CONTRIBUTION LIMIT.—The amount of an eligible candidate's contribution limit under section 502(c)(1)(B)(iv) shall be increased by the amount of the estimated pro rata withholding under subparagraph (B).

"(4) NOTIFICATION OF ACTUAL WITHHOLDING.—

"(A) IN GENERAL.—The Secretary shall notify the Commission and each eligible Senate candidate by registered mail of any actual reduction in the amount of any payment by reason of this subsection.

"(B) GREATER AMOUNT OF WITHHOLDING.—If the amount of a withholding exceeds the amount estimated under paragraph (3), an eligible Senate candidate's contribution limit under section 502(c)(1)(B)(iv) shall be increased by the amount of the excess.".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) shall apply to elections occurring after December 31, 1998.

(2) APPLICABILITY TO CONTRIBUTIONS AND EXPENDITURES.—For purposes of any expenditure or contribution limit imposed by the amendment made by subsection (b)—

(A) no expenditure made before January 1, 1999, shall be taken into account, except that there shall be taken into account any such expenditure for goods or services to be provided after that date; and

(B) all cash, cash items, and Government securities on hand as of January 1, 1999, shall be taken into account in determining whether the contribution limit is met, except that there shall not be taken into account amounts used during the 60-day period beginning on January 1, 1999, to pay for expenditures that were incurred (but unpaid) before that date.

(c) EFFECT OF INVALIDITY ON OTHER PROVISIONS OF TITLE.—If section 502, 503, or 504 of the Federal Election Campaign Act of 1971 (as added by subsection (a)) or any part of those sections is held to be invalid, this Act and all amendments made by this Act shall be treated as invalid.

(d) PROVISIONS TO FACILITATE VOLUNTARY CONTRIBUTIONS TO SENATE ELECTION CAMPAIGN FUND.—

(1) GENERAL RULE.—Part VIII of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following:

"Subpart B—Designation of Additional Amounts to Senate Election Campaign Fund

"Sec. 6097. Designation of additional amounts.

"SEC. 6097. DESIGNATION OF ADDITIONAL AMOUNTS.

"(a) GENERAL RULE.—Every individual (other than a nonresident alien) who files an income tax return for any taxable year may designate an additional amount equal to $5 ($10 in the case of a joint return) to be paid over to the Senate Election Campaign Fund.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made for any taxable year only at the time of filing the income tax return for the taxable year. Such designation shall be made on the page bearing the taxpayer's signature.

"(c) TREATMENT OF ADDITIONAL AMOUNTS.—Any additional amount designated under subsection (a) for any taxable year shall, for all purposes of law, be treated as an additional income tax imposed by chapter 1 for such taxable year.

"(d) INCOME TAX RETURN.—For purposes of this section, the term 'income tax return' means the return of the tax imposed by chapter 1.".

(2) CONFORMING AMENDMENTS.—(A) Part VIII of subchapter A of chapter 61 of such Code is amended by striking the heading and inserting:

"PART VIII—DESIGNATION OF AMOUNTS TO ELECTION CAMPAIGN FUNDS

"Subpart A. Presidential Election Campaign Fund.

"Subpart B. Designation of additional amounts to Senate Election Campaign Fund.

"Subpart A—Presidential Election Campaign Fund".

(B) The table of parts for subchapter A of chapter 61 of such Code is amended by striking the item relating to part VIII and inserting:

"Part VIII. Designation of amounts to election campaign funds."

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 102. POLITICAL ACTION COMMITTEES.

(a) LIMITATIONS ON MULTICANDIDATE POLITICAL COMMITTEE CONTRIBUTIONS TO CANDIDATES.—Section 315(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)) is amended—

(1) by striking "(2) No multicandidate" and inserting the following:

"(2) MULTICANDIDATE POLITICAL COMMITTEES.—

"(A) IN GENERAL.—No multicandidate";

(2) in subparagraph (A) by striking "$5,000" and inserting "$1,000";

(3) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively; and

(4) by adding at the end the following:

"(B) CONTRIBUTIONS TO CANDIDATES.— Notwithstanding subparagraph (A)(i) it shall be unlawful for a multicandidate political committee to make a contribution to a candidate for election, or nomination for election, to the Senate or an authorized committee of a Senate candidate, or for a Senate candidate to accept a contribution, to the extent that the making or accepting of the contribution would cause the amount of contributions received by the candidate and the candidate's authorized committees from multicandidate political committees to exceed the lesser of—

"(i) $825,000; or

"(ii) 20 percent of the primary election expenditure limit, runoff election expenditure limit, or general election expenditure limit (as those terms are defined in section 501) that is applicable (or, if the candidate were an eligible Senate candidate (as defined in section 501) would be applicable) to the candidate.".

(b) INDEXING.—The $825,000 amount under subparagraph (B) shall be increased as of the beginning of each calendar year based on the increase in the price index determined under section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)), except that for purposes of subparagraph (B), the base period shall be the calendar year 1996.

(c) RETURN OF EXCESS.—A candidate or authorized committee that receives a contribution from a multicandidate political committee in excess of the amount allowed under subparagraph (B) shall return the amount of the excess contribution to the contributor.

(d) LIMITATIONS ON MULTICANDIDATE COMMITTEE CONTRIBUTIONS TO POLITICAL COMMITTEES.—Paragraphs (1)(C) and (2)(A)(iii) of section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)), as amended by subsection (a), are amended by striking "$5,000" and inserting "$1,000".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elections (and the election cycles relating thereto) occurring after December 31, 1998.

(2) APPLICABILITY.—In applying the amendments made by this section, there shall not be taken into account—

(A) a contribution made or received before January 1, 1999; or

(B) a contribution made to, or received by, a candidate on or after January 1, 1999, to the extent that the aggregate amount of such contributions made to or received by the candidate is not greater than the excess (if any) of—

(i) the aggregate amount of such contributions made to or received by any opponent of the candidate before January 1, 1999; over

(ii) the aggregate amount of such contributions made to or received by the candidate before January 1, 1999.

SEC. 103. REPORTING REQUIREMENTS.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 304 the following:

"SEC. 304A. REPORTING REQUIREMENTS FOR SENATE CANDIDATES.

"(a) MEANINGS OF TERMS.—Any term used in this section that is used in title V shall have the same meaning as when used in title V.

"(b) CANDIDATE OTHER THAN ELIGIBLE SENATE CANDIDATE.—

"(1) DECLARATION OF INTENT.—A candidate for the office of Senator who does not file a certification with the Secretary of the Senate under section 502(c) shall, at the time provided in section 502(c)(2), file with the Secretary of the Senate a declaration as to whether the candidate intends to make expenditures for the general election in excess of the general election expenditure limit.

"(2) REPORTS.—

"(A) INITIAL REPORT.—A candidate for the Senate who qualifies for the ballot for a general election—

"(i) who is not an eligible Senate candidate under section 502; and

"(ii) who receives contributions in an aggregate amount or makes or obligates to make expenditures in an aggregate amount for the general election that exceeds 75 percent of the general election expenditure limit;

shall file a report with the Secretary of the Senate within 24 hours after aggregate contributions have been received or aggregate expenditures have been made or obligated to be made in that amount (or, if later, within 24 hours after the date of qualification for the general election ballot), setting forth the candidate's aggregate amount of contributions received and aggregate amount of expenditures made or obligated to be made for the election as of the date of the report.

"(B) ADDITIONAL REPORTS.—After an initial report is filed under subparagraph (A), the candidate shall file additional reports (until the amount of such contributions or expenditures exceeds 200 percent of the general election expenditure limit) with the Secretary of the Senate within 24 hours after each time additional contributions are received, or expenditures are made or are obligated to be made, that in the aggregate exceed an amount equal to 10 percent of the general election expenditure limit and after the aggregate amount of contributions or expenditures exceeds 133⅓, 166⅔, and 200 percent of the general election expenditure limit.

"(3) NOTIFICATION OF OTHER CANDIDATES.—The Commission—

"(A) shall, within 24 hours after receipt of a declaration or report under paragraph (1) or (2), notify each eligible Senate candidate of the filing of the declaration or report; and

"(B) if an opposing candidate has received aggregate contributions, or made or obligated to make aggregate expenditures, in excess of the general election expenditure limit, shall certify, under subsection (e), the eligibility for payment of any amount to which an eligible Senate candidate in the general election is entitled under section 504(a).

"(4) ACTION BY THE COMMISSION ABSENT REPORT.—

"(A) IN GENERAL.—Notwithstanding the reporting requirements under this subsection, the Commission may make its own determination that a candidate in a general election who is not an eligible Senate candidate has raised aggregate contributions, or made or has obligated to make aggregate expenditures, in the amounts that would require a report under paragraph (2).

"(B) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—The Commission shall—

"(i) within 24 hours after making a determination under subparagraph (A), notify each eligible Senate candidate in the general election of the making of the determination; and

"(ii) when the aggregate amount of contributions or expenditures exceeds the general election expenditure limit, certify under subsection (e) an eligible Senate candidate's eligibility for payment of any amount under section 504(a).

"(c) REPORTS ON PERSONAL FUNDS.—

"(1) FILING.—A candidate for the Senate who, during an election cycle, expends more than the personal funds expenditure limit during the election cycle shall file a report with the Secretary of the Senate within 24 hours after expenditures have been made or loans incurred in excess of the personal funds expenditure limit.

"(2) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—Within 24 hours after a report has been filed under paragraph (1), the Commission shall notify each eligible Senate candidate in the general election of the filing of the report.

"(3) ACTION BY THE COMMISSION ABSENT REPORT.—

"(A) IN GENERAL.—Notwithstanding the reporting requirements under this subsection, the Commission may make its own determination that a candidate for the Senate has made expenditures in excess of the amount under paragraph (1).

"(B) NOTIFICATION OF ELIGIBLE SENATE CANDIDATES.—Within 24 hours after making a determination under subparagraph (A), the Commission shall notify each eligible Senate candidate in the general election of the making of the determination.

"(d) CANDIDATES FOR OTHER OFFICES.—

"(1) FILING.—Each individual—

"(A) who becomes a candidate for the office of United States Senator;

"(B) who, during the election cycle for that office, held any other Federal, State, or local office or was a candidate for any such office; and

"(C) who expended any amount during the election cycle before becoming a candidate for the office of United States Senator that would have been treated as an expenditure if the individual had been such a candidate (including amounts for activities to promote the image or name recognition of the individual);

shall, within 7 days after becoming a candidate for the office of United States Senator, report to the Secretary of the Senate the amount and nature of such expenditures.

"(2) APPLICABILITY.—Paragraph (1) shall not apply to any expenditures in connection with a Federal, State, or local election that has been held before the individual becomes a candidate for the office of United States Senator.

"(3) DETERMINATION.—The Commission shall, as soon as practicable, make a determination as to whether any amounts reported under paragraph (1) were made for purposes of influencing the election of the individual to the office of Senator.

"(d) BASIS OF CERTIFICATIONS.—Notwithstanding section 505(a), the certification required by this section shall be made by the Commission on the basis of reports filed in accordance with this Act or on the basis of the Commission's own investigation or determination.

"(e) COPIES OF REPORTS AND PUBLIC INSPECTION.—The Secretary of the Senate shall—

"(1) transmit a copy of any report or filing received under this section or under title V (whenever a 24 hour response is required of the Commission) as soon as possible (but not later than 4 working hours of the Commission) after receipt of the report or filing;

"(2) make the report or filing available for public inspection and copying in the same manner as the Commission under section 311(a)(4); and

"(3) preserve the reports and filings in the same manner as the Commission under section 311(a)(5).".

SEC. 104. DISCLOSURE BY CANDIDATES OTHER THAN ELIGIBLE SENATE CANDIDATES.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) (as amended by section 133) is amended by adding at the end the following:

"(f) DISCLOSURE BY CANDIDATES OTHER THAN ELIGIBLE SENATE CANDIDATES.—A broadcast, cablecast, or other communication that is paid for or authorized by a candidate in the general election for the office of United States Senator who is not an eligible Senate candidate, or the authorized committee of such a candidate, shall contain the following sentence: 'This candidate has not agreed to voluntary campaign spending limits.'.".

Subtitle B—General Provisions

SEC. 131. BROADCAST RATES AND PREEMPTION.

(a) BROADCAST RATES.—Section 315(b) of the Communications Act of 1934 (47 U.S.C. 315(b)) is amended—

(1) by striking "(b) The charges" and inserting the following:

"(b) BROADCAST MEDIA RATES.—

"(1) IN GENERAL.—The charges";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margins accordingly;

(3) in paragraph (1)(A) (as redesignated by paragraph (2))—

(A) by striking "forty-five" and inserting "30";

(B) by striking "sixty" and inserting "45"; and

(C) by striking "lowest unit charge of the station for the same class and amount of time for the same period" and inserting "lowest charge of the station for the same amount of time for the same period on the same date"; and

(4) by adding at the end the following:

"(2) ELIGIBLE SENATE CANDIDATES.—In the case of an eligible Senate candidate (as described in section 501 of the Federal Election Campaign Act), the charges for the use of a television broadcasting station during the general election period (as defined in section 301 of that Act) shall not exceed 50 percent of the lowest charge described in paragraph (1)(A).

(b) PREEMPTION; ACCESS.—Section 315 of the Communications Act of 1947 (47 U.S.C. 315) is amended—

(1) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (b) the following:

"(c) PREEMPTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased and paid for such use pursuant to subsection (b)(1).

"(2) CIRCUMSTANCES BEYOND CONTROL OF LICENSEE.—If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the broadcasting station, any candidate advertising spot scheduled to be broadcast during that program may also be preempted.".

"(d) TIME FOR LEGALLY QUALIFIED SENATE CANDIDATES.—In the case of a legally qualified candidate for the United States Senate, a licensee shall provide broadcast time without regard to the rates charged for the time.".

SEC. 132. EXTENSION OF REDUCED THIRD-CLASS MAILING RATES TO ELIGIBLE SENATE CANDIDATES.

Section 3626(e) of title 39, United States Code, is amended—

(1) in paragraph (2)(A)—

(A) by striking "and the National" and inserting "the National"; and

(B) by striking "Committee;" and inserting "Committee, and, subject to paragraph (3), the principal campaign committee of an eligible House of Representatives or Senate candidate;";

(2) in paragraph (2)(B), by striking "and" after the semicolon;

(3) in paragraph (2)(C), by striking the period and inserting "; and";

(4) by adding after paragraph (2)(C) the following new subparagraph:

"(D) The terms 'eligible Senate candidate' and 'principal campaign committee' have the meanings given those terms in section 301 of the Federal Election Campaign Act of 1971."; and

(5) by adding after paragraph (2) the following paragraph:

"(3) The rate made available under this subsection with respect to an eligible Senate candidate shall apply only to—

"(A) the general election period (as defined in section 301 of the Federal Election Campaign Act of 1971); and

"(B) that number of pieces of mail equal to the number of individuals in the voting age population (as certified under section 315(e) of such Act) of the congressional district or State, whichever is applicable.".

SEC. 133. CAMPAIGN ADVERTISING AMENDMENTS.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) is amended—

(1) in subsection (a)—

(A) by striking "Whenever" and inserting the following:

"(a) DISCLOSURE.—When a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or when";

(B) by striking "an expenditure" and inserting "a disbursement";

(C) by striking "direct"; and

(D) in paragraph (3), by inserting "and permanent street address" after "name";

(2) in subsection (b), by inserting "SAME CHARGE AS CHARGE FOR COMPARABLE USE.—" before "No"; and

(3) by adding at the end the following:

"(c) REQUIREMENTS FOR PRINTED COMMUNICATIONS.—A printed communication described in subsection (a) shall be—

"(1) of sufficient type size to be clearly readable by the recipient of the communication;

"(2) contained in a printed box set apart from the other contents of the communication; and

"(3) consist of a reasonable degree of color contrast between the background and the printed statement.

"(d) REQUIREMENTS FOR BROADCAST AND CABLECAST COMMUNICATIONS.—

"(1) PAID FOR OR AUTHORIZED BY THE CANDIDATE.—

"(A) IN GENERAL.—A broadcast or cablecast communication described in paragraph (1) or (2) of subsection (a) shall include, in addition to the requirements of those paragraphs, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

"(B) TELEVISED COMMUNICATIONS.—A broadcast or cablecast communication described in paragraph (1) that is broadcast or cablecast by means of television shall include, in addition to the audio statement under subparagraph (A), a written statement—

"(i) that states: 'I [name of candidate] am a candidate for [the office the candidate is seeking], and I have approved this message';

"(ii) that appears at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds; and

"(iii) that is accompanied by a clearly identifiable photographic or similar image of the candidate.

"(2) NOT PAID FOR OR AUTHORIZED BY THE CANDIDATE.—A broadcast or cablecast communication described in subsection (a)(3) shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the statement—

'_____ is responsible for the content of this advertisement.';

with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor; and, if the communication is broadcast or cablecast by means of television, the statement shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.".

SEC. 134. DEFINITIONS.

(a) IN GENERAL.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by striking paragraph (19) and inserting the following:

"(19) The term 'general election'—

"(A) means an election that will directly result in the election of a person to a Federal office; but

"(B) does not include an open primary election.

"(20) The term 'general election period' means, with respect to a candidate, the period beginning on the day after the date of the primary or runoff election for the specific office that the candidate is seeking, whichever is later, and ending on the earlier of—

"(A) the date of the general election; or

"(B) the date on which the candidate withdraws from the campaign or otherwise ceases actively to seek election.

"(21) The term 'immediate family' means—

"(A) a candidate's spouse;

"(B) a child, stepchild, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate or the candidate's spouse; and

"(C) the spouse of any person described in subparagraph (B).

"(22) The term 'major party' has the meaning given the term in section 9002(6) of the Internal Revenue Code of 1986, except that if a candidate qualified under State law for the ballot in a general election in an open primary in which all the candidates for the office participated and which resulted in the candidate and at least 1 other candidate's qualifying for the ballot in the general election, the candidate shall be treated as a candidate of a major party for purposes of title V.

"(23) The term 'primary election' means an election that may result in the selection of a candidate for the ballot in a general election for a Federal office.

"(24) The term 'primary election period' means, with respect to a candidate, the period beginning on the day following the date of the last election for the specific office that the candidate is seeking and ending on the earlier of—

"(A) the date of the first primary election for that office following the last general election for that office; or

"(B) the date on which the candidate withdraws from the election or otherwise ceases actively to seek election.

"(25) The term 'runoff election' means an election held after a primary election that is prescribed by applicable State law as the means for deciding which candidate will be on the ballot in the general election for a Federal office.

"(26) The term 'runoff election period' means, with respect to any candidate, the period beginning on the day following the date of the last primary election for the specific office that the candidate is seeking and ending on the date of the runoff election for that office.

"(27) The term 'voting age population' means the number of residents of a State who are 18 years of age or older, as certified under section 315(e).

"(28) The term 'election cycle' means—

"(A) in the case of a candidate or the authorized committees of a candidate, the period beginning on the day after the date of the most recent general election for the specific office or seat that the candidate is seeking and ending on the date of the next general election for that office or seat; and

"(B) in the case of all other persons, the period beginning on the first day following the date of the last general election and ending on the date of the next general election.".

"(29) The term 'lobbyist' means—

"(A) a person required to register under the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601 et seq.) or the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.); and

"(B) a person who receives compensation in return for having contact with Congress on any legislative matter.".

(b) IDENTIFICATION.—Section 301(13) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(13)) is amended by striking "mailing address" and inserting "permanent residence address".

SEC. 135. PROVISIONS RELATING TO FRANKED MASS MAILINGS.

(a) MASS MAILINGS OF SENATORS.—Section 3210(a)(6) of title 39, United States Code, is amended—

(1) in subparagraph (A), by striking "It is the intent of Congress that a Member of, or a Member-elect to, Congress" and inserting "A Member of, or Member-elect to, the House"; and

(2) in subparagraph (C)—

(A) by striking "if such mass mailing is postmarked fewer than 60 days immediately before the date" and inserting "if such mass mailing is postmarked during the calendar year"; and

(B) by inserting "or reelection" before the period.

(b) MASS MAILINGS OF HOUSE MEMBERS.—Section 3210 of title 39, United States Code, is amended—

(1) in subsection (a)(7) by striking ", except that—" and all that follows through the end of subparagraph (B) and inserting a period; and

(2) in subsection (d)(1) by striking "delivery—" and all that follows through the end of subparagraph (B) and inserting "delivery within that area constituting the congressional district or State from which the Member was elected.".

(c) PROHIBITION ON USE OF OFFICIAL FUNDS.—The Committee on House Administration of the House of Representatives may not approve any payment, nor may a Member of the House of Representatives make any expenditure from, any allowance of the House of Representatives or any other official funds if any portion of the payment or expenditure is for any cost related to a mass mailing by a Member of the House of Representatives outside the congressional district of the Member.

TITLE II—INDEPENDENT EXPENDITURES

SEC. 201. DEFINITIONS.

(a) INDEPENDENT EXPENDITURE; EXPRESS ADVOCACY.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by striking paragraphs (17) and (18) and inserting the following:

"(17) INDEPENDENT EXPENDITURE.—

"(A) IN GENERAL.—The term 'independent expenditure' means an expenditure for an advertisement or other communication that—

"(i) contains express advocacy; and

"(ii) is made without the participation or cooperation of, or without the consultation of, a candidate or a candidate's representative.

"(B) EXCLUSIONS.—The term 'independent expenditure' does not include the following:

"(i) An expenditure made by—

"(I) an authorized committee of a candidate; or

"(II) a political committee of a political party.

"(ii) An expenditure if there is any arrangement, coordination, or direction with respect to the expenditure between the candidate or the candidate's representative and the person making the expenditure.

"(iii) An expenditure if, in the same election cycle, the person making the expenditure—

"(I) is or has been authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees; or

"(II) is serving or has served as a member, employee, or agent of the candidate's authorized committees in an executive or policymaking position.

"(iv) An expenditure if the person making the expenditure has played a significant role in advising or counseling the candidate or the candidate's agents at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office.

"(v) An expenditure if the person making the expenditure retains the professional services of any individual or other person also providing services in the same election cycle to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, including any services relating to the candidate's decision to seek Federal office.

"(C) DEFINITIONS.—For purposes of subparagraph (B)—

"(i) the person making the expenditure includes any officer, director, employee, or agent of a person; and

"(ii) the term 'professional service' includes any service (other than legal and accounting services for purposes of ensuring compliance with this title) in support of a candidate's pursuit of nomination for election, or election, to Federal office.

"(18) EXPRESS ADVOCACY.—

"(A) IN GENERAL.—The term 'express advocacy' means a communication that is taken as a whole and with limited reference to external events, makes an expression of support for or opposition to a specific candidate, to a specific group of candidates, or to candidates of a particular political party.

"(B) EXPRESSION OF SUPPORT FOR OR OPPOSITION TO.—In subparagraph (A), the term 'expression of support for or opposition to' includes a suggestion to take action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity, or to refrain from taking action.".

"(C) VOTING RECORDS.—The term 'express advocacy' does not include the publication and distribution of a communication that is limited to providing information about votes by elected officials on legislative matters and that does not expressly advocate the election or defeat of a clearly identified candidate.".

(b) CONTRIBUTION DEFINITION AMENDMENT.—Section 301(8)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(A)) is amended—

(1) by striking "or" at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting "; or"; and

(3) by adding at the end the following:

"(iii) any payment or other transaction referred to in paragraph (17)(A)(i) that is excluded from the meaning of 'independent expenditure' under paragraph (17)(B).".

SEC. 202. REPORTING REQUIREMENTS FOR CERTAIN INDEPENDENT EXPENDITURES.

(a) IN GENERAL.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following:

"(d) TIME FOR REPORTING CERTAIN EXPENDITURES.—

"(1) EXPENDITURES AGGREGATING $1,000.—

"(A) INITIAL REPORT.—A person (including a political committee) that makes independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before an election shall file a report describing the expenditures within 24 hours after that amount of independent expenditures has been made.

"(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person filing the report shall file an additional report each time that independent expenditures aggregating an additional $1,000 are made with respect to the same election as that to which the initial report relates.

"(2) EXPENDITURES AGGREGATING $10,000.—

"(A) INITIAL REPORT.—A person (including a political committee) that makes independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before an election shall file a report describing the expenditures within 48 hours that amount of independent expenditures has been made.

"(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person filing the report shall file an additional report each time that independent expenditures aggregating an additional $10,000 are made with respect to the same election as that to which the initial report relates.

"(3) PLACE OF FILING; CONTENTS; TRANSMITTAL.—

"(A) PLACE OF FILING; CONTENTS.—A report under this subsection—

"(i) shall be filed with the Commission; and

"(ii) shall contain the information required by subsection (b)(6)(B)(iii), including whether each independent expenditure was made in support of, or in opposition to, a candidate.

"(B) TRANSMITTAL TO CANDIDATES.—In the case of an election for United States Senator, not later than 48 hours after receipt of a report under this subsection, the Commission shall transmit a copy of the report to each eligible candidate seeking nomination for election to, or election to, the office in question.

"(4) OBLIGATION TO MAKE EXPENDITURE.—For purposes of this subsection, an expenditure shall be treated as being made when it is made or obligated to be made.

"(5) DETERMINATIONS BY THE COMMISSION.—

"(A) IN GENERAL.—The Commission may, upon a request of a candidate or on its own initiative, make its own determination that a person, including a political committee, has made, or has incurred obligations to make, independent expenditures with respect to any candidate in any Federal election that in the aggregate exceed the applicable amounts under paragraph (1) or (2).

"(B) NOTIFICATION.—In the case of a United States Senator, the Commission shall notify each candidate in the election of the making of the determination within 2 business days after making the determination.

"(C) TIME TO COMPLY WITH REQUEST FOR DETERMINATION.—A determination made at the request of a candidate shall be made with 48 hours of the request.

"(6) NOTIFICATION OF AN ALLOWABLE INCREASE IN INDEPENDENT EXPENDITURE LIMIT.—When independent expenditures totaling in the aggregate $10,000 have been made in the same election in favor of another candidate or against an eligible Senate candidate, the Commission shall, within 2 business days, notify the eligible candidate that such candidate is entitled to an increase under section 503(e) in the candidate's applicable election limit in an amount equal to the amount of such independent expenditures.".

TITLE III—EXPENDITURES

Subtitle A—Personal Funds; Credit

SEC. 301. CONTRIBUTIONS AND LOANS FROM PERSONAL FUNDS.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended by adding at the end the following:

"(i) LIMITATIONS ON REPAYMENT OF LOANS AND RETURN OF CONTRIBUTIONS FROM PERSONAL FUNDS.—

"(1) REPAYMENT OF LOANS.—If a candidate or a member of the candidate's immediate family made a loan to the candidate or to the candidate's authorized committees during an election cycle, no contribution received after the date of the general election for the election cycle may be used to repay the loan.

"(2) RETURN OF CONTRIBUTIONS.—No contribution by a candidate or member of the candidate's immediate family may be returned to the candidate or member other than as part of a pro rata distribution of excess contributions to all contributors.".

SEC. 302. EXTENSIONS OF CREDIT.

Section 301(8)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(A)), as amended by section 201(b), is amended—

(1) by striking "or" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; or"; and

(3) by inserting at the end the following:

"(iv) with respect to a candidate and the candidate's authorized committees, any extension of credit for goods or services relating to advertising on a broadcasting station, in a newspaper or magazine, or by a mailing, or relating to other similar types of general public political advertising, if the extension of credit is—

"(I) in an amount greater than $1,000; and

"(II) for a period greater than the period, not in excess of 60 days, for which credit is generally extended in the normal course of business after the date on which the goods or services are furnished or the date of a mailing.".

Subtitle B—Soft Money of Political Party Committees

SEC. 311. SOFT MONEY OF POLITICAL PARTY COMMITTEES.

(a) SOFT MONEY OF COMMITTEES OF POLITICAL PARTIES.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

"SEC. 324. SOFT MONEY OF POLITICAL PARTY COMMITTEES.

"(a) NATIONAL COMMITTEES.—A national committee of a political party and the congressional campaign committees of a political party (including a national congressional campaign committee of a political party, an entity that is established, financed, maintained, or controlled by the national committee, a national congressional campaign committee of a political party, and an officer or agent of any such party or entity but not including an entity regulated under subsection (b)) shall not solicit or accept an amount or spend any funds, or solicit or accept a transfer from another political committee, that is not subject to the limitations, prohibitions, and reporting requirements of this Act.

"(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

"(1) IN GENERAL.—Any amount that is expended or disbursed by a State, district, or local committee of a political party (including an entity that is established, financed, maintained, or controlled by a State, district, or local committee of a political party and an agent or officer of any such committee or entity) during a calendar year in which a Federal election is held, for any activity that might affect the outcome of a Federal election, including any voter registration or get-out-the-vote activity, any generic campaign activity, and any communication that identifies a candidate (regardless of whether a candidate for State or local office is also mentioned or identified) shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) ACTIVITY EXCLUDED FROM PARAGRAPH (1).—

"(A) IN GENERAL.—Paragraph (1) shall not apply to an expenditure or disbursement made by a State, district, or local committee of a political party for—

"(i) a contribution to a candidate for State or local office if the contribution is not designated or otherwise earmarked to pay for an activity described in paragraph (1);

"(ii) the costs of a State, district, or local political convention;

"(iii) the non-Federal share of a State, district, or local party committee's administrative and overhead expenses (but not including the compensation in any month of any individual who spends more than 20 percent of the individual's time on activity during the month that may affect the outcome of a Federal election) except that for purposes of this paragraph, the non-Federal share of a party committee's administrative and overhead expenses shall be determined by applying the ratio of the non-Federal disbursements to the total Federal expenditures and non-Federal disbursements made by the committee during the previous presidential election year to the committee's administrative and overhead expenses in the election year in question;

"(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs that name or depict only a candidate for State or local office; and

(v) the cost of any campaign activity conducted solely on behalf of a clearly identified candidate for State or local office, if the candidate activity is not an activity described in paragraph (1).

"(B) FUNDRAISING COSTS.—Any amount spent by a national, State, district, or local committee, by an entity that is established, financed, maintained or controlled by a State, district, or local committee of a political party, or by an agent or officer of any such committee or entity to raise funds that are used, in whole or in part, in connection with an activity described in paragraph (1) shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(c) TAX-EXEMPT ORGANIZATIONS.—No national, State, district, or local committee of a political party shall solicit any funds for or make any donations to an organization that is exempt from Federal taxation under section 501(c) of the Internal Revenue Code of 1986.

"(d) CANDIDATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no candidate, individual holding Federal office, or agent of a candidate or individual holding Federal office may—

"(A) solicit or receive funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

"(B) solicit or receive funds that are to be expended in connection with any election for other than a Federal election unless the funds—

"(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under section 315(a) (1) and (2); and

"(ii) are not from sources prohibited by this Act from making contributions with respect to an election for Federal office.

"(2) EXCEPTION.—Paragraph (1) does not apply to the solicitation or receipt of funds by an individual who is a candidate for a State or local office if the solicitation or receipt of funds is permitted under State law for the individual's State or local campaign committee.".

SEC. 312. REPORTING REQUIREMENTS.

(a) REPORTING REQUIREMENTS.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following:

"(d) POLITICAL COMMITTEES.—

"(1) NATIONAL AND CONGRESSIONAL POLITICAL COMMITTEES.—The national committee of a political party, a congressional campaign committee of a political party, and any subordinate committee of a national committee or congressional campaign committee of a political party, shall report all receipts and disbursements during the reporting period, whether or not in connection with an election for Federal office.

"(2) OTHER POLITICAL COMMITTEES TO WHICH SECTION 324 APPLIES.—A political committee (not described in paragraph (1)) to which section 324 applies shall report all receipts and disbursements.

"(3) TRANSFERS.—A political committee to which section 324 applies shall—

"(A) include in a report under paragraph (1) or (2) the amount of any transfer described in section 324(d)(2); and

"(B) itemize those amounts to the extent required by section 304(b)(3)(A).

"(4) OTHER POLITICAL COMMITTEES.—Any political committee to which paragraph (1) or (2) does not apply shall report any receipts or disbursements that are used in connection with a Federal election.

"(5) ITEMIZATION.—If a political committee has receipts or disbursements to which this

subsection applies from any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for the person in the same manner as under paragraphs (3)(A), (5), and (6) of subsection (b).

"(6) REPORTING PERIODS.—Reports required to be filed by this subsection shall be filed for the same time periods as reports are required for political committees under subsection (a).".

(b) REPORT OF EXEMPT CONTRIBUTIONS.—Section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)) is amended by adding at the end the following:

"(C) REPORTING REQUIREMENT.—The exclusion provided in subparagraph (B)(viii) shall not apply for purposes of any requirement to report contributions under this Act, and all such contributions aggregating in excess of $200 shall be reported.".

(c) REPORTS BY STATE COMMITTEES.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434 (as amended by subsection (a)) is amended by adding at the end the following:

"(f) FILING OF STATE REPORTS.—In lieu of any report required to be filed under this Act, the Commission may allow a State committee of a political party to file with the Commission a report required to be filed under State law if the Commission determines that such a report contains substantially the same information as a report required under this Act.".

(d) OTHER REPORTING REQUIREMENTS.—

(1) AUTHORIZED COMMITTEES.—Section 304(b)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(4)) is amended—

(A) by striking "and" at the end of subparagraph (H);

(B) by inserting "and" at the end of subparagraph (I); and

(C) by adding at the end the following:

"(J) in the case of an authorized committee, disbursements for the primary election, the general election, and any other election in which the candidate participates;".

(2) NAMES AND ADDRESSES.—Section 304(b)(5)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(5)(A)) is amended—

(A) by striking "within the calendar year"; and

(B) by striking "such operating expenditures" and inserting "operating expenses, and the election to which the operating expense relates".

TITLE IV—CONTRIBUTIONS

SEC. 401. CONTRIBUTIONS THROUGH INTERMEDIARIES AND CONDUITS; PROHIBITION ON CERTAIN CONTRIBUTIONS BY LOBBYISTS.

(a) CONTRIBUTIONS THROUGH INTERMEDIARIES AND CONDUITS.—Section 315(a)(8) of FECA (2 U.S.C. 441a(a)(8)) is amended by striking paragraph (8) and inserting the following:

"(8) INTERMEDIARIES AND CONDUITS.—

"(A) DEFINITIONS.—In this paragraph:

"(i) ACTING ON BEHALF OF THE ENTITY.—The term 'acting on behalf of the entity' means soliciting one or more contributions—

"(I) in the name of an entity;

"(II) using other than incidental resources of an entity; or

"(III) by directing a significant portion of the solicitations to other officers, employees, agents, or members of an entity or their spouses, or by soliciting a significant portion of the other officers, employees, agents, or members of an entity or their spouses.

"(ii) BUNDLER.—The term 'bundler' means an intermediary or conduit that is any of the following persons or entities:

"(I) A political committee (other than the authorized campaign committee of the candidate that receives contributions as described in subparagraph (B) or (C)).

"(II) Any officer, employee or agent of a political committee described in subclause (I).

"(III) An entity.

"(IV) Any officer, employee, or agent of an entity who is acting on behalf of the entity.

"(V) A person required to be listed as a lobbyist on a registration or other report filed pursuant to the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601 et seq.) or any successor law that requires reporting on the activities of a person who is a lobbyist or foreign agent.

"(iii) DELIVER.—The term 'deliver' means to deliver contributions to a candidate by any method of delivery used or suggested by a bundler that communicates to the candidate (or to the person who receives the contributions on behalf of the candidate) that the bundler collected the contributions for the candidate, including such methods as—

"(I) personal delivery;

"(II) United States mail or similar services;

"(III) messenger service; and

"(IV) collection at an event or reception.

"(iv) ENTITY.—The term 'entity' means a corporation, labor organization, or partnership.

"(B) TREATMENT AS CONTRIBUTIONS FROM PERSONS BY WHOM MADE.—

"(i) IN GENERAL.—For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a candidate, including contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, shall be treated as contributions from the person to the candidate.

"(ii) REPORTING.—The intermediary or conduit through which a contribution is made shall report the name of the original contributor and the intended recipient of the contribution to the Commission and to the intended recipient.

"(C) TREATMENT AS CONTRIBUTIONS FROM THE BUNDLER.—Contributions that a bundler delivers to a candidate, agent of the candidate, or the candidate's authorized committee shall be treated as contributions from the bundler to the candidate as well as from the original contributor.

"(D) NO LIMITATION ON OR PROHIBITION OF CERTAIN ACTIVITIES.—This subsection does not—

"(i) limit fundraising efforts for the benefit of a candidate that are conducted by another candidate or Federal officeholder; or

"(ii) prohibit any individual described in subparagraph (A)(ii)(IV) from soliciting, collecting, or delivering a contribution to a candidate, agent of the candidate, or the candidate's authorized committee if the individual is not acting on behalf of the entity.".

(b) PROHIBITION OF CERTAIN CONTRIBUTIONS BY LOBBYISTS.—Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) (as amended by section 314(b)) is amended by adding at the end the following:

"(m) PROHIBITION OF CERTAIN CONTRIBUTIONS BY LOBBYISTS.—

"(1) IN GENERAL.—A lobbyist, or a political committee controlled by a lobbyist, shall not make a contribution to or solicit contributions for or on behalf of—

"(A) a Federal officeholder or candidate for Federal office if, during the preceding 12 months, the lobbyist has made a lobbying contact with the officeholder or candidate; or

"(B) any authorized committee of the President or Vice President of the United States if, during the preceding 12 months, the lobbyist has made a lobbying contact with a covered executive branch official.

"(2) CONTRIBUTIONS TO MEMBER OF CONGRESS OR CANDIDATE FOR CONGRESS.—A lobbyist who, or a lobbyist whose political committee, has made a contribution to a member of Congress or candidate for Congress (or any authorized committee of the President) shall not, during the 12 months following such contribution, make a lobbying contact with the member or candidate who becomes a member of Congress or with a covered executive branch official.

"(3) SOLICITATION OF CONTRIBUTIONS.—If a lobbyist advises or otherwise suggests to a client of the lobbyist (including a client that is the lobbyist's regular employer), or to a political committee that is funded or administered by such a client, that the client or political committee should make a contribution to or solicit a contribution for or on behalf of—

"(A) a member of Congress or candidate for Congress, the making or soliciting of such a contribution is prohibited if the lobbyist has made a lobbying contact with the member of Congress within the preceding 12 months; or

"(B) an authorized committee of the President or Vice President, the making or soliciting of such a contribution shall be unlawful if the lobbyist has made a lobbying contact with a covered executive branch official within the preceding 12 months.

"(4) DEFINITIONS.—In this subsection, the terms 'covered executive branch official', 'lobbying contact', and 'lobbyist' have the meanings given those terms in section 3 of the Federal Lobbying Disclosure Act of 1995 (2 U.S.C. 1602), except that—

"(A) the term 'lobbyist' includes a person required to register under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.); and

"(B) for purposes of this subsection, a lobbyist shall be considered to make a lobbying contact or communication with a member of Congress if the lobbyist makes a lobbying contact or communication with—

"(i) the member of Congress;

"(ii) any person employed in the office of the member of Congress; or

"(iii) any person employed by a committee, joint committee, or leadership office who, to the knowledge of the lobbyist, was employed at the request of or is employed at the pleasure of, reports primarily to, represents, or acts as the agent of the member of Congress.".

SEC. 402. CONTRIBUTIONS BY DEPENDENTS NOT OF VOTING AGE.

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) (as amended by section 401(c)) is amended by adding at the end the following:

"(n) DEPENDENTS NOT OF VOTING AGE.—

"(1) IN GENERAL.—For purposes of this section, any contribution by an individual who—

"(A) is a dependent of another individual; and

"(B) has not, as of the time of the making of the contribution, attained the legal age for voting in an election to Federal office in the State in which the individual resides;

shall be treated as having been made by the other individual.

"(2) ALLOCATION BETWEEN SPOUSES.—If such individual described in paragraph (1) is the dependent of another individual and the individual's spouse, a the contribution described in paragraph (1) shall be allocated among such individuals in the manner determined by them.".

SEC. 403. CONTRIBUTIONS TO CANDIDATES FROM STATE AND LOCAL COMMITTEES OF POLITICAL PARTIES TO BE AGGREGATED.

Section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is amended by adding at the end the following:

"(9) AGGREGATION OF CONTRIBUTIONS FROM STATE AND LOCAL COMMITTEES OF POLITICAL PARTIES.—Notwithstanding paragraph (5)(B), a candidate may not accept, with respect to an election, any contribution from a State or local committee of a political party (including any subordinate committee of such a committee), if the contribution, when added to the total of contributions previously accepted from all such committees of that political party, exceeds would cause the total amount of contributions to exceed a limitation on contributions to a candidate under this section.".

SEC. 404. LIMITED EXCLUSION OF ADVANCES BY CAMPAIGN WORKERS FROM THE DEFINITION OF THE TERM "CONTRIBUTION".

Section 301(8)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(B)) is amended—

(1) in clause (xiii), by striking "and" after the semicolon at the end;

(2) in clause (xiv), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new clause:

"(xv) any advance voluntarily made on behalf of an authorized committee of a candidate by an individual in the normal course of such individual's responsibilities as a volunteer for, or employee of, the committee, if the advance is reimbursed by the committee within 10 days after the date on which the advance is made, and the value of advances on behalf of a committee does not exceed $500 with respect to an election.".

TITLE V—REPORTING REQUIREMENTS

SEC. 501. CHANGE IN CERTAIN REPORTING FROM A CALENDAR YEAR BASIS TO AN ELECTION CYCLE BASIS.

Paragraphs (2) through (7) of section 304(b) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(2)–(7)) are amended by inserting after "calendar year" each place it appears the following: "(election cycle, in the case of an authorized committee of a candidate for Federal office)".

SEC. 502. PERSONAL AND CONSULTING SERVICES.

Section 304(b)(5)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)(5)(A)) is amended by adding before the semicolon at the end the following: ", except that if a person to whom an expenditure is made is merely providing personal or consulting services and is in turn making expenditures to other persons (not including employees) who provide goods or services to the candidate or his or her authorized committees, the name and address of such other person, together with the date, amount and purpose of such expenditure shall also be disclosed".

SEC. 503. CONTRIBUTIONS OF $50 OR MORE.

Section 304(b)(2)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(b)2)(A)) is amended by inserting ", including the name and address of each person who makes contributions aggregating at least $50 but not more than $200 during the calendar year" after "political committees".

SEC. 504. COMPUTERIZED INDICES OF CONTRIBUTIONS.

Section 311(a) of Federal Election Campaign Act of 1971 (2 U.S.C. 438(a)) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(11) maintain computerized indices of contributions of $50 or more.".

TITLE VI—FEDERAL ELECTION COMMISSION

SEC. 601. USE OF CANDIDATES' NAMES.

Section 302(e)(4) of Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)(4)) is amended to read as follows:

"(4) NAME OF POLITICAL COMMITTEE.—

"(A) AUTHORIZED COMMITTEE.—The name of each authorized committee shall include the name of the candidate who authorized the committee under paragraph (1).

"(B) UNAUTHORIZED COMMITTEE.—A political committee that is not an authorized committee shall not include the name of any candidate in its name or use the name of any candidate in any activity on behalf of such committee in such a context as to suggest that the committee is an authorized committee of the candidate or that the use of the candidate's name has been authorized by the candidate.".

SEC. 602. REPORTING REQUIREMENTS.

(a) OPTION TO FILE MONTHLY REPORTS—Section 304(a)(2) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(2)) is amended—

(1) in subparagraph (A) by striking "and" at the end;

(2) in subparagraph (B) by striking the period at the end and inserting "; and"; and

(3) by inserting the following new subparagraph at the end:

"(C) in lieu of the reports required by subparagraphs (A) and (B), the treasurer may file monthly reports in all calendar years, which shall be filed no later than the 15th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-primary election report and a pre-general election report shall be filed in accordance with subparagraph (A)(i), a post-general election report shall be filed in accordance with subparagraph (A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.".

(b) FILING DATE.—Section 304(a)(4)(B) of Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(4)(B)) is amended by striking "20th" and inserting "15th".

SEC. 603. PROVISIONS RELATING TO THE GENERAL COUNSEL OF THE COMMISSION.

(a) VACANCY IN THE OFFICE OF GENERAL COUNSEL.—Section 306(f) of Federal Election Campaign Act of 1971 (2 U.S.C. 437c(f)) is amended by adding at the end the following:

"(5) VACANCY.—In the event of a vacancy in the office of general counsel, the next highest ranking enforcement official in the general counsel's office shall serve as acting general counsel with full powers of the general counsel until a successor is appointed.".

(b) PAY OF THE GENERAL COUNSEL.—Section 306(f)(1) of Federal Election Campaign Act of 1971 (2 U.S.C. 437c(f)(1)) is amended—

(1) by inserting "and the general counsel" after "staff director" in the second sentence; and

(2) by striking the third sentence.

SEC. 604. PENALTIES.

(a) PENALTIES PRESCRIBED IN CONCILIATION AGREEMENTS.—

(1) CIVIL PENALTY FOR VIOLATION OF ACT.—Section 309(a)(5)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(5)(A)) is amended by striking "which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation" and inserting "which is—

"(i) not less than 50 percent of all contributions and expenditures involved in the violation (or such lesser amount as the Commission provides if necessary to ensure that the penalty is not unjustly disproportionate to the violation); and

"(ii) not greater than all contributions and expenditures involved in the violation".

(2) PENALTY FOR KNOWING AND WILLFUL VIOLATION OF ACT.—Section 309(a)(5)(B) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(5)(B)) is amended by striking "which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation" and inserting "which is—

"(i) not less than all contributions and expenditures involved in the violation; and

"(ii) not greater than 150 percent of all contributions and expenditures involved in the violation".

(b) PENALTIES WHEN VIOLATIONS ARE ADJUDICATED IN COURT.—

(1) COMMISSION PROCEEDINGS INSTITUTED FOR AN ORDER.—Section 309(a)(6)(A) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(6)(A)) is amended by striking all that follows "appropriate order" and inserting ", including an order for a civil penalty in the amount determined under subparagraph (A) or (B) in the district court of the United States for the district in which the defendant resides, transacts business, or may be found.".

(2) COURT ORDERS.—Section 309(a)(6)(B) of Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(6)(B)) is amended by striking all that follows "other order" and inserting ", including an order for a civil penalty which is—

"(i) not less than all contributions and expenditures involved in the violation; and

"(ii) not greater than 200 percent of all contributions and expenditures involved in the violation;

upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or chapter 95 of chapter 96 of the Internal Revenue Code of 1986.".

(3) KNOWING AND WILLFUL VIOLATION PENALTY.—Section 309(a)(6)(C) of Federal Election Campaign Act of 1971 (29 U.S.C. 437g(6)(C)) is amended by striking "a civil penalty" and all that follows and inserting "a civil penalty which is—"

"(i) not less than 200 percent of all contributions and expenditures involved in the violation; and

"(ii) not greater than 250 percent of all contributions and expenditures involved in the violation.".

SEC. 605. RANDOM AUDITS.

Section 311(b) of Federal Election Campaign Act of 1971 (2 U.S.C. 438(b)) is amended—

(1) by inserting "(1)" before "The Commission"; and

(2) by adding at the end the following new paragraph:

"(2) RANDOM AUDITS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), the Commission may from time to

time conduct random audits and investigations to ensure voluntary compliance with this Act.

"(B) SELECTION OF SUBJECTS.—The subjects of such audits and investigations shall be selected on the basis of criteria established by vote of at least 4 members of the Commission to ensure impartiality in the selection process.

"(C) APPLICABILITY.—This paragraph does not apply to an authorized committee of an eligible Senate candidate subject to audit under section 505(a) or an authorized committee of an eligible House of Representatives candidate subject to audit under section 605(a).".

SEC. 606. PROHIBITION OF FALSE REPRESENTATION TO SOLICIT CONTRIBUTIONS.

Section 322 of Federal Election Campaign Act of 1971 (2 U.S.C. 441h) is amended—

(1) by inserting after "SEC. 322." the following: "(a)"; and

(2) by adding at the end the following:

"(b) FALSE SOLICITATION OF CONTRIBUTIONS.—No person shall solicit contributions by falsely representing himself as a candidate or as a representative of a candidate, a political committee, or a political party.".

SEC. 607. REGULATIONS RELATING TO USE OF NON-FEDERAL MONEY.

Section 306 of Federal Election Campaign Act of 1971 (2 U.S.C. 437c) is amended by adding at the end the following:

"(g) REGULATIONS.—The Commission shall promulgate regulations to prohibit devices or arrangements which have the purpose or effect of undermining or evading the provisions of this Act restricting the use of non-Federal money to affect Federal elections.".

SEC. 608. FILING OF REPORTS USING COMPUTERS AND FACSIMILE MACHINES.

Section 302(g) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(g)) is amended by adding at the end the following new paragraph:

"(6)(A) The Commission, in consultation with the Secretary of the Senate, may prescribe regulations under which persons required to file designations, statements, and reports under this Act—

"(i) are required to maintain and file them for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and

"(ii) may maintain and file them in that manner if not required to do so under regulations prescribed under clause (i).

"(B) The Commission, in consultation with the Secretary of the Senate, shall prescribe regulations which allow persons to file designations, statements, and reports required by this Act through the use of facsimile machines.

"(C) In prescribing regulations under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulations. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

"(D) The Secretary of the Senate and the Clerk of the House of Representatives shall ensure that any computer or other system that they may develop and maintain to receive designations, statements, and reports in the forms required or permitted under this paragraph is compatible with any such system that the Commission may develop and maintain.".

TITLE VII—MISCELLANEOUS

SEC. 701. PROHIBITION OF LEADERSHIP COMMITTEES.

(a) DEFINITIONS.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by adding at the end the following:

(b) PROHIBITION.—Section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)) is amended—

(1) by striking paragraph (3) and inserting the following:

"(3) LIMITATIONS.—A political committee that supports or has supported more than 1 candidate shall not be designated as an authorized committee, except that—

"(A) a candidate for the office of President nominated by a political party may designate the national committee of the political party as the candidate's principal campaign committee if the national committee maintains separate books of account with respect to its functions as a principal campaign committee; and

"(B) a candidate may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee."; and

(2) by adding at the end the following:

"(6) PROHIBITION OF LEADERSHIP COMMITTEES.—

"(A) IN GENERAL.—

"(i) PROHIBITION.—A candidate for Federal office or an individual holding Federal office shall not establish, finance, maintain, or control any political committee or non-Federal political committee other than a principal campaign committee of the candidate, authorized committee, party committee, or other political committee designated in accordance with paragraph (3).

"(ii) CANDIDATE FOR MORE THAN 1 OFFICE.—A candidate for more than 1 Federal office may designate a separate principal campaign committee for the campaign for election to each Federal office.

"(B) TRANSITION.—

"(i) CONTINUATION FOR 12 MONTHS.—For a period of 12 months after the effective date of this paragraph, any political committee established before that date but that is prohibited under subparagraph (A) may continue to make contributions.

"(ii) DISBURSEMENT AT THE END OF 1 YEAR.—At the end of that period the political committee shall disburse all funds by 1 or more of the following means:

"(I) Making contributions to a person described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of the United States Code.

"(II) Making a contribution to the Treasury of the United States.

"(III) Contributing to the national, State, or local committee of a political party.

"(IV) Making a contribution of not to exceed $1,000 each to candidates or non-Federal candidates.".

SEC. 702. POLLING DATA CONTRIBUTED TO CANDIDATES.

Section 301(8) of Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), as amended by section 314(b), is amended by inserting at the end the following:

"(D) VALUATION OF POLLING DATA AS A CONTRIBUTION.—A contribution of polling data to a candidate shall be valued at the fair market value of the data on the date the poll was completed, depreciated at a rate not more than 1 percent per day from such date to the date on which the contribution was made.".

SEC. 703. RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR PERSONAL PURPOSES.

(a) RESTRICTIONS ON USE OF CAMPAIGN FUNDS.—Title III of Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) (as amended by section 311) is amended by adding at the end the following:

"SEC. 325. RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR PERSONAL PURPOSES.

"(a) DEFINITIONS.—In this section:

"(1) CAMPAIGN EXPENSE.—The term 'campaign expense' means an expense that is attributable solely to a bona fide campaign purpose.

"(2) INHERENTLY PERSONAL PURPOSES.—The term 'inherently personal purpose' means a purpose that, by its nature, confers a personal benefit, including a home mortgage, rent, or utility payment, clothing purchase, noncampaign automobile expense, country club membership, vacation, or trip of a noncampaign nature, household food items, tuition payment, admission to a sporting event, concert, theater or other form of entertainment not associated with a campaign, dues, fees, or contributions to a health club or recreational facility, and any other inherently personal living expense as determined under the regulations promulgated pursuant to section 301(b) of the Senate Campaign Financing and Spending Reform Act.

"(b) PERMITTED AND PROHIBITED USES.—An individual who receives contributions as a candidate for Federal office—

"(1) shall use the contributions only for legitimate and verifiable campaign expenses; and

"(2) shall not use the contributions for any inherently personal purpose.".

(b) REGULATION.—Not later than 90 days after the date of enactment of this Act, the Federal Election Commission shall issue a regulation consistent with this Act to implement subsection (a). The regulation shall apply to all contributions possessed by an individual on the date of enactment of this Act.

TITLE VIII—EFFECTIVE DATES; AUTHORIZATIONS

SEC. 801. EFFECTIVE DATE.

Except as otherwise provided in this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act but shall not apply with respect to activities in connection with any election occurring before January 1, 1999.

SEC. 802. SEVERABILITY.

Except as provided in section 101(c), if any provision of this Act (including any amendment made by this Act), or the application of any such provision to any person or circumstance, is held invalid, the validity of any other provision of this Act, or the application of the provision to other persons and circumstances, shall not be affected thereby.

SEC. 803. EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.

(a) DIRECT APPEAL TO SUPREME COURT.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory order or final judgment, decree, or order issued by any court ruling on the constitutionality of any provision of this Act or amendment made by this Act.

(b) ACCEPTANCE AND EXPEDITION.—The Supreme Court shall, if it has not previously ruled on the question addressed in the ruling below, accept jurisdiction over, advance on the docket, and expedite the appeal to the greatest extent possible.

By Mr. FEINGOLD:

S. 58. A bill to modify the estate recovery provisions of the medicaid program to give States the option to recover the costs of home and community-based services for individuals over age 55; to the Committee on Finance.

MEDICAID BENEFICIARIES LEGISLATION

Mr. FEINGOLD. Mr. President, I am pleased to introduce legislation today to eliminate the current mandate on States to place liens on the homes and estates of older Medicaid beneficiaries receiving home and community-based long-term care services, and to provide more than adequate funding for that change by establishing a certificate of need process to regulate the growth of federally funded nursing home beds.

This legislation modifies the estate recovery provisions of OBRA 93 to clarify that States may pursue recovery of the cost of Medicaid home and community-based long-term care services from the estate of beneficiaries, but that States are not required to do so.

Mr. President, slowing the growth of rising Medicaid costs is central to easing pressure on both Federal and State budgets, and addressing the long-term care portion of those Medicaid budgets is a key to containing those costs. Meaningful reform of our long-term care system is the ultimate solution to this problem, and I will introduce long-term care reform legislation in the near future that will outline the path we need to follow—helping States provide flexible, consumer-oriented and consumer-directed home and community-based long-term care services.

In the meantime, however, we can take a few important steps down the path toward long-term care reform by repealing the cumbersome mandate on States that they recover the cost of some services by imposing liens on the homes and estates of seniors using home and community-based long-term care services.

Mr. President, in the past, States have had the option of recovering payments for those services from the estates of beneficiaries, but in some cases, at least, have chosen not to do so. In Wisconsin, estate recovery for home and community-based long-term care services was implemented briefly in 1991, but was terminated because of the significant problems experienced with the home and Medicaid waiver programs. Many cases were documented where individuals needing long-term care refused community-based care because of their fear of estate recovery or the placement of a lien on their homes.

One case in southwestern Wisconsin involved an older woman who was suffering from congestive heart failure, phlebitis, severe arthritis, and who had difficulty just being able to move. She was being screened for the Medicaid version of Wisconsin's model home and community-based long-term care program, the Community Options Program, when the caseworker told her of the new law, and that a lien would be put on the estate of the program's clients. The caseworker reported that the older woman began to sob, and told the caseworker that she had worked hard all her life and paid taxes and could not understand why the things she had worked for so hard would be taken from her family after her death.

When asked if she would like to receive services, the client refused. As frail as this client was, the social worker noted that she preferred to chance being on her own rather than endanger her meager estate by using Medicaid funded services.

In northeastern Wisconsin, a 96-year-old woman was being cared for by her 73-year-old widowed daughter in their home. The family was receiving some Medicaid long-term care services, including respite services for the elderly caregiver daughter, but the family discontinued all services when they heard of the new law because the older daughter needed to count on the home for security in her own old age.

A 72-year-old man, who had four bypass surgeries and was paralyzed on one side, and his 66-year-old wife, who had 3 bypass surgeries and rheumatoid arthritis, both needed some assistance to be able to live together at home. But when Medicaid was suggested, they refused because of the new law.

Mr. President, these examples are not unusual. Nor were many of the individuals and families who refused help protecting vast estates. For many, the estates being put at risk were modest at best. A couple in the Green Bay area of Wisconsin who lived in a mobile home and had less than $20,000 in life savings told the local benefit specialist that they would refuse Medicaid funded services rather than risk not leaving their small estate to their family members.

Leaving even a small bequest to a loved-one is a fundamental and deeply felt need of many seniors. Even the most modest home can represent a lifetime's work, and many are willing to forego medical care they know they need to be able to leave a small legacy.

Mr. President, while the vision of this mandate on States from inside the Washington beltway may appear simple, the estate recovery requirements are not so simple for program administrators. States, counties, and nonprofit agencies, administrators of Medicaid services, are ill-equipped to be real estate agents.

Further, divestment concerns in the Medicaid Program, already a problem, could continue to grow as pressure to utilize existing loopholes increases with estate recovery mandated in this way. Worse, as the Coalition of Wisconsin Aging Groups has pointed out, children who feel "entitled to inheritance" might force transfers, constituting elder abuse in some cases.

Too, Mr. President, there is a very real question of age discrimination with the estate recovery provisions of OBRA 93. Only individuals over age 55 are subject to estate recovery. Such age-based distinctions border on age discrimination and ought to be minimized.

Mr. President, because I am committed to reducing the deficit and balancing the budget, I firmly believe we must find offsetting spending cuts to fully fund legislative proposals, even when we might disagree with the cost estimates for those proposals. For that reason, I have included provisions in this measure that have been scored by the Congressional Budget Office to more than offset the officially estimated loss in savings from the estate recovery mandate. Nevertheless, while this bill includes offsetting cuts to fund the proposed change, I also believe that the savings ascribed to the existing mandate are questionable.

Prior to enacting estate recovery in Wisconsin, officials estimated $13.4 million a year could be recovered by the liens. Real collections fell far short. For fiscal year 1992, the State only realized a reported $1 million in collections. And for the period of January to July 1993, even after officials lowered their estimates, only $2.2 million was realized of an expected $3.8 million in collections.

In addition to lower than expected collections, the refusal to accept home and community-based long-term care because of the prospect of a lien on the estate could lead to the earlier and more costly need for institutional care. Such a result would not only undercut the questionable savings from the program, but would be directly contrary to the Medicaid home and community-based waiver program, which is intended precisely to keep people out of institutions and in their own homes and communities.

The brief experience we had in Wisconsin led the State to limit estate recovery to nursing home care and related services, where, as a practical matter, the potential for estate recovery and liens on homes are much less of a barrier to services. Indeed, just as we should provide financial incentives to individuals to use more cost-effective care, so too should we consider financial disincentives for more costly alternatives. A recent study in Wisconsin showed that two Medicaid waiver programs saved $17.6 million in 1992 by providing home and community-based alternatives to institutional care.

In that context, retaining the more expansive institutional care alternatives in the estate recovery mandate makes good sense, and my legislation would not change that portion of the law. But it does not make sense to jeopardize a program that has produced many more times the savings in lowered institutional costs than even the

overly optimistic estimates suggest could be recovered from the estates of those receiving home and community-based long-term care.

All in all, the estate recovery provisions of OBRA 93 are likely to produce more expensive utilization of Medicaid services, may cause an administrative nightmare for State and local government, could aggravate the divestment problem, may result in increased elder abuse, and could well constitute age discrimination.

Though many long-term care experts maintain that mandating estate recovery for home and community-based long-term care services will only lead to increased utilization of more expensive institutional alternatives, and thus increased cost to Federal taxpayers, the CBO estimated a revenue loss of $20 million in the first year and $260 million over 5 years for this proposal.

As I noted above, it is important to act responsibly to fund that formal cost estimate with offsetting spending cuts. The additional savings I firmly believe will be generated beyond the scored amounts would then help reduce our Federal budget deficit. This measure includes a provision that more than offsets the official scored revenue loss from eliminating the estate recovery mandate. That provision regulates the growth in the number of nursing home beds eligible for Federal funding through Medicaid, Medicare, or other Federal programs by requiring providers to obtain a certificate of need [CON] to operate additional beds.

For any specified area, States would issue a CON only if the ratio of the number of nursing home beds to the population that is likely to need them falls below guidelines set by the State and subject to Federal approval.

This approach allows new nursing home beds to operate where there is a demonstrated need, while limiting the potential burden on the taxpayer where no such need has been established. CBO has estimated that the proposed regulation of nursing home bed growth would generate savings of $35 million in the first year, and $625 million over 5 years, more than offsetting the CBO estimates for removing the State mandate on estate recoveries sought in this bill. The net fiscal effect of this proposal would be to generate about $15 million in savings in the first year, and $365 million over 5 years.

Slowing the growth of nursing home beds is critical to reforming the current long-term care system. In Wisconsin, limiting nursing home bed growth has been part of the success of the long-term care reforms initiated in the early 1980's. While the rest of the country experienced a 46-percent increase in Medicaid nursing home bed use between 1980 and 1993, Wisconsin saw Medicaid nursing home bed use decline by 15 percent.

The certificate of need provision is far more modest than the absolute cap on nursing home beds adopted in Wisconsin, and recognizes that there needs to be some flexibility to recognize the differences of long-term care services among States. It is also consistent with the kind of long-term care reform I will be proposing as separate legislation.

Certainly, our ability to reform long-term care will depend not only on establishing consumer-oriented, consumer-directed home and community-based services that are available to the severely disabled of all ages, but also on establishing a more balanced and cost-effective allocation of public support of long-term care services by eliminating the current bias toward institutional care.

Mr. President, taken together, the change in the estate recovery provisions and the slowing of nursing home bed growth, these two provisions will help shift the current distorted Federal long-term care policy away from the institutional bias that currently exists and toward a more balanced approach that emphasizes home and community-based services.

That is the direction that we will need to take if we are to achieve significant long-term care reform.

Mr. President, I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 58

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MEDICAID ESTATE RECOVERIES.

Section 1917(b)(1)(B) of the Social Security Act (42 U.S.C. 1396p(b)(1)(B)) is amended by striking "consisting of—" and all that follows through the period and inserting the following: "consisting of—

"(i) nursing facility services and related hospital and prescription drug services; and

"(ii) at the option of the State, any additional items or services under the State plan.".

SEC. 2. REQUIRING STATES TO REGULATE GROWTH IN THE NUMBER OF NURSING FACILITY BEDS.

(a) IN GENERAL.—A nursing facility shall not receive reimbursement under the medicare program under title XVIII of the Social Security Act, the medicaid program under title XIX of such Act, or any other Federal program for services furnished with respect to any beds first operated by such facility on or after the date of the enactment of this Act unless a certificate of need is issued by the State with respect to such beds.

(b) ISSUANCE OF CERTIFICATE.—A certificate of need may be issued by a State with respect to a geographic area only if the ratio of the number of nursing facility beds in such area to the total population in such area that is likely to need such beds is below the ratio included in guidelines that are established by the State and approved by the Secretary of Health and Human Services under subsection (c).

(c) APPROVAL OF GUIDELINES.—The Secretary of Health and Human Services shall promulgate regulations under which States may submit proposed guidelines for the issuance of certificates of need under subsection (b) for review and approval.

(d) DEFINITION OF NURSING FACILITY.—In this section, the term "nursing facility" has the meaning given the terms—

(1) "skilled nursing facility", under the medicare program under title XVIII of the Social Security Act; and

(2) "nursing facility", under the medicaid program under title XIX of such Act.

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 59. A bill to terminate the Extremely Low Frequency Communication System of the Navy; to the Committee on Armed Services.

EXTREMELY LOW FREQUENCY COMMUNICATION SYSTEM TERMINATION AND DEFICIT REDUCTION ACT OF 1997

Mr. FEINGOLD. Mr. President, today I am introducing legislation for myself and Senator KOHL, which we offered during the 103d and 104th Congress to terminate the Extremely Low Frequency Communications System, located in Clam Lake, WI, and Republic, MI.

This project has been opposed by residents of Wisconsin since its inception, but for years we were told that the national security considerations of the cold war outweighed our concerns about this installation in our State. As we continue our efforts to reduce the Federal budget deficit and as the Department of Defense continues to struggle to meet a tighter budget, it is clear that Project ELF should be closed down. If enacted, my legislation would save $9 to $20 million a year.

Project ELF was developed in the late 1970's as an added protection against the Soviet naval nuclear deployment. It is an electromagnetic messenger system—otherwise known as a bell ringer—used primarily to tell a deeply submerged Trident submarine that it needs to surface to retrieve a message. Because it communicates through very primitive pulses, called phonetic-letter-spelled-out [PLSO] messages, ELF's radiowaves transmit very limited messages.

With the end of the cold war, Project ELF becomes harder and harder to justify. Trident submarines no longer need to take that extra precaution against Soviet nuclear forces. They can now surface on a regular basis with less danger of detection or attack. They can also receive more complicated messages through very low frequency [VLF] radiowaves or lengthier messages through satellite systems, if it can be done more cheaply.

Not only do Wisconsinites think the mission of Project ELF is unnecessary and anachronistic, but they are also concerned about possible environmental and public health hazards associated with it. While I have heard some ELF supporters say there is no apparent environmental impact of Project

ELF, we can only conclude that we do not know that—in fact, we do not know much about its impact at all.

The Navy itself had yet to conclude definitively that operating Project ELF is safe for the residents living near the site. It you are a resident in Clam Lake, that is unsettling information. For example, in 1992, a Swedish study found that children exposed to relatively weak magnetic fields from powerlines develop leukemia at almost four times the expected rate. We also know that in 1984, a U.S. district court ruling on State of Wisconsin versus Weinberger ordered Project ELF to be shut down because the Navy paid inadequate attention to the system's possible health effects and violated the National Environmental Policy Act. That decision was overturned on appeal, however, in a ruling that claimed national security interests at the time prevailed over environmental concerns. More recent studies of the impact of electromagnetic fields in general still leave unanswered questions and concerns.

During the 103d Congress, I worked with the Senator from Georgia, Senator NUNN to include an amendment in the National Defense Authorization Act for fiscal year 1994 requiring a report by the Secretary of Defense on the benefits and costs of continued operation of Project ELF. The report issued by DOD was particularly disappointing because it basically argued that because Project ELF may have a purpose during the cold war, it should continue to operate after the cold war as part of the complete complement of command and control links configured for the cold war.

Did Project ELF play a role in helping to minimize the Soviet threat? Perhaps. Did it do so at risk to the community? Perhaps. Does it continue to play a vital security role to the Nation? No.

Most of us in Wisconsin don't want it anymore. Many of my constituents have opposed Project ELF since its inception. Congressman DAVID OBEY has consistently sought to terminate Project ELF, and in fact, we have him to thank in part for getting ELF scaled down from the large-scale project first conceived by the Carter administration. I look forward to continue working with him on this issue in the 105th Congress.

As we take up the budget for fiscal year 1998, the Department of Defense and the Armed Services Committee will again be searching for programs that have outlived their intended purpose. I hope they will seriously consider zeroing out the ELF transmitter system, as I propose in this bill, and save the taxpayers $9 to $20 million a year. Given both its apparently diminished strategic value and potential environmental and public health hazards, Project ELF is a perfect target for termination.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 59

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 "Extremely Low Frequency Communication System Termination and Deficit Reduction Act of 1997".

SEC. 2. PROHIBITION OF FURTHER FUNDING OF THE EXTREMELY LOW FREQUENCY COMMUNICATION SYSTEM.

(a) PROHIBITION ON USE OF FUNDS.—Except as provided in subsection (b), funds appropriated on or after the date of enactment of this Act to or for the use of the Department of Defense may not be obligated or expended for the Extremely Low Frequency Communication System of the Navy.

(b) LIMITED EXCEPTION FOR TERMINATION COSTS.—Subsection (a) does not apply to expenditures solely for termination of the Extremely Low Frequency Communication System.

By Mr. LOTT:

S. 61. A bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II; to the Committee on Veterans Affairs.

THE MERCHANT MARINERS FAIRNESS ACT OF 1997

Mr. LOTT. Mr. President, today, it is my pleasure to introduce the Merchant Mariners Fairness Act. My bill would grant veterans status to American merchant mariners who have been denied this status.

In 1988, the Secretary of the Air Force decided, for the purposes of granting veterans benefits to merchant seamen, that the cut-off date for service would be August 15, 1945, V–J Day, rather than December 31, 1946, when hostilities were declared officially ended. My bill would correct the 1988 decision and extend veterans benefits to merchant mariners who served from August 15, 1945 to December 31, 1946. It would extend eligibility for burial benefits and related veterans benefits for certain members of the U.S. Merchant Marine during World War II.

I urge my distinguished colleagues to join me in supporting this important legislation.

By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 62. A bill to prohibit further extension of establishment of any national monument in Idaho without full public participation and an express Act of Congress, and for other purposes; to the Committee on Energy and National Resources.

THE IDAHO PROTECTION ACT OF 1997

Mr. CRAIG. Mr. President, I rise today to introduce legislation that has been forced by recent events. I am talking about President Clinton's proclamation of last fall declaring nearly two million acres of southern Utah a national monument.

After the President's announcement, Senator KEMPTHORNE and I introduced the Idaho Protection Act of 1996. That bill would have required that the public and the Congress be included before a national monument could be established in Idaho.

When we introduced that bill, I was immediately approached by other Senators seeking the same protection. What we see unfolding before us in Utah ought to frighten all of us. Without including Utah's Governor, Senators, congressional delegation, the State legislature, county commissioners, or the people of Utah—President Clinton set off-limits forever approximately 1.7 million acres of Utah.

Under the 1906 Antiquities Act, President Clinton has the unilateral authority to create a national monument where none existed before. And if he can do it in the State of Utah, he can do it in Idaho. In fact, since 1906, the law has been used some 66 times to set lands aside. I would note—with very few exceptions, these declarations occurred before enactment of the National Environmental Policy Act of 1969 which recognized the need for public involvement in such issues and mandated public comment periods before such decisions are made.

Just as 64 percent of the land in Utah is owned by the Federal Government, 62 percent of Idaho is owned by Uncle Sam. What the President has done in Utah, without public input, he could also do in Idaho or any or the States where the Federal Government has a presence.

With Senator KEMPTHORNE as a cosponsor, I am once again introducing the Idaho Protection Act. This bill would simply require that the public and the Congress be fully involved and give approval before such a unilateral Presidential declaration of a new national monument could be imposed on Idaho.

The President's action in Utah has been a wake-up call to people across America. While we all want to preserve what is best in our States, people everywhere understand that much of their economic future is tied up in what happens on their public lands.

In the West, where public lands dominate the landscape, issues such as grazing, timber harvesting, water use, and recreation access have all come under attack by this administration seemingly bent upon kowtowing to a segment of our population that wants these uses kicked off our public lands.

Everyone wants public lands decisions to be made in an open and inclusive process. No one wants the President, acting alone, to unilaterally lock up enormous parts of any State. We certainly don't work that way in the

West. There is a recognition that with common sense, a balance can be struck that allows jobs to grow and families to put down roots while at the same time protecting America's great natural resources.

In my view, the President's actions are beyond the pale and for that reason—to protect others from suffering a similar fate, I am cosponsoring this bill.

By Mr. FEINGOLD:

S. 63. A bill to amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful employment discrimination based on race, color, religion, sex, national origin, age, or disability, and for other purposes; to the Committee on Labor and Human Resources.

THE CIVIL RIGHTS PROCEDURES PROTECTION ACT OF 1997

Mr. FEINGOLD. Mr. President, I rise today to introduce the Civil Rights Procedures Protection Act of 1997. The 105th Congress will mark the third successive Congress that I have introduced this legislation. Very simply Mr. President, this legislation addresses the rapidly growing and, in my opinion, troubling practice of employers conditioning employment or professional advancement upon their employees willingness to submit claims of discrimination or harassment to arbitration, rather than pursuing them in the courts. In other words, employees raising claims of harassment or discrimination by their employers must submit the adjudication of those claims to arbitration, irrespective of what other remedies may exist under the laws of this Nation.

To address the growing incidents of compulsory arbitration, the Civil Rights Procedures Protection Act of 1997 amends seven civil rights statutes to ensure that those statutes remain effective when claims of this nature arise. Specifically, this legislation affects claims raised under Title VII of the Civil Rights Act of 1965, Section 505 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Section 1977 of the Revised Statutes, the Equal Pay Act, the Family and Medical Leave Act and the Federal Arbitration Act (FAA). In the context of the Federal Arbitration Act, the protections of this legislation are extended to claims of unlawful discrimination arising under State or local law and other Federal laws that prohibit job discrimination.

Mr. President, I want to be clear that this legislation is in no way intended to bar the use of arbitration, conciliation, mediation or any other form of adjudication short of litigation in resolving these claims. I have long been and will continue to be a strong supporter of "voluntary" forms of alternative dispute resolution. The key, however, is that the practices targeted by this bill are not voluntary. Rather they are imposed upon working men and women and are mandatory. Furthermore, the ability to be promoted, or in some cases, to be hired in the first place, is often conditioned upon the employee accepting this type of mandatory arbitration. Mandatory arbitration allows employers to tell all current and prospective employees in effect, 'if you want to work for us, you will have to check your rights as a working American citizen at the door.' In short, working men and women all across this country are faced with the tenuous choice of either accepting these mandatory limitations on their right to redress in the face of discrimination or placing at risk employment opportunities or professional advancement. These requirements have been referred to recently as "front door" contracts; that is, they require an employee to surrender certain rights up front in order to "get in the front door." As a nation which values work as well as deplores discrimination, we should not allow this situation to continue.

As I noted Mr. President, today marks the third successive Congress in which this important legislation has been introduced. Given that much of the rhetoric coming out of Washington and this body in recent months, certainly during the most recent elections, dealt with helping working families, it is my hope that this legislation will receive consideration in the coming months. The practice of mandatory arbitration should be stopped now—if people are being discriminated against, they should retain all avenues of redress provided for in the laws of this Nation. This bill will help restore integrity in relations between hard working employees and their employers, but more importantly, it will ensure that the civil rights laws which we pass, will continue to protect all Americans.

Mr. President, I ask unanimous consent that the text of the legislation be printed in the RECORD at the conclusion of my remarks.

Mr. President, I also ask unanimous consent that a newspaper article from the September 24, 1996 edition of the Boston Globe, entitled, "A cautionary tale about signing away right to sue," be placed in the RECORD.

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

S. 63

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 "Civil Rights Procedures Protection Act of 1997".

SEC. 2. AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) is amended by adding at the end the following new section:

"EXCLUSIVITY OF POWERS AND PROCEDURES

"SEC. 719. Notwithstanding any Federal statute of general applicability that would modify any of the powers and procedures expressly applicable to a claim arising under this title, such powers and procedures shall be the exclusive powers and procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.".

SEC. 3. AMENDMENT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) is amended—

(1) by redesignating sections 16 and 17 as sections 17 and 18, respectively; and

(2) by inserting after section 15 the following new section 16:

"EXCLUSIVITY OF POWERS AND PROCEDURES

"SEC. 16. Notwithstanding any Federal statute of general applicability that would modify any of the powers and procedures expressly applicable to a right or claim arising under this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to resolve such right or such claim through arbitration or another procedure.".

SEC. 4. AMENDMENT TO THE REHABILITATION ACT OF 1973.

Section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 795) is amended by adding at the end the following new subsection:

"(c) Notwithstanding any Federal statute of general applicability that would modify any of the procedures expressly applicable to a claim based on right under section 501, such procedures shall be the exclusive procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.".

SEC. 5. AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT OF 1990.

Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) is amended by adding at the end the following new subsection:

"(c) Notwithstanding any Federal statute of general applicability that would modify any of the powers and procedures expressly applicable to a claim based on a violation described in subsection (a), such powers and procedures shall be the exclusive powers and procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.".

SEC. 6. AMENDMENT TO SECTION 1977 OF THE REVISED STATUTES OF THE UNITED STATES.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any Federal statute of general applicability that would modify any of the procedures expressly applicable to a right to make and enforce a contract of employment under this section, such procedures shall be the exclusive procedures applicable to a claim based on such right unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.".

SEC. 7. AMENDMENT TO THE EQUAL PAY REQUIREMENT UNDER THE FAIR LABOR STANDARDS ACT OF 1938.

Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended by

adding at the end the following new paragraph:

"(5) Notwithstanding any Federal statute of general applicability that would modify any of the powers or procedures expressly applicable to a claim based on violation of this subsection, such powers and procedures shall be the exclusive procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.".

SEC. 8. AMENDMENT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.

Title IV of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) is amended by adding at the end the following new section:

"SEC. 406. EXCLUSIVITY OF REMEDIES.

"Notwithstanding any Federal statute of general applicability that would modify any of the procedures expressly applicable to a claim based on a right provided under this Act or under an amendment made by this Act, such procedures shall be the exclusive procedures applicable to such claim unless after such claim arises the claimant voluntarily enters into an agreement to resolve such claim through arbitration or another procedure.".

SEC. 9. AMENDMENT TO TITLE 9 OF THE UNITED STATES CODE.

Section 14 of title 9, United States Code, is amended—

(1) by inserting "(a)" before "This"; and

(2) by adding at the end the following new subsection:

"(b) This chapter shall not apply with respect to a claim of unlawful discrimination in employment if such claim arises from discrimination based on race, color, religion, sex, national origin, age, or disability.".

SEC. 10. APPLICATION OF AMENDMENTS.

The amendments made by this Act shall apply with respect to claims arising on and after the date of the enactment of this Act.

[From the Boston Globe, Sept. 24, 1996]

A CAUTIONARY TALE ABOUT SIGNING AWAY RIGHT TO SUE; ON THE JOB

(By Diane E. Lewis)

Jane Lajoie thought she had an open-and-shut discrimination case against her employer. Instead, she now has a cautionary tale for the growing number of American workers whose employers have asked them to sign away their rights to have employment complaints brought before a jury.

Lajoie's story begins in 1987 when, after receiving an MBA, she joined Fidelity Management Research Corp. as a data analyst for the publishing group's Mutual Fund Guide. Over the next seven years, she took on more responsibilities, rising to managing editor and then publisher of the guide.

But the Marlborough woman says there was a dark cloud over what should have been a successful career: She was convinced that she was not being compensated fairly, that men in comparable posts had more prestigious titles and were getting a lot more money for the same work. And she voiced her concerns.

Lajoie, 51, alleges that not long after she spoke up, a company lawyer asked her to register as a principle with the New York Stock Exchange and the National Association of Securities Dealers. Lajoie says she agreed, think she was required to register. She admits that she didn't read the fine print.

Today, Lajoie claims she was tricked into signing a so-called U-4 securities arbitration form stating that any dispute or claim against her employer must be submitted to private arbitration. In a lawsuit filed in Norfolk Superior Court, she alleges that she was replaced by a younger woman and then fired after she signed the form.

Fidelity denies discriminating against Lajoie. "There was no discrimination. She was compensated properly and fairly. She was also replaced by another woman," said attorney Wilfred Benoit Jr., who represents the Boston firm.

As for trickery, Benoit asserted: "Jane Lajoie was not tricked into signing anything. She signed a U-4 application as a principal in the securities industry and, as far as we know, she understood what it was."

Thus far, two Massachusetts courts have upheld Fidelity's right to arbitration, and an arbitration hearing is expected this year. The dispute may or may not end there.

Attorney Nancy Shilepsky, who represents Lajoie, says the Massachusetts Court of Appeals has acknowledged that her client may have good grounds for an appeal. But the court also ruled the Lajoie must arbitrate first and then, if unhappy with the findings, appeal.

For employers, mandatory arbitration has been a boon. Not only does it limit lengthy and expensive court battles, but it also reduces the kind of publicity that can seriously damage a company's image. In the five years since the US Supreme Court ruled that U-4s were legal, scores of companies have sought to have sexual harassment, age, gender and other discrimination claims moved from courts to the system of private justice known as binding arbitration. In the securities industry alone, about 500,000 Wall Street employees are legally bound by arbitration agreements.

Not surprisingly, the American Arbitration Association reports that employment arbitration claims increased 70 percent between 1994 and 1995.

Criticism has kept pace with the trend. Both the Equal Employment Opportunity Commission and the National Labor Relations Board have denounced the increased use of mandatory arbitration forms. The National Employment Lawyers Association has an ongoing campaign against the agreements.

The critics argue that the agreements are generally signed at the time of hiring or in the course of a policy change at a company—times when workers are concerned about making a good first impression or are probably not focused on the consequences of compliance.

Last year, the EEOC succeeded in enjoining an employer from requiring workers to sign mandatory arbitration forms and from firing those workers who refused.

This spring, the NLRB took a similar stand when it issued a complaint against a luggage maker that fired an employee for refusing to sign a form stating that all workplace disputes would have to be arbitrated.

"Nobody should be forced to use an employer's private justice system," says Lewis Maltby, director of workplace rights at the American Civil Liberties Union in New York.

Maltby, who sits on the board of the American Arbitration Association, concedes that there are times when employees may be better off arbitrating a dispute than taking the matter to a backlogged court or a beleaguered government agency.

In Boston, the Massachusetts Commission Against Discrimination is hoping arbitration will help reduce a two-year backlog of cases. For those who opt for binding arbitration, the dispute would be heard within 30 days after filing and decided in 60 days. Decisions would be binding on both sides.

Still, MCAD Commissioner Michael Duffy has drawn the line: His program will not mediate any cases stemming from mandatory arbitration agreements.

"We're not against arbitration or mediation," said Duffy. "We think it's fine when all parties agree. But problems arise when employees are told they must do it or are made to feel they could lose a job, and then they wind up giving up their right to a jury trial."

In the meantime, he and others advise what consumer advocates have been telling the public for years: Read the fine print before signing on the bottom line.

By Mr. LUGAR:

S. 64. A bill to state the national missile defense policy of the United States; to the Committee on Armed Services.

THE DEFEND THE UNITED STATES OF AMERICA ACT OF 1997

Mr. LUGAR. Mr. President, as we commence the 105th Congress and take up, as we surely will, issues with regard to national missile defense and theater missile defense, a key question is whether continued adherence to the ABM Treaty, in its original or a modified form, is compatible with the kind of missile defense we need.

Is this an "either/or" choice?

I hold the view that the ABM Treaty does have, or can be made to have, sufficient flexibility or elasticity to accommodate certain kinds of national missile or theater missile defense systems. By the same token, I reject the notion that we can only achieve the types of theater missile defense or national missile defense we need by outright abrogation of the ABM Treaty.

I am struck more by the commonality than the differences between the prevailing views of some of my Republican colleagues in the Senate and views in the Administration on this subject. Much of the difference has to do with timing, stemming in part from different assessments of the intelligence information on the ballistic missile threat facing the country. Ultimately, responsible policy makers must come to grips with the management of the risk entailed by the threat and how much money we are willing to spend, in a tight budget situation, for various levels of missile defense to counter that threat.

At this point in our debates, there seems to be general agreement that we are not trying to protect the U.S. against a massive nuclear strike from a reconstituted Soviet Union or even a general exchange with Russia. Nor, for that matter, are we talking about protection against a deliberate, massive Chinese nuclear attack on the United States.

A consensus between the prevailing positions on the Hill and that of the administration comes closer if there is an acceptance that this range of Russian or Chinese threats are beyond our

technological and financial means in the near term and that our objective is one of defending America against a Third World, long-range ballistic missile capability from a regime not subject to any rational laws of deterrence.

It is the prospect that rogue states will at some point obtain strategic ballistic missiles—ICBM's—that can reach American shores which propels us to consider the deployment of a national missile defense. A second prospect involves an unauthorized or accidental launch of an ICBM from Russia or China.

The kind of national missile defense system promoted both on the Hill and in the administration would not be capable of defending against thousands of warheads being launched against the United States. Rather, both sides are talking about a system capable of defending against the much smaller and relatively unsophisticated ICBM threat that a rogue nation or terrorist group could mount anytime in the foreseeable future as well as one capable of shooting down an unauthorized or accidentally launched missile.

The critical difference between many of the plans offered on the Hill and those proposed by the administration has to do with timing. Some Congressional proposals would require selection of a missile defense system to be made within a year, with deployment to begin within three years. The administration has argued for the need to develop a system, assess the threat in three years, and make a deployment decision accordingly.

It is the difference between the various plans over timing on system selection and deployment that holds practical implications for existing and potential arms control agreements—START II, the ABM Treaty, START III?—as well as the potential effectiveness of the system deployed. The more immediate the commitment to deploy a national defense system, the greater the risk of a Russian rejection of the START II Treaty and of an outright American rejection of the original ABM Treaty.

Second, differences over timing have been linked to the issue of the effectiveness of the system deployed by the United States. The administration has argued that selection of a system within the next year or so will limit the options to build a system that is better matched to the threat, and that the real choice between various Congressional plans and that of the administration is between building an advanced system to defeat an actual threat and a less capable system to defeat a hypothetical threat.

Mr. President, is there a middle ground—one that satisfies neither the administration nor various Congressional proponents fully but that does move us in the direction of providing the American people with a limited national defense system against the most urgent ballistic missile threats? I believe there is, and this legislation is an attempt to chart it.

Mr. President, I sense a greater willingness in both branches to try to come together in the interest of providing the American people with some form of limited, national defense system against the most urgent form of ballistic missile threat—to seek to bridge gaps rather than score debating points.

Moreover, with the passage of time, the differences over preferred dates of system selection and deployment have narrowed.

With that in mind, and with a felt need to change the terms of reference of previous ballistic missile defense debates by focusing on areas of commonality between the administration's position and the various congressional plans, I offer this legislation as one of the starting points for a more constructive exchange on the subject of national missile defense.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

DEFEND THE UNITED STATES OF AMERICA ACT OF 1997—SECTION-BY-SECTION ANALYSIS

I. SHORT TITLE

This act may be cited as the "Defend the United States of America Act of 1997".

II. FINDINGS

Describes the linkages between U.S. missile defenses, the ABM Treaty, and continued Russian adherences to other arms reduction treaties like START I and START II.

Describes the newly-emerging threats posed by other kinds of weapons of mass destruction than nuclear weapons, and other delivery means than long-range ballistic missiles.

Hearings over the last two years have shown the pervasive threat to the U.S. from chemical, biological, and radiological weapons, and the relative unpreparedness of U.S. governments at all levels to cope with such terrorist incidents.

Restates what DoD and Congress have learned about major weapons system development, with emphasis on the necessity for thorough testing and careful systems cost-effectiveness analysis prior to a commitment to deployment.

III. NATIONAL MISSILE DEFENSE POLICY

Development for deployment not later than 2003 of a National Missile Defense system designed to defend against accidental, unauthorized, and limited attacks.

The initial National Missile Defense system to be developed and deployed at the former Safeguard ABM site in compliance with the ABM Treaty, and to consist of:

Fixed, guard-based battle management radars;

Up to 100 ground-based interceptor missiles;

Space based adjuncts allowed by the ABM Treaty; and

Large phased array radars on the periphery of the U.S., facing outward, as necessary.

A requirement for a Presidential recommendation in 2000 on whether or not to deploy the developed system, and a set of criteria that should be used by the Congress in 2000 to aid in making a deployment decision. The criteria include:

The threat, as it exists in 2000 and is projected over the next several years;

The projected cost and effectiveness of the system, based on development and testing results;

The projected cost and effectiveness of the National Missile Defense system if deployment were deferred for one to three years, while additional development occurs;

Arms control factors; and

Where the U.S. stands in preparedness for, and defenses against, all the other nuclear, chemical and biological threats to the U.S.

The establishment of provisions to give the 106th Congress a vote on whether or not to authorize deployment of the system, as a privileged motion under expedited procedures.

This is a process that has been used by previous Congresses to insure an up-or-down vote in both Houses on the B–2 bomber, the MX missile, and on B–52s.

In sum, this section establishes a process whereby Congress will vote in 2000 on whether or not to deploy whatever National Missile Defense system may be ready to begin deployment at that time, and with better information than we have today.

IV. NATIONAL MISSILE DEFENSE VS. ARMS CONTROL AGREEMENTS

A statement that it is the United States' legal right to deploy such a National Missile Defense system, and that such a deployment does not threaten Russian or Chinese deterrent capabilities.

A direction to the President to seek both further cooperation with Russia on a variety of Theater Missile Defense issues, and the relaxation of the ABM Treaty to allow both sides to have two National Missile Defense sites.

This would greatly increase the effectiveness of our National Missile Defense systems against Third World missile attacks aimed at targets on our distant borders, while not posing a threat to Russia's deterrent.

This section also contains a provision requiring the President, if the ballistic missile threat to the U.S. exceeds that which the initial National Missile Defense system is capable of handling, to consult with the Congress regarding the exercise of our right to withdraw from the ABM Treaty under Article XV.

V. DOD TO CONTINUE R&D ON NATIONAL MISSILE DEFENSE

Directs the Secretary of Defense to continue a research and development program on advanced National Missile Defense technologies while the initial site is developed and deployed; this program would be conducted in full compliance with the ABM Treaty.

VI. U.S. POLICY TOWARD OTHER WMD DELIVERY THREATS

Sets forth U.S. policy on reducing the threat to the U.S. from weapons of mass destruction and associated delivery systems. It further directs the Administration to develop a balanced comprehensive plan for reducing the threat to the U.S. from all weapons of mass destruction and all delivery means.

VII. PRESIDENTIAL AND CONGRESSIONAL REVIEW OF U.S. DEFENSES AGAINST ALL TYPES OF WMD ATTACK

Requires a review, following the initial deployment of a National Missile Defense, by

the President and the Congress to determine the future course of U.S. defenses against all types of weapons of mass destruction.

VIII. REPORTING REQUIREMENTS

Administration reporting requirements to Congress.

IX. LEGAL DEFINITIONS

The legal definitions of the treaties mentioned in the bill.

By Mr. HATCH:

S. 65. A bill to amend the Internal Revenue Code of 1986 to ensure that members of tax-exempt organizations are notified of the portion of their dues used for political and lobbying activities, and for other purposes; to the Committee on Finance.

MEMBERSHIP DUES DISCLOSURE AND DEDUCTIBILITY LEGISLATION

Mr. HATCH. Mr. President, for many years, Congress has recognized that private institutions can often provide better service in certain areas than the government. In this regard, membership organizations that serve various public needs are given tax-exempt treatment. However, some tax-exempt membership organizations are involved in political and lobbying activities. These activities may or may not meet with the approval of those who pay dues and certainly should not be subsidized by the taxpayers.

Today, I am introducing legislation that is designed to rectify this problem. My bill is very simple. It requires tax-exempt membership organizations to disclose to their members these political activities and organizational resources spent on them. In addition, this bill will give the members of these tax-exempt organizations the opportunity to deduct the nonpolitical portion of their dues for income tax purposes without regard to the so-called "two percent limitation."

First, let me discuss the issue of full disclosure.

Mr. President, in the Omnibus Budget Reconciliation Act of 1993, Congress disallowed a deduction for expenses relating to lobbying and political activities. Lobbying is no longer a legitimate deductible expense for American businesses. Since tax-exempt organizations generally do not pay any income tax, the law was amended to further disallow an individual taxpayer a tax deduction for the portion of annual dues paid to a tax-exempt organization that is attributable to any lobbying or political activities of the organization. To assist association members in knowing what portion is and what portion is not deductible when paying their dues, the law requires organizations to annually disclose to the IRS and to the individual members the amount of money spent on political activities by the organization.

However, certain exceptions to the disclosure rules are provided in the tax code and an organization is not required to disclose such information if (1) political activities do not exceed $2,000 a year; (2) the organization elects to pay a proxy tax on the nondeductible portion in order to avoid providing disclosure; or (3) substantially all of the individual members do not deduct their annual dues payments on their tax returns as itemized deductions.

In 1995, the IRS put forth an interpretation of this third exception and explained what they believe Congress meant by substantially all dues are not deductible. In Revenue Procedure 95-35, the IRS let all but three categories of tax-exempt organizations off the hook from the disclosure rules. The three that must comply are: section 501(c)(4) organizations that are not veterans organizations, 501(c)(5) agricultural and horticultural organizations, and 501(c)(6) organizations.

Interestingly, Mr. President, the IRS choose to grant labor unions, which are also 501(c)(5) organizations, a complete exemption from the lobbying disclosure rules. Thus, unions do not have to inform their members how much of their dues are used for political purposes.

I am sure that my colleagues see the obvious problems in this. It is simply not fair that the IRS would treat a labor union preferentially. Why are unions exempt and not, for example, farm cooperatives?

Mr. President, it seems to me that the Clinton administration has twisted the law to favor their friends in union leadership at the expense of the right to know for the rank and file. Let me reiterate this point: the law says clearly that tax-exempt organizations must disclose their political and lobbying activities. It is only the IRS interpretation that enables unions to duck this disclosure requirement and still benefit from tax-exempt status.

Second, I find it outrageous that union leadership are able to coerce dues from workers in many states as a condition of employment. But, it adds insult to injury that those dues can be used for political purposes without the knowledge, let alone permission, of the rank and file.

The Supreme Court, in 1988, in *Beck* v. *Communication Workers of America*, declared that workers were entitled to know how much of their dues were being directed to political uses and to receive a refund for that portion of dues paid. This seems like a simple common sense solution to this violation of free speech rights. However, in one of his first acts upon taking office in 1993, President Clinton rescinded the executive order enforcing this decision of the Supreme Court.

Mr. President, in the *Beck* case, for example, it was found that only 21 percent of the dues collected by the Communications Workers of America went for bargaining-related activities. This meant that Harry Beck, the former Maryland union shop steward who spent 13 years fighting his case in the courts, was entitled to get a substantial rebate of his dues, plus interest. Yet, this case is merely illustrative of a widespread injustice. Where is the fairness in requiring a worker to contribute to a political cause or a lobbying effort with which he or she does not agree?

Forcing people to contribute portions of their earnings to political causes they oppose violates their First Amendment rights. In his *Beck* opinion, Justice William Brennen cited Thomas Jefferson's view that forcing people to finance opinions they disagree with was "sinful and tyrannical."

Mr. President, it is often a requirement or a condition of employment for workers to be members of a labor union. Yet, this requirement is often very costly. Union dues can run from about $300 to over $1,000 a year. Now, I am the first to acknowledge that unions play an important role in employee-employer relations. I will wager that I am one of the few members of this body who was ever a member of a union. And, that experience, perhaps, is the reason I believe so strongly that the rank and file have rights that must be protected.

Citizens of a free country ought to be free to spend their own money on the political causes and candidates they wish to support. In 1992, union officials admit to having spent at least $92 million on political contributions and expenses. In-kind contributions could be 3 to 5 times that amount. In other words, organized labor may have actually spent from $300 million to $500 million on political activities in 1992. While some union members would approve of these expenditures, some definitely would not.

But, I want to be absolutely clear that the bill I am introducing today does *not* affect any provision in the National Labor Relations Act, the ability of unions to establish closed or agency shops in any state where they are currently permitted, or the ability of unions to assess dues or collect fees. Those are debates for another day.

Rather, this bill deals only with the obligation of labor unions, as tax exempt organizations, to disclose political and lobbying activities to their members. All union members deserve to know how their organizations spend their money. Moreover, because these are tax-exempt organizations, the taxpayers deserve to know what they are subsidizing.

While union members are certainly capable of reading a headline like, "Union leaders commit $35 million to Democrats," they may wish to have a more comprehensive disclosure of political and lobbying activity financed with their dues—and I cannot blame them one bit..

Mr. President, polling data suggests that union members would prefer that

their unions not engage in partisan political campaign activities at all. But, by an overwhelming 84 percent to 9 percent margin, according to a survey by Luntz and Associates, union members want to force their union leaders to explain what happens to their dues. They simply want to know where the money is spent and why. This seems utterly reasonable and fair to me.

Furthermore, only 19 percent of union members know that they can request a refund if they do not agree with an ideological position and/or political position of their particular union. When told that they have the right to a refund, 20 percent say they would "definitely" request their money back, and another 20 percent would be "very likely" to request a refund.

Mr. President, let me turn to the issue of deductibility.

Currently, an individual union member may deduct his union dues only if the amount exceed two percent of his or her adjusted gross income [AGI]. For all intents and purposes, this means that union dues and fees are not deductible at all for most workers, even if such dues and fees are required as a condition of employment.

I believe that union dues and fees, especially to the extent that so many workers are forced to pay them, ought to be fully deductible for those who itemize deductions. Therefore, I am proposing this bill to remove the two percent threshold and to permit union members and fee payers to deduct that portion of their dues and fees that is not used for political or lobbying activities. This conforms union dues and fees with all other sorts of business expenses and contributions to tax-exempt organizations.

Moreover, this deduction is a form of tax break that could put real money back in the pockets of American workers.

Mr. President, to summarize, if my bill is enacted into law, tax-exempt organizations would be required—really required—to disclose to their members the amount of their political and lobbying activities. It goes further by allowing full deductibility of membership dues to the extent they are used for nonpolitical or lobbying activities.

Mr President, this proposal is a step in the direction of campaign finance reform. One important objective of campaign finance reform should be to return political power to individual citizens and to diminish the influence of large organizational special interests.

Well, Mr. President, knowledge has always been power. To return power to individual voters, they need to know where their dollars are going. If my bill is passed, workers will no longer be in the dark about their dues. At the same time they will be getting a tax break and possibly an increase in their take-home pay. I believe this is the fair and honest thing to do. I urge all my colleagues to support and cosponsor this bill.

By Mr. HATCH (for himself, Mr. LIEBERMAN, Mr. GRASSLEY, and Mr. BREAUX):

S. 66. A bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes; to the Committee on Finance.

THE CAPITAL FORMATION ACT OF 1997

Mr. HATCH. Mr. President, I am pleased to be joined by Senators LIEBERMAN, GRASSLEY, and BREAUX in introducing the Capital Formation Act of 1997.

Mr. President, reducing the high rate on capital gains has long been a priority of mine. During the last Congress, I joined my good friend, the chairman of the House Ways and Means Committee, Bill Archer, in sponsoring the Archer-Hatch capital gains bill. Then later in the session Senator LIEBERMAN and I offered a bipartisan capital gains tax reduction bill. The Hatch/Lieberman bill, S. 959, contained the same 50 percent deduction for capital gains as well as an enhanced incentive for investments in newly issued stock of small corporations. This measure was supported by 45 senators, and we were pleased that its provisions were included in the Balanced Budget Act of 1995.

The bill we are introducing today is substantially the same. Our bill combines two important elements of capital gains relief with a broad based tax cut and a targeted incentive to give an extra push for newly formed or expanding small businesses. Like the capital gains measure that passed the House and Senate during the last Congress, our bill would allow individual taxpayers to deduct 50 percent of any net capital gain. This means that the top capital gains tax rate for individuals would be 19.8 percent. Also, it grants a 25-percent maximum capital gains tax rate for corporations. Our bill also includes an important provision that would allow homeowners who sell their personal residences at a loss to take a capital gains deduction.

A provision that is not in our bill is a provision for indexing assets. Many of our Senate colleagues have expressed concern that indexing capital assets would result in undue complexity and possibly lead to a resurgence of tax shelters. While I continue to support the concept of indexing capital assets to prevent the taxation of inflationary gains, I believe even more strongly that capital gains tax relief is essential for our long-term economic growth. Therefore, in an effort to streamline this bill and expedite its passage, we have omitted the indexing provisions. I hope that some form of indexing can be developed that will achieve the goals of indexing without adding undue complexity or the potential for abuse.

In addition to the broad-based provisions listed above, our bill also includes some extra capital gains incentives targeted to individuals and corporations who are willing to invest in small businesses. We see this add-on as an inducement for investors to provide the capital needed to help small businesses get established and to expand.

Mr. President, this additional targeted incentive works as follows: If an investor buys newly issued stock of a qualified small business, which is defined as one with up to $100 million in assets, and holds that stock for three or more years, he or she can deduct 75 percent of the gain on the sale of that stock, rather than just the 50 percent deduction provided for other capital gains.

In addition, any time after the end of the 3 year period, if the investor decides to sell the stock of one qualified small business and invest in another qualified small business, he or she can completely defer the gain on the sale of the first stock and not pay taxes on the gain until the second stock is sold. In essence, the investor is allowed to roll over the gain into the new stock until he or she sells the stock and cashes out the assets. We think that this additional incentive will make a tremendous amount of capital available for new and expanding small businesses in this country.

In particular, these special incentives should really make a difference in the electronics, biotechnology, and other high tech industries that are so important to our economy and to our future. The software and medical device industries in Utah are perfect examples of how these industries have transformed our economy. While these provisions are not limited to high tech companies by any means, these are the types of businesses that are most likely to use them because it is so hard to attract capital for these higher risk ventures. In addition, many start-up companies have large research and development needs. With the uncertainty of the R&E tax credit, this bill will give investors an incentive to fund high risk research companies that may be a Novell or Thiokol of tomorrow.

Mr. President, our economy is becoming more connected to the global marketplace every day. And, it is vital for us to realize that capital flows across national boundaries very rapidly. Therefore, we need to be concerned with how our trading partners tax capital and investment income.

Unfortunately, the U.S. has the highest tax rate on individual capital gains of all of the G–7 nations, except the U.K. And, even in the U.K., individuals can take advantage of indexing to alleviate capital gains caused solely by inflation. For example, Germany totally exempts long-term capital gains

on securities. In Japan, investors pay the lesser of 1 percent of the sales price or 20 percent of the net gain. I think it is no coincidence, Mr. President, that Germany's saving rate is twice ours, and Japan's is three times as high as ours. In order to stay competitive in the world, it is vital that our tax laws provide the proper incentive to attract the capital we need here in the U.S.

We are aware that some of the opponents of capital gains tax reductions have asserted that such changes would inordinately benefit the wealthy, leaving little or no tax relief for the lower and middle income classes. Nothing could be further from the truth. In fact, capital gains taxation affects every homeowner, every employee who participates in a stock purchase plan, or every senior citizen who relies on income from mutual funds for their basic needs during retirement. A capital gains tax cut is for everybody.

It is interesting to note how the current treatment of capital gains only gives preferential treatment to those taxpayers whose incomes lie in the highest tax brackets. Under the Capital Formation Act of 1997, the benefits will tilt decidedly toward the middle-income taxpayer. A married couple with $30,000 in taxable income who sells a capital asset would, under our bill, pay only a 7.5-percent tax on the capital gain. Further, this bill would slash the taxes retired seniors pay when they sell the assets they have accumulated for income during retirement.

I also believe there is a misperception about the term "capital asset." We tend to think of capital assets as something only wealthy persons have. In fact, a capital asset is a savings account—which we should all have—a piece of land, a savings bond, some stock your grandmother gave you, a mutual fund share, your house, your farm, your 1964 Mustang convertible, or any number of things that have monetary worth. It is misleading to imply that only "the wealthy" would benefit from this bill.

I want to elaborate on this point, Mr. President. Current law already provides a sizeable differential between ordinary income tax rates and capital gains tax rates for upper income taxpayers. The wealthiest among us pay up to 39.6 percent on ordinary income but only 28 percent on capital gains. We certainly believe that income tax rates are too high. And, for middle-income taxpayers in the 28 percent income tax bracket, there is no difference between their capital gains rate and their ordinary income rate. Thus, current law provides no tax incentive for middle income taxpayers to invest assets that may have capital gains. Our bill would correct this problem and give the largest percentage rate reduction to the lowest income taxpayers. For example, the rate for high income earners would change from 28 percent to 19.8 percent—a 8.2 percentage point reduction. Whereas, a middle income taxpayer—who is getting no benefit under current law—would be taxed at 14 percent—a 14 percentage point reduction.

Frankly, Mr. President, the introduction of a bipartisan capital gains bill couldn't come at a better time than now. Congress is in the midst of formulating a plan to balance the federal budget. The elements of this plan will have consequences far beyond this year or even beyond 2002 when we hope to achieve our balanced budget goal. Crucial to the achievement of a balanced budget is the underlying growth and strength of our economy. Small changes in the behavior of the economy can make or break our ability to put our fiscal house in order. Thus, especially now, we can ill afford to have our economy slow down and create an increased fear of future job insecurity. Both Republicans and Democrats alike can agree that the creation of new and secure jobs is imperative for a vibrant and growing economy.

This is where a reduction of the capital gains rate can be so important. By stimulating the economy and spurring job creation, a cut in the capital gains rate can stave off the downturn that may be on its way.

Many Americans have expressed concern about the wisdom of a tax reduction while we are trying to balance the budget. However, Mr. President, we see this bill as a change that will help us balance the budget. The evidence clearly shows that a cut in the capital gains tax rate will increase, not decrease, revenue to the Treasury. During the period from 1978 to 1985, the tax rate on capital gains was cut from almost 50 percent to 20 percent. Over this same period, however, tax receipts increased from $9.1 billion to $26.5 billion. The opposite occurred after the 1986 Tax Reform Act raised the capital gains tax rate. The higher rate resulted in less revenue.

Mr. President, the capital gains tax is really a tax on realizing the American dream. For those Americans who have planted seeds in small or large companies, family farms, or other investments, and who have been fortunate enough and worked hard enough to see them grow, the capital gains tax is a tax on success. It is an additional tax on the reward for taking risks. The American dream is not dead; it's just that we have been taxing it away.

I urge my colleagues on both sides of the aisle to take a close look at this bill. We believe it offers a solid plan to help us achieve our goal of a brighter future for our children and grandchildren. When it comes down to it, jobs, economic growth, and entrepreneurship are not partisan issues. They are American issues.

Mr. President, I ask unanimous consent that the text and a summary of the bill be printed in the RECORD.

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

S. 66

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Capital Formation Act of 1997".

(b) REFERENCE TO 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—CAPITAL GAINS REFORM

Subtitle A—Capital Gains Deduction for Taxpayers Other Than Corporations

SEC. 101. CAPITAL GAINS DEDUCTION.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by redesignating section 1202 as section 1203 and by inserting after section 1201 the following:

"SEC. 1202. CAPITAL GAINS DEDUCTION.

"(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a net capital gain, 50 percent of such gain shall be a deduction from gross income.

"(b) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

"(c) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

"(d) TRANSITIONAL RULE.—

"(1) IN GENERAL.—In the case of a taxable year which includes January 1, 1997—

"(A) the amount taken into account as the net capital gain under subsection (a) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year on or after January 1, 1997, and

"(B) if the net capital gain for such year exceeds the amount taken into account under subsection (a), the rate of tax imposed by section 1 on such excess shall not exceed 28 percent.

"(2) SPECIAL RULES FOR PASS-THRU ENTITIES.—

"(A) IN GENERAL.—In applying paragraph (1) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

"(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

"(i) a regulated investment company,

"(ii) a real estate investment trust,

"(iii) an S corporation,

"(iv) a partnership,

"(v) an estate or trust, and

"(vi) a common trust fund.".

(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) is amended by inserting after paragraph (15) the following:

"(16) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202.".

(c) CONFORMING AMENDMENTS.—

(1) Section 1 is amended by striking subsection (h).

(2) Section 170(e)(1) is amended by striking "the amount of gain" in the material following subparagraph (B)(ii) and inserting "50 percent ($^{25}/_{35}$ in the case of a corporation) of the amount of gain".

(3) Section 172(d)(2)(B) is amended to read as follows:

"(B) the deduction under section 1202 and the exclusion under section 1203 shall not be allowed.".

(4) The last sentence of section 453A(c)(3) is amended by striking all that follows "long-term capital gain," and inserting "the maximum rate on net capital gain under section 1201 or the deduction under section 1202 (whichever is appropriate) shall be taken into account.".

(5) Section 642(c)(4) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year or gain described in section 1203(a), proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses) or for the exclusion allowable to the estate or trust under section 1203 (relating to exclusion for gain from certain small business stock). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).".

(6) The last sentence of section 643(a)(3) is amended to read as follows: "The deduction under section 1202 (relating to deduction of excess of capital gains over capital losses) and the exclusion under section 1203 (relating to exclusion for gain from certain small business stock) shall not be taken into account.".

(7) Section 643(a)(6)(C) is amended by inserting "(i)" before "there shall" and by inserting before the period ", and (ii) the deduction under section 1202 (relating to capital gains deduction) and the exclusion under section 1203 (relating to exclusion for gain from certain small business stock) shall not be taken into account".

(8) Section 691(c)(4) is amended by striking "sections 1(h), 1201, 1202, and 1211" and inserting "sections 1201, 1202, 1203, and 1211".

(9) The second sentence of section 871(a)(2) is amended by inserting "or 1203" after "section 1202".

(10)(A) Section 904(b)(2) is amended by striking subparagraph (A), by redesignating subparagraph (B) as subparagraph (A), and by inserting after subparagraph (A) (as so redesignated) the following:

"(B) OTHER TAXPAYERS.—In the case of a taxpayer other than a corporation, taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.".

(B) Section 904(b)(2)(A), as so redesignated, is amended—

(i) by striking all that precedes clause (i) and inserting the following:

"(A) CORPORATIONS.—In the case of a corporation—", and

(ii) by striking in clause (i) "in lieu of applying subparagraph (A),".

(C) Section 904(b)(3) is amended by striking subparagraphs (D) and (E) and inserting the following:

"(D) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).".

(D) Section 593(b)(2)(D)(v) is amended—

(i) by striking "if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year,"; and

(ii) by striking "section 904(b)(3)(E)" and inserting "section 904(b)(3)(D)".

(11) The last sentence of section 1044(d) is amended by striking "1202" and inserting "1203".

(12)(A) Section 1211(b)(2) is amended to read as follows:

"(2) the sum of—

"(A) the excess of the net short-term capital loss over the net long-term capital gain, and

"(B) one-half of the excess of the net long-term capital loss over the net short-term capital gain.".

(B) So much of section 1212(b)(2) as precedes subparagraph (B) thereof is amended to read as follows:

"(2) SPECIAL RULES.—

"(A) ADJUSTMENTS.—

"(i) For purposes of determining the excess referred to in paragraph (1)(A), there shall be treated as short-term capital gain in the taxable year an amount equal to the lesser of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

"(II) the adjusted taxable income for such taxable year.

"(ii) For purposes of determining the excess referred to in paragraph (1)(B), there shall be treated as short-term capital gain in the taxable year an amount equal to the sum of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) or the adjusted taxable income for such taxable year, whichever is the least, plus

"(II) the excess of the amount described in subclause (I) over the net short-term capital loss (determined without regard to this subsection) for such year.".

(C) Section 1212(b) is amended by adding at the end the following:

"(3) TRANSITIONAL RULE.—In the case of any amount which, under this subsection and section 1211(b) (as in effect for taxable years beginning before January 1, 1998), is treated as a capital loss in the first taxable year beginning after December 31, 1997, paragraph (2) and section 1211(b) (as so in effect) shall apply (and paragraph (2) and section 1211(b) as in effect for taxable years beginning after December 31, 1997, shall not apply) to the extent such amount exceeds the total of any capital gain net income (determined without regard to this subsection) for taxable years beginning after December 31, 1997.".

(13) Section 1402(i)(1) is amended by inserting ", and the deduction provided by section 1202 and the exclusion provided by section 1203 shall not apply" before the period at the end thereof.

(14) Section 1445(e) is amended—

(A) in paragraph (1), by striking "35 percent (or, to the extent provided in regulations, 28 percent)" and inserting "25 percent (or, to the extent provided in regulations, 19.8 percent)"; and

(B) in paragraph (2), by striking "35 percent" and inserting "25 percent".

(15)(A) The second sentence of section 7518(g)(6)(A) is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) applies"; and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (25 percent".

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) of such Code applies"; and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (25 percent".

(16) The table of sections for part I of subchapter P of chapter 1 is amended by striking the item relating to section 1202 and by inserting after the item relating to section 1201 the following:

"Sec. 1202. Capital gains deduction.
"Sec. 1203. 50-percent exclusion for gain from certain small business stock.".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section apply to taxable years ending after December 31, 1996.

(2) CONTRIBUTIONS.—The amendment made by subsection (c)(2) applies to contributions on or after January 1, 1997.

(3) USE OF LONG-TERM LOSSES.—The amendments made by subsection (c)(12) apply to taxable years beginning after December 31, 1997.

(4) WITHHOLDING.—The amendments made by subsection (c)(14) apply only to amounts paid after the date of enactment of this Act.

Subtitle B—Capital Gains Reduction for Corporations

SEC. 111. REDUCTION OF ALTERNATIVE CAPITAL GAIN TAX FOR CORPORATIONS.

(a) IN GENERAL.—Section 1201 is amended to read as follows:

"SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS.

"(a) GENERAL RULE.—If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, and 831 (whichever is applicable), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

"(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(2) a tax of 25 percent of the net capital gain.

"(b) TRANSITIONAL RULE.—

"(1) IN GENERAL.—In the case of any taxable year ending after December 31, 1996, and beginning before January 1, 1998, in applying subsection (a), net capital gain for such taxable year shall not exceed such net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year after December 31, 1996.

"(2) SPECIAL RULE FOR PASS-THRU ENTITIES.—Section 1202(d)(2) shall apply for purposes of paragraph (1).

"(c) CROSS REFERENCES.—

"For computation of the alternative tax—

"(1) in the case of life insurance companies, see section 801(a)(2),

"(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D), and

"(3) in the case of real estate investment trusts, see section 857(b)(3)(A).".

(b) CONFORMING AMENDMENT.—Section 852(b)(3)(D)(iii) is amended by striking "65 percent" and inserting "75 percent".

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years ending after December 31, 1996.

Subtitle C—Capital Loss Deduction Allowed With Respect to Sale or Exchange of Principal Residence

SEC. 121. CAPITAL LOSS DEDUCTION ALLOWED WITH RESPECT TO SALE OR EXCHANGE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Section 165(c) (relating to limitation on losses of individuals) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "; and", and by adding at the end the following:

"(4) losses arising from the sale or exchange of the principal residence (within the meaning of section 1034) of the taxpayer.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to sales and exchanges after December 31, 1996, in taxable years ending after such date.

TITLE II—SMALL BUSINESS VENTURE CAPITAL STOCK

SEC. 201. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) INCREASE IN EXCLUSION PERCENTAGE.—

(1) IN GENERAL.—Section 1203(a), as redesignated by section 101, is amended—

(A) by striking "50 percent" and inserting "75 percent"; and

(B) in the heading, by striking "50-PERCENT" and inserting "PARTIAL".

(2) CONFORMING AMENDMENTS.—

(A) Section 1203, as so redesignated, is amended by adding at the end the following:

"(*l*) CROSS REFERENCE.—

"For treatment of eligible gain not excluded under subsection (a), see sections 1201 and 1202.".

(B) The heading for section 1203, as so redesignated, is amended by striking "50-PERCENT" and inserting "PARTIAL".

(C) The table of sections for part I of subchapter P of chapter 1, as amended by section 101(d), is amended by striking "50-percent" in the item relating to section 1203 and inserting "Partial".

(b) REDUCTION IN HOLDING PERIOD.—Subsection (a) of section 1202 is amended by striking "5 years" and inserting "3 years".

(c) EXCLUSION AVAILABLE TO CORPORATIONS.—

(1) IN GENERAL.—Section 1203(a), as redesignated by section 101, is amended by striking "other than a corporation".

(2) CONFORMING AMENDMENT.—Section 1203(c), as so redesignated, is amended by adding at the end the following:

"(4) STOCK HELD AMONG MEMBERS OF CONTROLLED GROUP NOT ELIGIBLE.—Stock of a member of a parent-subsidiary controlled group (as defined in subsection (d)(3)) shall not be treated as qualified small business stock while held by another member of such group.".

(d) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) IN GENERAL.—Section 57(a) is amended by striking paragraph (7).

(2) CONFORMING AMENDMENT.—Section 53(d)(1)(B)(ii)(II) is amended by striking ", (5), and (7)" and inserting "and (5)".

(e) STOCK OF LARGER BUSINESSES ELIGIBLE FOR EXCLUSION.—

(1) IN GENERAL.—Section 1203(d)(1), as redesignated by section 101, is amended by striking "$50,000,000" each place it appears and inserting "$100,000,000".

(2) INFLATION ADJUSTMENT.—Section 1203(d), as so redesignated, is amended by adding at the end the following:

"(4) INFLATION ADJUSTMENT OF ASSET LIMITATION.—In the case of stock issued in any calendar year after 1998, the $100,000,000 amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.".

(f) REPEAL OF PER-ISSUER LIMITATION.—Section 1203, as redesignated by section 101, is amended by striking subsection (b).

(g) OTHER MODIFICATIONS.—

(1) REPEAL OF WORKING CAPITAL LIMITATION.—Section 1203(e)(6), as redesignated by section 101, is amended—

(A) in subparagraph (B), by striking "2 years" and inserting "5 years"; and

(B) by striking the last sentence.

(2) EXCEPTION FROM REDEMPTION RULES WHERE BUSINESS PURPOSE.—Section 1203(c)(3), as so redesignated, is amended by adding at the end the following:

"(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitations of this section.".

(h) QUALIFIED TRADE OR BUSINESS.—Section 1203(e)(3), as redesignated by section 101, is amended by inserting "and" at the end of subparagraph (C), by striking ", and" at the end of subparagraph (D) and inserting a period, and by striking subparagraph (E).

(i) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section apply to stock issued after the date of enactment of this Act.

(2) SPECIAL RULE.—The amendments made by subsections (a), (c), (e), and (f) apply to stock issued after August 10, 1993.

SEC. 202. ROLLOVER OF GAIN FROM SALE OF QUALIFIED STOCK.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 is amended by adding at the end the following:

"SEC. 1045. ROLLOVER OF GAIN FROM QUALIFIED SMALL BUSINESS STOCK TO ANOTHER QUALIFIED SMALL BUSINESS STOCK.

"(a) NONRECOGNITION OF GAIN.—In the case of any sale of qualified small business stock with respect to which the taxpayer elects the application of this section, eligible gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

"(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

"(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED SMALL BUSINESS STOCK.—The term 'qualified small business stock' has the meaning given such term by section 1203(c).

"(2) ELIGIBLE GAIN.—The term 'eligible gain' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

"(3) PURCHASE.—A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

"(4) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

"(c) SPECIAL RULES FOR TREATMENT OF REPLACEMENT STOCK.—

"(1) HOLDING PERIOD FOR ACCRUED GAIN.—For purposes of this chapter, gain from the disposition of any replacement qualified small business stock shall be treated as gain from the sale or exchange of qualified small business stock held more than 5 years to the extent that the amount of such gain does not exceed the amount of the reduction in the basis of such stock by reason of subsection (b)(4).

"(2) TACKING OF HOLDING PERIOD FOR PURPOSES OF DEFERRAL.—Solely for purposes of applying this section, if any replacement qualified small business stock is disposed of before the taxpayer has held such stock for more than 5 years, gain from such stock shall be treated eligible gain for purposes of subsection (a).

"(3) REPLACEMENT QUALIFIED SMALL BUSINESS STOCK.—For purposes of this subsection, the term 'replacement qualified small business stock' means any qualified small business stock the basis of which was reduced under subsection (b)(4).".

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a)(23) is amended—

(A) by striking "or 1044" and inserting ", 1044, or 1045"; and

(B) by striking "or 1044(d)" and inserting ", 1044(d), or 1045(b)(4)".

(2) The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end the following:

"Sec. 1045. Rollover of gain from qualified small business stock to another qualified small business stock.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to stock sold or exchanged after the date of enactment of this Act.

SUMMARY OF CAPITAL FORMATION ACT OF 1997

The Capital Formation Act of 1997 would reduce the tax rate on capital gains and encourage investment in new and growing business enterprises through the following provisions:

I. Broad-Based Tax Relief:

(1) Individual taxpayers would be allowed a deduction of 50 percent of any net capital gain. The top effective rate on capital gains would thus be 19.8 percent.

(2) Corporations would have a maximum capital gains tax rate of 25 percent.

(3) Capital loss treatment would be allowed with respect to the sale of a taxpayer's principal residence.

(4) Indexing of capital assets would not be included.

(5) Would be effective for taxable years ending after December 31, 1996.

II. Targeted Incentives to Invest in Small Business Enterprises:

(1) Provides an exclusion of 75 percent of capital gains from the sale of investments in qualified small business stock held for more than three years.

(2) Allows 100 percent deferral of capital gains tax, after the three year period, if proceeds from the sale of qualified small business stock are rolled over within 60 days into another qualified small business stock. Gains accrued after the rollover would qualify for a 50 percent deduction if held for more than one year, 75 percent exclusion if held for more than another three years, or, at any time, could be rolled over yet again into another qualified small business stock for 100 percent deferral.

(3) Would be effective upon date of enactment.

Example: A taxpayer buys qualified small business stock in 1997 for $10,000. She sells the stock in 2001 for $20,000. She would be allowed to exclude 75 percent of the gain, or $7,500, and then deduct 50 percent of the remaining gain of $2,500. Thus, she would pay tax on only $1,250. Or, if she chose to roll over the $20,000 proceed from the sale into another qualified small business stock within 60 days, she would defer all tax until she ultimately sold the second stock.

Qualified small business stock is defined as newly issued stock of corporations with up to $100 million in assets and is an expansion of the current law targeted small business capital gains exclusion added by the 1993 tax act. The changes in the targeted small business stock incentive from current law would include:

(1) Allow corporations to participate.

(2) Remove the current law per-issuer limitation.

(3) Expand the working capital limitation.

Mr. LIEBERMAN. Mr. President, I am proud to join Senator HATCH in introducing this important capital gains legislation today.

This bill is nearly identical to S. 959, legislation that I introduced with Senator HATCH in the last Congress. Ultimately that bill had over 40 cosponsors. A variation of that bill was included in the broader budget and tax bill which was approved by the Congress in 1995 but failed to become law. In addition, a version of S. 959 was included in the Centrist Coalition budget, a budget which was crafted by a group of 22 Senators evenly divided between Republicans and Democrats. That package was offered on the floor of the Senate in May of 1996 and received a very respectable 46 votes.

The capital gains bill we are introducing today contains a broad-based capital gains cut which would allow individuals to deduct 50 percent of their capital gains and a corporate rate of 25 percent. It also has a targeted provision which provides a "sweetener" for investments in qualified small businesses. In addition, it allows taxpayers to deduct losses on the sale of a principal residence, something which is very important in places like my home state of Connecticut as well as in California and Texas.

This bill gives people at all income levels a reason to put their money in places where that money will help businesses start and grow and that means more jobs for Americans and more economic prosperity for our country. The benefits of this capital gains cut will not flow just to people of wealth. Anyone who has stock, who has money invested in a mutual fund, who owns a home, who has a stock option plan at work, has a stake in capital gains tax relief. This means millions and millions of middle-class American families stand to benefit from this legislation. I often cite data on employee stock options and stock purchase plans in talking about stakeholders in a capital gains cut. A recent count showed that over three hundred American companies with over seven million workers offered these plans. Each of those workers and their spouses and their children stand to gain from this legislation.

This capital gains bill rewards those people who are willing to invest their money and not spend it. It rewards people who put their money in places where it will add to our national pool of savings. Businesses can draw on this pool of savings to meet their capital needs, expand their businesses and hire more workers. The 1995 Nobel Prize winner in Economics, Robert Lucas, had this to say about capital gains taxes in the fall of 1995: "When I left graduate school in 1963, I believed that the single most desirable change in the U.S. tax structure would be the taxation of gains as ordinary income. I now believe that neither capital gains nor any of the income from capital should be taxed at all." Professor Lucas went on to say that his analysis shows that even under conservative assumptions, eliminating capital gains taxes would increase available capital in this country by about 35 percent. While we reduce not eliminate the tax on capital in this country, we hope you will consider joining us in cosponsoring this important legislation.

I would also like to point out that this bill contains a targeted sweetener for investments in qualified small businesses. This is an attempt to promote investments in small businesses, the firms that are driving job creation in our economy. We expect these provisions to be very helpful to the kinds of small businesses we need for our future, the high technology companies that will be the source of new jobs in the next century. The bill provides a 75 percent exclusion of capital gains from sales of investment in qualified small business stock held more than three years. In addition, it allows a 100 percent deferral of capital gains, after the three year period, if proceeds from the sale of qualified small business stock are rolled over within 60 days into another qualified small business stock. If the taxpayer continues to roll into qualified stock, and holds that stock for at least a year, this deferral could continue indefinitely.

Before I go any further, I must give credit where credit is due. The targeted provisions of this legislation build on the fine work of Senator DALE BUMPERS, who has been a leader in providing incentives for start-up businesses to attract capital. He worked mightily to have a targeted incentive piece included in the 1993 reconciliation bill and he succeeded. The legislation we are introducing today builds on, and we hope, improves, on that targeted incentive.

I would also like to note that I am also joining Minority Leader DASCHLE today as a cosponsor of his Targeted Investment Incentive and Economic Growth Act of 1997. That proposal contains a capital gains rollover provision which contains features of a targeted rollover piece I introduced in the last Congress, S. 1053, as well as features from the targeted section of the bill I am introducing with Senator HATCH today. Senator DASCHLE's legislation is also very helpful insofar as he improves upon the targeted capital gains bill we passed in 1993, much in the same way the broader capital gains bill being introduced today does.

I am also delighted that Senator DASCHLE's bill incorporates a version of a bill I introduced in June of 1993, The Equity Expansion Act of 1993. That bill created a preferred type of stock options for companies willing to offer stock options to a wide cross section of their employees. Under current law, taxpayers are taxed on a stock option when they exercise their right to buy stock, not when they sell that stock. The perverse effect of taxing this paper gain is that many people feel compelled to sell their stock when they exercise their option to buy it in order to pay the tax. The Equity Expansion Act began with the premise that we ought to encourage people to hold their investment in their company. It changed the taxable event from the date of exercise to the date of sale for a new class of stock options known as performance-based stock options [PSOs]. Under my bill, as under the bill being introduced by the Minority Leader, in order to qualify for this new class of stock options, at least half of a company's stock options would have to go to non-highly compensated employees.

In addition, 50 percent of any capital gain on these PSO's would be exempt from tax if they are held by the taxpayer for more than two years. I hope this will prove a powerful incentive for employees to buy and hold the investments they are making in their company.

In closing, I applaud both Senator HATCH and Minority Leader DASCHLE, in their efforts to promote economic growth by changing the way we tax investment in this country. They have done yeoman's work on this issue and I hope that we will be able to move forward in a bipartisan way to make these

incentives a reality in the very near future.

By Ms. SNOWE:

S. 67. A bill to amend the Public Health Service Act to extend the program of research on breast cancer; to the Committee on Labor and Human Resources.

THE BREAST CANCER RESEARCH EXTENSION ACT OF 1997

Ms. SNOWE. Mr. President, I am extremely pleased that one of the first resolutions introduced in the 105th Congress by the Republican leadership will significantly increase biomedical research funding at NIH. I truly believe that this is a momentous occasion which will reap enormous benefits for all Americans. Building on this, I rise to introduce legislation which authorizes increased funding for breast cancer research.

Over the past 6 years, Congress has demonstrated an increased commitment to the fight against breast cancer. Back in 1991, less than $100 million was spent on breast cancer research. Since then, Congress has steadily increased this allocation. These increases have stimulated new and exciting research that has begun to unravel the mysteries of this devastating disease and is moving us closer to a cure. Today, we must send a message through our authorization level to scientists and research policymakers that we are committed to continued funding for this important research.

This increase in funding is necessary because breast cancer has reached crisis levels in America. In 1997, it is estimated that 180,200 new cases of breast cancer will be diagnosed in this country, and 43,900 women will die from this disease. Breast cancer is the most common form of cancer and the second leading cause of cancer deaths among American women. Today, over 2.6 million American women are living with this disease. In my home State of Maine, it is the most commonly diagnosed cancer among women, representing more than 30 percent of all new cancers in Maine women.

In addition to these enormous human costs, breast cancer also exacts a heavy financial toll—over $6 billion of our health care dollars are spent on breast cancer annually.

Today, however, there is cause for hope. Recent scientific progress made in the fight to conquer breast cancer is encouraging. Researchers have isolated the genes responsible for inherited breast cancer, and are beginning to understand the mechanism of the cancer cell itself. It is imperative that we capitalize upon these advances by continuing to support the scientists investigating this disease and their innovative research.

For this reason, my bill increases the fiscal year 1998 funding authorization level for breast cancer research to $590 million. This level represents the funding level scientists believe is necessary to make progress against this disease. This increased funding will contribute substantially toward solving the mysteries surrounding breast cancer. Our continued investment will save countless lives and health care dollars, and prevent undue suffering in millions of American women and families.

On behalf of the 2.6 million women living with breast cancer, I urge my colleagues to support this important bill.

By Mr. KYL:

S. 68. A bill to establish a commission to study the impact on voter turnout of making the deadline for filing Federal income tax returns conform to the date of Federal elections; to the Committee on Rules and Administration.

THE VOTER TURNOUT ENHANCEMENT STUDY COMMISSION ACT

Mr. KYL. Mr. President, I rise today to introduce the Voter Turnout Enhancement Study (VoTES) Commission Act, a bill designed to promote fiscal responsibility while helping to motivate more Americans to get to the polls on Election Day.

Mr. President, there are far too many people who, for one reason or another, choose not to exercise their right to vote. Although the reasons for their non-participation are undoubtedly varied, I suspect that it comes down to a perception that the choices they will make on the ballot will not make enough of a difference. One person, explaining why she chose not to participate in last November's election, told the Tucson Citizen that "it doesn't make any difference in my life who's President." This is a common enough sentiment that the election last fall posted one of the lowest voter turnout rates this century.

The motor voter bill that President Clinton championed a few years ago as a way to get out the vote apparently had little effect, other than to impose additional costs and mandates on State and local governments and their taxpayers. Although the bill did help increase voter registration, it did little, if anything, to motivate people to get to the polls. Like the woman in Tucson, too many people did not believe they had enough of a stake in the outcome of the election to take the time to vote.

Of course, people do have a stake in the outcome of every election. For one thing, the candidates chosen determine how much and for what purpose citizens are taxed. Most people I hear from say that is one area where the majority of those elected in the past failed to heed their concerns; they say their taxes are far too high.

One survey, which was published in Reader's Digest last year, found that more than two-thirds of Americans felt their own taxes were "too high." According to the poll, the maximum tax burden that Americans think a family of four should bear is 25 percent of its total income, even if the family's income is $200,000 per year.

But the Government takes far more than that. The average family—whose income is not $200,000, but something far less than that—now pays nearly 40 percent of its income in taxes. That is more than it spends on food, clothing, and shelter combined. People around the country are reacting to that heavy burden. The new faces in the House and Senate in recent years have been those of people pledging to oppose tax increases and support tax cuts. President Clinton won reelection, promising to support tax cuts. In some cases, people around the country have also placed limits on how much their State governments can tax them. But advocates of tax cuts, and tax limits themselves, can only achieve their purpose if people are willing to go to the polls to support them.

With that in mind, one way to demonstrate to people that their choices at the polls have a real effect on their lives would be to move the deadline for filing income tax returns to Election Day. That would give people a reason to vote by focusing their attention on the role of government—and how much it actually takes from them in taxes—on the day of the year that they have the greatest opportunity to influence change. Moving Tax Day to Election Day would probably result in more voter turnout and more change in Washington than anything else we could do. And of course, maximizing voter turnout is the best way to ensure that government officials heed the will of the people and make sound public policy.

The bill I am introducing today would provide for a thoughtful and thorough analysis of a change in the tax-filing deadline from April to November, its potential effect on voter turnout, as well as any economic impact it might have. The bill explicitly requires that an independent commission conduct a cost-benefit analysis—a requirement that Congress would be wise to impose routinely on legislative initiatives to separate the good ideas from the bad, and save taxpayers a lot of money in the process. A number of other cost-limiting provisions have been included to protect taxpayers' interests.

While just about every day of the year is celebrated by special interest groups around the country for the government largesse they receive, the taxpayers—the silent majority—have only one day of the year to focus on what that largesse means to them—how much it costs them—and that is Tax Day. I believe that it ought to coincide with Election Day.

Mr. President, I invite my colleagues to join me as cosponsors of this initiative, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 68

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 "Voter Turnout Enhancement Study Commission Act".

SECTION 2. FINDINGS.

(a) FINDINGS.—The Congress finds that:

(1) The right of citizens of the United States to vote is a fundamental right.

(2) It is the duty of federal, state, and local governments to promote the exercise of that right to vote to the greatest extent possible.

(3) The power to tax is a power that citizens of the United States only guardedly vest in their elected representatives to the federal, state, and local governments.

(4) The only regular contacts most Americans have with their government are the filing of their personal income tax returns and their participation in federal, state, and local elections.

(5) About 14 million individual income tax returns were filed in 1996, but only about 92 million Americans cast votes in that year's presidential election.

SECTION 3. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Voter Turnout Enhancement Study Commission (hereafter in this Act referred to as the 'Commission').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of nine members of whom—

(A) 3 shall be appointed by the President;

(B) 3 shall be appointed by the Majority Leader of the Senate, and

(C) 3 shall be appointed by the Speaker of the House of Representatives.

(c) PERIOD OF APPOINTMENT, VACANCIES.—Members shall be appointed no later than 30 days after the date of the enactment of this Act, and serve for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) COMPENSATION.—

(1) RATES OF PAY.—Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, include per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(e) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) MEETINGS.—After the initial meeting, the Commission shall meet at the call of the Chairman.

(g) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(h) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.

SECTION 4. DUTIES OF THE COMMISSION.

(a) STUDY.—

(1) IN GENERAL.—The Commission shall conduct a thorough study of all matters relating to the propriety of conforming the annual filing date for federal income tax returns with the date for holding biennial federal elections.

(2) MATTERS STUDIED.—The matters studied by the Commission shall include:

(A) whether establishment of a single date on which individuals can fulfill their obligations of citizenship as both electors and taxpayers would increase participation in federal, state, and local elections; and

(B) a cost-benefit analysis of any change in tax filing deadlines.

(b) REPORT.—No later than 12 months after the date of the enactment of this Act, the Commission shall submit a report to the President and the Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

SECTION 5. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such information as the Commission considers advisable to carry out the purposes of this Act.

(b) INFORMATION TO BE GATHERED.—The Commission shall obtain information from sources as it deems appropriate, including, but not limited to, taxpayers and their representatives, Governors, state and federal election officials, and the Commissioner of the Internal Revenue Service.

SECTION 6. TERMINATION OF THE COMMISSION.

The Commission shall terminate upon the submission of the report under section 4.

SECTION 7. AUTHORIZATION OF APPROPRIATIONS

There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

By Mr. KYL:

S. 69. A bill to amend the Internal Revenue Code of 1986 to allow a one-time election of the interest rate to be used to determine present value for purposes of pension cash-out restrictions, and for other purposes; to the Committee on Finance.

THE RETIREMENT PROTECTION ACT AMENDMENT ACT OF 1997

Mr. KYL. Mr. President, today I am introducing the Retirement Protection Act Amendments of 1997, a bill that will make a small but very important change in the pension-related provisions of the 1994 Uruguay Round Agreements Act.

Mr. President, the 1994 trade act made some very significant changes in pension law, including a modification in the interest rate used to calculate lump-sum distributions from defined benefit pension plans. The act required such plans to use the interest rate on 30-year Treasury securities, a rate that is proving too volatile for many retirement plans, particularly small plans.

Bruce Tempkin, an actuary and small business pension specialist at Louis Kravitz & Associates, described the effect of the change this way: "it is similar to taking out a variable-rate mortgage with no cap." You could find yourself getting ready to retire and expecting a lump-sum distribution of a given amount, but being told that you will actually get a third less because the government just mandated an interest-rate change. That is not only unfair, it discourages people from participating in private pension plans at the very time we need to be encouraging more such planning.

Recognizing the problem created by the 1994 law, legislators included language in the Small Business Job Protection Act last year to delay the effective date of the change for plans adopted and in effect before December 8, 1995. While I supported that delay, it is, at best, only a temporary solution.

The bill I am introducing today proposes a permanent solution. It would give plans a one-time option to choose a fixed interest rate between five percent and eight percent instead of the floating 30-year Treasury rate. That will make it easier for employers to plan for the required contributions, and for employers and employees alike to understand what their lump-sum benefits will ultimately be.

Mr. President, I invite my colleagues to join me as cosponsors of this initiative.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 69

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 "Retirement Protection Act Amendments of 1997".

SECTION 2. INTEREST RATE FOR DETERMINATION OF PRESENT VALUE FOR PURPOSES OF PENSION CASH-OUT RESTRICTIONS.

(a) IN GENERAL.—Subclause (II) of section 417(e)(3)(A)(ii) of the Internal Revenue Code of 1986 (relating to determination of present value) is amended by inserting ", or, at the irrevocable election of the plan, an annual interest rate specified in the plan, which may not be less than 5 percent nor more than 8 percent" after "prescribe".

(b) CONFORMING AMENDMENT.—Subclause (II) of section 205(g)(3)(A)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)(A)(ii)) is amended by inserting ", or, at the irrevocable election of the plan, an annual interest rate specified in the plan, which may not be less than 5 percent nor more than 8 percent" after "perscribe".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the amendments made by section 767 of the Uruguay Round Agreements Act.

By Mrs. BOXER (for herself, Mr. CHAFEE, Mr. REED, and Mr. DURBIN):

S. 70. A bill to apply the same quality and safety standards to domestically manufactured handguns that are currently applied to imported handguns; to the Committee on the Judiciary.

THE AMERICAN HANDGUN STANDARDS ACT

Mrs. BOXER. Mr. President, today I am to introducing the American Handgun Standards Act, a bill to require that handguns made in the United States meet the same quality and safety standards currently required of imported handguns. I am joined in this effort by Senators JOHN CHAFEE, JACK REED, and DICK DURBIN.

This bill is aimed at junk guns—the cheap, unsafe, and easily concealable handguns that are the criminals' clear favorite. Under our bill, junk guns will no longer be allowed to be manufactured or sold in the United States of America.

Nearly 30 years ago, Congress thought it had solved the problem of junk guns. Following the assassination of Senator Robert Kennedy, Congress passed the Gun Control Act of 1968, which banned the importation of junk guns. At the time, virtually all junk guns were imported, so restricting their domestic manufacture was not considered necessary.

To implement the new law, a quality and safety test was designed to measure a gun's suitability for import. Any foreign-made firearm that fails this test is, by definition, a junk gun, and it cannot be imported into the United States. This bill would require that all handguns made in the United States pass this common sense quality and safety test.

The Gun Control Act of 1968 created a junk gun double standard. Imported handguns were subjected to rigorous quality and safety standards, but guns made in the United States were left totally unregulated. Even toy guns are subject to quality and safety standards, but real handguns made in the United States are not required to meet even one.

The need for strong action is clear. Gunshots are now the leading cause of death among children in California. A child dies from gunfire every 92 minutes in the United States. A total of 39,720 people died from gunshot wounds in 1994 and approximately 250,000 Americans were injured. If we were in a war with this many casualties, there would be protests in the streets to end it. Let us end now, end this junk gun war.

For each person killed by gunfire, up to 8 are wounded. Many survivors of gun violence face debilitating injuries that require constant medical attention. The economic costs of gun violence are staggering. Direct medical costs alone cost Americans more than $20 billion. When indirect costs, such as lost productivity, are considered, the total economic cost of gun injuries soars to over $120 billion.

I first introduced junk gun legislation less than a year ago. Since then, I have received support so strong that it has surpassed even my most optimistic hopes. More than two dozen California cities and counties have passed local ordinances banning junk gun sales, and my legislation has been endorsed by the California Police Chiefs Association and 36 individual police chiefs and sheriffs representing some of California's largest cities, including Los Angeles, San Francisco, San Jose and Sacramento.

This legislation has generated such strong support in the law enforcement community because police know the danger of these junk guns first hand. They know that junk guns are the criminals' favorite firearms.

Junk guns are 3.4 times as likely to be used in crimes as are other firearms. And newly compiled ATF data shows that in 1996, the three firearms most frequently traced at crime scenes were junk guns made in America.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 70

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 "American Handgun Standards Act of 1997".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Gun Control Act of 1968 prohibited the importation of handguns that failed to meet minimum quality and safety standards;

(2) the Gun Control Act of 1968 did not impose any quality and safety standards on domestically produced handguns;

(3) domestically produced handguns are specifically exempted from oversight by the Consumer Product Safety Commission and are not required to meet any quality and safety standards;

(4) each year—

(A) gunshots kill more than 35,000 Americans and wound approximately 250,000;

(B) approximately 75,000 Americans are hospitalized for the treatment of gunshot wounds;

(C) Americans spend more than $20 billion for the medical treatment of gunshot wounds; and

(D) gun violence costs the United States economy a total of $135 billion;

(5) the disparate treatment of imported handguns and domestically produced handguns has led to the creation of a high-volume market for junk guns, defined as those handguns that fail to meet the quality and safety standards required of imported handguns;

(6) traffic in junk guns constitutes a serious threat to public welfare and to law enforcement officers;

(7) junk guns are used disproportionately in the commission of crimes; and

(8) the domestic manufacture, transfer, and possession of junk guns should be restricted.

SEC. 3. DEFINITION OF JUNK GUN.

Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(33)(A) The term 'junk gun' means any handgun that does not meet the standard imposed on imported handguns as described in section 925(d)(3), and any regulations issued under such section.".

SEC. 4. RESTRICTION ON MANUFACTURE, TRANSFER, AND POSSESSION OF CERTAIN HANDGUNS.

Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(y)(1) It shall be unlawful for a person to manufacture, transfer, or possess a junk gun that has been shipped or transported in interstate or foreign commerce.

"(2) Paragraph (1) shall not apply to—

"(A) the possession or transfer of a junk gun otherwise lawfully possessed under Federal law on the date of the enactment of the American Handgun Standards Act of 1997;

"(B) a firearm or replica of a firearm that has been rendered permanently inoperative;

"(C)(i) the manufacture for, transfer to, or possession by, the United States or a State or a department or agency of the United States, or a State or a department, agency, or political subdivision of a State, of a junk gun; or

"(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a junk gun for law enforcement purposes (whether on or off-duty);

"(D) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a junk gun for purposes of law enforcement (whether on or off-duty); or

"(E) the manufacture, transfer, or possession of a junk gun by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.".

By Mr. DASCHLE (for himself, Mr. KERRY, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REID, Mr. WYDEN, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. HARKIN, and Mr. LAUTENBERG):

S. 71. A bill to amend the Fair Labor Standards Act of 1938 and the Civil Rights Act of 1964 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes; to the Committee on Labor and Human Resources.

PAYCHECK FAIRNESS ACT

Mr. DASCHLE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 71

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 "Paycheck Fairness Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Women have entered the workforce in record numbers.

(2) Even in the 1990s, women earn significantly lower pay than men for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.

(3) The existence of such pay disparities—

(A) depresses the wages of working families who rely on the wages of all members of the family to make ends meet;

(B) prevents the optimum utilization of available labor resources;

(C) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of the several States;

(D) burdens commerce and the free flow of goods in commerce;

(E) constitutes an unfair method of competition in commerce;

(F) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and

(G) interferes with the orderly and fair marketing of goods in commerce.

(4)(A) Artificial barriers to the elimination of discrimination in the payment of wages on the basis of sex continue to exist more than 3 decades after the enactment of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

(B) Elimination of such barriers would have positive effects, including—

(i) providing a solution to problems in the economy created by unfair pay disparities;

(ii) substantially reducing the number of working women earning unfairly low wages, thereby reducing the dependence on public assistance; and

(iii) promoting stable families by enabling all family members to earn a fair rate of pay.

(5) Only with increased information about the provisions added by the Equal Pay Act of 1963 and generalized wage data, along with more effective remedies, will women recognize and enforce their rights to equal pay for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.

(6) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.

(a) NONRETALIATION PROVISION.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(1) by striking "or has" each place it appears and inserting "has"; and

(2) by inserting before the semicolon the following: ", or has inquired about, discussed, or otherwise disclosed the wages of the employee or another employee".

(b) ENHANCED PENALTIES.—Section 16(b) of such Act (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: "Any employer who violates section 6(d) shall additionally be liable for such compensatory or punitive damages as may be appropriate.";

(2) in the sentence beginning "An action to", by striking "either of the preceding sentences" and inserting "any of the preceding sentences of this subsection";

(3) in the sentence beginning "No employees shall", by striking "No employees" and inserting "Except with respect to class actions brought to enforce section 6(d), no employee";

(4) by inserting after such sentence the following: "Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure."; and

(5) in the sentence beginning "The court in"—

(A) by striking "in such action" and inserting "in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection"; and

(B) by inserting before the period the following: ", including expert fees".

(c) ACTION BY SECRETARY.—Section 16(c) of such Act (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting "or, in the case of a violation of section 6(d), additional compensatory or punitive damages," before "and the agreement"; and

(B) by inserting before the period the following: ", or such compensatory or punitive damages, as appropriate";

(2) in the second sentence, by inserting before the period the following: and, in the case of a violation of section 6(d), additional compensatory or punitive damages";

(3) in the third sentence, by striking "the first sentence" and inserting "the first or second sentence"; and

(4) in the last sentence, by inserting after "in the complaint" the following: "or becomes a party plaintiff in a class action brought to enforce section 6(d)".

SEC. 4. COLLECTION OF PAY INFORMATION BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4) is amended by adding at the end the following new subsection:

"(1)(1) The Commission shall, by regulation, require each employer who has 100 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year to maintain payroll records and to prepare and submit to the Commission reports containing information from the records. The reports shall contain pay information, analyzed by the race, sex, and national origin of the employees. The reports shall not disclose the pay information of an employee in a manner that permits the identification of the employee.

"(2) The third through fifth sentences of section 709(c) shall apply to employers, regulations, and records described in paragraph (1) in the same manner and to the same extent as the sentences apply to employers, regulations, and records described in such section.".

SEC. 5. TRAINING.

The Equal Employment Opportunity Commission, subject to the availability of funds appropriated under section 8(b), shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.

The Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women, including—

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the general public the findings resulting from studies and other materials, relating to eliminating the pay disparities;

(3) sponsoring and assisting State and community informational and educational programs;

(4) providing information to employers, labor organizations, professional associations, and other interested persons on the means of eliminating the pay disparities;

(5) recognizing and promoting the achievements of employers, labor organizations, and professional associations that have worked to eliminate the pay disparities; and

(6) convening a national summit to discuss, and consider approaches for rectifying, the pay disparities.

SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR PAY EQUITY IN THE WORKPLACE.

(a) IN GENERAL.—There is established the Robert Reich National Award for Pay Equity in the Workplace, which shall be evidenced by a medal bearing the inscription "Robert Reich National Award for Pay Equity in the Workplace". The medal shall be of such design and materials, and bear such additional inscriptions, as the Secretary may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including at a minimum information that demonstrates that the business has made substantial effort to eliminate pay disparities between men and women, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Secretary determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Secretary, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the elimination of pay disparities between men and women.

(d) BUSINESS.—For the purposes of this section, the term "business" includes—

(1)(A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) an entity carrying out a joint program, formed by a combination of any entities described in paragraph (1) or (2).

SEC. 8. INCREASED RESOURCES FOR ENFORCEMENT AND EDUCATION.

(a) GENERAL RESOURCES.—There is authorized to be appropriated to the Equal Employment Opportunity Commission, for necessary expenses of the Commission in carrying out title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), and section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), $36,000,000, in addition to sums otherwise appropriated for such expenses. Any amounts so appropriated shall remain available until expended.

(b) TARGETED RESOURCES.—There is authorized to be appropriated to the Equal Employment Opportunity Commission to carry out section 5, $500,000, in addition to sums otherwise appropriated for providing training described in such section. Any amounts so appropriated shall remain available until expended.

(c) RESEARCH, EDUCATION, OUTREACH, AND NATIONAL AWARD.—There is authorized to be appropriated to the Secretary of Labor to carry out sections 6 and 7, $1,000,000. Any amounts so appropriated shall remain available until expended.

By Mr. KYL:

S. 72. A bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gain rates for all taxpayers, and for other purposes; to the Committee on Finance.

S. 73. A bill to amend the Internal Revenue Code of 1986 to repeal the corporate alternative minimum tax; to the Committee on Finance.

S. 74. A bill to amend the Internal Revenue Code of 1986 to limit the tax rate for certain small businesses, and for other purposes; to the Committee on Finance.

AGENDA FOR ECONOMIC GROWTH AND OPPORTUNITY

Mr. KYL. Mr. President, I rise today to introduce a series of bills aimed at improving our Nation's rate of economic growth, encouraging investment in small businesses, enhancing wages of American workers, and making our country more competitive in the global economy. The bills make up what I will call the Agenda for Economic Growth and Opportunity.

Mr. President, it was just over 34 years ago that President John F. Kennedy made the following observation in his State of the Union message—an observation that someone could just as easily make about today's economy. He said, "America has enjoyed 22 months of uninterrupted economic recovery". The current expansion, albeit one of the weakest this century, has gone on a little longer. "But", President Kennedy went on to say, "recovery is not enough. If we are to prevail in the long run, we must expand the long-run strength of our economy. We must move along the path to a higher rate of economic growth".

Economic growth. Tracking it is the domain of economists and statisticians, but what does it mean for the average American family, and why should policy-makers be so concerned about the slow rate of economic growth during the last 4 years?

Slow growth means fewer job opportunities for young Americans just entering the work force and for those people seeking to free themselves from the welfare rolls. It means stagnant wages and salaries, and fewer opportunities for career advancement for those who do have jobs. It means less investment in new plant and equipment, and new technology—things needed to enhance workers' productivity and ensure that American businesses can remain competitive in the global marketplace. It means less revenue for the U.S. Treasury, compared to what we could collect with higher rates of economic growth, for the critical programs serving the American people. And it means that interest rates are higher than they need to be because national debt as a share of Gross Domestic Product is higher. As a result, we all pay more for such things as home mortgages, college loans, and car loans.

For most of the 20th century, our Nation enjoyed very strong rates of economic growth and the dividends that came with it. The 1920s saw annual economic growth above 5 percent. In the 1950s, it was above 6 percent. Economic growth during the Kennedy and Johnson years averaged 4.8 percent annually. During the decade before President Clinton took office, the economy grew at an average rate of 3.2 percent a year, according to data supplied by the Joint Economic Committee.

The Clinton years, by contrast, have seen the economy grow at an average rate of only about 2.3 percent. What that means is that, while we may not exactly be hurting as a Nation, we are not becoming much better off, either. And we are certainly not leaving much of a legacy for our children and grandchildren to meet the needs of tomorrow.

So what do we do to enhance economic growth—to ensure that jobs are available for those who want them, that families can earn better wages, and that American business maintains a dominant role in the global economy? Those are, after all, the goals of the agenda I am laying out today—an agenda for economic growth and opportunity for all Americans, for those struggling to make ends meet today, and for our children when they enter the work force tomorrow.

Let me answer then, beginning with another quotation from John Kennedy:

> [I]t is increasingly clear—to those in Government, business, and labor who are responsible for our economy's success—that our obsolete tax system exerts too heavy a drag on private purchasing power, profits, and employment. Designed to check inflation in earlier years, it now checks growth instead. It discourages extra effort and risk. It distorts use of resources. It invites recurrent recessions, depresses our Federal revenues, and causes chronic budget deficits.

Mr. President, the agenda I am proposing attacks some of the most significant deficiencies in our Nation's Tax Code that are inhibiting savings and investment, and job creation—deficiencies that are preventing us from reaching our potential as a Nation. I do not make these proposals as a substitute for fundamental tax reform, which I believe is the ultimate solution to the problem. But fundamental tax reform is going to take some time to accomplish, maybe several years. What we need now are interim steps—things we can do quickly—to make sure our movement into the 21st century is based on the bedrock of a strong and growing economy.

I believe these Tax Code changes will help strengthen the economy and, in turn, produce more revenue for the Federal Government to assist in deficit reduction. Still, I recognize that under existing budget rules which require static scoring of tax bills, there may be a need to find offsetting spending cuts. With that in mind, I am asking the Joint Committee on Taxation, as well as the respected Institute for Policy Innovation, to estimate the economic impact of these proposals, including the effect on Federal revenues. Should the result of those analyses indicate that there will be some revenue loss—most likely because of rules requiring static scoring—my intention would be to propose some offsetting spending cuts.

Mr. President, the cuts I would identify would come in so-called corporate welfare programs. In other words, in exchange for the targeted subsidies from corporate welfare programs, we would adopt broadly applicable tax incentives to support activities vetted by the free market. That is what free enterprise is all about.

THE CAPITAL GAINS REFORM ACT

Mr. KYL. Mr. President, the first of the five tax-related bills I am introducing is based upon President John Kennedy's own growth package from three decades ago. Like the Kennedy plan, the legislation would reduce the percentage of long-term capital gains included in individual income subject to tax to 30 percent. It would reduce the alternative tax on the capital gains of corporations to 22 percent.

I would note that Democratic President John Kennedy's plan called for a deeper capital gains tax cut than the Republican-controlled Congress proposed last year.

There was a reason that John Kennedy called for a significant cut in the capital gains tax. "The present tax treatment of capital gains and losses is both inequitable and a barrier to economic growth", the President said. "The tax on capital gains directly affects investment decisions, the mobility and flow of risk capital from static to more dynamic situations, the ease or difficulty experienced by new ventures in obtaining capital, and thereby the strength and potential for growth of the economy."

So, if we are concerned whether new jobs are being created, whether new technology is developed, whether workers have the tools they need to do a better, more efficient job, we should support measures that reduce the cost of capital to facilitate the achievement of all these things. Remember, for every employee, there is an employer who took risks, made investments, and created jobs. But that employer needed capital to start.

Also remember that the capital gains tax represents a second tax on amounts saved and invested. As a result, individuals and businesses that save and invest end up paying more taxes over time than if all income is consumed and no saving takes place at all. To make matters even worse, the tax is applied to gains due solely to inflation.

Mr. President, it may come as a surprise to some people, but experience shows that lower capital gains tax rates have a positive effect on federal revenues. The most impressive evidence, as noted in a recent report by the American Council for Capital Formation, can be found in the period from 1978 to 1985. During those years, the top marginal federal tax rate on capital gains was cut by almost 45 percent—from 35 percent to 20 percent—but total individual capital gains tax receipts nearly tripled—from $9.1 billion to $26.5 billion annually.

Research by experts at the prestigious National Bureau of Economic Research indicates that the maximizing capital gains tax rate—that is, the rate that would bring in the most Treasury revenue—is somewhere between nine and 21 percent. The bill I am introducing today would set an effective top rate on capital gains earned by individuals, by virtue of the 70 percent exclusion, at 11.88 percent.

Mr. President, when capital gains tax rates are too high, people need only hold onto their assets to avoid the tax indefinitely. No sale, no tax. But that means less investment, fewer new businesses and new jobs, and—as historical records show—far less revenue to the Treasury than if capital gains taxes were set at a lower level. Just as the Target store down the street does not lose money on weekend sales—because volume more than makes up for lower prices—lower capital gains tax rates can encourage more economic activity and, in turn, produce more revenue for the Government.

Capital gains reform will help the Treasury. A capital gains tax reduction would help unlock a sizable share of the estimated $7 trillion of capital that is left virtually unused because of high tax rates. More importantly, it will help the family that has a small plot of land it would like to sell, and the business that could expand, buy new equipment and create new jobs.

And evidence shows that most of the benefits will go to Americans of modest means. A special U.S. Treasury study covering 1985 showed that nearly half of all capital gains that year were realized by taxpayers with wage and salary income of less than $50,000 a year. An update of the Treasury study by the Barents Group, a subsidiary of the public accounting firm of KPMG Peat Marwick, estimates that for 1995, middle-income wage and salary earners making $50,000 or less in inflation-adjusted dollars will continue to receive almost half of all capital gains.

President Clinton recognized the importance of lessening the capital gains tax burden by proposing to eliminate the tax on most gains earned on the sale of a home. I would support the President's proposal, but I would also ask, if a capital gains tax cut is good for homeowners, is it not also good policy to apply a tax cut to other kinds of gains that help create new businesses and new jobs?

I believe John Kennedy's plan was far superior—far more beneficial for the Nation's economy—than the very limited one Bill Clinton has proposed. That is why I encourage the Senate to take up the Capital Gains Reform Act, which is based on the Kennedy plan, and which I am introducing today.

CORPORATE TAX EQUITY ACT

Mr. KYL. Mr. President, the second in this series of bills is the Corporate Tax Equity Act, a bill designed to help U.S. businesses make larger capital expenditures and thereby enhance productivity growth and job creation by repealing the corporate Alternative Minimum Tax (AMT).

Mr. President, the original intent of the AMT was to make it harder for large, profitable corporations to avoid paying any federal income tax. But the way to have accomplished that objective was not, in my view, to impose an AMT, but to identify and correct the provisions of law that allowed large companies to inappropriately lower their federal tax liabilities to begin with. Ironically, the primary shelters corporations were using to minimize their tax liability—that is, the accelerated depreciation and safe harbor leasing of the old Tax Code—were being corrected at the time the AMT was enacted.

I would point out that the AMT is not a tax, per se. As indicated in an April 3, 1996 report by the Congressional Research Service, the AMT is merely intended to serve as a prepayment of the regular corporate income tax, not a permanent increase in overall corporate tax liability. What that means in practical terms is that businesses are forced to make interest-free loans to the federal government under the guise of the AMT. Corporations pay a tax for which they are not liable, but which they are able to apply toward their future regular tax liability.

I would also point out that most of the corporations paying the AMT are relatively small. The General Accounting Office, in a 1995 report on the issue, found that, in most years between 1987 and 1992, more than 70 percent of corporations paying the AMT had less than $10 million in assets.

The AMT's effect on the economy, moreover, is disproportionate to the small amount of revenue raised, due in large part to its requirement that corporations calculate their tax liability under two separate but parallel income tax systems. Firms must calculate their AMT liability even if they end up paying the regular tax. At a minimum, that means that firms must maintain two sets of records for tax purposes.

The compliance costs are substantial. In 1992, for example, while only about 28,000 corporations paid the AMT, more than 400,000 corporations filed the AMT form, and an even greater—but unknown—number of firms performed the calculations needed to determine their AMT liability. A 1993 analysis by the Joint Committee on Taxation found that the AMT added 16.9 percent to a corporation's total cost of complying with federal income tax laws.

Mr. President, repealing the corporate AMT would help free up badly needed capital to assist in business expansion and job creation. According to a study by DRI/McGraw-Hill, repeal of the AMT would, over the 1996–2005 time period, increase fixed investment by a total of 7.9 percent, raise Gross Domestic Product by 1.6 percent, and increase labor productivity by 1.6 percent. The study also projected repeal would produce an additional 100,000 jobs a year during the years 1998 to 2002.

SMALL BUSINESS INVESTMENT AND GROWTH ACT

Mr. KYL. Mr. President, the third bill in this package is the Small Business Investment and Growth Act, which would ensure that small businesses do not pay a higher income tax rate than large corporations. Congressman PHIL CRANE of Illinois has promoted similar legislation in the House of Representatives.

Mr. President, the 1990 and 1993 increases in the marginal income tax rates applicable to individuals put a tremendous strain on small businesses organized as S corporations, because they pay taxes at the individual rate. S corporations, facing 36 percent and 39.6 percent tax rates at the highest levels, are forced to compete against larger corporations, which pay a top rate of 34 percent.

The bill I am introducing would establish 34 percent as the top rate that small businesses must pay. Taxable small business income would be limited to income from the trade or business of certain eligible small businesses, specifically excluding passive income. To benefit from the maximum 34 percent rate, businesses must reinvest their after-tax income into the business.

The intent is to provide relief for those small businesses that invest income into their business operations, thereby creating new jobs. In fact, successful small manufacturers have been able to create three to four new jobs for every additional $100,000 they retain in the business.

FAMILY HERITAGE PRESERVATION ACT

Mr. KYL. Mr. President, the fourth in the series of economic growth incentives is a bill to enhance the economic security of older Americans and small businesses around the country, a bill known as the Family Heritage Preservation Act. It would repeal the onerous

Federal estate and gift tax, and the tax on generation-skipping transfers. A companion bill will be introduced in the House of Representatives by Congressman CHRIS COX of California.

Mr. President, most Americans know the importance of planning ahead for retirement. Sometimes that means buying a less expensive car, wearing clothes a little longer, or foregoing a vacation or two. But by doing with a little less during one's working years, people know they can enjoy a better and more secure life during retirement, and maybe even leave their children and grandchildren a little better off when they are gone.

Savings not only create more personal security, they help create new opportunities for others, too. Savings are really investments that help others create new jobs in the community. They make our country more competitive. And ultimately they make a citizen's retirement more secure by providing a return on the money invested during his or her working years.

So how does the government reward all of this thrift and careful planning? It imposes a hefty tax on the end result of such activity—up to 55 percent of a person's estate. The respected liberal Professor of Law at the University of Southern California, Edward J. McCaffrey, observed that "polls and practices show that we like sin taxes, such as on alcohol and cigarettes." "The estate tax," he went on to say, "is an anti-sin, or a virtue, tax. It is a tax on work and savings without consumption, on thrift, on long term savings. There is no reason even a liberal populace need support it."

At one time, the estate tax was required of only the wealthiest Americans. Now inflation, a nice house, and a good insurance policy can push people of even modest means into its grip. The estate tax is applied to all of the assets owned by an individual at the time of death. The tax rate, which starts at 37 percent, can quickly rise to a whopping 55 percent—the highest estate tax rate in the world.

It is true that each person has a $600,000 exemption, but that does not provide as much relief as one might expect. Unless a couple goes through expensive estate planning so that trusts are written into their wills and at least $600,000 of the assets are owned by each spouse—that is, not held jointly—the couple will end up with only one $600,000 exemption. Many people do not realize that literally every asset they own, including the face value of life insurance policies, all retirement plan assets, including Individual Retirement Accounts, is counted toward the $600,000 limit.

As detrimental as the tax is for couples, it is even more harmful to small businesses, including those owned by women and minorities. The tax is imposed on a family business when it is least able to afford the payment—upon the death of the person with the greatest practical and institutional knowledge of that business's operations. It should come as no surprise then that a 1993 study by Prince and Associates—a Stratford, Connecticut research and consulting firm—found that nine out of 10 family businesses that failed within three years of the principal owner's death attributed their companies' demise to trouble paying estate taxes. Six out of 10 family-owned businesses fail to make it to the second generation. Nine out of 10 never make it to the third generation. The estate tax is a major reason why.

Think of what that means to women and minority-owned businesses. Instead of passing a hard-earned and successful business on to the next generation, many families have to sell the company in order to pay the estate tax. The upward mobility of such families is stopped in its tracks. The proponents of this tax say they want to hinder "concentrations of wealth." What the tax really hinders is new American success stories.

With that in mind, the 1995 White House Conference on Small Business identified the estate tax as one of small business's top concerns. Delegates to the conference voted overwhelming to endorse its repeal.

Obviously, there is a great deal of peril to small businesses when they fail to plan ahead for estate taxes. So many small business owners try to find legal means of avoiding the tax or preparing for it, but that, too, comes at a significant cost. Some people simply slow the growth of their businesses to limit their estate tax burden. Of course, that means less investment in our communities and fewer jobs created. Others divert money they would have spent on new equipment or new hires to insurance policies designed to cover estate tax costs. Still others spend millions on lawyers, accountants, and other advisors for estate tax planning purposes. But that leaves fewer resources to invest in the company, start up new businesses, hire additional people, or pay better wages.

The inefficiencies surrounding the tax can best be illustrated by the findings of a 1994 study published in the Seton Hall Law Review. That study found that compliance costs totalled a whopping $7.5 billion in 1992, a year when the estate tax raised only $11 billion.

The estate tax raises only about one percent of the federal government's annual revenue, but it consumes eight percent of each year's private savings. That is about $15 billion sidelined from the Nation's economy. Economists calculate that if the money paid in estate taxes since 1971 had been invested instead, total savings in 1991 would have been $399 billion higher, the economy would have been $46 billion larger, and we would have 262,000 more jobs. Obviously, the income and payroll taxes that would have been paid on these gains would have topped the amount collected by the government in estate taxes.

There have been nine attempts to reform the estate tax during the last 50 years. Few would contend that it has been made any fairer or more efficient. The only thing that has really changed is that lobbyists and estate planners have gotten a little wealthier. Probably the best thing we could do is repeal the estate tax altogether. That is what I am proposing in the Family Heritage Preservation Act.

Mr. President, the National Commission on Economic Growth and Tax Reform, which studied ways to make the tax code simpler, looked at the estate tax during the course of its deliberations just over a year ago. The Commission concluded that "[i]t makes little sense and is patently unfair to impose extra taxes on people who choose to pass their assets on to their children and grandchildren instead of spending them lavishly on themselves." It went on to endorse repeal of the estate tax.

INVEST MORE IN AMERICA ACT

Mr. KYL. Mr. President, the last in the series of bills that make up what I call the Agenda for Economic Growth and Opportunity is the Invest More in America Act, a bill that would allow small businesses to fully deduct the first $250,000 they invest in equipment in the year it is purchased. The bill is based on another recommendation made by the White House Conference on Small Business in 1995.

Mr. President, Congress last year approved legislation to phase in an increase in the expensing limit to $25,000 by the year 2003. That is a step in the right direction, but it is not nearly enough.

Businesses investing more than the annual expensing allowance must recover the cost of their investments over several years using the current depreciation system. Inflation, however, erodes the present value of their depreciation deductions taken in future years. Moreover, many businesses are required to make significant capital investments to comply with various government regulations, including environmental regulations, yet in many cases are unable to immediately expense such costs.

The increased expensing allowance provided by the Invest More in America Act would spur additional investment in business assets and lead to increased productivity and more jobs.

CONCLUSION

Mr. KYL. Mr. President, as I said at the beginning of my remarks, I am asking the Joint Tax Committee and the Institute for Policy Innovation to analyze the economic and revenue effects of this economic growth package. It is my intention that, if there is a revenue

loss to the Treasury associated with it, the loss could at least partially be offset by reductions in corporate welfare spending.

Mr. President, the Agenda for Economic Growth and Opportunity will help improve the standard of living for all Americans. It will help eliminate from the federal budget much of the largesse the government showers on a select group of business enterprises through corporate welfare.

I invite my colleagues' support for this very important initiative.

By Mr. BREAUX:

S. 77. A bill to provide for one additional Federal judge for the middle district of Louisiana by transferring one Federal judge from the eastern district of Louisiana; to the Committee on the Judiciary.

LOUISIANA JUDICIAL DISTRICTS LEGISLATION

Mr. BREAUX. Mr. President, I rise today to offer legislation that will correct a serious inequity in Louisiana's judicial districts.

My legislation adds an additional judge to the middle district of Louisiana, based in Baton Rouge. U.S. District Judges John Parker and Frank Polozola, the two Baton Rouge, judges, each have almost 2,000 cased pending. The national average for federal judges is 400 cased pending. Case filings in the Middle District have totaled more than four times the national average. The Baton Rouge district also ranks first among the Nation's 97 federal court districts in total filings, civil filings, weighted filings and in the percent change in total filings last year.

Louisiana's Middle District is composed of nine parishes. The state capital and many of the State's adult and juvenile prisons and forensic facilities are located in this district. The Court is regularly required to hear most of the litigation challenging the constitutionality of State laws and the actions of State agencies and officials. The District now has several reapportionment and election cases pending on the docket which generally require the immediate attention of the court. Additionally, because numerous chemical, oil, and industrial plants and hazardous waste sites are located in the Middle District, the Court has in the past and will continue to handle complex mass tort cases. One environmental case alone, involving over 7,000 plaintiffs and numerous defendants, is being handled by a judge from another district because both of the Middle District's judges were recused.

Since 1984, the Middle District has sought an additional judge because of its concern that its caseload would continue to rise despite the fact that its judges' termination rate exceeded that national average and ranked among the highest in numerical standing within the United States and the Fifth Circuit. Both the Judicial Conference and the Judicial Council of the Fifth Circuit have approved the Middle District's request for an additional judgeship after each biennial survey from 1984 through 1994.

Mr. President, I know that my colleagues will agree with me that the clear solution to this obvious inequity is to assign an additional judge to Louisiana's Middle District. I look forward to the Senate's resolution of this important matter.

By Mr. HATCH (for himself and Mr. THOMAS):

S. 78. A bill to provide a fair and balanced resolution to the problem of multiple imposition of punitive damages, and for other purposes; to the Committee on the Judiciary.

THE MULTIPLE PUNITIVE DAMAGES FAIRNESS ACT OF 1997

Mr. HATCH. Mr. President, I rise today to introduce legislation which will at last deal with one of the most unfair aspects of our civil justice system—the availability of multiple awards of punitive damages for the same wrongful act. I introduced identical legislation last Congress, in the form of S. 671, and I hope that we can move this bill in the 105th Congress.

While there are countless abuses and excesses in our civil justice system, the fact that one defendant may face repeated punishment for the same conduct is one of the most egregious and unconscionable. This can happen in a variety of ways, but in any case is unjust and unfair. A defendant might, for example, be sued by a different plaintiff for essentially the same action, or might be sued by the same parties in a different state based on essentially the same conduct. The only effective means of addressing these problems is through a nationwide solution, which the legislation I introduce today would provide.

Significantly, this legislation will not affect the compensatory damages that injured parties will be entitled to receive. Even in cases of multiple lawsuits based on the same conduct, under this legislation injured parties will be entitled to receive full compensatory damages when they are wrongfully harmed. My legislation deals only with punitive damages. Punitive damages are not intended to compensate injured plaintiffs or make them whole, but rather constitute punishment and an effort to deter future egregious misconduct. Punitive damages reform is not about shielding wrongdoers from liability, nor does such reform prevent victims of wrongdoing from being rightfully compensated for their damages. It is about ensuring that wrongdoers do not face excessive and unfair punishments.

I certainly do not argue that a person or company that acts maliciously should not be subject to punitive damages. But it is neither just nor fair for a defendant to face the repeated imposition of punitive damages in several states for the same act or conduct, as our system currently permits. Exorbitant and out-of-control punitive damage awards also have the effect of punishing innocent people: employees, consumers, shareholders, and others who ultimately pay the price of these outrageous awards.

This is not a hypothetical problem. Last Term, the Supreme Court considered a case, *BMW* v. *Gore*, in which a state court let stand a multimillion dollar punitive damage award against an automobile distributor who failed to inform a buyer that his new vehicle had been refinished to cure superficial paint damage. The defendant in that case could be exposed to thousands of claims based on the same conduct.

The plaintiff, a purchaser of a $40,000 BMW automobile, learned nine months after his purchase that his vehicle might have been partially refinished. As a result of the discovery, he sued the automobile dealer, the North American distributor, and the manufacturer for fraud and breach of contract. He also sought an award for punitive damages. He won a ridiculously high award of punitive damages.

At trial, the jury was allowed to assess damages for each of the partially refinished vehicles that had been sold throughout the United States over a period of ten years. As sought by the plaintiff's attorney, the jury returned a verdict of $4,000 in compensatory damages and $4,000,000 in punitive damages. On appeal to the state supreme court, the punitive damage award was reduced to $2 million, applicable to the North American distributor.

On reviewing the *BMW* v. *Gore* case, the United States Supreme Court recognized that excessive punitive damages "implicate the federal interest in preventing individual states from imposing undue burdens on interstate commerce." While that decision for the first time recognizes some outside limits on punitive damage awards, the Court's decision leaves ample room for legislative action. Legislative reforms are now—more than ever before—desperately needed to set up the appropriate boundaries.

In the 5–4 decision, the Supreme Court held that the $2 million punitive damages award was grossly excessive and therefore violated the due process clause of the Fourteenth Amendment. The Court remanded the case, and the majority opinion set out three guideposts for assessing the excessiveness of a punitive damages award: the reprehensibility of the conduct being punished, the ratio between compensatory and punitive damages, and the difference between the punitive award and criminal or civil sanctions that could be imposed for comparable conduct.

Unfortunately, even under the Supreme Court's decision, this same defendant can be sued again and again for punitive damages by every owner of a partially refinished vehicle. The company could still be sued for punitive damages for the same act in every other state in which it sold one of its vehicles. In fact, the very same plaintiffs' attorney who filed the *BMW* v. *Gore* case filed numerous similar lawsuits against BMW.

Defendants and consumers are not the only ones hurt by excessive, multiple punitive damage awards. Ironically, other victims can be those the system is intended to benefit—the injured parties themselves. Funds that might otherwise be available to compensate later victims can be wiped out at any early stage by excessive punitive damage awards.

The imposition of multiple punitive damage awards in different states for the same act is an issue that can be addressed only through federal legislation. If only one state limits such awards, other states still remain free to impose multiple punitive damages. The fact is that a federal response in this area is the only viable solution.

This bill provides that response by generally prohibiting the award of multiple punitive damages. With one exception, the bill prevents courts from awarding punitive damages based on the same act or course of conduct for which punitive damages have already been awarded against the same defendant. Under the exception, an additional award of punitive damages may be permitted if the court determines that the claimant will offer new and substantial evidence of previously undiscovered, wrongful behavior on the part of the defendant. In those circumstances, the court must make specific findings of fact to support the award, must reduce the amount of punitive damages awarded by the amounts of prior punitive damages based on the same acts, and may not disclose to the jury the court's determination and action under the provisions. The provisions would not apply to any action brought under a federal or state statute that specifically mandates the amount of punitive damages to be awarded.

This legislation is needed to correct a glaring injustice. I hope my colleagues will join me in supporting it, and I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 78

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 "Multiple Punitive Damages Fairness Act of 1997".

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) CLAIMANT.—The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) HARM.—The term "harm" means any legally cognizable wrong or injury for which punitive damages may be imposed.

(3) DEFENDANT.—The term "defendant" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(4) PUNITIVE DAMAGES.—The term "punitive damages" means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(5) SPECIFIC FINDINGS OF FACT.—The term "specific findings of fact" means findings in written form focusing on specific behavior of a defendant.

(6) STATE.—The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 3. MULTIPLE PUNITIVE DAMAGES FAIRNESS.

(a) FINDINGS.—The Congress finds the following:

(1) Multiple or repetitive imposition of punitive damages for harms arising out of a single act or course of conduct may deprive a defendant of all the assets or insurance coverage of the defendant, and may endanger the ability of future claimants to receive compensation for basic out-of-pocket expenses and damages for pain and suffering.

(2) The detrimental impact of multiple punitive damages exists even in cases that are settled, rather than tried, because the threat of punitive damages being awarded results in a higher settlement than would ordinarily be obtained. To the extent this premium exceeds what would otherwise be a fair and reasonable settlement for compensatory damages, assets that could be available for satisfaction of future compensatory claims are dissipated.

(3) Fundamental unfairness results when anyone is punished repeatedly for what is essentially the same conduct.

(4) Federal and State appellate and trial judges, and well-respected commentators, have expressed concern that multiple imposition of punitive damages may violate constitutionally protected due process rights.

(5) Multiple imposition of punitive damages may be a significant obstacle to comprehensive settlement negotiations in repetitive litigation.

(6) Limiting the imposition of multiple punitive damages awards would facilitate resolution of mass tort claims involving thousands of injured claimants.

(7) Federal and State trial courts have not provided adequate solutions to problems caused by the multiple imposition of punitive damages because of a concern that such courts lack the power or authority to prohibit subsequent awards in other courts.

(8) Individual State legislatures can create only a partial remedy to address problems caused by the multiple imposition of punitive damages, because each State lacks the power to control the imposition of punitive damages in other States.

(b) GENERAL RULE.—Except as provided in subsection (c), punitive damages shall be prohibited in any civil action in any State or Federal court in which such damages are sought against a defendant based on the same act or course of conduct for which punitive damages have already been sought or awarded against such defendant.

(c) CIRCUMSTANCES FOR AWARD.—If the court determines in a pretrial hearing that the claimant will offer new and substantial evidence of previously undiscovered, additional wrongful behavior on the part of the defendant, other than the injury to the claimant, the court may award punitive damages in accordance with subsection (d).

(d) LIMITATIONS ON AWARD.—A court awarding punitive damages pursuant to subsection (c) shall—

(1) make specific findings of fact on the record to support the award;

(2) reduce the amount of the punitive portion of the damage award by the sum of the amounts of punitive damages previously paid by the defendant in prior actions based on the same act or course of conduct; and

(3) prohibit disclosure to the jury of the court's determination and action under this subsection.

(e) APPLICABILITY AND PREEMPTION.—

(1) IN GENERAL.—Except as provided in paragraph (3), this section shall apply to—

(A) any civil action brought on any theory where punitive damages are sought based on the same act or course of conduct for which punitive damages have already been sought or awarded against the defendant; and

(B) all civil actions in which the trial has not commenced before the effective date of this Act.

(2) APPLICABILITY.—Except as provided in paragraph (3), this section shall apply to all civil actions in which the trial has not commenced before the effective date of this Act.

(3) NONAPPLICABILITY.—This section shall not apply to any civil action involving damages awarded under any Federal or State statute that prescribes the precise amount of punitive damages to be awarded.

(4) EXCEPTION.—This section shall not preempt or supersede any existing Federal or State law limiting or otherwise restricting the recovery for punitive damages to the extent that such law is inconsistent with the provisions of this section.

SEC. 4. EFFECT ON OTHER LAW.

Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) create a cause of action for punitive damages.

By Mr. HATCH (for himself, Mr. KYL, and Mr. THOMAS):

S. 79. A bill to provide a fair and balanced resolution to the problem of multiple imposition of punitive damages, and for the reform of the civil justice system; to the Committee on the Judiciary.

THE CIVIL JUSTICE FAIRNESS ACT OF 1997

Mr. HATCH. Mr. President, today I introduce the Civil Justice Fairness Act of 1997. Last Congress, I introduced a similar bill that, had it been enacted, would have granted significant relief from litigation abuses to individuals, consumers, small businesses and others. Unfortunately, given President Clinton's repeated vetoes of litigation reform measures in the 104th Congress, it was clear that we would be unable to enact more broad-reaching civil justice reform.

This Congress, I urge my colleagues to revisit the important issue of litigation reform. Product liability reform remains badly needed, as do the more comprehensive reforms of the civil litigation system embodied in my civil justice reform bill, the Civil Justice Fairness Act of 1997.

Americans in Utah and every other State overwhelmingly agree that there is a crying need for reform of our civil justice system. They are sick and tired of the abuses of our system, and are fed up with million dollar awards for scratched paint jobs, spilled coffee, and other minor harms. The system fails to deliver justice in far too many cases. Success for plaintiffs can depend more on chance than the merits of the case, and defendants may find themselves forced to settle for significant sums in circumstances in which they have done little or no wrong, simply due to the high litigation costs involved in defending against a weak or frivolous lawsuit.

I have gone through the litany of problems with our civil justice system time and time again. They continue to include excessive legal fees and costs, dilatory and sometimes abusive litigation practices, the increasing use of "junk science" as evidence, and the risk of unduly large punitive damage awards.

The problems with our current civil justice system have resulted in several perverse effects. First, all too often the system fails to accomplish its most important function—to compensate deserving plaintiffs adequately. Second, it imposes unnecessarily high litigation costs on all parties. Those costs are passed along to consumers—in effect, to each and every American—in the form of higher prices for products and services we buy. Those costs can even harm our nation's competitiveness in the global economy.

Congress must face these problems and enact meaningful legislation reforming our civil justice system. Reforms are needed to eliminate abuses and procedural problems in litigation, and to restore to the American people a civil justice system deserving of their trust, confidence and support. To achieve this goal, I am introducing civil justice reform legislation. This bill will correct some of the more serious abuses in our present civil justice system through a number of provisions.

The legislation will address the problems of excessive punitive damage awards and of multiple punitive damage awards. We all know that punitive damage awards are out of control in this country. Further, the imposition of multiple punitive damages for the same wrongful act raises particular concerns about the fairness of punitive damages and their ability to serve the purposes of punishment and deterrence for which they are intended.

The Supreme Court, legal scholars, practicing litigators, and others have acknowledged for years that punitive damages may raise serious constitutional issues. A decision from the U.S. Supreme Court last term finally held that in certain circumstances a punitive damage award may violate due process and provided guidance as to when that would occur.

In the case, BMW versus Gore, the Supreme Court acknowledged that excessive punitive damages "implicate the federal interest in preventing individual states from imposing undue burdens on interstate commerce." The decision for the fist time recognizes some outside limits on punitive damage awards. The Court's decision leaves plenty of room for legislative action, and legislative reforms are now needed more than ever to set up the appropriate boundaries.

The decision also highlights some of the extreme abuses in our civil justice system. The BMW versus Gore case was brought by a doctor who had purchased a BMW automobile for $40,000 and later discovered that the car had been partially refinished prior to sale. He sued the manufacturer in Alabama State court on a theory of fraud, seeking compensatory and punitive damages. The jury found BMW liable for $4,000 in compensatory damages and $4 million in punitive damages. On appeal, the Alabama Supreme Court reduced the punitive damages award to $2 million—which still represents an astonishing award for such inconsequential harm.

In its 5 to 4 decision, the Supreme Court held that the $2 million punitive damages award was grossly excessive and therefore violated the due process clause of the 14th amendment. The court remanded the case for further proceedings. The majority opinion set out three guideposts for courts to employ in assessing the constitutional excessiveness of a punitive damages award: the reprehensibility of the conduct being punished, the ratio between compensatory and punitive damages, and the difference between the punitive award and criminal or civil sanctions that could be imposed for comparable conduct.

Justice Breyer, in a concurring opinion joined by Justices O'Connor and Souter, emphasized that, although constitutional due process protections generally cover purely procedural protections, the narrow circumstances of the case justified added protections to ensure that legal standards providing for discretion are adequately enforced so as to provide for the "application of law, rather than a decisionmaker's caprice." Congress has a similar responsibility to ensure fairness in the litigation system and the application of law in that system. It is high time for Congress to provide specific guidance to courts on the appropriate level of damage awards, and to address other issues in the civil litigation system.

The BMW case also illustrates the potential abuses of the system that can occur through the availability of multiple awards of punitive damages for essentially the same conduct. Under current law, the company can still, in every other state in which it sold one of its vehicles, be sued for punitive damages for the same act.

Multiple punitive damage awards can hurt not only defendants but also injured parties. Funds that would otherwise be available to compensate later victims can be wiped out at any early stage by excessive punitive damage awards. A Federal response is critical: if only the one State limits such awards, other States still remain free to impose multiple punitive damages. An important provision in my bill limits these multiple punitive damage awards. I am also today introducing separate legislation that would deal only with the multiple punitive damages problem.

In addition to reforming multiple punitive damage awards, my broad civil justice reform legislation addresses general abuses of punitive damages litigation. It includes a heightened standard of proof to ensure that punitive damages are awarded only if there is clear and convincing evidence that the harm suffered was the result of conduct either specifically intended to cause that harm, or carried out with conscious, flagrant indifference to the right or the safety of the claimant.

The bill also provides that punitive damages may not be awarded against the seller of a drug or medical device that received pre-market approval from the Food and Drug Administration.

Additionally, this legislation would allow a bifurcated trial, at the defendant's request, on the issue of punitive damages and limits the amount of the award to either $250,000 or three times the economic damages suffered by the claimant, whichever is greater. The bill provides a special limit in the cases of small business or individuals; in those cases, punitive damages will be limited to the lesser of $250,000 or three times economic damages.

The legislation would also limit a defendant's joint liability for non-economic damages. In any civil case for personal injury, wrongful death, or

based upon the principles of comparative fault, a defendant's liability for non-economic loss shall be several only and shall not be joint. The trier of fact will determine the proportional liability of each person, whether or not a party to the action, and enter separate judgments against each defendant.

Another provision of this bill would shift costs and attorneys fees in circumstances in which a party has rejected a settlement offer, forcing the litigation to proceed, and then obtain a less favorable judgment. This provision encourages parties to act reasonably, rather than pursue lengthy and costly litigation. It allows a plaintiff or a defendant to be compensated for their reasonable attorneys fees and costs from the point at which the other party rejects a reasonable settlement offer.

Another widely reported problem in our civil justice system is abuse in contingency fee cases. This bill encourages attorneys to disclose fully to clients the hours worked and fees paid in all contingency fee cases. The bill calls upon the Attorney General to draft model State legislation requiring such disclosure to clients. It also requires the Attorney General to study possible abuses in the area of contingency fees and, where such abuses are found, to draft model State legislation specifically addressing those problems.

This legislation restricts the use of so-called "junk science" in the courtroom. This long overdue reform will improve the reliability of expert scientific evidence and permit juries to consider only scientific evidence that is objectively reliable.

This legislation includes a provision for health care liability reform. It limits, in any health care liability action, the maximum amount of non-economic damages that may be awarded to a claimant of $250,000. This limit would apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought. To avoid prejudice to any parties, the jury would not be informed about the limitations on non-economic damages.

This legislation would also establish a reasonable, uniform statute of limitations for the bringing of health care liability actions. Further, if damages for losses incurred after the date of judgment exceed $100,000, the Court shall allow the parties to have 60 days in which to negotiate an agreement providing for the payment of such damages in a lump sum, periodic payments, or a combination of both. If no agreement is reached, a defendant may elect to pay the damages on a periodic basis. Periodic payments for future damages would terminate in the event of the claimant's return to work, or upon the claimant's death. This is an exception for the portion of such payments allocable to future earnings, which shall be paid to any individual to whom the claimant owed a duty of support immediately prior to death, to the extent required by law at the time of the claimant's death.

This legislation also allows states the freedom to experiment with alternative patient compensation systems based upon no-fault principles. The Secretary of Health and Human Services would award grants based on applications by interested states according to enumerated criteria and subject to enumerated reporting requirements. Persons or entities participating in such experimental systems may obtain from the Secretary a waiver from the provisions of this legislation for the duration of the experiment. The Secretary would collect information regarding these experiments and submit an annual report to Congress, including an assessment of the feasibility of implementing no-fault systems, and legislative recommendations, if any.

I urge my colleagues to take a serious look at these problems within our civil justice system. I believe this bill addresses these issues in a common sense way, and I hope my colleagues will join me in supporting this legislation.

Mr. President, I ask for unanimous consent that a section-by-section description of the bill be printed in the RECORD.

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

SECTION-BY-SECTION DESCRIPTION OF THE CIVIL JUSTICE FAIRNESS ACT OF 1997

TITLE I—PUNITIVE DAMAGES REFORM

Sec. 101. Definitions.—This section defines various terms used in Title I of the bill.

Sec. 102. Multiple Punitive Damages Fairness.—This section generally prohibits the award of multiple punitive damages. With one exception, it prevents courts from awarding punitive damages based on the same act or course of conduct for which punitive damages have already been awarded against the same defendant. Under the exception, an additional award of punitive damages may be permitted if the court determines in a pretrial hearing that the claimant will offer new and substantial evidence of previously undiscovered, additional wrongful behavior on the part of the defendant, other than injury to the claimant. In those circumstances, the court must make specific findings of fact to support the award, must reduce the amount of punitive damages awarded by the amounts of prior punitive damages based on the same acts, and may not disclose to the jury the court's determination and action under the section. This section would not apply to any action brought under a federal or state statute that specifically mandates the amount of punitive damages to be awarded.

Sec. 103. Uniform Standards for Award of Punitive Damages.—This section sets the following uniform standards for the award of punitive damages in any State or Federal Court action: (1) In general, punitive damages may be awarded only if the claimant establishes by clear and convincing evidence that the conduct causing the harm was either specifically intended to cause harm or carried out with conscious, flagrant indifference to the rights or the safety of the claimant. (2) Punitive damages may not be awarded in the absence of an award of compensatory damages exceeding nominal damages. (3) Punitive damages may not be awarded against a manufacturer or product seller of a drug or medical device which was the subject of pre-market approval by the Food and Drug Administration (FDA). This FDA exemption is not applicable where a party has withheld or misrepresented relevant information to the FDA. (4) Punitive damages may not be pleaded in a complaint. Instead, a party must establish at a pretrial hearing that it has a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages, and may then amend the pleading to include a prayer for relief seeking punitive damages. (5) At the defendant's request, the trier of fact shall consider in separate proceedings whether punitive damages are warranted and, if so, the amount of such damages. If a defendant requests bifurcated proceedings, evidence relevant only to the claim for punitive damages may not be introduced in the proceeding on compensatory damages. Evidence of the defendant's profits from his misconduct, if any, is admissible, but evidence of the defendant's overall wealth is inadmissible in the proceeding on punitive damages. (6) In any civil action where the plaintiff seeks punitive damages under this title, the amount awarded shall not exceed three times the economic damages or $250,000, whichever is greater. This provision shall be applied by the court and shall not be disclosed to the jury. (7) A special rule applies to small businesses and individuals. In any action against an individual whose net worth does not exceed $500,000, or a business or organization having 25 or fewer employees, punitive damages may not exceed the lesser of $250,000 or 3 times the amount awarded for economic loss.

Sec. 104. Effect on Other Law.—This section specifies that certain state and federal laws are not superseded or affected by this legislation. Choice-of-law and forum nonconveniens rules are similarly unaffected.

TITLE II—JOINT AND SEVERAL LIABILITY REFORM

Sec. 201. Several Liability for Non-Economic Loss.—This section limits a defendant's joint liability for non-economic damages. In any civil case, a defendant's liability for non-economic loss shall be several only and shall not be joint. The trier of fact will determine the proportional liability of each defendant and enter separate judgments against each defendant.

TITLE III—CIVIL PROCEDURAL REFORM

Sec. 301. Trial Lawyer Accountability.—This section contains two major provisions. The first provides that it is the sense of the Congress that each State should require attorneys who enter into contingent fee agreements to disclose to their clients the actual services performed and hours expended in connection with such agreements. The second provision directs the Attorney General to study and evaluate contingent fee awards and their abuses in State and Federal court; to develop model legislation to require attorneys who enter into contingency fee agreements to disclose to clients the actual services performed and hours expended, and to curb abuses in contingency fee awards based on the study; and to report the Attorney General's findings and recommendations to Congress within one year of enactment.

Sec. 302. Honesty in Evidence.—This section amends Federal Rule of Evidence 702 to

reform the rules regarding the use of expert testimony. It clarifies that courts retain substantial discretion to determine whether the testimony of an expert witness that is premised on scientific, technical, or medical knowledge is based on scientifically valid reasoning, is sufficiently reliable, and is sufficiently established to have gained general acceptance in the particular field in which it belongs. The section follows the standard for admissibility of expert testimony enunciated in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993). It also mirrors the common law *Frye* rule that requires that scientific evidence have "general acceptance" in the relevant scientific community to be admissible. This section further clarifies that expert witnesses have expertise in the particular field on which they are testifying. Finally, this section mandates that the testimony of an expert retained on a contingency fee basis is inadmissible.

Sec. 303. Fair Shifting of Costs and Reasonable Attorney Fees.—This section modifies Federal Rule of Civil Procedure 68 to allow either party, not just the defendant, to make a written offer of settlement or to allow a judgment to be entered against the offering party. It expands the time period during which an offer can be made from 10 days before trial to any time during the litigation. If within 21 days the offer is accepted, a judgment may be entered by the court. If, however, a final judgment is not more favorable to an offeree than the offer, the offeree must pay attorney fees and costs incurred after the time expired for acceptance of the offer. Thus, this is not a true "loser pays" provision where a loser pays the winner's attorney's fees, but rather a narrower attorney fee and cost-shifting idea applicable only when a party has made an offer of settlement or judgment. This section also significantly expands the definition of recoverable costs. Currently, costs are narrowly defined and do not create enough of a financial incentive for a party to make an offer that allows judgment to be entered. Finally, this section also allows a party to make an offer of judgment after liability has already been determined but before the amount or extent has been adjudged.

TITLE IV—HEALTH CARE LIABILITY REFORM

Sec. 401. Definitions.—This section sets up definitions for various terms used in Title IV of the bill.

Sec. 402. Limitations on Noneconomic Damages.—In any health care liability action the maximum amount of noneconomic damages that may be awarded to a claimant is $250,000. This limit shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought. The jury shall not be informed about the limitations on non-economic damages.

Sec. 403. Statute of Limitations.—This section provides a reasonable uniform statute of limitations for health care liability actions, with one exception for minors. The general rule is that an action must be brought within two years from the date the injury and its cause was or reasonably should have been discovered, but in no event can an action be brought more than six years after the alleged date of injury. This section also allows an exception for young children. The rule for children under six years of age is that an action must be brought within two years from the date the injury and its cause was or reasonably should have been discovered, but in no event can an action be brought more than six years after the alleged date of injury or the date on which the child attains 12 years of age, whichever is later.

Sec. 404. Periodic Payment of Future Damages.—This section allows for the periodic payment of large awards for losses accruing in the future. If damages for losses incurred after the date of judgment exceed $100,000, the court shall allow the parties to have 60 days in which to negotiate an agreement providing for the payment of such damages in a lump sum, periodic installments, or a combination of both. If no agreement is reached within those 60 days, a defendant may elect to pay the damages on a periodic basis. The court will determine the amount and periods for such payments, reducing amounts to present value for purposes of determining the funding obligations of the individual making the payments. Periodic payments for future damages terminate in the event of the claimant's recovery or return to work; or upon the claimant's death, except for the portion of the payments allocable to future earnings which shall be paid to any individual to whom the claimant owed a duty of support immediately prior to death to the extent required by law at the time of death. Such payments shall expire upon the death of the last person to whom a duty of support is owed or the expiration of the obligation pursuant to the judgment for periodic payments.

Sec. 405. State No-Fault Demonstration Projects.—This section allows states to experiment with alternative patient compensation systems based upon no-fault principles. Grants shall be awarded by the Secretary of Health and Human Services based on applications made by interested states according to enumerated criteria and subject to enumerated reporting requirements. Persons or entities involved in the demonstrations involved may obtain a waiver from the Secretary from the provisions of this Title for the duration of the experiment, which shall be not greater than five years. The Secretary shall collect information regarding these experiments and submit an annual report to Congress including an assessment of the feasibility of implementing no-fault systems and legislative recommendations, if any.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Federal Cause of Action Precluded.—This section provides that the bill does not provide any new basis for federal court jurisdiction. The resolution of punitive damages claims is left to state courts or to federal courts that currently have jurisdiction over those claims.

Sec. 502. Effective Date.—This section states that the bill, except as otherwise provided, shall be effective 30 days after the date of enactment and apply to all civil actions commenced on or after such date, including those in which the harm, or harm-causing conduct, predates the bill's enactment.

By Mr. KOHL:

S. 80. A bill to amend the Internal Revenue Code of 1986 to provide for the rollover of gain from the sale of farm assets into an individual retirement account; to the Committee on Finance.

FAMILY FARM RETIREMENT EQUITY ACT OF 1997

Mr. KOHL. Mr. President, I rise today to introduce the Family Farm Retirement Equity Act of 1995, a bill to help improve the retirement security of our Nation's farmers.

As we begin the 105th Congress, we can anticipate legislative action dealing with pension reform and the tax treatment of retirement savings. In his 1996 State of the Union address, President Clinton mentioned his concerns about the retirement security of farmers and ranchers, and many of us in Congress have sought to address this concern, as well.

Last year, Congress passed the 1996 farm bill, bringing sweeping changes to the traditional farm support programs, and greatly affecting the income side of the average farmer's financial sheet. But it is equally important that we address the other side of the farmers' financial equation—the cost side. And some of the biggest costs that farmers face are the costs associated with retirement planning. In fact, those costs are sometimes so monumental that farmers reach retirement age without having made the appropriate provisions for their security.

In the last Congress, efforts were made to address the financial concerns of retiring farmers and ranchers. In fact, the Senate version of the 1995 Budget Reconciliation Act included the legislation that I am reintroducing today, the Family Farm Retirement Equity Act. Unfortunately, that important provision did not survive the conference negotiations between House and Senate budget leaders. It is my hope that we will be able to revisit this matter this year, and address this growing concern in rural America.

Farming is a highly capital-intensive business. To the extent that the average farmer reaps any profits from his or her farming operation, much of that income is directly reinvested into the farm. Rarely are there opportunities for farmers to put money aside in individual retirement accounts. Instead, farmers tend to rely on the sale of their accumulated capital assets, such as real estate, livestock, and machinery, in order to provide the income to sustain them during retirement. All too often, farmers are finding that the lump-sum payments of capital gains taxes levied on those assets leave little for retirement.

The legislation that I am reintroducing today would provide retiring farmers the opportunity to rollover the proceeds from the sale of their farms into a tax-deferred retirement account. Instead of paying a large lump-sum capital gains tax at the point of sale, the income from the sale of a farm would be taxed only as it is withdrawn from the retirement account. Such a change in method of taxation would help prevent the financial distress that many farmers now face upon retirement.

Another concern that I have about rural America is the diminishing interest of our younger rural citizens in continuing in farming. Because this legislation will facilitate the transition of our older farmers into a successful retirement, the Family Farm Retirement Equity Act will also pave the way for a more graceful transition

of our younger farmers toward farm ownership. While low prices and low profits in farming will continue to take their toll on our younger farmers, I believe that this will be one tool we can use to make farming more viable for the next generation.

This proposal is supported by farmers and farm organizations throughout the country. It has been endorsed by the American Farm Bureau Federation, the American Sheep Industry Association, the American Sugar Beet Association, the National Association of Wheat Growers, the National Cattleman's Beef Association, the National Corn Growers Association, National Pork Producers Council, and the Southwestern Peanut Growers Association.

Further, I am very pleased that a modified version of this legislation has also been included in the Targeted Investment Incentive and Economic Growth Act of 1997, as introduced today by Minority Leader DASCHLE and other Senators. I look forward to swift action on that legislation, so that the working families and small businesses targeted for assistance can enjoy tax relief as soon as possible.

Mr. President, I ask unanimous consent that the full text of the bill and a summary be included in the RECORD.

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

S. 80

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE TO INTERNAL REVENUE CODE.

(a) SHORT TITLE.—This Act may be cited as the "Family Farm Retirement Equity Act of 1997".

(b) REFERENCE TO INTERNAL REVENUE CODE OF 1986.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. ROLLOVER OF GAIN FROM SALE OF FARM ASSETS TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by inserting after section 1034 the following new section:

"SEC. 1034A. ROLLOVER OF GAIN ON SALE OF FARM ASSETS INTO ASSET ROLLOVER ACCOUNT.

"(a) NONRECOGNITION OF GAIN.—Subject to the limits of subsection (c), if for any taxable year a taxpayer has qualified net farm gain from the sale of qualified farm assets, then, at the election of the taxpayer, such gain shall be recognized only to the extent it exceeds the contributions to 1 or more asset rollover accounts of the taxpayer for the taxable year in which such sale occurs.

"(b) ASSET ROLLOVER ACCOUNT.—

"(1) GENERAL RULE.—Except as provided in this section, an asset rollover account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(2) ASSET ROLLOVER ACCOUNT.—For purposes of this title, the term 'asset rollover account' means an individual retirement plan which is designated at the time of the establishment of the plan as an asset rollover account. Such designation shall be made in such manner as the Secretary may prescribe.

"(c) CONTRIBUTION RULES.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to an asset rollover account.

"(2) AGGREGATE CONTRIBUTION LIMITATION.—Except in the case of rollover contributions, the aggregate amount for all taxable years which may be contributed to all asset rollover accounts established on behalf of an individual shall not exceed—

"(A) $500,000 ($250,000 in the case of a separate return by a married individual), reduced by

"(B) the amount by which the aggregate value of the assets held by the individual (and spouse) in individual retirement plans (other than asset rollover accounts) exceeds $100,000.

The determination under subparagraph (B) shall be made as of the close of the taxable year for which the determination is being made.

"(3) ANNUAL CONTRIBUTION LIMITATIONS.—

"(A) GENERAL RULE.—The aggregate contribution which may be made in any taxable year to all asset rollover accounts shall not exceed the lesser of—

"(i) the qualified net farm gain for the taxable year, or

"(ii) an amount determined by multiplying the number of years the taxpayer is a qualified farmer by $10,000.

"(B) SPOUSE.—In the case of a married couple filing a joint return under section 6013 for the taxable year, subparagraph (A) shall be applied by substituting '$20,000' for '$10,000' for each year the taxpayer's spouse is a qualified farmer.

"(4) TIME WHEN CONTRIBUTION DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a contribution to an asset rollover account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

"(d) QUALIFIED NET FARM GAIN; ETC.—For purposes of this section—

"(1) QUALIFIED NET FARM GAIN.—The term 'qualified net farm gain' means the lesser of—

"(A) the net capital gain of the taxpayer for the taxable year, or

"(B) the net capital gain for the taxable year determined by only taking into account gain (or loss) in connection with dispositions of qualified farm assets.

"(2) QUALIFIED FARM ASSET.—The term 'qualified farm asset' means an asset used by a qualified farmer in the active conduct of the trade or business of farming (as defined in section 2032A(e)).

"(3) QUALIFIED FARMER.—

"(A) IN GENERAL.—The term 'qualified farmer' means a taxpayer who—

"(i) during the 5-year period ending on the date of the disposition of a qualified farm asset materially participated in the trade or business of farming, and

"(ii) owned (or who with the taxpayer's spouse owned) 50 percent or more of such trade or business during such 5-year period.

"(B) MATERIAL PARTICIPATION.—For purposes of this paragraph, a taxpayer shall be treated as materially participating in a trade or business if the taxpayer meets the requirements of section 2032A(e)(6).

"(4) ROLLOVER CONTRIBUTIONS.—Rollover contributions to an asset rollover account may be made only from other asset rollover accounts.

"(e) DISTRIBUTION RULES.—For purposes of this title, the rules of paragraphs (1) and (2) of section 408(d) shall apply to any distribution from an asset rollover account.

"(f) INDIVIDUAL REQUIRED TO REPORT QUALIFIED CONTRIBUTIONS.—

"(1) IN GENERAL.—Any individual who—

"(A) makes a contribution to any asset rollover account for any taxable year, or

"(B) receives any amount from any asset rollover account for any taxable year,

shall include on the return of tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe) information described in paragraph (2).

"(2) INFORMATION REQUIRED TO BE SUPPLIED.—The information described in this paragraph is information required by the Secretary which is similar to the information described in section 408(o)(4)(B).

"(3) PENALTIES.—For penalties relating to reports under this paragraph, see section 6693(b).".

(b) CONTRIBUTIONS NOT DEDUCTIBLE.—Section 219(d) (relating to other limitations and restrictions) is amended by adding at the end the following new paragraph:

"(5) CONTRIBUTIONS TO ASSET ROLLOVER ACCOUNTS.—No deduction shall be allowed under this section with respect to a contribution under section 1034A.".

(c) EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Section 4973 (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended by adding at the end the following new subsection:

"(e) ASSET ROLLOVER ACCOUNTS.—For purposes of this section, in the case of an asset rollover account referred to in subsection (a)(1), the term 'excess contribution' means the excess (if any) of the amount contributed for the taxable year to such account over the amount which may be contributed under section 1034A.".

(2) CONFORMING AMENDMENTS.—

(A) Section 4973(a)(1) is amended by striking "or" and inserting "an asset rollover account (within the meaning of section 1034A), or".

(B) The heading for section 4973 is amended by inserting "**ASSET ROLLOVER ACCOUNTS,**" after "**CONTRACTS**".

(C) The table of sections for chapter 43 is amended by inserting "asset rollover accounts," after "contracts" in the item relating to section 4973.

(d) TECHNICAL AMENDMENTS.—

(1) Section 408(a)(1) (defining individual retirement account) is amended by inserting "or a qualified contribution under section 1034A," before "no contribution".

(2) Section 408(d)(5)(A) is amended by inserting "or qualified contributions under section 1034A" after "rollover contributions".

(3)(A) Section 6693(b)(1)(A) is amended by inserting "or 1034A(f)(1)" after "408(o)(4)".

(B) Section 6693(b)(2) is amended by inserting "or 1034A(f)(1)" after "408(o)(4)".

(4) The table of sections for part III of subchapter O of chapter 1 is amended by inserting after the item relating to section 1034 the following new item:

"Sec. 1034A. Rollover of gain on sale of farm assets into asset rollover account.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges after the date of the enactment of this Act.

FAMILY FARM RETIREMENT EQUITY ACT OF 1997

Allows retiring farmers to roll over up to $500,000 from the sale of their farm assets into a tax-deferred individual retirement account, called an Asset Rollover Account [ARA]. In this manner, they avoid paying lump-sum capital gains, and instead pay taxes only as they withdraw the funds from the retirement account.

Each farmer would be allowed to rollover an amount equal to $10,000—$20,000 for a couple—for each year that he or she was a "qualified farmer," with a maximum contribution of $250,000—or $500,000 per farm couple.

The maximum allowed contribution to the ARA would be reduced by any amount in excess of $100,000 that the qualified farmer and spouse already have in a separate IRA.

A qualified farmer is a farmer who: For the 5-year period ending on the date of sale of the farm, was materially participating in the business of the farm. A farmer is determined to be materially participating in the farm operation if they meet the requirements of section 2032A individually, or jointly in the case of a couple, owns at least 50 percent of the farm asset during the 5-year period.

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 81. A bill to amend the Dairy Production Stabilization Act of 1983 to require that members of the National Dairy Promotion and Research Board be elected by milk producers and to prohibit bloc voting by cooperative associations of milk producers in the election of the producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

NATIONAL DAIRY PROMOTION REFORM ACT OF 1997

Mr. KOHL. Mr. President, one of the basic tenets upon which this Nation was founded was that there should be no taxation without representation. But the dairy farmers of this nation know all too well that taxation without representation continues today. They live with that reality in their businesses every day.

Dairy farmers are required to pay a 15 cent tax, in the form of an assessment, on every hundred pounds of milk that they sell. This tax goes to fund dairy promotion activities, such as those conducted by the National Dairy Promotion and Research Board, commonly known as the National Dairy Board. Yet these same farmers that pay hundreds, or in some cases thousands, of dollars every year for these mandatory promotion activities have no direct say over who represents them on that Board.

In the summer of 1993, a national referendum was held giving dairy producers the opportunity to vote on whether or not the National Dairy Board should continue. The referendum was held after 16,000 dairy producers, more than 10 percent of dairy farmers nationwide, signed a petition to the Secretary of Agriculture calling for the referendum.

Farmers signed this petition for a number of reasons. Some felt they could no longer afford the promotion assessment that is taken out of their milk checks every month. Others were frustrated with what they perceived to be a lack of clear benefits from the promotion activities. And still others were alarmed by certain promotion activities undertaken by the Board with which they did not agree. But overriding all of these concerns was the fact that dairy farmers have no direct power over the promotion activities which they fund from their own pockets.

When the outcome of the referendum on continuing the National Dairy Board was announced, it had passed overwhelmingly. But because nearly 90 percent of all votes cast in favor of continuing the Board were cast by bloc-voting cooperatives, there has been skepticism among dairy farmers about the validity of the vote.

While I believe that dairy promotion activities are important for enhancing markets for dairy products, it matters more what dairy farmers believe. After all, they are the ones who pay hundreds or thousands of dollars every year for these promotion activities. And they are the ones who have no direct say over who represents them on that Board.

It is for this reason that I rise today to reintroduce the National Dairy Promotion Reform Act of 1997.

Some in the dairy industry have argued that this issue is dead, and that to reintroduce such legislation will only reopen old wounds. But I must respectfully disagree.

The intent of this legislation is not to rehash the referendum debate, which was a contentious one. Instead, the intent is to look forward.

Farmers in my state have traditionally been strong supporters of the cooperative movement, because the cooperative business structure has given them the opportunity to be equal partners in the businesses that market their products and supply their farms. I have been a strong supporter of the cooperative movement for the same reason.

But there is a growing dissention among farmers that I believe is dangerous to the long-term viability of agricultural cooperatives. As I talk to farmers around Wisconsin, I hear a growing concern that their voices are not being heard by their cooperatives. They frequently cite the 1993 National Dairy Board referendum as an example. The bill that I am reintroducing today seeks to address one small part of that concern, by giving dairy farmers a more direct role in the selection of their representatives on the National Dairy Board. Whereas current law requires that members of the National Dairy Board be appointed by the Secretary of Agriculture, this legislation would require that the Board be an elected body.

Further, although the legislation would continue the right of farmer cooperatives to nominate individual members to be on the ballot, bloc voting by cooperatives would be prohibited for the purposes of the election itself. There are many issues for which the cooperatives can and should represent their members. But on this issue, farmers ought to speak for themselves.

It is my hope that this legislation will help restore the confidence of the U.S. dairy farmer in dairy promotion. To achieve that confidence, farmers need to know that they have direct power over their representatives on the Board. This bill gives them that power.

I welcome my colleague from Wisconsin, Senator FEINGOLD, as an original cosponsor of this bill, and I am also pleased to join today as an original cosponsor of two pieces of legislation that he is introducing today, as well.

Senator FEINGOLD's two bills would make other needed improvements in the national dairy promotion program. Specifically, one bill would require that imported dairy products be subject to the same dairy promotion assessment as are paid on domestic dairy products today. The other would prohibit the practice of bloc voting by cooperatives for the purpose of any future farmer referenda regarding the National Dairy Board.

I thank my colleague Senator FEINGOLD for his efforts on these matters, and I believe that our three bills provide dairy promotion program reforms that are both complementary and necessary.

I ask unanimous consent that the full text of the bill and summary be included in the RECORD.

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

S. 81

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 "National Dairy Promotion Reform Act of 1997".

SEC. 2. DAIRY VOTING REFORM.

Section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)) is amended—

(1) by designating the first and second sentences as paragraphs (1) and (2), respectively;

(2) by designating the third through fifth sentences as paragraph (3);

(3) by designating the sixth sentence as paragraph (4);

(4) by designating the seventh and eighth sentences as paragraph (5);

(5) by designating the ninth sentence as paragraph (6);

(6) in paragraph (1) (as so designated), by striking "and appointment";

(7) by striking paragraph (2) (as so designated) and inserting the following:

"(2) QUALIFICATIONS, NOMINATION, AND ELECTION OF MEMBERS.—

"(A) QUALIFICATIONS AND ELECTION.—

"(i) IN GENERAL.—Subject to clause (ii), each member of the Board shall be a milk producer nominated in accordance with subparagraph (B) and elected by a vote of producers through a process established by the Secretary.

"(ii) BLOC VOTING.—In carrying out clause (i), the Secretary shall not permit an organization certified under section 114 to vote on behalf of the members of the organization.

"(B) NOMINATIONS.—

"(i) SOURCE.—Nominations shall be submitted by organizations certified under section 114, or, if the Secretary determines that a substantial number of milk producers are not members of, or the interests of the producers are not represented by, a certified organization, from nominations submitted by the producers in the manner authorized by the Secretary.

"(ii) CONSULTATION WITH MEMBERS.—In submitting nominations, each certified organization shall demonstrate to the satisfaction of the Secretary that the milk producers who are members of the organization have been fully consulted in the nomination process.";

(8) in the first sentence of paragraph (3) (as so designated), by striking "In making such appointments," and inserting "In establishing the process for the election of members of the Board,"; and

(9) in paragraph (4) (as so designated)—

(A) by striking "appointment" and inserting "election"; and

(B) by striking "appointments" and inserting "elections".

National Dairy Promotion Reform Act of 1997

SUMMARY OF THE BILL

The bill would amend the Dairy Production Stabilization Act of 1983 to require that future members of the National Dairy Board be elected directly by dairy producers, and not appointed by the Secretary of Agriculture as they are currently.

The bill would also prohibit the practice of bloc voting of members by producer cooperatives for the purposes of the Board elections.

However, cooperatives could continue to nominate members to be on the ballot, as long as they adequately consult with their membership in the nomination process.

The explicit details of the election process would be developed by the Secretary of Agriculture.

By Mr. KOHL:

S. 82. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide child care assistance for dependents of their employees, and for other purposes; to the Committee on Finance.

CHILD CARE INFRASTRUCTURE ACT

Mr. KOHL. Mr. President, today I rise to introduce the Child Care Infrastructure Act. This legislation is designed to give incentives to private companies to get involved in the provision of quality child care. I introduced the bill as S. 2088 late last year, and I intend to make its passage this year one of my highest priorities.

My bill responds to the challenges presented by the landmark welfare legislation enacted last Congress. And it responds to the fundamental changes in the American economy that have led to parents entering the work force in record numbers.

The Child Care Infrastructure Act creates a tax credit for employers who get involved in increasing the supply of quality child care. The credit is limited to 50 percent of $150,000 per company per year. The credit will sunset after 3 years. The credit goes to employers who engage in activities like: Building and subsidizing an entire child care center on the site of a company or near it; participating, along with other businesses, in setting up and running a child care center jointly; contracting with a child care facility to provide a set number of places to employees—this gives existing centers the steady cash flow they need to survive, or it can give a startup center the steady income it needs to get off the ground; contracting with a resource and referral agency to provide services such as placement or the design of a network of local child care providers.

This legislation responds to a great need, a great challenge, and a great opportunity. The need is to provide a safe and stimulating place for our youngest children to spend their time while their parents are at work. The challenge is to make the American workplace more productive by making it more responsive to the needs of the American family. And the opportunity is to take what we are learning about the importance of early childhood education and use it to help our children become the best educated adults of the 21st century.

The need for quality child care is certainly apparent. As real wages have stagnated over the last decade, many families have adapted by having two wage earners per family. Also, over the same period, the number of children living in mother-only families has increased—in 1950, 6 percent of all children lived in mother-only families; in 1994, that number was 24 percent. In my home State of Wisconsin, 67 percent of women with children under 6 years old are in the work force according to Children's Defense Fund. And in Milwaukee County, about 56 percent of children under the age of 6 have both parents in the work force or their sole parent in the work force. That translates into about 67,600 children under the age of 6 in that county who right now are already in need of or in child care.

With the passage of the welfare reform law, and the implementation of W–2, Wisconsin's welfare reform State plan, the need for child care will become even greater. A recent report done for the Community Coordinated Child Care of Milwaukee found that the implementation of W–2 will lead to the need for over 8,000 new full-time child care slots in Milwaukee County alone.

Wisconsin is not unique in facing this overwhelming shortage of child care slots. Across the Nation, States and communities are facing the same issue. Where are our youngest children going to spend the day while their parents are at work?

This is not the sort of market shortage we can or should address haphazardly. There is nothing less at stake than the welfare of our children. Study after study has found the enormous importance of early childhood education and care—and by early education, the experts mean the education of 0 to 4 year olds. One University of Chicago researcher has claimed that intelligence appears to develop as much during the years 0 to 4 as it does from the years 4 to 18.

If we are simply warehousing kids in these early years, we are going to not only hamper their ability to develop fulfilling and productive lives, but we are hurting ourselves. We are resigning ourselves to trying to solve educational and developmental problems—at great expense—for the rest of these children's lives.

As obvious as this point may seem, the desperate need for quality early child care is not a problem that this Nation has addressed. As a Nation—and I mean Federal, State, local, and private resources—over the last 10 years, we have doubled our expenditures on educating 5 to 25 year olds to $500 billion. Contrast that with the mere $4 billion we are spending on Head Start, and 95 percent of that is on children 3, 4, and 5 years old. Only $100 million out of $500 billion is spent on the period when the most significant development takes place—that's one-fifth of one thousandth of what we spend on ages 5 through 25.

Obviously, our investment in children has not kept up with what we now know about how children learn and develop in their earliest year.

There is another reason to care about the supply of quality child care—especially for businesses to care about quality child care. Employees who are happy with their child care situations are better employees. They are more productive, have less absenteeism, and are more loyal to their company.

Clearly, there is a shortage of quality child care, and equally clearly, there is a benefit to the private sector if they are involved in solving that shortage. The approach I take in my legislation is to try to encourage private businesses to undertake activities that

would increase the supply of quality child care.

The legislation gives flexibility to businesses that want to get involved in providing child care for their employee's dependents. Though the shortage of quality child care is definitely a national problem, it does have uniquely local solutions. What sort of child care infrastructure works best in a community is going to depend on the sort of work that community does—whether there are many part-time or odd hour shifts, whether the local economy has a few very large employers or a lot of small employers, or some mix. My legislation includes a tax incentive that would allow many different kinds of businesses to take advantage of it—and that would allow them to be as creative as possible.

The 21st century economy will be one in which more of us are working, and more of us are trying to balance work and family. How well we adjust to that balance will determine how strong we are as an economy and as a Nation of families. My legislation is an attempt to encourage businesses to play an active role in this deeply important transition.

In the 1950's, Federal, State, local governments, communities, and businesses banded together to build a highway system that is the most impressive in the world. Those roads allowed our economy to flourish and our people to move safely and quickly to work. In the 1990's, we need the same sort of national, comprehensive effort to build safe and affordable child care for our children. As more and more parents—of all income levels—move into the work force, they need access to quality child care just as much as their parents needed quality highways to drive to work. And if we are successful—and I plan to be successful—in the 21st century excellent child care will be as common as interstate highways.

Child care is an investment that is good for children, good for business, good for our States, and good for the Nation. We need to involve every level of government—and private communities and private businesses—in building a child care infrastructure that is the best in the world. My legislation is a first, essential step toward this end.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 82

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 "Child Care Infrastructure Act of 1997".

SEC. 2. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CHILD CARE ASSISTANCE.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45D. EMPLOYER-PROVIDED CHILD CARE CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified child care expenditures of the taxpayer for such taxable year.

"(b) DOLLAR LIMITATION.—The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED CHILD CARE EXPENDITURE.—The term 'qualified child care expenditure' means any amount paid or incurred—

"(A) to acquire, construct, rehabilitate, or expand property—

"(i) which is to be used as part of a qualified child care facility of the taxpayer,

"(ii) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

"(iii) which does not constitute part of the principal residence (within the meaning of section 1034) of the taxpayer or any employee of the taxpayer,

"(B) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training,

"(C) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer, or

"(D) under a contract to provide child care resource and referral services to employees of the taxpayer.

"(2) QUALIFIED CHILD CARE FACILITY.—

"(A) IN GENERAL.—The term 'qualified child care facility' means a facility—

"(i) the principal use of which is to provide child care assistance, and

"(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 1034) of the operator of the facility.

"(B) SPECIAL RULES WITH RESPECT TO A TAXPAYER.—A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

"(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

"(ii) the facility is not the principal trade or business of the taxpayer unless at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

"(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

"(d) RECAPTURE OF ACQUISITION AND CONSTRUCTION CREDIT.—

"(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

"(A) the applicable recapture percentage, and

"(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

"(2) APPLICABLE RECAPTURE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this sub section, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	The applicable recapture percentage is:
Years 1-3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

"(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

"(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

"(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified child care facility.

"(B) CHANGE IN OWNERSHIP.—

"(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

"(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

"(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) AGGREGATION RULES.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

"(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(f) NO DOUBLE BENEFIT.—

"(1) REDUCTION IN BASIS.—For purposes of this subtitle—

"(A) IN GENERAL.—If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

"(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

"(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

"(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1999."

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (11),

(B) by striking out the period at the end of paragraph (12), and inserting a comma and "plus", and

(C) by adding at the end the following new paragraph:

"(13) the employer-provided child care credit determined under section 45D."

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45D. Employer-provided child care credit."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

By Mr. AKAKA:

S. 83. A bill to consolidate and revise the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PLANT PROTECTION ACT

Mr. AKAKA. Mr. President, today I am introducing the Plant Protection Act, a comprehensive consolidation of Federal laws governing plant pests and diseases, noxious weeds, and the plant products that harbor pests and weeds.

During the past century, numerous Federal laws were enacted to address problems caused by plant pests and noxious weeds. While some of these laws continue to protect agriculture and the environment, others are ambiguous, outmoded, or difficult to enforce. The Nation's agricultural community, as well as private, state, and Federal land managers, cannot afford the continuing uncertainty caused by the hodgepodge of Federal plant pest laws, some of which were enacted before World War I. Legislation to revise and consolidate federal plant pest laws is urgently needed and long overdue.

Agriculture Secretary Dan Glickman highlighted the problem created by federal plant protection laws when he told Congress that "in some instances, it is unclear which statutes should be relied upon for authority. It is difficult to explain to the public why some apparently similar situations have to be treated differently because different authorities are involved."

A 1993 report issued by the Office of Technology Assessment reached the same conclusion. The OTA found that Federal and State statutes, regulations, and programs are not keeping pace with new and spreading alien pests.

The Plant Protection Act will address many of these problems. The bill I introduced today will enhance the Federal Government's ability to combat weeds, plant pests, and diseases, and protect our farms, environment, and economy from the harm they cause.

Plant pests are a problem of monumental proportions. Insects such as Mediterranean fruit fly, fire ant, and gypsy moth plague America's farmers and cause billions of dollars in crop losses annually. Destructive plant diseases include chestnut blight, which wiped out the most common tree of our Appalachian forests, elm blight, which destroyed many splendid trees throughout our towns and cities, and the white pine blister rust, which eliminated western white pine as a source of timber for several decades.

Alien weeds also cause havoc, and nowhere is this problem more apparent than in Hawaii. Because our climate is so accommodating, Hawaii is heaven-on-earth for weeds. Weeds such as gorse, ivy gourd, miconia, and banana poka are ravaging our tropical and subtropical landscape.

Invasive noxious weeds do more than just compete with domestic species. They transform the landscape, change the rules by which native plants and animals live, and undermine the economic and environmental health of the areas they infest.

Alien weeds fuel grass and forest fires, promote soil erosion, and destroy critical water resources. They significantly increase the cost of farming and ranching. Noxious weeds destroy or alter natural habitat, damage waterways and powerlines, and depress property values. Some are toxic to humans, livestock, and wildlife.

Alien weeds are biological pollution, pure and simple. Due to the worldwide growth in trade and travel we are witnessing an explosion in the number of foreign weeds that plague our Nation.

Just how big is this problem? Let me offer an example. Last year, on Federal lands alone, we lost 4,500 acres each day to noxious weeds. That's a million-and-a-half acres a year, or an area the size of Delaware. By comparison, forest fires—one of the most fearsome natural disasters—claimed only half as many Federal acres as weeds.

Noxious weeds have also been called biological wildfire, and for good reason. Forests, national parks, recreation areas, urban landscapes, wilderness, grasslands, waterways, farm and range land across the Nation are overrun by noxious weeds.

Farmers experience the greatest economic impact of this problem. The Office of Technology Assessment estimates that exotic weeds cost U.S. farmers $3.6 to $5.4 billion annually due to reduced yields, crops of poor quality, increased herbicide use, and other weed control costs. Noxious weeds are a significant drain on farm productivity.

Despite the magnitude of this problem, few people get alarmed about weeds. The issue certainly doesn't appear on the cover of Time or Newsweek. Perhaps if kudzu, a weed known as the "vine that ate the South," attacked the Capitol grounds, weeds would finally get the attention they deserve.

Several of these foreign weeds are truly the King Kong of plants. Some are 50 feet tall. Others have 4 inch thorns. Some have roots 25 feet deep, and others produce 20 million seeds each year.

My least-favorite weed is the tropical soda apple, a thorny plant with a sweet-sounding name. It bears small yellow and green fruit. But, like fruit from the forbidden tree, tropical soda apples are a source of great strife.

This import from Brazil has inch-long spikes covering its stems and leaves. The fruit is a favorite among cattle, and when they pass the seeds in their manure new weeds quickly sprout. As cattle are shipped from state to state with soda apple seeds in their stomachs you can easily imagine how the problem rapidly spreads. Tropical soda apple is a weed control nightmare.

The saga of tropical soda apple prompted me to introduce S. 690, the Federal Noxious Weed Improvement Act during the 104th Congress. S. 690 would grant the Secretary of Agriculture emergency powers to restrict the entry of a foreign weed until formal action can be taken to place it on the noxious weed list. This legislation would prevent future tropical soda apples from taking root.

I have incorporated the text of S. 690 into section 4 of the Plant Protection Act. Other provisions of the legislation I have introduced today are drawn from USDA recommendations for consolidating weed and plant pest authorities.

Because the U.S. Department of Agriculture's authority over plant pests and noxious weeds is dispersed throughout many statutes, Federal efforts to protect agriculture, forestry,

and our environment are seriously hindered. To enable the Department to respond more efficiently to this challenge, the Plant Protection Act will consolidate these authorities into a single statute.

I ask unanimous consent that the text of the Plant Protection Act be printed in the RECORD.

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

S. 83

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 "Plant Protection Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) the detection, control, eradication, suppression, prevention, and retardation of the spread of plant pests and noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States;

(2) biological control—

(A) is often a desirable, low-risk means of ridding crops and other plants of plant pests and noxious weeds; and

(B) should be facilitated by the Secretary of Agriculture, Federal agencies, and States, whenever feasible;

(3) markets could be severely impacted by the introduction or spread of pests or noxious weeds into or within the United States;

(4) the unregulated movement of plant pests, noxious weeds, plants, biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds would present an unacceptable risk of introducing or spreading plant pests or noxious weeds;

(5) the existence on any premises in the United States of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States could threaten crops, other plants, plant products, and the natural resources and environment of the United States and burden interstate commerce or foreign commerce; and

(6) all plant pests, noxious weeds, plants, plant products, or articles capable of harboring plant pests or noxious weeds regulated under this Act are in or affect interstate commerce or foreign commerce.

SEC. 3. DEFINITIONS.

In this Act:

(1) ARTICLE.—The term "article" means any material or tangible object that could harbor a pest, disease, or noxious weed.

(2) BIOLOGICAL CONTROL ORGANISM.—The term "biological control organism" means a biological entity, as defined by the Secretary, that suppresses or decreases the population of another biological entity.

(3) ENTER.—The term "enter" means to move into the commerce of the United States.

(4) ENTRY.—The term "entry" means the act of movement into the commerce of the United States.

(5) EXPORT.—The term "export" means to move from the United States to any place outside the United States.

(6) EXPORTATION.—The term "exportation" means the act of movement from the United States to any place outside the United States.

(7) IMPORT.—The term "import" means to move into the territorial limits of the United States.

(8) IMPORTATION.—The term "importation" means the act of movement into the territorial limits of the United States.

(9) INDIGENOUS.—The term "indigenous" means a plant species found naturally as part of a natural habitat in a geographic area in the United States.

(10) INTERSTATE.—The term "interstate" means from 1 State into or through any other State, or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(11) INTERSTATE COMMERCE.—The term "interstate commerce" means trade, traffic, movement, or other commerce—

(A) between a place in a State and a point in another State;

(B) between points within the same State but through any place outside the State; or

(C) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(12) MEANS OF CONVEYANCE.—The term "means of conveyance" means any personal property or means used for or intended for use for the movement of any other personal property.

(13) MOVE.—The term "move" means to—

(A) carry, enter, import, mail, ship, or transport;

(B) aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting;

(C) offer to carry, enter, import, mail, ship, or transport;

(D) receive to carry, enter, import, mail, ship, or transport; or

(E) allow any of the activities referred to this paragraph.

(14) NOXIOUS WEED.—The term "noxious weed" means a plant, seed, reproductive part, or propagative part of a plant that—

(A) can directly or indirectly injure or cause damage to a crop, other useful plant, plant product, livestock, poultry, or other interest of agriculture (including irrigation), navigation, public health, or natural resources or environment of the United States; and

(B) belongs to a species that is not indigenous to the geographic area or ecosystem in which it is causing injury or damage.

(15) PERMIT.—The term "permit" means a written or oral authorization (including electronic authorization) by the Secretary to move a plant, plant product, biological control organism, plant pest, noxious weed, or article under conditions prescribed by the Secretary.

(16) PERSON.—The term "person" means an individual, partnership, corporation, association, joint venture, or other legal entity.

(17) PLANT.—The term "plant" means a plant or plant part for or capable of propagation, including a tree, shrub, vine, bulb, root, pollen, seed, tissue culture, plantlet culture, cutting, graft, scion, and bud.

(18) PLANT PEST.—The term "plant pest" means—

(A) a living stage of a protozoan, animal, bacteria, fungus, virus, viroid, infection agent, or parasitic plant that can directly or indirectly injure or cause damage to, or cause disease in, a plant or plant product; or

(B) an article that is similar to or allied with an article referred to in subparagraph (A).

(19) PLANT PRODUCT.—The term "plant product" means a flower, fruit, vegetable, root, bulb, seed, or other plant part that is not considered a plant or a manufactured or processed plant or plant part.

(20) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(21) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(22) UNITED STATES.—The term "United States", when used in a geographical sense, means all of the States.

SEC. 4. RESTRICTIONS ON MOVEMENT OF PLANTS, PLANT PRODUCTS, BIOLOGICAL CONTROL ORGANISMS, PLANT PESTS, NOXIOUS WEEDS, ARTICLES, AND MEANS OF CONVEYANCE.

(a) IN GENERAL.—The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the interstate dissemination of a plant pest or noxious weed.

(b) MAIL.—

(1) IN GENERAL.—No person shall convey in the mail, or deliver from a post office or by a mail carrier, a letter or package containing a plant pest, biological control organism, or noxious weed unless it is mailed in accordance with such regulations as the Secretary may issue to prevent the introduction into the United States, or interstate dissemination, of plant pests or noxious weeds.

(2) POSTAL EMPLOYEES.—This subsection shall not apply to an employee of the United States in the performance of the duties of the employee in handling the mail.

(3) POSTAL LAWS AND REGULATIONS.—Nothing in this subsection authorizes a person to open a mailed letter or other mailed sealed matter except in accordance with the postal laws and regulations.

(c) STATE RESTRICTIONS ON NOXIOUS WEEDS.—No person shall move into a State, or sell or offer for sale in the State, a plant species the sale of which is prohibited by the State because the plant species is designated as a noxious weed or has a similar designation.

(d) ADMINISTRATION.—The Secretary may issue regulations to carry out this section, including regulations requiring that a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance imported, entered, to be exported, or moved in interstate commerce—

(1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, or movement in interstate commerce;

(2) be accompanied by a certificate of inspection issued in a manner and form required by the Secretary or by an appropriate official of the country or State from which the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is to be moved;

(3) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests; and

(4) in the case of a plant or biological control organism, be grown or handled under post-entry quarantine conditions by or under the supervision of the Secretary for the purpose of determining whether the plant or biological control organism may be infested

with a plant pest or noxious weed, or may be a plant pest or noxious weed.

(e) LIST OF RESTRICTED NOXIOUS WEEDS.—

(1) PUBLICATION.—The Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States.

(2) PETITIONS TO ADD OR REMOVE PLANT SPECIES.—

(A) IN GENERAL.—A person may petition the Secretary to add or remove a plant species from the list required under paragraph (1).

(B) ACTION ON PETITION.—The Secretary shall—

(i) act on a petition not later than 1 year after receipt of the petition by the Secretary; and

(ii) notify the petitioner of the final action the Secretary takes on the petition.

(C) BASIS FOR DETERMINATION.—The Secretary's determination on the petition shall be based on sound science, available data and technology, and information received from public comment.

(D) INCLUSION ON LIST.—To include a plant species on the list, the Secretary must determine that—

(i) the plant species is nonindigenous to the geographic region or ecosystem in which the species is spreading and causing injury; and

(ii) the dissemination of the plant in the United States may reasonably be expected to interfere with natural resources, agriculture, forestry, or a native ecosystem of a geographic region, or management of an ecosystem, or cause injury to the public health.

(f) CONFORMING AMENDMENTS.—

(1) Section 102 of the Act of September 21, 1944 (58 Stat. 735, chapter 412; 7 U.S.C. 147a) is amended by striking "(a)" in subsection (a) and all that follows through "(2)" in subsection (f)(2).

(2) The matter under the heading "ENFORCEMENT OF THE PLANT-QUARANTINE ACT:" under the heading "MISCELLANEOUS" of the Act of March 4, 1915 (commonly known as the "Terminal Inspection Act") (38 Stat. 1113, chapter 144; 7 U.S.C. 166) is amended—

(A) in the second paragraph—

(i) by striking "plants and plant products" each place it appears and inserting "plants, plant products, animals, and other organisms";

(ii) by striking "plants or plant products" each place it appears and inserting "plants, plant products, animals, or other organisms";

(iii) by striking "plant-quarantine law or plant-quarantine regulation" each place it appears and inserting "plant-quarantine or other law or plant-quarantine regulation";

(iv) in the second sentence—

(I) by striking "Upon his approval of said list, in whole or in part, the Secretary of Agriculture" and inserting "On the receipt of the list by the Secretary of Agriculture, the Secretary"; and

(II) by striking "said approved lists" and inserting "the lists";

(v) by inserting after the second sentence the following: "On the request of a representative of a State, a Federal agency shall act on behalf of the State to obtain a warrant to inspect mail to carry out this paragraph."; and

(vi) in the last sentence, by striking "be forward" and inserting "be forwarded"; and

(B) in the third paragraph, by striking "plant or plant product" and inserting "plant, plant product, animal, or other organism".

SEC. 5. NOTIFICATION OF ARRIVAL AND INSPECTION BEFORE MOVEMENT OF PLANTS, PLANT PRODUCTS, BIOLOGICAL CONTROL ORGANISMS, PLANT PESTS, NOXIOUS WEEDS, ARTICLES, AND MEANS OF CONVEYANCE.

(a) NOTIFICATION AND HOLDING BY SECRETARY OF THE TREASURY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of the Treasury shall—

(A) promptly notify the Secretary of the arrival of a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance at a port of entry; and

(B) hold the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance until inspected and authorized for entry into or transit movement through the United States, or otherwise released by the Secretary.

(2) APPLICATION.—Paragraph (1) shall not apply to a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that is imported from a country or region of countries that the Secretary designates as exempt from paragraph (1), pursuant to such regulations as the Secretary may issue.

(b) NOTIFICATION BY RESPONSIBLE PERSON.—The person responsible for a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance subject to subsection (a) shall promptly, on arrival at the port of entry and before the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is moved from the port of entry, notify the Secretary or, at the Secretary's direction, the proper official of the State to which the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is destined, or both, as the Secretary may prescribe, of—

(1) the name and address of the consignee;

(2) the nature and quantity of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance proposed to be moved; and

(3) the country and locality where the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance was grown, produced, or located.

(c) NO MOVEMENT WITHOUT INSPECTION AND AUTHORIZATION.—No person shall move from the port of entry or interstate an imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance unless the imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance has been inspected and authorized for entry into or transit movement through the United States, or otherwise released by the Secretary.

SEC. 6. REMEDIAL MEASURES OR DISPOSAL FOR PLANT PESTS OR NOXIOUS WEEDS; EXTRAORDINARY EMERGENCY.

(a) REMEDIAL MEASURES OR DISPOSAL FOR PLANT PESTS OR NOXIOUS WEEDS.—

(1) IN GENERAL.—Except as provided in subsection (c), if the Secretary considers it necessary to prevent the dissemination of a plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of—

(A) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that is moving into or through the United States or interstate and that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(B) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that has moved into the United States or interstate and that the Secretary has reason to believe was infested with the plant pest or noxious weed at the time of the movement;

(C) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this Act;

(D) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that has not been maintained in compliance with a post-entry quarantine requirement;

(E) a progeny of a plant, plant product, biological control organism, plant pest, or noxious weed that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this Act; or

(F) a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that is infested with a plant pest or noxious weed that the Secretary has reason to believe was moved into the United States or in interstate commerce.

(2) ORDERING TREATMENT OR DISPOSAL BY THE OWNER.—Except as provided in subsection (c), the Secretary may order the owner of a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance subject to disposal under paragraph (1), or the owner's agent, to treat, apply other remedial measures to, destroy, or otherwise dispose of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance, without cost to the Federal Government and in a manner the Secretary considers appropriate.

(3) CLASSIFICATION SYSTEM FOR NOXIOUS WEEDS.—

(A) IN GENERAL.—To facilitate control of noxious weeds, the Secretary shall develop a classification system to describe the status and action levels for noxious weeds.

(B) CATEGORIES.—The classification system shall differentiate between—

(i) noxious weeds that are not known to be introduced into the United States;

(ii) noxious weeds that are not known to be widely disseminated within the United States;

(iii) noxious weeds that are widely distributed within the United States; and

(iv) noxious weeds that are not indigenous, including native plant species that are invasive in limited geographic areas within the United States.

(C) OTHER CATEGORIES.—In addition to the categories required under subparagraph (B), the Secretary may establish other categories of noxious weeds for the system.

(D) VARYING LEVELS OF REGULATION AND CONTROL.—The Secretary shall develop varying levels of regulation and control appropriate to each of the categories of the system.

(E) APPLICATION OF REGULATIONS.—The regulations issued to carry out this paragraph shall apply, as the Secretary considers appropriate, to—

(i) exclude a noxious weed;

(ii) prevent further dissemination of a noxious weed through movement or commerce;

(iii) establish mandatory controls for a noxious weed; or

(iv) designate a noxious weed as warranting control efforts.

(F) REVISIONS.—The Secretary shall revise the classification system, and the placement of individual noxious weeds within the system, in response to changing circumstances.

(G) INTEGRATED MANAGEMENT PLANS.—In conjunction with the classification system, the Secretary may develop an integrated management plan for a noxious weed for the geographic region or ecological range of the United States where the noxious weed is found or to which the noxious weed may spread.

(b) EXTRAORDINARY EMERGENCIES.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary determines that an extraordinary emergency exists because of the presence of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest or noxious weed threatens a crop, other plant, plant product, or the natural resources or environment of the United States, the Secretary may—

(A) hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, a plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(B) quarantine, treat, or apply other remedial measures to a premises, including a plant, plant product, biological control organism, article, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(C) quarantine a State or portion of a State in which the Secretary finds the plant pest or noxious weed, or a plant, plant product, biological control organism, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed; or

(D) prohibit or restrict the movement within a State of a plant, plant product, biological control organism, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed.

(2) REQUIREMENTS FOR ACTION.—

(A) INADEQUATE STATE MEASURES.—After review and consultation with the Governor or other appropriate official of the State, the Secretary may take action under this subsection only on a finding that the measures being taken by the State are inadequate to eradicate the plant pest or noxious weed.

(B) NOTICE TO STATE AND PUBLIC.—Before taking any action in a State under this subsection, the Secretary shall—

(i) notify the Governor or another appropriate official of the State;

(ii) issue a public announcement; and

(iii) except as provided in subparagraph (C), publish in the Federal Register a statement of—

(I) the Secretary's findings;

(II) the action the Secretary intends to take;

(III) the reason for the intended action; and

(IV) if practicable, an estimate of the anticipated duration of the extraordinary emergency.

(C) NOTICE AFTER ACTION.—If it is not practicable to publish a statement in the Federal Register under subparagraph (B) prior to taking an action under this subsection, the Secretary shall publish the statement in the Federal Register within a reasonable period of time, not to exceed 10 business days, after commencement of the action.

(3) COMPENSATION.—

(A) IN GENERAL.—The Secretary may pay compensation to a person for economic losses incurred by the person as a result of action taken by the Secretary under paragraph (1).

(B) FINAL DETERMINATION.—The determination by the Secretary of the amount of any compensation paid under this subsection shall be final and shall not be subject to judicial review.

(c) LEAST DRASTIC ACTION TO PREVENT DISSEMINATION.—No plant, plant product, biological control organism, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible, and that would be adequate, to prevent the dissemination of a plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

(d) COMPENSATION OF OWNER FOR UNAUTHORIZED DISPOSAL.—

(1) IN GENERAL.—The owner of a plant, plant product, biological control organism, article, or means of conveyance destroyed or otherwise disposed of by the Secretary under this section may bring an action against the United States in the United States District Court of the District of Columbia, not later than 1 year after the destruction or disposal, and recover just compensation for the destruction or disposal of the plant, plant product, biological control organism, article, or means of conveyance (not including compensation for loss due to delays incident to determining eligibility for importation, entry, exportation, movement in interstate commerce, or release into the environment) if the owner establishes that the destruction or disposal was not authorized under this Act.

(2) SOURCE FOR PAYMENTS.—A judgment rendered in favor of the owner shall be paid out of the money in the Treasury appropriated for plant pest control activities of the Department of Agriculture.

SEC. 7. INSPECTIONS, SEIZURES, AND WARRANTS.

(a) IN GENERAL.—Consistent with guidelines approved by the Attorney General, the Secretary may—

(1) stop and inspect, without a warrant, a person or means of conveyance moving into the United States to determine whether the person or means of conveyance is carrying a plant, plant product, biological control organism, or article regulated under this Act or is moving subject to this Act;

(2) stop and inspect, without a warrant, a person or means of conveyance moving in interstate commerce on probable cause to believe that the person or means of conveyance is carrying a plant, plant product, biological control organism, or article regulated under this Act or is moving subject to this Act;

(3) stop and inspect, without a warrant, a person or means of conveyance moving in interstate commerce from or within a State, portion of a State, or premises quarantined under section 6(b) on probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, or article regulated under this Act or is moving subject to this Act; and

(4) enter, with a warrant, a premises in the United States for the purpose of making inspections and seizures under this Act.

(b) WARRANTS.—

(1) IN GENERAL.—A United States judge, a judge of a court of record in the United States, or a United States magistrate judge may, within the judge's or magistrate's jurisdiction, on proper oath or affirmation showing probable cause to believe that there is on certain premises a plant, plant product, biological control organism, article, facility, or means of conveyance regulated under this Act, issue a warrant for entry on the premises to make an inspection or seizure under this Act.

(2) EXECUTION.—The warrant may be executed by the Secretary or a United States Marshal.

SEC. 8. COOPERATION.

(a) IN GENERAL.—To carry out this Act, the Secretary may cooperate with—

(1) other Federal agencies;

(2) States or political subdivisions of States;

(3) national, State, or local associations;

(4) national governments;

(5) local governments of other nations;

(6) international organizations;

(7) international associations; and

(8) other persons.

(b) RESPONSIBILITY.—The individual or entity cooperating with the Secretary shall be responsible for conducting the operations or taking measures on all land and property within the foreign country or State, other than land and property owned or controlled by the United States, and for other facilities and means determined by the Secretary.

(c) TRANSFER OF BIOLOGICAL CONTROL METHODS.—At the request of a Federal or State land management agency, the Secretary may transfer to the agency biological control methods utilizing biological control organisms against plant pests or noxious weeds.

(d) IMPROVEMENT OF PLANTS, PLANT PRODUCTS, AND BIOLOGICAL CONTROL ORGANISMS.—The Secretary may cooperate with State authorities in the administration of regulations for the improvement of plants, plant products, and biological control organisms.

SEC. 9. PHYTOSANITARY CERTIFICATE FOR EXPORTS.

The Secretary may certify a plant, plant product, or biological control organism as free from plant pests and noxious weeds, and exposure to plant pests and noxious weeds, according to the phytosanitary requirements of the country to which the plant, plant product, or biological control organism may be exported.

SEC. 10. ADMINISTRATION.

(a) IN GENERAL.—The Secretary may acquire and maintain such real or personal property, employ such persons, make such grants, and enter into such contracts, cooperative agreements, memoranda of understanding, or other agreements as are necessary to carry out this Act.

(b) PERSONNEL OF USER FEE SERVICES.—Notwithstanding any other law, the Secretary shall provide adequate personnel for services provided under this Act that are funded by user fees.

(c) TORT CLAIMS.—

(1) IN GENERAL.—The Secretary may pay a tort claim (in the manner authorized in the first paragraph of section 2672 of title 28, United States Code) if the claim arises outside the United States in connection with an activity authorized under this Act.

(2) TIME LIMITATION.—A claim may not be allowed under paragraph (1) unless the claim is presented in writing to the Secretary not later than 2 years after the claim accrues.

SEC. 11. REIMBURSABLE AGREEMENTS.

(a) PRECLEARANCE.—

(1) IN GENERAL.—The Secretary may enter into a reimbursable fee agreement with a person for preclearance (at a location outside the United States) of plants, plant products, and articles for movement into the United States.

(2) ACCOUNT.—All funds collected under this subsection shall be credited to an account that may be established by the Secretary and remain available until expended without fiscal year limitation.

(b) OVERTIME.—

(1) IN GENERAL.—Notwithstanding any other law, the Secretary may pay an employee of the Department of Agriculture performing services under this Act relating to imports into and exports from the United States, for all overtime, night, or holiday work performed by the employee, at a rate of pay determined by the Secretary.

(2) REIMBURSEMENT OF SECRETARY.—The Secretary may require a person for whom the services are performed to reimburse the Secretary for any funds paid by the Secretary for the services.

(3) ACCOUNT.—All funds collected under this subsection shall be credited to the account that incurs the costs and remain available until expended without fiscal year limitation.

(c) LATE PAYMENT PENALTY AND INTEREST.—

(1) PENALTY.—On failure of a person to reimburse the Secretary in accordance with this section, the Secretary may assess a late payment penalty against the person.

(2) INTEREST.—Overdue funds due the Secretary under this section shall accrue interest in accordance with section 3717 of title 31, United States Code.

(3) ACCOUNT.—A late payment penalty and accrued interest shall be credited to the account that incurs the costs and shall remain available until expended without fiscal year limitation.

SEC. 12. VIOLATIONS; PENALTIES.

(a) CRIMINAL PENALTIES.—A person who knowingly violates this Act, or who knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys a certificate, permit, or other document provided under this Act shall be guilty of a misdemeanor, and, on conviction, shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 1 year, or both.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—A person who violates this Act, or who forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys a certificate, permit, or other document provided under this Act may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary of not more than $25,000 for each violation.

(2) FINAL ORDER.—The order of the Secretary assessing a civil penalty shall be treated as a final order that is reviewable under chapter 158 of title 28, United States Code.

(3) VALIDITY OF ORDER.—The validity of an order of the Secretary may not be reviewed in an action to collect the civil penalty.

(4) INTEREST.—A civil penalty not paid in full when due under an order assessing the civil penalty shall (after the due date) accrue interest until paid at the rate of interest applicable to a civil judgment of a court of the United States.

(c) PECUNIARY GAINS OR LOSSES.—If a person derives pecuniary gain from an offense described in subsection (a) or (b), or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than an amount that is the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the imposition of a fine or sentence under subsection (a) or (b).

(d) AGENTS.—For purposes of this Act, the act, omission, or failure of an officer, agent, or person acting for or employed by any other person within the scope of the employment or office of the other person shall be considered also to be the act, omission, or failure of the other person.

(e) CIVIL PENALTIES OR NOTICE IN LIEU OF PROSECUTION.—The Secretary shall coordinate with the Attorney General to establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this Act.

SEC. 13. ENFORCEMENT.

(a) INVESTIGATIONS, EVIDENCE, AND SUBPOENAS.—

(1) INVESTIGATIONS.—The Secretary may gather and compile information and conduct any investigations the Secretary considers necessary for the administration and enforcement of this Act.

(2) EVIDENCE.—The Secretary shall at all reasonable times have the right to examine and copy any documentary evidence of a person being investigated or proceeded against.

(3) SUBPOENAS.—

(A) IN GENERAL.—The Secretary shall have power to require by subpoena the attendance and testimony of any witness and the production of all documentary evidence relating to the administration or enforcement of this Act or any matter under investigation in connection with this Act.

(B) LOCATION.—The attendance of a witness and production of documentary evidence may be required from any place in the United States at any designated place of hearing.

(C) NONCOMPLIANCE WITH SUBPOENA.—If a person disobeys a subpoena, the Secretary may request the Attorney General to invoke the aid of a court of the United States within the jurisdiction in which the investigation is conducted, or where the person resides, is found, transacts business, is licensed to do business, or is incorporated to require the attendance and testimony of a witness and the production of documentary evidence.

(D) ORDER.—If a person disobeys a subpoena, the court may order the person to appear before the Secretary and give evidence concerning the matter in question or to produce documentary evidence.

(E) NONCOMPLIANCE WITH ORDER.—A failure to obey the court's order may be punished by the court as a contempt of the court.

(F) FEES AND MILEAGE.—

(i) IN GENERAL.—A witness summoned by the Secretary shall be paid the same fees and reimbursement for mileage that is paid to a witness in the courts of the United States.

(ii) DEPOSITIONS.—A witness whose deposition is taken, and the person taking the deposition, shall be entitled to the same fees that are paid for similar services in a court of the United States.

(b) ATTORNEY GENERAL.—The Attorney General may—

(1) prosecute, in the name of the United States, a criminal violation of this Act that is referred to the Attorney General by the Secretary or is brought to the notice of the Attorney General by a person;

(2) bring an action to enjoin the violation of or to compel compliance with this Act, or to enjoin any interference by a person with the Secretary in carrying out this Act, if the Secretary has reason to believe that the person has violated or is about to violate this Act, or has interfered, or is about to interfere, with the Secretary; and

(3) bring an action for the recovery of any unpaid civil penalty, funds under a reimbursable agreement, late payment penalty, or interest assessed under this Act.

(c) JURISDICTION.—

(1) IN GENERAL.—Except as provided in section 12(b), a United States district court, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of other territories and possessions shall have jurisdiction over all cases arising under this Act.

(2) VENUE.—Except as provided in subsection (b), an action arising under this Act may be brought, and process may be served, in the judicial district where a violation or interference occurred or is about to occur, or where the person charged with the violation, interference, impending violation, impending interference, or failure to pay resides, is found, transacts business, is licensed to do business, or is incorporated.

(3) SUBPOENAS.—A subpoena for a witness to attend court in a judicial district or to testify or produce evidence at an administrative hearing in a judicial district in an action or proceeding arising under this Act may apply to any other judicial district.

SEC. 14. PREEMPTION.

(a) IN GENERAL.—Except as provided in subsection (b), no State or political subdivision of a State may regulate any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in foreign commerce to control a plant pest or noxious weed, eradicate a plant pest or noxious weed, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.

(b) STATE NOXIOUS WEED LAWS.—This Act shall not invalidate the law of any State or political subdivision of a State relating to noxious weeds, except that a State or political subdivision of a State may not permit any action that is prohibited under this Act.

SEC. 15. REGULATIONS AND ORDERS.

The Secretary may issue such regulations and orders as the Secretary considers necessary to carry out this Act, including (at the option of the Secretary) regulations and orders relating to—

(1) notification of arrival of plants, plant products, biological control organisms, plant pests, noxious weeds, articles, or means of conveyance;

(2) prohibition or restriction of or on the importation, entry, exportation, or movement in interstate commerce of plants, plant products, biological control organisms, plant pests, noxious weeds, articles, or means of conveyance;

(3) holding, seizure of, quarantine of, treatment of, application of remedial measures to, destruction of, or disposal of plants, plant products, biological control organisms, plant pests, noxious weeds, articles, premises, or means of conveyance;

(4) in the case of an extraordinary emergency, prohibition or restriction on the movement of plants, plant products, biological control organisms, plant pests, noxious weeds, articles, or means of conveyance;

(5) payment of compensation;
(6) cooperation with other Federal agencies, States, political subdivisions of States, national governments, local governments of other countries, international organizations, international associations, and other persons, entities, and individuals;
(7) transfer of biological control methods for plant pests or noxious weeds;
(8) negotiation and execution of agreements;
(9) acquisition and maintenance of real and personal property;
(10) issuance of letters of warning;
(11) compilation of information;
(12) conduct of investigations;
(13) transfer of funds for emergencies;
(14) approval of facilities and means of conveyance;
(15) denial of approval of facilities and means of conveyance;
(16) suspension and revocation of approval of facilities and means of conveyance;
(17) inspection, testing, and certification;
(18) cleaning and disinfection;
(19) designation of ports of entry;
(20) imposition and collection of fees, penalties, and interest;
(21) recordkeeping, marking, and identification;
(22) issuance of permits and phytosanitary certificates;
(23) establishment of quarantines, post-importation conditions, and post-entry quarantine conditions;
(24) establishment of conditions for transit movement through the United States; and
(25) treatment of land for the prevention, suppression, or control of plant pests or noxious weeds.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS; TRANSFERS.

(a) AUTHORIZATION OF APPROPRIATIONS.—
(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Act.
(2) INDEMNITIES.—Except as specifically authorized by law, no part of the money made available under paragraph (1) shall be used to pay an indemnity for property injured or destroyed by or at the direction of the Secretary.

(b) TRANSFERS.—
(1) IN GENERAL.—In connection with an emergency in which a plant pest or noxious weeds threatens any segment of the agricultural production of the United States, the Secretary may transfer (from other appropriations or funds available to an agency or corporation of the Department of Agriculture) such funds as the Secretary considers necessary for the arrest, control, eradication, and prevention of the spread of the plant pest or noxious weed and for related expenses.
(2) AVAILABILITY.—Any funds transferred under this subsection shall remain available to carry out paragraph (1) without fiscal year limitation.

SEC. 17. REPEALS.

The following provisions of law are repealed:
(1) Public Law 97-46 (7 U.S.C. 147b).
(2) The Joint Resolution of April 6, 1937 (50 Stat. 57, chapter 69; 7 U.S.C. 148 et seq.).
(3) Section 1773 of the Food Security Act of 1985 (7 U.S.C. 148f).
(4) The Act of January 31, 1942 (56 Stat. 40, chapter 31; 7 U.S.C. 149).
(5) The Golden Nematode Act (7 U.S.C. 150 et seq.).
(6) The Federal Plant Pest Act (7 U.S.C. 150aa et seq.).
(7) The Act of August 20, 1912 (commonly known as the "Plant Quarantine Act") (37 Stat. 315, chapter 308; 7 U.S.C. 151 et seq.).
(8) The Halogeton Glomeratus Control Act (7 U.S.C. 1651 et seq.).
(9) The Act of August 28, 1950 (64 Stat. 561, chapter 815; 7 U.S.C. 2260).
(10) The Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 et seq.), other than the first section of the Act (Public Law 93-629; 7 U.S.C. 2801 note) and section 15 of the Act (7 U.S.C. 2814).

By Mr. GRAMM:

S. 84. A bill to authorize negotiation of free trade agreements with the countries of the Americas, and for other purposes; to the Committee on Finance.

S. 85. A bill to authorize negotiation for the accession of Chile to the North American Free Trade Agreement, and for other purposes; to the Committee on Finance.

AMERICAS FREE TRADE ACT AND NAFTA ACCESSION ACT

Mr. GRAMM. Mr. President, when America trades, America wins. The United States of America is the greatest trading Nation the world has ever known. From beef to computers to engineering, last year American workers exported more than $830 billion in goods and services. No other country even came close.

Over the last decade, America's exports in goods of all kinds grew by 131 percent. By comparison, Europe's exports of goods grew by 55 percent, and Japan's total grew less than half the rate of Europe's by 24 percent. The U.S. trade expansion involved virtually every sector of the economy, but it was particularly pronounced in the export of manufactured goods. From 1985 to 1995, U.S. exports of manufactured goods grew by over 180 percent. That growth rate was six times the rate for Germany and almost nine times Japan's export growth.

In short, trade is our game. American workers, businesses, and farms are more competitive and far more successful than the merchants of fear and defeatism advertise.

Fortunately, we have resisted incessant cries to model our economic and trade policies after those of Japan, Germany, and others, and we have outperformed them in every respect. Lately, one does not hear much talk about the Japanese economic miracle, and Germany's double-digit unemployment rate finds few admirers. Instead, what Pericles said of ancient Athens in the days of that city's glory may without fear be said of us. "The magnitude of our city draws the produce of the world into our harbor, so that to the Athenian the fruits of other countries are as familiar a luxury as those of his own."

In fact, successful economic and trade policies have resulted in the addition of 18 million jobs to the Nation since 1985, 6 million jobs more than the total job creation for Japan and the nations of the European Community combined.

We must not forget that the most valuable products of trade are high-wage jobs. An export-related job in America pays better, 15 percent better, than the average pay in the Nation. Today, America exports over $26,000 in manufactured goods for every man and woman employed in manufacturing.

In January 1988, President Reagan gave his final State of the Union address. As a veteran of those trade battles, President Reagan warned us all: "A creative, competitive America is the answer to a changing world, not trade wars that would close doors, create great barriers, and destroy millions of jobs. We should always remember: protectionism is destructionism."

Mr. President, on May 21, 1986, I introduced legislation to begin negotiations for a free trade agreement with Mexico. On February 26, 1987, I introduced a bill that laid out a framework for negotiating a North American free trade area, and on June 26 of that same year the Senate adopted an amendment that I offered to the omnibus trade bill, authorizing the negotiation of a North American Free Trade Agreement.

On February 7, 1989, I once again introduced trade legislation and called for a free trade agreement encompassing the entire Western Hemisphere. I have introduced similar legislation in the 103d and the 104th Congress, providing authority for negotiation of a free trade agreement with the nations of the Americas.

Today I am introducing two pieces of legislation to extend free trade from Point Barrow, AK, to Cape Horn at the tip of South America. The first bill, the Americas Free Trade Act, will provide fast track authority for consideration of free trade agreements with any or all of the nations of the Western Hemisphere.

While renewing fast track authority, the legislation provides two very important reforms made necessary by the abuse of the fast track authority in the most recent trade agreement. First of all, the legislation explicitly excludes labor and environmental provisions from the fast track approval process. These are important issues to be addressed in our relations with other nations, but the Senate must not surrender its constitutional treaty review responsibilities over these important matters.

The legislation also deals with the problem of unrelated matters being included in a bill implementing a trade agreement. Similar to the Byrd Rule that excludes extraneous matter from reconciliation legislation, this bill will permit a point of order to be raised against any provision in an implementing bill that is not necessary to carry out the provisions of the trade agreement. This point of order, as with

the Byrd Rule, would strike the offending provision from the bill rather than cause the entire bill to fail.

As with legislation that I have introduced in the past, this bill provides special procedures for trade agreements with Cuba. In short, Fidel Castro's Cuba would not be eligible, but a free trade agreement with a free Cuba would be made a national priority.

I am also introducing today legislation to provide for Chile to join the North American Free Trade Agreement. While I would prefer the extension of fast track authority for free trade agreements for any nation of the Western Hemisphere, as the Americas Free Trade Act would do, I do not believe that we should delay the process of including Chile in NAFTA, or hold Chile hostage to that process, should a broader trade bill require more time to be enacted. I believe that a free trade agreement with Chile could and should be concluded this year, and I am eager to see the progress toward lower barriers to trade and economic growth move forward.

We are the best competitor the world has ever known, and we have the biggest stake. Trade and expanding economic opportunity power America's engines of economic growth and prosperity. Let us embrace them, not destroy them.

Mr. President, I ask unanimous consent that the text of the Americas Free Trade Act and the NAFTA Accession Act, together with an outline of each bill, be included in the RECORD.

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

S. 84

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 "Americas Free Trade Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The countries of the Western Hemisphere have enjoyed more success in the twentieth century in the peaceful conduct of their relations among themselves than have the countries in the rest of the world.

(2) The economic prosperity of the United States and its trading partners in the Western Hemisphere is increased by the reduction of trade barriers.

(3) Trade protection endangers economic prosperity in the United States and throughout the Western Hemisphere and undermines civil liberty and constitutionally limited government.

(4) The successful establishment of a North American Free Trade Area sets the pattern for the reduction of trade barriers throughout the Western Hemisphere, enhancing prosperity in place of the cycle of increasing trade barriers and deepening poverty that results from a resort to protectionism and trade retaliation.

(5) The reduction of government interference in the foreign and domestic sectors of a nation's economy and the concomitant promotion of economic opportunity and freedoms promote civil liberty and constitutionally limited government.

(6) Countries that observe a consistent policy of free trade, the promotion of free enterprise and other economic freedoms (including effective protection of private property rights), and the removal of barriers to foreign direct investment, in the context of constitutionally limited government and minimal interference in the economy, will follow the surest and most effective prescription to alleviate poverty and provide for economic, social, and political development.

SEC. 3. FREE TRADE AREA FOR THE WESTERN HEMISPHERE.

(a) IN GENERAL.—The President shall take action to initiate negotiations to obtain trade agreements with the sovereign countries located in the Western Hemisphere, the terms of which provide for the reduction and ultimate elimination of tariffs and other nontariff barriers to trade, for the purpose of promoting the eventual establishment of a free trade area for the entire Western Hemisphere.

(b) RECIPROCAL BASIS.—An agreement entered into under subsection (a) shall be reciprocal and provide mutual reductions in trade barriers to promote trade, economic growth, and employment.

(c) BILATERAL OR MULTILATERAL BASIS.—Agreements may be entered into under subsection (a) on a bilateral basis with any foreign country described in that subsection or on a multilateral basis with all of such countries or any group of such countries.

SEC. 4. FREE TRADE WITH FREE CUBA.

(a) RESTRICTIONS PRIOR TO RESTORATION OF FREEDOM IN CUBA.—The provisions of this Act shall not apply to Cuba unless the President certifies to Congress that—

(1) freedom has been restored in Cuba; and

(2) the claims of United States citizens for compensation for expropriated property have been appropriately addressed.

(b) STANDARDS FOR THE RESTORATION OF FREEDOM IN CUBA.—The President shall not make the certification that freedom has been restored in Cuba, for purpose of subsection (a), unless the President determines that—

(1) a constitutionally guaranteed democratic government has been established in Cuba with leaders chosen through free and fair elections;

(2) the rights of individuals to private property have been restored and are effectively protected and broadly exercised in Cuba;

(3) Cuba has a currency that is fully convertible domestically and internationally;

(4) all political prisoners have been released in Cuba; and

(5) the rights of free speech and freedom of the press in Cuba are effectively guaranteed.

(c) PRIORITY FOR FREE TRADE WITH FREE CUBA.—Upon making the certification described in subsection (a), the President shall give priority to the negotiation of a free trade agreement with Cuba.

SEC. 5. INTRODUCTION AND FAST-TRACK CONSIDERATION OF IMPLEMENTING BILLS.

(a) INTRODUCTION IN HOUSE AND SENATE.—When the President submits to Congress a bill to implement a trade agreement described in section 3, the bill shall be introduced (by request) in the House and the Senate as described in section 151(c) of the Trade Act of 1974 (19 U.S.C. 2191(c)).

(b) RESTRICTIONS ON CONTENT.—A bill to implement a trade agreement described in section 3—

(1) shall contain only provisions that are necessary to implement the trade agreement; and

(2) may not contain any provision that establishes (or requires or authorizes the establishment of) a labor or environmental protection standard or amends (or requires or authorizes an amendment of) any labor or environmental protection standard set forth in law or regulation.

(c) POINT OF ORDER IN SENATE.—

(1) APPLICABILITY TO ALL LEGISLATIVE FORMS OF IMPLEMENTING BILL.—For the purposes of this subsection, the term "implementing bill" means the following:

(A) THE BILL.—A bill described in subsection (a), without regard to whether that bill originated in the Senate or the House of Representatives.

(B) AMENDMENT.—An amendment to a bill referred to in subparagraph (A).

(C) CONFERENCE REPORT.—A conference report on a bill referred to in subparagraph (A).

(D) AMENDMENT BETWEEN HOUSES.—An amendment between the Houses of Congress in relation to a bill referred to in subparagraph (A).

(E) MOTION.—A motion in relation to an item referred to in subparagraph (A), (B), (C), or (D).

(2) MAKING OF POINT OF ORDER.—

(A) AGAINST SINGLE ITEM.—When the Senate is considering an implementing bill, a Senator may make a point of order against any part of the implementing bill that contains material in violation of a restriction under subsection (b).

(B) AGAINST SEVERAL ITEMS.—Notwithstanding any other provision of law or rule of the Senate, when the Senate is considering an implementing bill, it shall be in order for a Senator to raise a single point of order that several provisions of the implementing bill violate subsection (b). The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order.

(3) EFFECT OF SUSTAINMENT OF POINT OF ORDER.—

(A) AGAINST SINGLE ITEM.—If a point of order made against a part of an implementing bill under paragraph (2)(A) is sustained by the Presiding Officer, the part of the implementing bill against which the point of order is sustained shall be deemed stricken.

(B) AGAINST SEVERAL ITEMS.—In the case of a point of order made under paragraph (2)(B) against several provisions of an implementing bill, only those provisions against which the Presiding Officer sustains the point of order shall be deemed stricken.

(C) STRICKEN MATTER NOT IN ORDER AS AMENDMENT.—Matter stricken from an implementing bill under this paragraph may not be offered as an amendment to the implementing bill (in any of its forms described in paragraph (1)) from the floor.

(4) WAIVERS AND APPEALS.—

(A) WAIVERS.—Before the Presiding Officer rules on a point of order under this subsection, any Senator may move to waive the point of order as it applies to some or all of the provisions against which the point of order is raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate.

(B) APPEALS.—After the Presiding Officer rules on a point of order under this subsection, any Senator may appeal the ruling of the Presiding Officer on the point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

(C) THREE-FIFTHS MAJORITY REQUIRED.—

(i) WAIVERS.—A point of order under this subsection is waived only by the affirmative vote of at least the requisite majority.

(ii) APPEALS.—A ruling of the Presiding Officer on a point of order under this subsection is sustained unless at least the requisite majority votes not to sustain the ruling.

(iii) REQUISITE MAJORITY.—For purposes of clauses (i) and (ii), the requisite majority is three-fifths of the Members of the Senate, duly chosen and sworn.

(c) APPLICABILITY OF FAST TRACK PROCEDURES.—Section 151 of the Trade Act of 1974 (19 U.S.C. 2191) is amended—

(1) in subsection (b)(1)—

(A) by inserting "section 5 of the Americas Free Trade Act," after "the Omnibus Trade and Competitiveness Act of 1988,"; and

(B) by amending subparagraph (C) to read as follows:

"(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary to implement such trade agreement or agreements or such extension, either repealing or amending existing laws or providing new statutory authority."; and

(2) in subsection (c)(1), by inserting "or under section 5 of the Americas Free Trade Act," after "the Uruguay Round Agreements Act,".

THE AMERICAS FREE TRADE ACT—SUMMARY

I. The President is directed to undertake negotiations to establish free trade agreements between the United States and countries of the Western Hemisphere (including North and South America and the Caribbean). Agreements may be bilateral or multilateral.

II. The President, before seeking a free trade agreement with Cuba under the Act, would have to certify (1) that freedom has been restored in Cuba, and (2) that the claims of U.S. citizens for compensation for expropriated property have been appropriately addressed. The President could make the certification that freedom has been restored to Cuba only if he determines that—

A. constitutionally guaranteed democratic government has been established in Cuba, with leaders freely and fairly elected;

B. private property rights have been restored and are effectively protected and broadly exercised;

C. Cuba has a convertible currency;

D. all political prisoners have been released; and

E. free speech and freedom of the press are effectively guaranteed.

If the President certifies that freedom has been restored to Cuba, priority will be given to the negotiation of a free trade agreement with Cuba.

III. Congressional fast track procedures for consideration of any such agreement (i.e. expedited consideration, no amendments) are extended permanently.

IV. Fast track procedures are amended to provide that they apply to an implementing bill only if such bill contains legislation that is "necessary" to implement the trade agreement. Also, such bills will be subject in the Senate to a procedure like the Byrd Rule that applies to extraneous provisions in reconciliation bills. That is, any provision that does not meet the "necessary" standard is subject to a point of order which, if sustained, causes the offending provisions to be stricken from the bill (rather than the whole bill falling), and this point of order can be overruled only by a vote of three-fifths of the members duly sworn.

V. Labor and environmental standards may not be included as elements of an implementing bill.

S. 85

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 "NAFTA Accession Act".

SEC. 2. ACCESSION OF CHILE TO THE NORTH AMERICAN FREE TRADE AGREEMENT.

Subject to section 3, the President is authorized to enter into an agreement which provides for the accession of Chile to the North American Free Trade Agreement and the provisions of section 151(c) of the Trade Act of 1974 (19 U.S.C. 2191(c)) shall apply with respect to a bill to implement such agreement if such agreement is entered into on or before December 31, 1998.

SEC. 3. INTRODUCTION AND FAST-TRACK CONSIDERATION OF IMPLEMENTING BILL.

(a) INTRODUCTION IN HOUSE AND SENATE.—When the President submits to Congress a bill to implement a trade agreement described in section 2, the bill shall be introduced (by request) in the House and the Senate as described in section 151(c) of the Trade Act of 1974 (19 U.S.C. 2191(c)).

(b) RESTRICTIONS ON CONTENT.—A bill to implement a trade agreement described in section 2—

(1) shall contain only provisions that are necessary to implement the trade agreement; and

(2) may not contain any provision that establishes (or requires or authorizes the establishment of) a labor or environmental protection standard or amends (or requires or authorizes an amendment of) any labor or environmental protection standard set forth in law or regulation.

(c) POINT OF ORDER IN SENATE.—

(1) APPLICABILITY TO ALL LEGISLATIVE FORMS OF IMPLEMENTING BILL.—For the purposes of this subsection, the term "implementing bill" means the following:

(A) THE BILL.—A bill described in subsection (a), without regard to whether that bill originated in the Senate or the House of Representatives.

(B) AMENDMENT.—An amendment to a bill referred to in subparagraph (A).

(C) CONFERENCE REPORT.—A conference report on a bill referred to in subparagraph (A).

(D) AMENDMENT BETWEEN HOUSES.—An amendment between the Houses of Congress in relation to a bill referred to in subparagraph (A).

(E) MOTION.—A motion in relation to an item referred to in subparagraph (A), (B), (C), or (D).

(2) MAKING OF POINT OF ORDER.—

(A) AGAINST SINGLE ITEM.—When the Senate is considering an implementing bill, a Senator may make a point of order against any part of the implementing bill that contains material in violation of a restriction under subsection (b).

(B) AGAINST SEVERAL ITEMS.—Notwithstanding any other provision of law or rule of the Senate, when the Senate is considering an implementing bill, it shall be in order for a Senator to raise a single point of order that several provisions of the implementing bill violate subsection (b). The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order.

(3) EFFECT OF SUSTAINMENT OF POINT OF ORDER.—

(A) AGAINST SINGLE ITEM.—If a point of order made against a part of an implementing bill under paragraph (2)(A) is sustained by the Presiding Officer, the part of the implementing bill against which the point of order is sustained shall be deemed stricken.

(B) AGAINST SEVERAL ITEMS.—In the case of a point of order made under paragraph (2)(B) against several provisions of an implementing bill, only those provisions against which the Presiding Officer sustains the point of order shall be deemed stricken.

(C) STRICKEN MATTER NOT IN ORDER AS AMENDMENT.—Matter stricken from an implementing bill under this paragraph may not be offered as an amendment to the implementing bill (in any of its forms described in paragraph (1)) from the floor.

(4) WAIVERS AND APPEALS.—

(A) WAIVERS.—Before the Presiding Officer rules on a point of order under this subsection, any Senator may move to waive the point of order as it applies to some or all of the provisions against which the point of order is raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate.

(B) APPEALS.—After the Presiding Officer rules on a point of order under this subsection, any Senator may appeal the ruling of the Presiding Officer on the point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

(C) THREE-FIFTHS MAJORITY REQUIRED.—

(i) WAIVERS.—A point of order under this subsection is waived only by the affirmative vote of at least the requisite majority.

(ii) APPEALS.—A ruling of the Presiding Officer on a point of order under this subsection is sustained unless at least the requisite majority votes not to sustain the ruling.

(iii) REQUISITE MAJORITY.—For purposes of clauses (i) and (ii), the requisite majority is three-fifths of the Members of the Senate, duly chosen and sworn.

(c) APPLICABILITY OF FAST TRACK PROCEDURES.—Section 151 of the Trade Act of 1974 (19 U.S.C. 2191) is amended—

(1) in subsection (b)(1)—

(A) by inserting "section 3 of the NAFTA Accession Act," after "the Omnibus Trade and Competitiveness Act of 1988,"; and

(B) by amending subparagraph (C) to read as follows:

"(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary to implement such trade agreement or agreements or such extension, either repealing or amending existing laws or providing new statutory authority."; and

(2) in subsection (c)(1), by inserting "or under section 3 of the NAFTA Accession Act," after "the Uruguay Round Agreements Act,".

THE NAFTA ACCESSION ACT—SUMMARY

I. The President is directed to undertake negotiations for the accession of Chile to the North American Free Trade Agreement.

II. Congressional fast track procedures for consideration of any such agreement (i.e., expedited consideration, no amendments), are extended through December 31, 1998.

III. Fast track procedures are amended to provide that they apply to an implementing bill only if such bill contains legislation that is "necessary" to implement the trade agreement. Also, such bill will be subject in the Senate to a procedure like the Byrd rule that applies to extraneous provisions in reconciliation bills. That is, any provision that does not meet the "necessary" standard is subject

to a point of order which, if sustained, causes the offending provision to be stricken from the bill (rather than the whole bill falling), and this point of order can be overruled only by a vote of three-fifths of the members duly sworn.

IV. Labor and environmental standards may not be included as elements of an implementing bill.

By Ms. SNOWE (for herself and Mr. LEAHY):

S. 86. A bill to amend the Public Health Service Act to provide, with respect to research on breast cancer, for the increased involvement of advocates in decision making at the National Cancer Institute; to the Committee on Labor and Human Resources.

By Ms. SNOWE (for herself and Mrs. FEINSTEIN):

S. 87. A bill to amend the Public Health Service Act to provide a one-stop shopping information service for individuals with serious or life-threatening diseases; to the Committee on Labor and Human Resources.

By Ms. SNOWE:

S. 88. A bill to permit individuals to continue health plan coverage of services while participating in approved clinical studies; to the Committee on Labor and Human Resources.

S. 89. A bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services; to the Committee on Labor and Human Resources.

S. 90. A bill to require studies and guidelines for breast cancer screening for women ages 40–49, and for other purposes; to the Committee on Labor and Human Resources.

S. 91. A bill to establish an Office on Women's Health within the Department of Health and Human Services; to the Committee on Labor and Human Resources.

WOMEN'S HEALTH LEGISLATION

Ms. SNOWE. Mr. President, I rise today to introduce a package of six bills designed to improve the health of countless women across America. By introducing these bills during the opening days of the 105th Congress, I hope to convey that women's health is one of my top legislative priorities for this Congress, and that I will do everything I can to ensure that it is a priority for the 105th Congress as well.

For too many years, women's health care needs were ignored or poorly understood, and women were systematically excluded from important health research. One famous medical study on breast cancer examined hundreds of men. Another federally-funded study examined the ability of aspirin to prevent heart attacks in 20,000 medical doctors, all of whom were men, despite the fact that heart disease is the leading cause of death among women.

Today, Members of Congress and the American public understand the importance of ensuring that both genders benefit equally from medical research and health care services. Unfortunately, equity does not yet exist in health care, and we have a long way to go. Knowledge about appropriate courses of treatment for women lags far behind that for men for many diseases. For years, research into diseases that predominantly affect women, such as breast cancer, went grossly underfunded. And many women do not have access to reproductive and other vital health services.

Throughout my tenure in the House and Senate, I have worked hard to expose and eliminate this health care gender gap and improve women's access to affordable, quality health services. As co-chairs of the Congressional Caucus for Women's Issues (CCWI), Representative Pat Schroeder and I, along with Representative Henry Waxman, called for a GAO investigation into the inclusion of women and minorities in medical research at the National Institutes of Health. This study documented the widespread exclusion of women from medical research, and spurred the Caucus to introduce the first Women's Health Equity Act (WHEA) in 1990. This comprehensive legislation provided Congress with its first broad, forward looking health agenda designed to redress the historical inequities that face women in medical research, prevention and services.

Since the initial introduction of WHEA, we have made important strides on behalf of women's health. Legislation from that first package became law in June 1993, mandating the inclusion of women and minorities in clinical trials at NIH. We secured dramatic funding increases for research into breast cancer, osteoporosis, and cervical cancer, and my legislation established the Office of Research on Women's Health at NIH. And last year the Mothers' and Newborns' Health Protection Act, which I cosponsored, became law. This Act will end the practice of "drive-thru deliveries", where hospitals discharge mothers and their newborns too soon after delivery.

Despite these achievements, women remain at a stark and singular disadvantage in our health care system and in health research. Equality in women's health remains a goal, not a completed task. Legislators must build on the gains that we have made on behalf of women's health to take the next crucial steps toward achieving equity. I believe that the package of bills which I am introducing today provides this framework for progress.

Several of the bills I am introducing today target one of the major public health crises facing this nation—breast cancer. This year alone, 180,000 new cases of breast cancer will be diagnosed in this country, and more than 44,000 women will die from the disease. Breast cancer is the most common form of cancer and the second leading cause of cancer deaths among American women.

Our first priority in the fight against breast cancer must be to maintain and strengthen our commitment to discovering new treatments for this deadly disease. As the Federal Government continues to fund breast cancer research, we also must ensure that funding goes to those projects which victims of breast cancer believe are important and meaningful to them in their fight against this disease.

Over the past three years, the Department of Defense has included lay breast cancer advocates in breast cancer research decision making. The involvement of these breast cancer advocates has helped foster new and innovative breast cancer research funding designs and research projects. While maintaining the highest level of quality assurance through peer review, breast cancer advocates have helped to ensure that all breast cancer research reflects the experiences and wisdom of the individuals who have lived with the disease. In addition, breast cancer advocates provide a vital educational link between the scientific and lay communities.

The first bill I am introducing today, which I am introducing with my colleague from Vermont, Senator LEAHY, urges the National Institutes of Health to follow the DOD's lead. This bill, the Consumer Involvement in Breast Cancer Research Act, urges NIH to include breast cancer advocates in breast cancer research decision making, and to report on progress that the Institute is making next year.

But funding new research alone is not enough—we must ensure that people who are suffering from deadly diseases such as breast cancer have access to information about the latest, most-innovative therapies which are frequently available only through experimental drug trials. At a breast cancer hearing which I sponsored last year with my colleagues, Senators CONNIE MACK and DIANNE FEINSTEIN, we heard testimony from breast cancer advocates on the difficulty patients and physicians face in learning about ongoing clinical trials. The second bill I introduce today addresses this knowledge gap, by establishing a data bank of information on clinical trials and experimental treatments for all serious or life-threatening illnesses.

This "one-stop shopping information service" will include a registry of all privately and publicly funded clinical trials, and will contain information describing the purpose of the trial, eligibility criteria for participating in the trial, as well as the location of the trial. The database will also contain information on the results of completed clinical trials, enabling patients to make fully informed decisions about medical treatments. The bill would

allow people with a serious or life-threatening illness, or the doctor of a family member, to call a toll-free number to access this critical information so they could locate a clinical trial near them that may offer hope by extending their lives or alleviating their suffering. I am pleased that my colleague from California, Senator FEINSTEIN, is joining me in introducing this important bill.

Providing people with information about clinical trials is only the first step in increasing access to experimental treatments—we must also ensure that they have adequate insurance coverage to cover costs associated with clinical trials. While pharmaceutical companies typically cover the costs of the experimental treatment, insurance companies are expected to cover the costs of non-experimental services. Yet many insurance companies deny coverage for these non-experimental services when a patient is enrolled in an experimental trial.

As a result, many patients who could benefit from these potentially life-saving investigational treatments do not have access to them because their insurance will not cover these associated costs. Denying reimbursement for these services also impedes the ability of scientists to conduct important research, by reducing the number of patients who are eligible to participate in clinical trials.

The third bill I am introducing today, the Improved Patient Access to Clinical Studies Act of 1997, addresses this problem. This bill would prohibit insurance companies from denying coverage for services provided to individuals participating in clinical trials, if those services would otherwise be covered by the plan. This bill would also prevent health plans from discriminating against enrollees who choose to participate in clinical trials.

Another form of discrimination in health insurance we see today is based on genetic information. This is a particular concern to women who inherit or may have inherited a mutated form of the breast cancer gene [BRCA1 or BRCA2]. Women who inherit either of these mutated genes have an 85 percent risk of developing breast cancer in their lifetime, and a 50 percent chance of developing ovarian cancer. Although there is no known treatment to ensure that women who carry the mutated gene do not develop breast cancer, genetic testing makes it possible for carriers of these mutated genes to take extra precautions in order to detect cancer at its earliest stages—precautions such as mammograms and self-examinations.

The tremendous promise of genetic testing, however, is significantly threatened when insurance companies use the results of genetic testing to deny or limit coverage to consumers on the basis of genetic information. Yet this practice is relatively common today. In fact, a recent survey of individuals with a known genetic condition in the family revealed that 22 percent had been denied health insurance coverage because of genetic information.

In addition to the potentially devastating consequences of being denied health insurance on the basis of genetic information, the fear of discrimination has equally harmful consequences for consumers and for scientific research. For example, many women who might take extra precautions if they knew they had the breast cancer gene may not seek testing because they fear losing their health insurance. Patients may be unwilling to disclose information about their genetic status to their physicians out of fear, hindering treatment or preventive efforts. And people may be unwilling to participate in potentially ground breaking research because they do not want to reveal information about their genetic status.

The Kassebaum/Kennedy Health Care Reform Act took the first step in protecting Americans in group health plans from genetic discrimination by preventing discrimination in health insurance based on a pre-exiting genetic condition. My bill, the Genetic Information Nondiscrimination in Health Insurance Act of 1997, takes the next crucial steps to prohibit genetic discrimination. My bill prevents insurers from charging higher premiums based on genetic information, prohibits insurers from requiring or requesting a genetic test as a condition of coverage, requires informed written consent before an insurance company can disclose genetic information to a third party, and extends these important protections to Medigap.

While there is much that we still do not know in the fight against breast cancer, we do know that mammograms are currently the most effective weapon we have in the fight against breast cancer. Yet experts still disagree about the effectiveness of mammograms for women in their forties. In fact, the National Cancer Institute (NCI) in 1993 reversed its position on the effectiveness of mammograms for women in their forties, producing widespread confusion in women and their doctors. To assure that American women have clear guidance from their government on when to have a mammogram, I am reintroducing my bill, the Breast Cancer Screening Act of 1997, directing NCI to reissue its guidelines recommending mammograms for women in this age group. This legislation is particularly crucial in light of recent studies that show a reduced death rate for women in their forties who seek mammograms. In fact, one Swedish study of 150,000 women conducted in 1996 showed a 25 percent lower death rate for women who obtained mammograms beginning in their forties.

Finally, the sixth bill I am introducing is the Women's Health Office Act of 1997. This bill creates or codifies offices of women's health at various federal agencies, including the Office of the Assistant Secretary at HHS, the Centers for Disease Control, the Agency for Health Care Policy and Research, the Health Resources and Services Administration and the Food and Drug Administration. This bill provides for short and long-range goals and coordination of all activities that related to disease prevention, health promotion, delivery of health services and scientific research concerning women. The bill also creates a clearinghouse for information on women's health.

By statutorily creating Offices of Women's Health, the Deputy Assistant Secretary for Women's Health will be able to better monitor various Public Health Service agencies and advise them on scientific, legal, ethical and policy issues. Agencies would establish a Coordinating Committee on Women's Health to identify and prioritize which women's health projects should be conducted. This will also provide a mechanism for coordination within and across these agencies, and with the private sector. But most importantly, this bill will ensure the presence of enduring offices dedicated to addressing the ongoing needs and gaps in research policy, programs, and education and training in women'shealth.

Improving the health of American women requires a far greater understanding of women's health needs and conditions, and ongoing evaluation in the areas of research, education, prevention, treatment and the delivery of services. I believe that passage of these important bills will help ensure that women's health will never again be a missing page in America's medical textbook.

Mrs. FEINSTEIN. Mr. President, today Senator SNOWE and I are introducing S. 87, a bill to set up a toll-free service so that people with life-threatening diseases and the medical community can find out about research projects on new treatments.

There are thousands of serious and life-threatening diseases, diseases for which we have no cure. For genetic diseases alone, there are 3,000 to 4,000. We are familiar with diseases like cancer, Alzheimer's disease and multiple sclerosis. But there are thousands of others that are not so common, like cystinosis, Tay-Sachs disease, Wilson's disease, and Sjogren's syndrome. Indeed, there are over 5,000 known rare diseases, diseases most of us have never heard of, affecting between 10 and 20 million Americans.

Cancer kills half a million Americans per year. Diabetes afflicts 15 million Americans per year, half of whom do not know they have it. Arthritis affects 40 million Americans every year.

15,000 American children die every year. Among children, the rates of chronic respiratory diseases (asthma, bronchitis and sinusitis), heart murmurs, migraine headaches, anemia, epilepsy and diabetes are increasing. Few families escape illness today. Every family fears it.

THE BILL

Our bill requires the Secretary of Health and Human Services to establish a "one-stop shopping" database, including a toll-free telephone number, so that patients and physicians can conveniently find out what clinical research trials are being conducted on experimental treatments. By accessing this database, users would be able to find out the purpose of the study, eligibility requirements, research locations, and a contact person. Information would have to be presented in "plain English," not "medicalese," so that the average person could understand it.

Our bill is endorsed by the American Cancer Society, the National Organization for Rare Disorders, AIDS Action and the Alzheimer's Association.

A CONSTITUENT SUGGESTION

The need for this information center came from my constituent, Nancy Evans, of San Francisco's Breast Cancer Action, in a June 13, 1996 hearing of the Senate cancer coalition, which I co-chair with Senator MACK. She described the difficulty that cancer patients have in trying to find out what experimental treatments might be available, research trials sponsored by the federal government and by private companies. Most of them are desperate; most have tried everything. She testfied that the National Cancer Institute has established 1-800-4-CANCER, but the NCI information is incomplete. It does not include all trials and the information is often difficult for the lay person to understand.

In addition, the National Kidney Cancer Association has called for a central database.

PEOPLE IN SERIOUS NEED

It is helpful to think about the plight of the individuals that this bill could help. These are people who have a terminal illness; their physicians have tried every treatment they can find. Cancer patients, for example, have probably had several rounds of chemotherapy, which has left them, debilitated, virtually lifeless. These patients cling to slim hopes. They are desperate to try anything. But step one is finding out what is available, even if it is still in the experimental stage.

One survey found that a majority of patients and families are willing to use investigational drugs (drugs being researched but not approved for sale), but find it difficult to locate information on research projects. A similar survey of physicians found that 42 percent of physicians are unable to find printed information about rare illnesses.

HELP FOR PHYSICIANS

Physicians, no matter how competent and well trained, also cannot be knowledgeable about experimental treatments being researched. And most Americans do not have sophisticated computers hookups that provide them instant access to the latest information. Our witness, Nancy Evans, testified that she can find out more about a company's clinical trials by calling her stockbroker than by calling existing data services.

Many desperate families have called me, their U.S. Senator, seeking help. Others have lodged their pleas at the White House. Others call lawyers, 911, the local medical society, the local Chamber of Commerce, anything they can think of. Getting information on health research projects should not require a "fishing expedition" of futiile calls, "good connections" or the involvement of elected officials.

In 1988, Congress directed HHS to establish an AIDS Clinical Trials Information Services. It is now operational (1-800-TRIALS-A) so that patients, providers and their families can find out about AIDS clinical trials. All calls are confidential and experienced professionals at the service can help people.

IMPROVING HEALTH, RESEARCH

Facilitating access to information can also strengthen our health research effort. With a national database enabling people to find research trials, more people could be available to participate in research. This can help researchers broaden their pool of research participants.

MODEST HELP FOR THE ILL

The bill we introduce does not guarantee that anyone can participate in a clinical research trial. Researchers would still control who participates and set the requirements for the research. But for people who cling to hopes for a cure, for people who want to live longer, for people who want to feel better, this database can offer a little help.

If you have a life-threatening illness, you should not have to have political or other connections, computer sophistication or access to top-flight university medical schools to find out about research on treatments of disease

I hope this bill will offer some hope to the millions who are suffering today.

By Mr. KERRY:

S. 92. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on Labor and Human Resources.

WORKPLACE RELIGIOUS FREEDOM ACT

Mr. KERRY. Mr. President, I am proud today to introduce the Workplace Religious Freedom Act of 1997. This bill would protect workers from on-the-job discrimination. It represents a milestone in the protection of religious liberty, assuring that all workers have equal employment opportunities.

In 1972, Congress amended the Civil Rights Act of 1964 to require employers to reasonably accommodate an employee's religious practice or observance unless doing so would impose an undue hardship on the employer. This 1972 amendment, although completely appropriate, has been interpreted by the courts so narrowly as to place little restraint on an employer's refusal to provide religious accommodation. The "Workplace Religious Freedom Act" will restore to the religious accommodation provision the weight that Congress originally intended and help assure that employers have a meaningful obligation to reasonably accommodate their employees' religious practices.

The restoration of this protection is no small matter. For many religiously observant Americans the greatest peril to their ability to carry out their religious faiths on a day-to-day basis may come from employers. I have heard accounts from around the country about a small minority of employers who will not make reasonable accommodation for employees to observe the Sabbath and other holy days or for employees who must wear religiously-required garb, such as a yarmulke, or for employees to wear clothing that meets religious modesty requirements.

The refusal of an employer, absent undue hardship, to provide reasonable accommodation of a religious practice should be seen as a form of religious discrimination, as originally intended by Congress in 1972. And religious discrimination should be treated fully as seriously as any other form of discrimination that stands between Americans and equal employment opportunities. Enactment of the "Workplace Religious Freedom Act" will constitute an important step towards ensuring that all members of society, whatever their religious beliefs and practices, will be protected from an invidious form of discrimination.

It is important to recognize that, in addition to protecting the religious freedom of employees, this legislation protects employers from an undue burden. Employees would be allowed to take time off only if their doing so does not pose a significant difficulty or expense for the employer. This common sense definition of "undue hardship" is used in the Americans with Disabilities Act and has worked well in that context.

I believe this bill should receive bipartisan support. The same bill was endorsed in the last session by a wide range of organizations including the American Jewish Committee, the Baptist Joint Committee on Public Affairs, the Christian Legal Society, and the Jewish Community Relations Council of Greater Boston.

I urge this body to pass this legislation so that all American workers can both be assured of equal employment opportunities and the ability to practice their religion.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 92

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 "Workplace Religious Freedom Act of 1997".

SEC. 2. AMENDMENT.

(a) DEFINITIONS.—Section 701(j) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(j)) is amended—

(1) by inserting "(1)" after "(j)";

(2) by inserting ", after initiating and engaging in an affirmative and bona fide effort," after "unable"; and

(3) by adding at the end the following:

"(2) As used in this subsection, the term 'undue hardship' means an accommodation requiring significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expense, the factors to be considered shall include—

"(A) the identifiable cost of the accommodation in relation to the size and operating cost of the employer; and

"(B) the number of individuals who will need a particular accommodation to a religious observance or practice.".

(b) EMPLOYMENT PRACTICES.—Section 703 of such Act (42 U.S.C. 2000e-2) is amended by adding at the end the following:

"(o)(1) As used in this subsection:

"(A) The term 'employee' includes a prospective employee.

"(B) The term 'undue hardship' has the meaning given the term in section 701(j)(2).

"(2) For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee, an accommodation by the employer shall not be deemed to be reasonable if—

"(A) such accommodation does not remove the conflict between employment requirements and the religious observance or practice of the employee; or

"(B)(i) the employee demonstrates to the employer the availability of an alternative accommodation less onerous to the employee that may be made by the employer without undue hardship on the conduct of the employer's business; and

"(ii) the employer refuses to make such accommodation.

"(3) It shall not be a defense to a claim of unlawful employment practice under this title for failure to provide a reasonable accommodation to a religious observance or practice of an employee that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate to such observance or practice—

"(A) an adjustment would be made in the employee's work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements), shift, or job assignment, that would not be available to any employee but for such accommodation; or

"(B) the employee and any other employee would voluntarily exchange shifts or job assignments, or voluntarily make some other arrangement between the employees.

"(4)(A) An employer shall not be required to pay premium wages for work performed during hours to which such premium wages would ordinarily be applicable, if work is performed during such hours only to accommodate religious requirements of an employee.

"(B) As used in this paragraph, the term 'premium wages' includes overtime pay and compensatory time off, pay for night, weekend, or holiday work, and pay for standby or irregular duty.".

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by section 2 take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by section 2 do not apply with respect to conduct occurring before the date of enactment of this Act.

By Mr. KERRY:

S. 93. A bill to increase funding for child care under the temporary assistance for needy families program; to the Committee on Finance.

WORKING FAMILIES CHILD CARE ASSISTANCE ACT

Mr. KERRY. Mr. President, today I am introducing the "Working Families' Child Care Assistance Act" to help the many working families who face great struggles to find affordable, good-quality child care.

Mr. President, we no longer live in an era when one parent generally stays at home full time to take care of the children. Today, 60 percent of women with children younger than six are in the labor force. The result is that approximately seven million children of working parents are cared for each month by someone other than a parent. And most of these children spend 30 hours or more each week in child care, according to the National Research Council.

New research also confirms that our current social reality has placed enormous strains on working families' budgets because many families must pay for child care. According to a new study of 100 child care centers entitled "Cost, Quality, and Child Outcomes in Child Care Centers," families spend an average of $4,940 per year to provide services for each enrolled child. Annual child care costs of this size represent a whopping 28 percent of $17,481, which is the yearly income of an average family in the bottom two-fifths of the income scale.

But even for families who can afford the cost of child care, in some communities child care continues to be hard to obtain at any cost. In 1994, 36 States reported State child care assistance waiting lists, according to the Children's Defense Fund. Eight States had at least 10,000 children waiting for assistance. Georgia's list was the longest with 41,000, while in Texas the list had 36,000 names and a wait of about 2 years. In Massachusetts, the statewide waiting list contains the names of 4,000 working families. Additionally, a 1995 U.S. General Accounting Office (GAO) study found that shortages of child care for infants, sick children, children with special needs, and school-age children before and after school pose difficulties for many families.

I believe the child care situation may worsen because of a provision to which I was opposed in last year's welfare reform bill which cuts the Title XX Social Services Block Grant by 15 percent. Many States use Title XX funding to pay for child care for working families; unfortunately, this cut will result in even more families needing child care assistance.

Mr. President, it is time to provide help to working families to afford quality child care. My bill would double the funding through the Child Care Development Block Grant, increasing child care funding by $1 billion per year. In my home State of Massachusetts, this would result in more than 5,000 families receiving child care help which otherwise would not receive it.

Working parents face an extraordinary uphill battle in trying to make ends meet and cover the high cost of child care. Well over half the women in the work force are parents of preschool children, and they need access to affordable, quality child care they can trust. This bill provides real help to working families and hopefully will send a strong signal that their work and their efforts to provide reliable child care for their children are valued and supported.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 93

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASED FUNDING FOR CHILD CARE.

(a) IN GENERAL.—Section 418(a) of the Social Security Act (42 U.S.C. 618(a)) is amended by striking paragraph (3) and inserting the following:

"(3) APPROPRIATION.—For grants under this section, there are appropriated—

"(A) $2,967,000,000 for fiscal year 1997;

"(B) $3,067,000,000 for fiscal year 1998;

"(C) $3,167,000,000 for fiscal year 1999;

"(D) $3,367,000,000 for fiscal year 2000;

"(E) $3,567,000,000 for fiscal year 2001; and

"(F) $3,717,000,000 for fiscal year 2002.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on August 22, 1996.

By Mr. DORGAN:

S. 95. A bill to provide for Federal campaign finance reform, and for other

purposes; to the Committee on Rules and Administration.

CAMPAIGN FINANCE REFORM LEGISLATION

Mr. DORGAN. Mr President, the current system of electing Members of Congress is badly in need of reform. Elections are too long, too negative and too expensive; incumbents have a decided advantage over challengers, voter participation continues to decline, and 30-second political attack ads are polluting the airways. The American people want us to fix the system, and they want us to do it now. It is my view that campaign finance reform, along with balancing the budget, should be the highest priorities on the Senate agenda in the 105th Congress.

Successive Supreme court decisions have made it increasingly difficult to control campaign spending. In its review of the Federal Election Campaign Act (FECA) of 1971, the Court, in Buckley v. Valeo, stuck down the mandatory spending limits in that law as an infringement of First Amendment rights. The Court stated unequivocally: "In the free society ordained by our Constitution, it is not the government, but the people—individuals as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign." The Court at that time did, however, retain the section of FECA which limited contributions to political candidates because of the Court's stated concern that unlimited gifts to candidates were a recipe for corruption. Simply put, the Courts have prohibited mandatory spending limits while preserving contribution limits. In the long run, it seems to me that we will have to pass a constitutional amendment to get a handle on the spending side of the campaign equation, and I intend to cosponsor just such a measure.

Nevertheless, there are short term solutions that can and should be addressed, including voluntary spending limits. The system is awash in money, and the public is disgusted with the ever increasing amounts of money flowing into congressional campaign coffers. Whether we like it or not, the public believes the money is tainted. They know that money flows towards power, and are convinced that large campaign contributions buy influence. To put their concerns in some perspective, one need only look at the statistics. The average cost of winning a Senate seat rose from $609,100 in 1976 to $3.6 million in the 1996 election cycle, and incumbents on average have a spending advantage of more than 2–1 over challengers.

There is simply no way to justify these escalating expenditures. No wonder the American people have grown cynical of public institutions and officials, and no wonder talented people in our communities do not want to run for elective office. If we hope to reverse public attitudes and restore confidence in our government officials and institutions, we should begin with campaign finance reform. We have a unique opportunity this year to pass meaningful and bipartisan reform, something that has eluded us for more than a decade. I hope we will seize the moment.

While I intend to support comprehensive reform efforts as I have in the past, I am introducing legislation today to address what I perceive to be the most serious problems in the system now. My bill includes the following provisions which I will describe briefly:

1. VOLUNTARY SPENDING LIMITS/LIMITATION ON PERSONAL FUNDS/FEE ON NON-COMPLYING CANDIDATES

As a result of the Supreme Court decisions mentioned above, the only way to control spending in the short term is through voluntary spending limits. My bill contains voluntary limits which are based on a percentage of the voting age population in each state. These are the same limits that were contained in the campaign finance reform bill that passed the Senate in the 103rd Congress and which have been the basis of comprehensive reform proposals in the 104th Congress. In addition, my bill would limit the amount of personal or family money that a candidate can contribute to his or her campaign to $25,000. I don't believe any candidate should be able to spend unlimited personal funds in an attempt to buy a seat in the U.S. Senate.

Unlike other bills, however, my proposal imposes a fee on candidates who choose not to comply with the spending limits. Under my legislation, noncomplying candidates would be charged a fee of 50 percent on all expenditures exceeding the spending limits. The fee would be due and payable at the time candidates are currently required to submit quarterly and other reports to the Federal Election Commission. The proceeds from the fee would be distributed by the FEC on a fair and equitable basis among complying candidates for the same federal office. It is my hope that this fee will provide a strong inducement for candidates to comply with the voluntary spending limits.

2. SOFT MONEY

My bill prohibits national political parties and congressional campaign committees from raising or spending so-called "soft money." Only money raised and spent according to the requirements and restrictions of federal law can be used to "expressly advocate" the election or defeat of a federal candidate. This is called "hard money." However, unlimited amounts of soft money are being raised by the national parties and congressional campaign committees, outside the constraints of federal election law, ostensibly to support state and local candidates as well as federal candidates to the extent that they do not directly advocate the election or defeat of that candidate. In practice, however, soft money is being raised and spent on federal elections because of a loophole in federal election law.

Soft money is raised from unions and corporations, which are prohibited from contributing to federal elections except through their PACs, and from individuals who have reached the aggregate federal contribution limits of $25,000 a year. In a nutshell, soft money contributions are unlimited and unregulated.

It is this pot of soft money which has dramatically increased in recent election cycles. The Republican national committees raised $141.2 million in soft money in the 1996 election cycle, a 183 percent increase over the $49.2 raised in 1992. The Democratic party committees raised $122 million in 1996, a 237 percent increase over their 1992 level of $36.5 million. A substantial portion of soft money spending by party campaign committees has gone to finance the generic issue ads we have come to know as attack ads. The figures above illustrate the problem. My bill would eliminate it by preventing national committees from raising or spending soft money which does not comply with the source and dollar restrictions in federal campaign finance law.

3. EXPRESS ADVOCACY

As mentioned above, only money raised under the restrictions and prohibitions of federal election law can be used to advocate the election or defeat of a candidate for federal office. As currently defined in FEC regulations, only communications which use such words as "vote for", "elect", "support", "defeat", "reject" or "Smith for Congress" are considered express advocacy which must be paid for with money raised under federal election law restraints, i.e., hard money.

This overly narrow definition of what constitutes express advocacy has created a giant loophole for attack ads. Simply by avoiding the magic words mentioned above, political parties, corporations, unions and other special interest groups can pay for brutal attack ads which certainly have the intent of influencing the outcome of federal elections—and they can do it without having to disclose it to the FEC.

My bill would expand the current express advocacy standard to include both the content and intent of such ads. It would not prohibit such ads; it would simply ensure—as Congress intended—that such ads are paid for with money which is subject to regulation and disclosure. Any political ads that clearly identify a candidate(s) and which are broadcast within 60 days prior to an election (or 90 days prior to a general election with respect to a candidate for Vice President or President) will be considered express advocacy and, therefore, will be subject to the restrictions and limitations of federal election law. The bottom line is

that you would have to pay for these ads with hard money which is more difficult to raise and which requires full disclosure to the FEC.

4. POLITICAL ADVERTISING

I have long thought that the 30-second political attack ad does little, if anything, to advance the cause of public debate. They tend to be hit-and-run ads. Under current federal communications law, television broadcasters are required to provide political candidates with their lowest unit rate—the rate they charge their best customers—for political ads run in the 45 days prior to a primary election and 60 days prior to a general election. Unfortunately, oftentimes the candidate never appears in the ad. My bill would require broadcasters to provide this reduced rate only for ads which are at least one minute in length and in which the candidate appears at least 75 percent of the time.

5. NON-CITIZENS

It is my strong view that people who are not citizens of the United States should not be able to influence our election process in any way. Therefore, my bill prohibits non-citizens from raising funds for or contributing to federal elections.

6. VOTER PARTICIPATION

I am extremely disheartened by the lack of individual involvement in the political process and the every increasing decline in voter participation numbers. Between 1948–1968, voter turnout for presidential elections was 60.43 percent. Between 1972–1992, it fell to 53.21 percent. Last year, it fell below 50 percent. These statistics are a national disgrace Certainly, there must be something that can be done to increase voter participation. Unfortunately, past initiatives have had little or marginal impact on increasing the number of voters who choose to fulfill their civic responsibility to vote. I believe we need a comprehensive analysis of what has worked, what has not worked or what we might try to change public attitudes, educate voters and improve participation. Early voting, extended polling hours and weekend voting are areas that ought to be researched. My bill provides $150,000 for the Federal Election Commission to conduct such a study and to make recommendations to Congress. This is a small amount of money to invest in an increasingly serious public problem.

7. TAX CREDIT

If we want to encourage participation by ordinary citizens, I believe it is in our national interest to restore a tax credit for small contributors similar to what existed between 1972 and 1986. My bill does that by providing an annual 100% tax credit for the first $100 ($200 for joint returns) of contributions to congressional campaigns. It is my belief that many people who want to participate financially in the political process simply cannot afford to do so. These voters believe they have no power or influence. They are increasingly frustrated, disgusted and disengaged. My bill will afford them the opportunity to participate in the process.

The American public and the voters in my state of North Dakota are clearly appalled by the amount of money involved in electing federal officials. They are adamant that we clean up the system—NOW. If we don't, we do so at our personal and collective peril.

I want the people of North Dakota and the Members of this body to know that I intend to support and to work as hard as I can to enact comprehensive campaign finance legislation this year. I think is in all our best interests to do so, and I hope my bill will stimulate debate and be incorporated in the final reform package.

By Mr. INOUYE:

S. 96. A bill to require the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Armed Services.

MILITARY SERVICE LEGISLATION

Mr. INOUYE. Mr. President, I am reintroducing legislation today that would direct the Secretary of the Army to determine whether certain nationals of the Philippine Islands performed military service on behalf of the United States during World War II.

Mr. President, our Filipino veterans fought side by side and sacrificed their lives on behalf of the United States. This legislation would confirm the validity of their claims and further allow qualified individuals the opportunity to apply for military and veterans benefits that, I believe, they are entitled to. As this population becomes older, it is important for our nation to extend its firm commitment to the Filipino veterans and their families who participated in making us the great nation that we are today.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 96

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DETERMINATIONS BY THE SECRETARY OF THE ARMY.

(a) IN GENERAL.—Upon the written application of any person who is a national of the Philippine Islands, the Secretary of the Army shall determine whether such person performed any military service in the Philippine Islands in aid of the Armed Forces of the United States during World War II which qualifies such person to receive any military, veterans', or other benefits under the laws of the United States.

(b) INFORMATION TO BE CONSIDERED.—In making a determination for the purpose of subsection (a), the Secretary shall consider all information and evidence (relating to service referred to in subsection (a)) available to the Secretary, including information and evidence submitted by the applicant, if any.

SEC. 2. CERTIFICATE OF SERVICE.

(A) ISSUANCE OF CERTIFICATE OF SERVICE.—The Secretary shall issue a certificate of service to each person determined by the Secretary to have performed military service described in section 1(a).

(b) EFFECT OF CERTIFICATE OF SERVICE.—A certificate of service issued to any person under subsection (a) shall, for the purpose of any law of the United States, conclusively establish the period, nature, and character of the military service described in the certificate.

SEC. 3. APPLICATIONS BY SURVIVORS.

An application submitted by a surviving spouse, child, or parent of a deceased person described in section 1(a) shall be treated as an application submitted by such person.

SEC. 4. LIMITATION PERIOD.

The Secretary may not consider for the purpose of this Act any application received by the Secretary more than two years after the date of enactment of this Act.

SEC. 5. PROSPECTIVE APPLICATION OF DETERMINATIONS BY THE SECRETARY OF THE ARMY.

No benefits shall accrue to any person for any period prior to the date of enactment of this Act as a result of the enactment of this Act.

SEC. 6. REGULATIONS.

The Secretary shall issue regulations to carry out sections 1, 3, and 4.

SEC. 7. RESPONSIBILITIES OF THE SECRETARY OF VETERANS AFFAIRS.

Any entitlement of a person to receive veterans' benefits by reason of this Act shall be administered by the Department of Veterans Affairs pursuant to regulations issued by the Secretary of Veterans Affairs.

SEC. 8. DEFINITIONS.

In this Act:

(1) The term "Secretary" means the Secretary of the Army.

(2) The term "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

By Mr. KERRY:

S. 97. A bill to amend the Internal Revenue Code of 1986 and the Social Security Act to require the Internal Revenue Service to collect child support through wage withholding and to eliminate State enforcement of child support obligations other than medical support obligations; to the Committee on Finance.

THE UNIFORM CHILD SUPPORT ENFORCEMENT ACT OF 1997

Mr. KERRY. Mr. President, I am introducing legislation today to help ensure that children across this country get the economic support they need and deserve from both parents in order to have a wholesome childhood, grow up healthy, and thrive.

Mr. President, child support reform is an urgent public issue because it affects so many children. In 1994, one out of every four children lived in a family with only one parent present in the

home. Half of all the 18.7 million children living in single-parent families in 1994 were poor, compared with only slightly more than one out of every ten children in two-parent families. Clearly the payment of child support by the absent parent is an important determinant of the economic status of these children.

Unfortunately, the failure to pay child support is extraordinarily widespread, cutting across income and racial lines. Of the 10 million women raising children with an absent parent, over 4 million had no support awarded. Of those 5.4 million women who were due support, slightly over half received the full amount due, while a quarter received partial payment and a quarter received nothing at all. Let me repeat that, Mr. President—more than half of the women with child support orders received no support or less than the full amount.

Mr. President, common sense will tell you that children are hurt when parents do not pay support. But perhaps some evidence will make the point even clearer. A recent survey of single parents in Georgia, Oregon, Ohio, and New York documents the real harm children suffer when child support is not paid: during the first year after the parent left the home, more than half the families surveyed faced a serious housing crisis. Nearly a third reported that their children went hungry at some point during the year. And over a third reported that their children lacked appropriate clothing such as a winter coat.

Mr. President, it is also evident that better child support enforcement can produce a lot more money for children. A 1994 study by the Urban Institute estimates that if child support orders were established for all children with a living non-custodial father and these orders were fully enforced, aggregate child support payments would have been $47.6 billion dollars in 1990—nearly three times the amount of child support actually paid in this country.

Unfortunately, this country has made all too little progress in tackling the child support problem, and this has been true under both Democratic and Republican Administrations. Over the past decade, the average child support payment due to all women with a child support award, the average amount received by those women, as well as the percentage of women with awards have remained virtually unchanged (adjusting for inflation). Similarly, the state child support enforcement system that serves welfare families and non-welfare families who ask for help has made progress in paternity establishment, but little progress overall. Over half a million children had their paternity established by state agencies in FY 1994—a fifty percent increase from five years earlier. But fewer than one out of every five cases served by state agencies had any child support paid in FY 1994—a figure that has risen only slightly since FY 1990. Mr. President, it is an intolerable situation for our nation's children when state child support agencies are making absolutely no collection in 80 percent of their cases.

My bill will help make sure that we achieve real progress for children. Last year, Congress passed some important improvements in the child support system in the welfare reform bill that became law. My bill would give states a chance to implement these new changes and then assess their success or failure. If these reforms succeed in dramatically improving the performance of state child support offices, then this bill would not tinker with success. If, however, we do not see dramatic improvement in collections within the next three years, this bill would ensure that we take bold steps to help children. This bill would leave establishment of paternity and child support orders at the state level but move collection of support to the national level where we can more aggressively pursue interstate cases and send a message to all parents obligated to pay support that making full and timely support payments is an obligation as serious as making full and timely payment of taxes. If more than half the states do not achieve a 75 percent collection rate in their child support cases, then the system of collection would be federalized to ensure that children get the support they need and deserve.

Mr. President, it has been 13 years since this Congress passed the first major child support legislation. Despite this legislative effort and additional reforms in 1988, according to a recent study there is a higher default rate on child support payments than on used car loans. I believe that every single member of this body will agree with me that this is wrong. If, under the newly revised federal law, states can rectify this situation, we can all take pleasure and satisfaction from watching them do it. If they cannot, we must take action. I urge my colleagues to support this bill so that America's children of every income level will be assured of the support they need and deserve.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 97

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 "Uniform Child Support Enforcement Act of 1997".

SEC. 2. EFFECTIVE DATE; AMENDMENTS.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect on the first day of the first calendar month that begins after the 3-year period that begins with the date of the enactment of this Act, if the Secretary of Health and Human Services certifies to the Congress that on such first day more than 50 percent of the States have not achieved a 75 percent collection rate in child support cases in which child support is awarded and due under the jurisdiction of such States pursuant to part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.).

(b) ELIMINATION OF PROVISIONS OF LAW RELATING TO STATE ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OTHER THAN MEDICAL SUPPORT OBLIGATIONS.—Not later than 90 days after the effective date of this Act and the amendments made by this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of the Congress a legislative proposal proposing such technical and conforming amendments as are necessary to eliminate State enforcement of child support obligations other than medical support obligations and to bring the law into conformity with the policy embodied in this Act.

SEC. 3. NATIONAL CHILD SUPPORT ORDER REGISTRY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of the Treasury shall establish in the Internal Revenue Service a national registry of abstracts of child support orders.

(2) CHILD SUPPORT ORDER DEFINED.—As used in this section, the term "child support order" means an order, issued or modified by a State court or an administrative process established under State law, that requires an individual to make payments for support and maintenance of a child or of a child and the parent with whom the child is living.

(b) CONTENTS OF ABSTRACTS.—The abstract of a child support order shall contain the following information:

(1) The names, addresses, and social security account numbers of each individual with rights or obligations under the order, to the extent that the authority that issued the order has not prohibited the release of such information.

(2) The name and date of birth of any child with respect to whom payments are to be made under the order.

(3) The dollar amount of child support required to be paid on a monthly basis under the order.

(4) The date the order was issued or most recently modified, and each date the order is required or scheduled to be reviewed by a court or an administrative process established under State law.

(5) Any orders superseded by the order.

(6) Such other information as the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall, by regulation require.

SEC. 4. CERTAIN STATUTORILY PRESCRIBED PROCEDURES REQUIRED AS A CONDITION OF RECEIVING FEDERAL CHILD SUPPORT FUNDS.

Section 466(a) of the Social Security Act (42 U.S.C. 666(a)) is amended by inserting after paragraph (19) the following:

"(20)(A) Procedures which require any State court or administrative agency that issues or modifies (or has issued or modified) a child support order to transmit an abstract of the order to the Internal Revenue Service on the later of—

"(i) the date the order is issued or modified; or

"(ii) the effective date of this paragraph.

"(B) Procedures which—

"(i) require any individual with the right to collect child support pursuant to an order

issued or modified in the State (whether before or after the effective date of this paragraph) to be presumed to have assigned to the Internal Revenue Service the right to collect such support, unless the individual affirmatively elects to retain such right at any time; and

"(ii) allow any individual who has made the election referred to in clause (i) to rescind or revive such election at any time.".

SEC. 5. COLLECTION OF CHILD SUPPORT BY INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7525. COLLECTION OF CHILD SUPPORT.

"(a) EMPLOYEE TO NOTIFY EMPLOYER OF CHILD SUPPORT OBLIGATION.—

"(1) IN GENERAL.—Each employee shall specify, on each withholding certificate furnished to such employee's employer—

"(A) the monthly amount (if any) of each child support obligation of such employee, and

"(B) the TIN of the individual to whom each such obligation is owed.

"(2) WHEN CERTIFICATE FILED.—In addition to the other required times for filing a withholding certificate, a new withholding certificate shall be filed within 30 days after the date of any change in the information specified under paragraph (1).

"(3) PERIOD CERTIFICATE IN EFFECT.—Any specification under paragraph (1) shall continue in effect until another withholding certificate takes effect which specifies a change in the information specified under paragraph (1).

"(4) AUTHORITY TO SPECIFY SMALLER CHILD SUPPORT AMOUNT.—In the case of an employee who is employed by more than 1 employer for any period, such employee may specify less than the monthly amount described in paragraph (1)(A) to each such employer so long as the total of the amounts specified to all such employers is not less than such monthly amount.

"(b) CERTAIN OBLIGATIONS EXEMPT.—This section shall not apply to a child support obligation for any month if the individual to whom such obligation is owed has so notified the Secretary and the individual owing such obligation more than 30 business days before the beginning of such month.

"(c) EMPLOYER OBLIGATIONS.—

"(1) REQUIREMENT TO DEDUCT AND WITHHOLD.—

"(A) IN GENERAL.—Every employer who receives a certificate under subsection (a) that specifies that the employee has a child support obligation for any month shall deduct and withhold from the wages (as defined in section 3401(a)) paid by such employer to such employee during each month that such certificate is in effect an additional amount equal to the amount of such obligation or such other amount as may be specified by the Secretary under subsection (d).

"(B) LIMITATION ON AGGREGATE WITHHOLDING.—In no event shall an employer deduct and withhold under this section from a payment of wages an amount in excess of the amount of such payment which would be permitted to be garnished under section 303(b) of the Consumer Credit Protection Act.

"(2) NOTICE TO SECRETARY.—

"(A) IN GENERAL.—Every employer who receives a withholding certificate shall, within 30 business days after such receipt, submit a copy of such certificate to the Secretary.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any withholding certificate if—

"(i) a previous withholding certificate is in effect with the employer, and

"(ii) the information shown on the new certificate with respect to child support is the same as the information with respect to child support shown on the certificate in effect.

"(3) WHEN WITHHOLDING OBLIGATION TAKES EFFECT.—Any withholding obligation with respect to a child support obligation of an employee shall commence with the first payment of wages after the certificate is furnished.

"(d) SECRETARY TO VERIFY AMOUNT OF CHILD SUPPORT OBLIGATION.—

"(1) VERIFICATION OF INFORMATION SPECIFIED ON WITHHOLDING CERTIFICATES.—Within 45 business days after receiving a withholding certificate of any employee, or a notice from any person claiming that an employee is delinquent in making any payment pursuant to a child support obligation, the Secretary shall determine whether the information available to the Secretary under section 3 of the Uniform Child Support Enforcement Act of 1996 indicates that such employee has a child support obligation.

"(2) EMPLOYER NOTIFIED IF INCREASED WITHHOLDING IS REQUIRED.—If the Secretary determines that an employee's child support obligation is greater than the amount (if any) shown on the withholding certificate in effect with respect to such employee, the Secretary shall, within 45 business days after such determination, notify the employer to whom such certificate was furnished of the correct amount of such obligation, and such amount shall apply in lieu of the amount (if any) specified by the employee with respect to payments of wages by the employer after the date the employer receives such notice.

"(3) DETERMINATION OF CORRECT AMOUNT.—In making the determination under paragraph (2), the Secretary shall take into account whether the employee is an employee of more than 1 employer and shall appropriately adjust the amount of the required withholding from each such employer.

"(e) CHILD SUPPORT OBLIGATIONS REQUIRED TO BE PAID WITH INCOME TAX RETURN.—

"(1) IN GENERAL.—The child support obligation of any individual for months ending with or within any taxable year shall be paid—

"(A) not later than the last date (determined without regard to extensions) prescribed for filing his return of tax imposed by chapter 1 for such taxable year, and

"(B)(i) if such return is filed not later than such date, with such return, or

"(ii) in any case not described in clause (i), in such manner as the Secretary may by regulations prescribe.

"(2) CREDIT FOR AMOUNT PREVIOUSLY PAID.—The amount required to be paid by an individual under paragraph (1) shall be reduced by the sum of—

"(A) the amount collected under this section with respect to periods during the taxable year, plus

"(B) the amount (if any) paid by such individual under section 6654 by reason of subsection (f)(3) thereof for such taxable year.

"(f) FAILURE TO PAY AMOUNT OWING.—If an individual fails to pay the full amount required to be paid under subsection (e) on or before due date for such payment, the Secretary shall assess and collect the unpaid amount in the same manner, with the same powers, and subject to the same limitations applicable to a tax imposed by subtitle C the collection of which would be jeopardized by delay.

"(g) CREDIT OR REFUND FOR WITHHELD CHILD SUPPORT IN EXCESS OF ACTUAL OBLIGATION.—There shall be allowed as a credit against the taxes imposed by subtitle A for the taxable year an amount equal to the excess (if any) of—

"(1) the aggregate of the amounts described in subparagraphs (A) and (B) of subsection (e)(2), over

"(2) the actual child support obligation of the taxpayer for such taxable year.

The credit allowed by this subsection shall be treated for purposes of this title as allowed by subpart C of part IV of subchapter A of chapter 1.

"(h) CHILD SUPPORT TREATED AS TAXES.—

"(1) IN GENERAL.—For purposes of penalties and interest related to failure to deduct and withhold taxes, amounts required to be deducted and withheld under this section shall be treated as taxes imposed by chapter 24.

"(2) OTHER RULES.—Rules similar to the rules of sections 3403, 3404, 3501, 3502, 3504, and 3505 shall apply with respect to child support obligations required to be deducted and withheld.

"(3) SPECIAL RULE FOR COLLECTIONS.—For purposes of collecting any unpaid amount which is required to be paid under this section—

"(A) paragraphs (4), (6), and (8) of section 6334(a) (relating to property exempt from levy) shall not apply, and

"(B) there shall be exempt from levy so much of the salary, wages, or other income of an individual as is being withheld therefrom in garnishment pursuant to a judgment entered by a court of competent jurisdiction for the support of his minor children.

"(i) COLLECTIONS DISPERSED TO INDIVIDUAL OWED OBLIGATION.—

"(1) IN GENERAL.—Payments received by the Secretary pursuant to this section or by reason of section 6654(f)(3) which are attributable to a child support obligation payable for any month shall be paid (to the extent such payments do not exceed the amount of such obligation for such month) to the individual to whom such obligation is owed as quickly as possible. Any penalties and interest collected with respect to such payments also shall be paid to such individual.

"(2) SHORTFALLS IN PAYMENTS MADE BY OTHER WITHHELD AMOUNTS.—If the amount payable under a child support obligation for any month exceeds the payments (referred in paragraph (1)) received with respect to such obligation for such month, such excess shall be paid from other amounts received under subtitle C or section 6654 with respect to the individual owing such obligation. The treasury of the United States shall be reimbursed for such other amounts from collections from the individual owing such obligation.

"(3) FAMILIES RECEIVING STATE ASSISTANCE.—In the case of an individual with respect to whom an assignment of child support payments to a State is in effect—

"(A) of the amounts collected which represent monthly support payments, the first $50 of any payments for a month shall be paid to such individual and shall not be considered as income for purposes of calculating amounts of State assistance, and

"(B) all other amounts shall be paid to such State pursuant to such assignment.

"(j) TREATMENT OF ARREARAGES UNDER CHILD SUPPORT OBLIGATIONS NOT SUBJECT TO SECTION FOR PRIOR PERIOD.—If—

"(1) this section did not apply to any child support obligation by reason of subsection (b) for any prior period, and

"(2) there is a legally enforceable past-due amount under such obligation for such period,

then such past-due amount shall be treated for purposes of this section as owed (until

paid) for each month that this section applies to such obligation.

"(k) DEFINITIONS AND SPECIAL RULES.—

"(1) DEFINITIONS.—For purposes of this section—

"(A) WITHHOLDING CERTIFICATE.—The term 'withholding certificate' means the withholding exemption certificate used for purposes of chapter 24.

"(B) BUSINESS DAY.—The term 'business day' means any day other than a Saturday, Sunday, or legal holiday (as defined in section 7503).

"(2) TIMELY MAILING.—Any notice under subsection (c)(2) or (d)(2) which is delivered by United States mail shall be treated as given on the date of the United States postmark stamped on the cover in which such notice is mailed.

"(l) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) WITHHELD CHILD SUPPORT TO BE SHOWN ON W-2.—Subsection (a) of section 6051 of such Code, as amended by section 310(c)(3) of the Health Insurance Portability and Accountability Act of 1996, is amended by striking "and" at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting ", and", and by inserting after paragraph (11) the following new paragraph:

"(12) the total amount deducted and withheld as a child support obligation under section 7525(c)."

(c) APPLICATION OF ESTIMATED TAX.—

(1) IN GENERAL.—Subsection (f) of section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by striking "minus" at the end of paragraph (2) and inserting "plus", by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) the aggregate amount of the child support obligations of the taxpayer for months ending with or within the taxable year (other than such an obligation for any month for which section 7525 does not apply to such obligation), minus".

(2) Paragraph (1) of section 6654(d) of such Code is amended by adding at the end the following new subparagraph:

"(D) DETERMINATION OF REQUIRED ANNUAL PAYMENT FOR TAXPAYERS REQUIRED TO PAY CHILD SUPPORT.—In the case of a taxpayer who is required under section 7525 to pay a child support obligation (as defined in section 7525) for any month ending with or within the taxable year, the required annual payment shall be the sum of—

"(i) the amount determined under subparagraph (B) without regard to subsection (f)(3), plus

"(ii) the aggregate amount described in subsection (f)(3)."

(3) CREDIT FOR WITHHELD AMOUNTS, ETC.—Subsection (g) of section 6654 of such Code is amended by adding at the end the following new paragraph:

"(3) CHILD SUPPORT OBLIGATIONS.—For purposes of applying this section, the amounts collected under section 7525 shall be deemed to be a payment of the amount described in subsection (f)(3) on the date such amounts were actually withheld or paid, as the case may be."

(d) PENALTY FOR FALSE INFORMATION ON WITHHOLDING CERTIFICATE.—Section 7205 of such Code (relating to fraudulent withholding exemption certificate or failure to supply information) is amended by adding at the end the following new subsection:

"(c) WITHHOLDING OF CHILD SUPPORT OBLIGATIONS.—If any individual willfully makes a false statement under section 7525(a), then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both."

(e) NEW WITHHOLDING CERTIFICATE REQUIRED.—Not later than 90 days after the date this Act takes effect, each employee who has a child support obligation to which section 7525 of the Internal Revenue Code of 1986 (as added by this section) applies shall furnish a new withholding certificate to each of such employee's employers. A certificate required under the preceding sentence shall be treated as required under such section 7525.

(f) REPEAL OF OFFSET OF PAST-DUE SUPPORT AGAINST OVERPAYMENTS.—

(1) Section 6402 of such Code, as amended by section 110(*l*)(7) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, is amended by striking subsections (c) and (h) and by redesignating subsections (d), (e), (f), (g), (i), and (j) as subsections (c), (d), (e), (f), (g), and (h), respectively.

(2) Subsection (a) of section 6402 of such Code, as so amended, is amended by striking "(c), (d), and (e)" and inserting "(c) and (d)".

(3) Subsection (c) of section 6402 of such Code (as redesignated by paragraph (1)) is amended—

(A) by striking "(other than past-due support subject to the provisions of subsection (c))" in paragraph (1),

(B) by striking "after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) of the Social Security Act and" in paragraph (2).

(4) Subsection (d) of section 6402 of such Code (as redesignated by paragraph (1)) is amended by striking "or (d)".

(g) REPEAL OF COLLECTION OF PAST-DUE SUPPORT.—Section 6305 of such Code is hereby repealed.

(h) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 64 of such Code is amended by striking the item relating to section 6305.

(2) The table of sections for chapter 77 of such Code is amended by adding at the end thereof the following new item:

"Sec. 7525. Collection of child support."

(h) USE OF PARENT LOCATOR SERVICE.—Section 453(a) of the Social Security Act (42 U.S.C. 653(a)) is amended by inserting "or the Internal Revenue Service" before "information as".

By Mr. GRAMS (for himself, Mr. HUTCHINSON, Mr. NICKLES, Mr. KYL, and Mr. COATS):

S. 98. A bill to amend the Internal Revenue Code of 1986 to provide a family tax credit; to the Committee on Finance.

THE FAMILY TAX FAIRNESS ACT OF 1997

Mr. GRAMS. Madam President, I thank my colleague from Oklahoma for helping us in supporting this bill.

Madam President, I rise today to introduce legislation, together with Senator HUTCHINSON, my distinguished colleague from Arkansas, a bill to provide the $500 per child tax credit for America's working families. We are pleased, as I said, to be joined by Senator NICKLES, along with Senators KYL and COATS, in introducing this bill.

The November election sends us a very clear message that the American people want us to work together, to work together in a bipartisan manner, to balance the Federal budget, control the growth of Government, and to restore its accountability. While we see the tax burden increase on the middle class, working families need our help, and it is time that Congress and the President come together to deliver it.

Since the opening days of the 105th Congress, a renewed spirit of cooperation has settled in over Washington. Instead of the partisan politics that have often and too often exploited our disagreements, the talk from the Capitol Building to the White House has centered on creating consensus. Just yesterday in his inaugural address the President affirmed this commitment when he said, "The American people returned to office a President of one party and a Congress of another. Surely they did not do this to advance the politics of petty bickering and partisanship, which they plainly deplore."

While a sign of that new commitment, I believe, is the strongest and the most compassionate statement this Congress and this President can make in 1997 on behalf of working families is to cut their taxes and to leave them a little bit more of their own money at the end of the day, the extensive debate that we have undertaken in the past 2 years over fiscal policy has helped us to understand that working families are indeed overtaxed.

The child tax credit is appropriate and necessary to stimulate economic growth and to allow families to make more of their own spending decisions. The people of Minnesota sent me to Washington with their instructions to make the $500-per-child tax credit a top priority. Like struggling men and women nationwide, Minnesotans have seen what our outrageous tax burden has done to their families over the past 40 years. It is far from merely being a fact of life. Taxes today dominate the family budget.

There is no better argument for tax relief than to consider that taxpayers today are spending more to feed their Government than they are spending to feed, clothe, and shelter their families. When we debated the $500-per-child tax credit in the last Congress, some of my colleagues expressed their concern that any tax relief now would jeopardize their efforts to balance the Federal budget. Balance the budget first, they said, and then cut taxes later. Their concerns missed a very important part. The budget will never be balanced or stay balanced until we decide that it is the people who should prosper under it and not the Government.

Recent economic data reveal that despite a shrinking Federal deficit, the Government is in fact getting bigger, not smaller. Government spending and taxes continue to soar, and total taxation now claims the largest bite in the

Nation's income in history. Without significant policy changes, the deficit will begin climbing again in fiscal year 1998 and reach over $200 billion by the year 2002.

By enacting the $500-per-child tax credit we can begin turning back the decades of abuse which taxpayers have suffered at the hands of their own Government, a Government often eager to spend the taxpayers' money with reckless regard. The $500-per-child tax credit is the right solution because it takes power out of the hands of Washington's big spenders and puts it back where it can do the most good, and that is in the hands of families.

Nobody outside of Washington's insulated fantasy world really thinks the Government can spend the family's dollars more efficiently than the family would. By leaving that money in the family bank accounts, taxpayers are then empowered to use it to directly benefit their own household. They can make the best decisions on how to spend those dollars. Beyond the direct benefits, families' tax relief can have a substantial and a positive impact on the economy as a whole.

It was John F. Kennedy who observed that "an economy hampered with high tax rates will never introduce enough revenue to balance the budget, just as it will never produce enough output and enough jobs." President Kennedy was able to put these theories to work in the early 1960's when he enacted significant tax cuts that sparked one of the few periods of sustained growth that we have experienced in the last half century.

It was 20 years later when President Ronald Reagan cut taxes once again that reinvigorated the economy, which responded enthusiastically with 19 million new jobs that were created, and take-home pay grew 13 percent between 1982 and 1996. It is now President Clinton who has the opportunity to work alongside Congress as we cut taxes and generate a new era of growth in the economy and prosperity for American families. I am encouraged by his public cause for family tax relief, and in particular his words in support of the $500-per-child tax credit.

With the President truly committed to working with us, there is every reason to believe that a plan that will balance the budget and reduce the tax load for working families will pass this Congress and be signed into law this year. We made a promise to middle class Americans that we would cut their taxes. We laid the groundwork for the $500-per-child tax credit in the 104th Congress, so now in the 105th it is time that we put aside politics and deliver on the promise.

So I ask that S. 9 be introduced and properly referred.

The PRESIDING OFFICER. The bill will be appropriately referred.

Mr. GRAMS. Thank you very much, Madam President.

Mr. HUTCHINSON. Madam President, I rise today in support of America's families. It is with a deep sense of honor that I stand for the first time before this great deliberative body. As the first Republican Senator to be popularly elected from the great state of Arkansas, I believe it is fitting that my first legislative initiative be on behalf of those whom we hold most dear—the children of America's families. It is doubly fitting that I join my dear friend from our days in the House of Representatives and now Senate colleague, ROD GRAMS, in cosponsorship of the Family Tax Fairness Act of 1997.

My career of public service has been grounded in principles of faith, preservation of the family and honest but less intrusive government. These tenets will be my guide post as I serve the good people of Arkansas in the United States Senate.

In my lifetime, I have observed the precipitous decline of the economic and moral health of the American family. This decline is attributable to many causes not the least of which is the rising tax burden. As a member of the baby boomer generation, I, like all of you, have watched our 2% tax rate of the 1950's grow to 25%, nearly a 300% increase since World War II. This means that America's families send one out of every four dollars to Washington. In real terms, the average American family pays more in federal taxes than it spends on food, clothing, transportation, insurance, and recreation combined.

What is the payback for millions of hardworking American families? It is increased crime rates, failing educational systems, intrusive government, and a very real threat to our overall quality of life by the shrinking of America's backbone—the middle class. It is my belief that over taxation is slowly destroying the middle class American family. Families are working harder and harder and taking home less and less. Measured by average after-tax per capita income, families with children are now the lowest income group in America. Their average after-tax income is below that of elderly households. It is below that of single individuals, and it is below that of couples without children. The shrinking family paycheck because of ever-higher taxes forces families with children to spend more time at work and less time at home. Less family time translates into children with less parental supervision with all of its attendant problems.

The Family Tax Fairness Act of 1997 with a $500 tax credit for every child under the age of 18, provides the stimulus to keep our families strong. It translates into over $25 billion of tax relief each year, of which over 78 percent would directly benefit working and middle class families. I am convinced that parents, not government, can best decide how to allocate resources. Under this proposal, a family with two children would receive $1,000 to pay for clothes, college, or health insurance for the children. The Family Tax Fairness Act of 1997 is a statement by our government and our society that all our families and all of our children are valuable.

In closing, I am reminded of the words of William Sumner in his speech, The Forgotten Man.

"The Forgotten Man . . . delving away in patient industry supporting his family, paying his taxes, casting his vote, supporting the church and school . . . but he is the only one for whom there is no provision in the great scramble and the big divide. Such is the Forgotten Man. He works, he votes, generally he prays—but his chief business in life is to pay . . . Who and where is the Forgotten Man in this case? Who will have to pay for it all?"

Sadly, the Forgotten Man is a metaphor for today's American family. So, while I urge support for the repeal of the death tax—the inheritance tax—that killer of the American dream . . . and while I urge support for dramatically cutting the capital gains tax rate, which both economists and experience teach will actually increase federal revenues, let us not forget the American family.

I urge my colleagues to join Senator GRAMS and myself in support of the Family Tax Fairness Act of 1997.

I thank the chair and yield the floor.

Mr. NICKLES. Madam President, Senator GRAMS and Senator Hutchinson will be introducing legislation dealing with the $500 tax credit per child. I compliment them on this legislation. I am happy to cosponsor it with them. It is outstanding legislation that will restore individual families the opportunity to keep more of their own money. I might mention that the definition of "child" in the legislation which we are introducing includes children up to age 18 in contrast to that introduced by the President which is up to age 12, a big difference. It is a very profamily, very positive protaxpayer piece of legislation of which I am very happy to cosponsor. And I compliment my colleagues from Minnesota and Arkansas for their leadership on this issue.

By Mrs. BOXER:

S. 99. A bill to amend the Internal Revenue Code of 1986 to allow companies to donate scientific equipment to elementary and secondary schools for use in their educational programs, and for other purposes; to the Committee on Finance.

THE COMPUTER DONATION INCENTIVE ACT OF 1997

Mrs. BOXER. Mr. President, in March 1996 scores of volunteers throughout California helped make NetDay 96 one of the most successful one-day public projects in history. At

the time, we all noted that this electronic barn-raising could be a turning point in educational history—but only if we followed through with other steps to help our children travel the information superhighway. I would like to take one step by introducing the Computer Donation Incentive Act of 1997.

The successful education of America's children is closely linked to the use of innovative educational technologies, particularly computer-based instruction and research. Unfortunately, however, far too many public elementary and secondary school classrooms lack the computers they need to take advantage of these new educational technologies.

The Computer Donation Incentive Act will help get our students those computers. Current law allows computer manufacturers to receive a greater deduction for donations of computers to college and universities, for scientific and research purposes, than for donations made to elementary and secondary schools for education purposes. That limitation may have made sense when this provision was enacted, before the personal computer boom, but not in the era of the Information Superhighway, such a limitation is unreasonable.

The Computer Donation Incentive Act provides computer manufacturers the same enhanced deduction for donating computers for educational purposes that they currently receive for donating computers to colleges and universities for scientific purposes. Similarly, the bill will allow nonmanufacturers to receive a deduction for donating computers to elementary and secondary schools for educational use.

The Boxer-Chafee bill will provide a reasonable incentive for businesses to donate computer to the schools. I would like to emphasize the donated computers must be nearly new; those donated by manufacturers must be no more than 2 year old, and those donated by nonmanufacturers must be no more than 3 year old.

Along with computers and software, businesses should also donate their expertise, providing the training required to bring our schools fully on-line—and we challenge them to do so. Teachers and students both need such training in order to integrate computer-based lessons into their basic curriculum.

Alone, neither NetDay nor an adjustment to the Tax Code can solve all our educational problems or even make every student computer literate for the next century. But together, each initiative we take will help provide our students with the tools they need to drive on the information Superhighway and compete in a global information-based marketplace. Such initiatives are investments in the futures of our children.

Mr. President, I ask unanimous consent that this bill be printed in the RECORD.

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

S. 99

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHARITABLE CONTRIBUTIONS OF SCIENTIFIC EQUIPMENT TO ELEMENTARY AND SECONDARY SCHOOLS.

(a) IN GENERAL.—Subparagraph (B) of section 170(e)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

"(B) QUALIFIED RESEARCH OR EDUCATION CONTRIBUTION.—For purposes of this paragraph, the term 'qualified research or education contribution' means a charitable contribution by a corporation of tangible personal property (including computer software), but only if—

"(i) the contribution is to—

"(I) an educational organization described in subsection (b)(1)(A)(ii),

"(II) a governmental unit described in subsection (c)(1), or

"(III) an organization described in section 41(e)(6)(B),

"(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed by the taxpayer, the date the construction of the property is substantially completed),

"(iii) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for—

"(I) research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences, or

"(II) in the case of an organization described in clause (i) (I) or (II), use within the United States for educational purposes related to the purpose or function of the organization,

"(iv) the original use of the property began with the taxpayer (or in the case of property constructed by the taxpayer, with the donee),

"(v) the property is not transferred by the donee in exchange for money, other property, or services, and

"(vi) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v)."

(b) DONATIONS TO CHARITY FOR REFURBISHING.—Section 170(e)(4) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(D) DONATIONS TO CHARITY FOR REFURBISHING.—For purposes of this paragraph, a charitable contribution by a corporation shall be treated as a qualified research or education contribution if—

"(i) such contribution is a contribution of property described in subparagraph (B)(iii) to an organization described in section 501(c)(3) and exempt from taxation under section 501(a),

"(ii) such organization repairs and refurbishes the property and donates the property to an organization described in subparagraph (B)(i), and

"(iii) the taxpayer receives from the organization to whom the taxpayer contributed the property a written statement representing that its use of the property (and any use by the organization to which it donates the property) meets the requirements of this paragraph."

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (4)(A) of section 170(e) of the Internal Revenue Code of 1986 is amended by striking "qualified research contribution" each place it appears and inserting "qualified research or education contribution".

(2) The heading for section 170(e)(4) of such Code is amended by inserting "OR EDUCATION" after "RESEARCH".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

By Mr. KERRY:

S. 100. A bill to amend title 49, United States Code, to provide protection for airline employees who provide certain air safety information, and for other purposes; to the Committee on Labor and Human Resources.

AVIATION SAFETY PROTECTION ACT

Mr. KERRY. Mr. President, in an effort to increase overall safety of the airline industry, I am introducing the "Aviation Safety Protection Act of 1997," which would establish whistle blower protection for aviation workers.

The worker protections contained in the Occupational Safety and Health Act [OSHA] are very important to American workers. OSHA properly protects both private and Federal Government employees who report health and safety violations from reprisal by their employers. However, because of a loophole, aviation employees are not covered by these protections. Flight attendants and other airline employees are in the best position to recognize breaches in safety regulations and can be the critical link in ensuring safer air travel. Currently, those employees who work for unscrupulous airlines face the possibility of harassment, negative disciplinary action, and even termination if they report work violations.

Aviation employees perform an important public service when they choose to report safety concerns. No employee should be put in the position of having to choose between his or her job and reporting violations that threaten the safety of passengers and crew. For that reason, we need a strong whistle blower law to protect aviation employees from retaliation by their employers when reporting incidents to Federal authorities. Americans who travel on commercial airlines deserve the safeguards that exist when flight attendants and other airline employees can step forward to help Federal authorities enforce safety laws.

This bill would close the loophole in OSHA law and provide the necessary protections for aviation employees who provide safety violation information to Federal authorities or testify about or assist in disclosure of safety violations. The act provides a Department of Labor complaint procedure for employees who experience employer reprisal for reporting such violations, and assures that there are strong enforcement and judicial review provisions for

fair implementation of the protections. The act also protects airlines from frivolous complaints by establishing a fine which will be imposed on an employee who files a complaint if the Department of Labor determines that there is no merit to the complaint.

I want to acknowledge the leadership of Representative JAMES CLYBURN who will introduce the bill in the House of Representatives. I am pleased to introduce the companion legislation in the Senate.

This bill will provide important protections to aviation workers and the general public. I urge my colleagues to join me in supporting it.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 100

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 "Aviation Safety Protection Act of 1997".

SEC. 2. PROTECTION OF EMPLOYEES PROVIDING AIR SAFETY INFORMATION.

(a) GENERAL RULE.—Chapter 421 of title 49, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

"§ 42121. Protection of employees providing air safety information

"(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee of the air carrier or the contractor or subcontractor of an air carrier or otherwise discriminate against any such employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

"(1) provided, caused to be provided, or is about to provide or cause to be provided to the Federal Government information relating to air safety under this subtitle or any other law of the United States;

"(2) has filed, caused to be filed, or is about to file or cause to be filed a proceeding relating to air carrier safety under this subtitle or any other law of the United States;

"(3) testified or is about to testify in such a proceeding; or

"(4) assisted or participated or is about to assist or participate in such a proceeding.

"(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

"(1) FILING AND NOTIFICATION.—

"(A) IN GENERAL.—In accordance with this paragraph, a person may file (or have a person file on behalf of that person) a complaint with the Secretary of Labor if that person believes that an air carrier or contractor or subcontractor of an air carrier discharged or otherwise discriminated against that person in violation of subsection (a).

"(B) REQUIREMENTS FOR FILING COMPLAINTS.—A complaint referred to in subparagraph (A) may be filed not later than 180 days after an alleged violation occurs. The complaint shall state the alleged violation.

"(C) NOTIFICATION.—Upon receipt of a complaint submitted under subparagraph (A), the Secretary of Labor shall notify the air carrier, contractor, or subcontractor named in the complaint and the Administrator of the Federal Aviation Administration of the—

"(i) filing of the complaint;

"(ii) allegations contained in the complaint;

"(iii) substance of evidence supporting the complaint; and

"(iv) opportunities that are afforded to the air carrier, contractor, or subcontractor under paragraph (2).

"(2) INVESTIGATION; PRELIMINARY ORDER.—

"(A) IN GENERAL.—Not later than 60 days after receiving a complaint under paragraph (1), and after affording the air carrier, contractor, or subcontractor named in the complaint the opportunities specified in subparagraph (B), the Secretary of Labor shall conduct an investigation to determine whether there is reasonable cause to believe that a complaint submitted under this subsection has merit.

"(B) OPPORTUNITY FOR RESPONSE.—Before the date specified in subparagraph (A), the Secretary of Labor shall afford the air carrier, contractor, or subcontractor named in the complaint an opportunity to—

"(i) submit to the Secretary of Labor a written response to the complaint; and

"(ii) meet with a representative of the Secretary of Labor to present statements from witnesses.

"(C) NOTIFICATION.—Upon completion of an investigation under subparagraph (A), the Secretary of Labor shall notify the complainant and the air carrier, contractor, or subcontractor alleged to have committed a violation of subsection (a) of the findings of the investigation.

"(D) ORDERS.—If, on the basis of the investigation conducted under this paragraph, the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall—

"(i) issue a preliminary order providing the relief prescribed by paragraph (3)(B); and

"(ii) provide a copy of the order to the parties specified in subparagraph (C).

"(E) OBJECTIONS.—Not later than 30 days after receiving a notification under subparagraph (C), the air carrier, contractor, or subcontractor alleged to have committed a violation in a complaint filed under this subsection or the complainant may file an objection to the findings of an investigation conducted under this paragraph or a preliminary order issued under this paragraph and request a hearing on the record. The filing of an objection under this subparagraph shall not operate to stay any reinstatement remedy contained in a preliminary order issued under this paragraph.

"(F) HEARINGS.—A hearing requested under this paragraph shall be conducted expeditiously.

"(G) FINAL ORDER.—If no hearing is requested by the date specified in subparagraph (E), a preliminary order shall be considered to be a final order that is not subject to judicial review.

"(3) FINAL ORDER.—

"(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—

"(i) IN GENERAL.—Not later than 120 days after conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order that—

"(I) provides relief in accordance with this paragraph; or

"(II) denies the complaint.

"(ii) SETTLEMENT AGREEMENT.—At any time before issuance of a final order under this paragraph, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the air carrier, contractor, or subcontractor alleged to have committed the violation.

"(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the air carrier, contractor, or subcontractor that the Secretary of Labor determines to have committed the violation to—

"(i) take action to abate the violation;

"(ii) reinstate the complainant to the former position of the complainant and ensure the payment of compensation (including back pay) and the restoration of terms, conditions, and privileges associated with the employment; and

"(iii) provide compensatory damages to the complainant.

"(C) COSTS OF COMPLAINT.—If the Secretary of Labor issues a final order that provides for relief in accordance with this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the air carrier, contractor, or subcontractor named in the order an amount equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant (as determined by the Secretary of Labor) for, or in connection with, the bringing of the complaint that resulted in the issuance of the order.

"(D) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint brought under paragraph (1) is frivolous or was brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee in an amount not to exceed $5,000.

"(4) REVIEW.—

"(A) APPEAL TO COURT OF APPEALS.—

"(i) IN GENERAL.—Not later than 60 days after a final order is issued under paragraph (3), a person adversely affected or aggrieved by that order may obtain review of the order in the United States court of appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of that violation.

"(ii) REQUIREMENTS FOR JUDICIAL REVIEW.—A review conducted under this paragraph shall be conducted in accordance with chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order that is the subject of the review.

"(B) LIMITATION ON COLLATERAL ATTACK.—An order referred to in subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

"(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—

"(A) IN GENERAL.—If an air carrier, contractor, or subcontractor named in an order issued under paragraph (3) fails to comply with the order, the Secretary of Labor may file a civil action in the United States district court for the district in which the violation occurred to enforce that order.

"(B) RELIEF.—In any action brought under this paragraph, the district court shall have jurisdiction to grant any appropriate form of relief, including injunctive relief and compensatory damages.

"(6) ENFORCEMENT OF ORDER BY PARTIES.—

"(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order is issued under paragraph (3) may commence a civil action against the air carrier, contractor, or subcontractor named in the order to require

compliance with the order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the order.

"(B) ATTORNEY FEES.—In issuing any final order under this paragraph, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any party if the court determines that the awarding of those costs is appropriate.

"(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

"(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of an air carrier, or contractor or subcontractor of an air carrier who, acting without direction from the air carrier (or an agent, contractor, or subcontractor of the air carrier), deliberately causes a violation of any requirement relating to air carrier safety under this subtitle or any other law of the United States.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 421 of title 49, United States Code, is amended by adding at the end the following:

"SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

"42121. Protection of employees providing air safety information.".

SEC. 3. CIVIL PENALTY.

Section 46301(a)(1)(A) of title 49, United States Code, is amended by striking "subchapter II of chapter 421" and inserting "subchapter II or III of chapter 421".

By Mrs. BOXER:

S. 101. A bill to amend the Public Health Service Act to provide for the training of health professions students with respect to the identification and referral of victims of domestic violence; to the Committee on Labor and Human Resources.

THE DOMESTIC VIOLENCE IDENTIFICATION AND REFERRAL ACT

Mrs. BOXER. Mr. President, I rise today to introduce the Domestic Violence Identification and Referral Act.

Spousal abuse, child abuse, and elder abuse injures millions of Americans each year, and is growing at an alarming rate. An estimated 2 to 4 million women are beaten by their spouses or former spouses each year. In 1993, 2.9 million children were reported abused or neglected, about triple the number reported in 1980. Studies also showed that spouse abuse and child abuse often go hand-in-hand.

Doctors, nurses, and other health care professionals are on the front lines of this abuse, but they cannot stop what they have been trained to see or talk about. The Domestic Violence Identification and Referral Act addresses this need by encouraging medical schools to incorporate training on domestic violence into their curriculums.

There is a need for this legislation. While many medical specialities, hospitals, and other organizations have made education about domestic violence a priority, this instruction typically occurs on the job or as part of a continuing medical education program. A 1994 survey by the Association of American Medical Colleges [AAMC] found that 60 percent of medical school graduates rated the time devoted to instruction in domestic violence as inadequate.

The bill I am introducing today would give preference in Federal funding to those medical and other health professional schools which provide significant training in domestic violence. It defines significant training to include identifying victims of domestic violence and maintaining complete medical records, providing medical advice regarding the dynamics and nature of domestic violence, and referring victims to appropriate public and nonprofit entities for assistance.

The bill also defines domestic violence in the broadest terms, to include battering, child abuse and elder abuse.

I hope my colleagues agree that this legislation is a critical next step in the fight to bring the brutality of domestic violence out in the open. It mobilizes our Nation's health care providers to recognize and treat its victims—and will ultimately save lives by helping to break the cycle of violence.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 101

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 "Domestic Violence Identification and Referral Act of 1997".

SEC. 2. ESTABLISHMENT, FOR CERTAIN HEALTH PROFESSIONS PROGRAMS, OF PROVISIONS REGARDING DOMESTIC VIOLENCE.

(a) TITLE VII PROGRAMS; PREFERENCES IN FINANCIAL AWARDS.—Section 791 of the Public Health Service Act (42 U.S.C. 295j) is amended by adding at the end the following:

"(c) PREFERENCES REGARDING TRAINING IN IDENTIFICATION AND REFERRAL OF VICTIMS OF DOMESTIC VIOLENCE.—

"(1) IN GENERAL.—In the case of a health professions entity specified in paragraph (2), the Secretary shall, in making awards of grants or contracts under this title, give preference to any such entity (if otherwise a qualified applicant for the award involved) that has in effect the requirement that, as a condition of receiving a degree or certificate (as applicable) from the entity, each student have had significant training in carrying out the following functions as a provider of health care:

"(A) Identifying victims of domestic violence, and maintaining complete medical records that include documentation of the examination, treatment given, and referrals made, and recording the location and nature of the victim's injuries.

"(B) Examining and treating such victims, within the scope of the health professional's discipline, training, and practice, including, at a minimum, providing medical advice regarding the dynamics and nature of domestic violence.

"(C) Referring the victims to public and nonprofit private entities that provide services for such victims.

"(2) RELEVANT HEALTH PROFESSIONS ENTITIES.—For purposes of paragraph (1), a health professions entity specified in this paragraph is any entity that is a school of medicine, a school of osteopathic medicine, a graduate program in mental health practice, a school of nursing (as defined in section 853), a program for the training of physician assistants, or a program for the training of allied health professionals.

"(3) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of the Domestic Violence Identification and Referral Act of 1997, the Secretary shall submit to the Committee on Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report specifying the health professions entities that are receiving preference under paragraph (1); the number of hours of training required by the entities for purposes of such paragraph; the extent of clinical experience so required; and the types of courses through which the training is being provided.

"(4) DEFINITIONS.—For purposes of this subsection, the term 'domestic violence' includes behavior commonly referred to as domestic violence, sexual assault, spousal abuse, woman battering, partner abuse, child abuse, elder abuse, and acquaintance rape.".

(b) TITLE VIII PROGRAMS; PREFERENCES IN FINANCIAL AWARDS.—Section 860 of the Public Health Service Act (42 U.S.C. 298b–7) is amended by adding at the end the following:

"(f) PREFERENCES REGARDING TRAINING IN IDENTIFICATION AND REFERRAL OF VICTIMS OF DOMESTIC VIOLENCE.—

"(1) IN GENERAL.—In the case of a health professions entity specified in paragraph (2), the Secretary shall, in making awards of grants or contracts under this title, give preference to any such entity (if otherwise a qualified applicant for the award involved) that has in effect the requirement that, as a condition of receiving a degree or certificate (as applicable) from the entity, each student have had significant training in carrying out the following functions as a provider of health care:

"(A) Identifying victims of domestic violence, and maintaining complete medical records that include documentation of the examination, treatment given, and referrals made, and recording the location and nature of the victim's injuries.

"(B) Examining and treating such victims, within the scope of the health professional's discipline, training, and practice, including, at a minimum, providing medical advice regarding the dynamics and nature of domestic violence.

"(C) Referring the victims to public and nonprofit private entities that provide services for such victims.

"(2) RELEVANT HEALTH PROFESSIONS ENTITIES.—For purposes of paragraph (1), a health professions entity specified in this paragraph is any entity that is a school of nursing or other public or nonprofit private entity that is eligible to receive an award described in such paragraph.

"(3) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of the Domestic Violence Identification and Referral Act of 1997, the Secretary shall submit to the Committee on Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a

report specifying the health professions entities that are receiving preference under paragraph (1); the number of hours of training required by the entities for purposes of such paragraph; the extent of clinical experience so required; and the types of courses through which the training is being provided.

"(4) DEFINITIONS.—For purposes of this subsection, the term 'domestic violence' includes behavior commonly referred to as domestic violence, sexual assault, spousal abuse, woman battering, partner abuse, child abuse, elder abuse, and acquaintance rape.".

By Mr. BREAUX (for himself, Mr. AKAKA, Mr. BINGAMAN, Mr. CHAFEE, Mr. COCHRAN, Mr. CRAIG, Mr. GLENN, Mr. JEFFORDS, Mr. LEAHY, Mr. INOUYE, Ms. MIKULSKI, and Mr. REID):

S. 102. A bill to amend title XVIII of the Social Security Act to improve medicare treatment and education for beneficiaries with diabetes by providing coverage of diabetes outpatient self-management training services and uniform coverage of blood-testing strips for individuals with diabetes; to the Committee on Finance.

Mr. BREAUX. Mr. President, diabetes is the fourth leading cause of death from diseases in the United States. Deaths accountable to diabetes or resulting complications number about 250,000 per year. Diabetes also results in about 12,000 new cases of blindness each year and greatly increases an individual's chance of heart disease, kidney failure, and stroke.

The terrible irony, Mr. President, is that diabetes is largely a treatable condition. While there is no known cure, individuals who have diabetes can lead completely normal, active lives so long as they stick to a proper diet, carefully monitor the amount of sugar in their blood, and take their medicine, which may or may not include insulin. In order to take proper care of themselves, diabetics need to take self-maintenance education programs—at least once when they are diagnosed with the disease and then periodically after that to keep up with the latest treatments and any changes in their own condition.

Appropriate preventive education services for diabetics have the potential to save a great deal of money that would otherwise go for hospitalizations and other acute care costs—not to mention a great deal of unnecessary pain and suffering. CBO projects that this proposal would save Medicare money in the long-run.

Medicare currently covers diabetes self-maintenance education services in inpatient or hospital-based settings and in limited outpatient settings, specifically hospital outpatient departments or rural health clinics. Medicare does not cover education services if they are given in any other outpatient setting, such as a doctor's office. Even the limited coverage of outpatient settings that is currently permitted under Medicare is subject to State-by-State variation according to fiscal intermediaries' interpretation.

Medicare also covers the cost of the paper test strips that are used to monitor the sugar levels in the blood—but only for diabetics who require insulin to control their disease. All noninsulin dependent diabetics must purchase these test strips at their own expense.

Today, I am introducing the Medicare Diabetes Education and Supplies Amendments of 1997. This legislation would provide Medicare coverage for outpatient education on a consistent equitable basis throughout the country. The bill would extend Medicare coverage of outpatient programs beyond hospital-based programs and rural health clinics and direct the Secretary of Health and Human Services to do two things: First, to develop and implement payment amounts for outpatient diabetes education programs; and second, to adopt quality standards for outpatient education programs. Only qualified programs would be eligible to receive Medicare reimbursement. Furthermore, this legislation would mandate test strip coverage for all diabetics.

This preventive measure is a sensible one that will show savings for the Medicare Program in the long run. I encourage my colleagues to join me in supporting its passage this Congress.

By Mr. MURKOWSKI (for himself, Mr. CRAIG, Mr. GRAMS, Mr. KEMPTHORNE, Mr. ABRAHAM, Mr. HELMS, Mr. THURMOND, Mr. KYL, Mr. HOLLINGS, Mr. MACK, Mr. FAIRCLOTH, Mr. HATCH, Mr. WARNER, Mr. BOND, Mr. SMITH of New Hampshire, Mr. ROBERTS, Mr. SANTORUM, Mr. LOTT, and Mr. JEFFORDS):

S. 104. A bill to amend the Nuclear Waste Policy Act of 1982; to the Committee on Energy and Natural Resources.

THE NUCLEAR WASTE POLICY ACT OF 1997

Mr. MURKOWSKI. Mr. President, last summer, the U.S. Court of Appeals issued a ruling that confirmed something that many of us already understood: the Federal Government has an obligation to provide a safe, centralized storage place for our Nation's spent nuclear fuel and nuclear waste, beginning less than 1 year from today.

This is a commitment that Congress, and the Department of Energy, made 15 years ago. We've collected $12 billion from America's ratepayers for this purpose. But after spending 6 billion of those dollars, the Federal Government is still not prepared to deliver on its promise to take and safely dispose of our Nation's nuclear waste by 1998. Hardworking Americans have paid for this as part of their monthly electric bill. But they haven't gotten results. So a lawsuit was filed, and the court confirmed that there is a legal obligation, as well as a moral one. We have reached a crossroads. The job of fixing this program is ours. The time for fixing the program is now.

Today, high-level nuclear waste and highly radioactive used nuclear fuel is accumulating at over 80 sites in 41 States, including waste stored at DOE weapons facilities. It is stored in populated areas, near our neighborhoods and schools, on the shores of our lakes and rivers, in the backyard of constituents young and old all across this land. Used nuclear fuel is being stored near the east and west coasts, where most Americans live. It may be in your town. Near your neighborhood.

Unfortunately, used fuel is being stored in pools that were not designed for long-term storage. Some of this fuel is already over 30 years old. Each year that goes by, our ability to continue storage of this used fuel at each of these sites in a safe and responsible way diminishes. It is irresponsible to let this situation continue. It is unsafe to let this dangerous radioactive material continue to accumulate at more than 80 sites all across the country. It is unwise to block the safe storage of this used fuel in a remote area, away from high populations. This is a national problem that requires a coordinated, national solution.

Today, on behalf of myself, Mr. CRAIG, Mr. GRAMS, Mr. KEMPTHORNE, Mr. ABRAHAM, Mr. HELMS, Mr. THURMOND, Mr. KYL, Mr. HOLLINGS, Mr. MACK, Mr. FAIRCLOTH, Mr. HATCH, Mr. WARNER, Mr. BOND, Mr. ROBERT SMITH, Mr. ROBERTS, Mr. SANTORUM, Mr. LOTT, and Mr. JEFFORDS, I introduce the text of S. 1936, from the 104th Congress, as the Nuclear Waste Policy Act of 1997. This legislation, which was passed by the Senate last summer by a 63-to-37 vote, sets forth a program that will allow the Department of Energy to meet its obligation as soon as possible. The bill provides for an integrated system to manage used fuel from commercial nuclear powerplants and high-level radioactive waste from DOE's nuclear weapons facilities. The integrated system includes construction and operation of a temporary storage center, a safe transportation network to transfer these byproducts, and continuing scientific studies at Yucca Mountain, NV, to determine if it is a suitable repository site.

During floor consideration of S. 1936 last year, we received many constructive suggestions for improving the bill. The final version of S. 1936 passed by the Senate incorporated many of these changes. The most important provisions of the bill include:

Role for EPA.—The bill provides that the Environmental Protection Agency shall issue standards for the protection of the public from releases of radioactive materials from a permanent nuclear waste repository. The Nuclear Regulatory Commission is required to

base its licensing determination on whether the repository can be operated in accordance with EPA's radiation protection standards.

National Environmental Policy Act [NEPA].—The bill complies fully with NEPA by requiring two full environmental impact statements, one in advance of operation of the temporary storage facility and one in advance of repository licensing by the Nuclear Regulatory Commission. The bill provides that where Congress has statutorily determined need, location, and size of the facilities, these issues need not be reconsidered.

Transportation routing.—The bill includes language of an amendment offered by Senator MOSELEY-BRAUN, which provides that, in order to ensure that spent nuclear fuel and high-level nuclear waste is transported safely, the Secretary of Energy will use transportation routes that minimize, to the maximum practicable extent, transportation through populated and sensitive environmental areas. The language also requires that the Secretary develop, in consultation with the Secretary of Transportation, a comprehensive management plan that ensures the safe transportation of these materials.

Transportation requirements.—The bill contains language clarifying that transportation of spent fuel under the Nuclear Waste Policy Act shall be governed by all requirements of Federal, State, and local governments and Indian tribes to the same extent that any person engaging in transportation in interstate commerce must comply with those requirements, as provided by the Hazardous Materials Transportation Act. The bill also requires the Secretary to provide technical assistance and funds for training to unions with experience with safety training for transportation workers. In addition, the bill clarifies that existing employee protections in title 49 of the United States Code concerning the refusal to work in hazardous conditions apply to transportation under this act. Finally, S. 1936 provides authority for the Secretary of Transportation to establish training standards, as necessary, for workers engaged in the transportation of spent fuel and high-level waste.

Interim storage facility.—In order to ensure that the size and scope of the interim storage facility is manageable in the context of the overall nuclear waste program, and yet adequate to address the Nation's immediate spent fuel storage needs, the bill would limit the size of phase I of the interim storage facility to 15,000 metric tons of spent fuel and the size of phase II of the facility to 40,000 metric tons. Phase II of the facility would be expandable to 60,000 metric tons if the Secretary fails to meet his projected goals with regard to licensing of the permanent repository site.

Preemption of other laws.—The bill provides that, if any law does not conflict with the provisions of the Nuclear Waste Policy Act and the Atomic Energy Act, that law will govern. State and local laws are preempted only if those laws are inconsistent with or duplicative of the Nuclear Waste Policy Act or the Atomic Energy Act. This language is consistent with the preemption authority found in the existing Hazardous Materials Transportation Act.

Finally, the bill contains bipartisan language that was drafted to address the administration's objections to the siting of an interim facility at the Nevada test site before the viability assessment of the Yucca Mountain permanent repository site was available.—The language provides that construction shall not begin on an interim storage facility at Yucca Mountain before December 31, 1998. The bill provides for the delivery of an assessment of the viability of the Yucca Mountain site to the President and Congress by the Secretary 6 months before the construction can begin on the interim facility. If, based upon the information before him, the President determines, in his discretion, that Yucca Mountain is not suitable for development as a repository, then the Secretary shall cease work on both the interim and permanent repository programs at the Yucca Mountain site. The bill further provides that, if the President makes such a determination, he shall have 18 months to designate an interim storage facility site. If the President fails to designate a site, or if a site he has designated has not be approved by Congress within 2 years of his determination, the Secretary is instructed to construct an interim storage facility at the Yucca Mountain site. This provision ensures that the construction of an interim storage facility at the Yucca Mountain site will not occur before the President and Congress have had an ample opportunity to review the technical assessment of the suitability of the Yucca Mountain site for a permanent repository and to designate an alternative site for interim storage based upon that technical information. However, this provision also ensures that, ultimately, an interim storage facility site will be chosen. Without this assurance, we leave open the possibility we will find in 1998 that we have no interim storage, no permanent repository program and, after more than 15 years and $6 billion spent, that we are back to where we started in 1982 when we passed the first version of the Nuclear Waste Policy Act.

During the debate that will unfold, we will have the Senators from Nevada oppose the bill with all the arguments that they can muster. That's understandable. They are merely doing what Nevadans have asked them to do. Nobody wants nuclear waste in their State, but it has to go somewhere. Both Senators from Nevada are friends of mine. We've talked about this issue at length. They are doing what they feel they must do to satisfy Nevadans. But as U.S. Senators, we must sometimes take a national perspective. We must do what's best for the country as a whole.

No one can continue to pretend that there is an unlimited amount of time to deal with this problem. The Federal Government must act—and act now—to ensure that there is a safe and secure place to put radioactive waste it is obligated to accept. Although the court did not address the issue of remedies, the court was very clear that DOE has an obligation to take spent nuclear fuel in 1998, whether or not a repository is ready.

So far, DOE's only response to the court's decision has been to send out a letter asking for suggestions on how it can meet its obligation to take spent fuel in 1998. Finally, it is clear that we all agree on the question. Now is the time for answers.

We have a clear and simple choice. We can choose to have one remote, safe, and secure nuclear waste storage facility. Or through inaction and delay, we can face an uncertain judicial remedy which will almost certainly be costly, and which is unlikely to actually move waste out of America's backyards.

It is not morally right to shirk our responsibility to protect the environment and the future of our children and grandchildren. We cannot wait until 1998 to decide whether the Department of Energy will store this nuclear waste. We have received letters from 23 State Governors and attorneys general, including Arizona, Arkansas, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Wisconsin, urging the Congress to pass, and the President to sign, a bill that provides for an interim storage site in Nevada. Congress must speak now and provide the means to build one, safe and monitored facility at the Nevada test site, a unique site so remote that the Government used it to explode nuclear weapons for 50 years, or another site designated by the President and Congress.

The time is now—the Nuclear Waste Policy Act of 1997 is the answer.

Mr. CRAIG. Mr. President, today we begin a new Congress and an urgent environmental problem remains unresolved. Today I am reintroducing legislation to address the problem that continues to vex us—that is, how to address our Nation's high-level nuclear waste disposal. The Nuclear Waste Policy Act of 1997 that is introduced today answers this problem and is responsible, fair, environmentally friendly,

and supported by Members of both parties.

Today, high-level nuclear waste and highly radioactive used nuclear fuel continues to accumulate at more than 80 sites in 41 States. Each year, as more and more fuel accumulates and our ability to continue to store this used fuel at each of these sites in a safe and responsible way diminishes. The only responsible choice is to support legislation that solves this problem by safely moving this used fuel to a safe, monitored facility in the remote Nevada desert. This answer will lead us to a safer future for all Americans.

To facilitate our consideration of such legislation, Senator MURKOWSKI and I along with 16 other cosponsors are introducing a bill to amend the Nuclear Waste Policy Act of 1982. This legislation is identical to S. 1936 that passed the Senate toward the end of the past Congress. Unfortunately, that legislation was not acted upon by the other body nor signed into law. It is my intent to assure that is not the fate of this legislation. The Senate Energy and Natural Resources Committee will hold a hearing on this bill on February 5 and will move to a speedy markup. I encourage the Senate and House to act quickly and to send it to the President for his signature.

This bill contains all of the important clarifications and changes addressing the concerns that were raised prior to and during floor debate in the 104th Congress. This is legislation that will allow a solution for nuclear waste disposal. Let us move forward to enact it into law. I encourage the administration to work with us to make that a reality.

This bill provides a clear and simple choice. We can choose to have one, remote, safe, and secure nuclear waste storage facility. Or, through inaction and delay, we can perpetuate the status quo and have 80 such sites spread across the Nation. The courts have made clear the Department of Energy must act to dispose of this material in 1998. It is irresponsible to shirk our responsibility to protect the environment and the future for our children and grandchildren. This Nation needs to confront its nuclear waste problem now. I urge my colleagues to support the Nuclear Waste Policy Act of 1997.

Mr. KEMPTHORNE. Mr. President, I rise in support of the Nuclear Waste Policy Act of 1997 introduced today by my good friends Senator CRAIG and Senator MURKOWSKI, the chairman of the Senate Energy and Natural Resource Committee. This important bill will make substantial, necessary and meaningful progress in our Nation's effort to deal with the problem of radioactive nuclear waste. The bill is similar to the Nuclear Waste Policy Act of 1996 which passed the Senate by a 2-to-1 ratio last year.

The Nuclear Waste Policy Act of 1997, which I am proud to cosponsor, will establish an interim storage facility for spent nuclear fuel and high-level radioactive waste at the Nevada test site. The interim storage site will address our near-term problem of safely storing spent nuclear fuel and high-level waste while the characterization, permitting and construction of the permanent repository at Yucca Mountain proceeds.

My State of Idaho currently stores a wide variety of Department of Energy, Navy and commercial reactor spent nuclear fuel at the Idaho National Engineering Laboratory. This spent nuclear fuel is stored in temporary facilities that are reaching the end of their design life. This phenomenon is happening across the country as temporary storage facilities are used beyond their design life because our Nation has not developed a comprehensive policy of dealing with nuclear waste. Instead of dealing with this difficult issue, for far too long our Government, under Democratic and Republican leadership, has kicked the hard decisions down the road. The Craig-Murkowski bill will tackle this difficult problem and it deserves the support of the Congress and the administration.

The Nuclear Waste Policy Act of 1997 directs the Environmental Protection Agency's role to determine the appropriate radiation protection standards for the interim storage facility. The language directing establishment of an interim storage facility complies with the National Environmental Protection Act which requires preparation of an environmental impact statement before operation of the interim storage facility can begin. The Craig-Murkowski bill also directs that all shipments to the interim storage facility must comply with existing transportation laws and standards.

The Nuclear Waste Policy Act offers justice to the rate payers and electric utilities who have paid into the nuclear waste fund and gotten little if any benefit from those fees. After collecting billions in fees, the Craig-Murkowski bill will force the Federal Government to provide the storage facility promised to those currently storing spent nuclear fuel.

Mr. President, this is a very good bill which solves a vexing nation problem. The Craig-Murkowski bill will make important progress in the way the United States stores radioactive nuclear waste. The bill will show the citizens of this country that this Congress will solve tough problems in a fair and rational manner.

I urge my colleagues to support the Nuclear Waste Policy Act of 1997 and I want to thank Senators CRAIG and MURKOWSKI for their tenacious determination to solve this national problem.

Mr. ABRAHAM. Mr. President, today I join several of my colleagues in cosponsoring the Nuclear Waste Policy Act of 1997. This bill, a replica of the legislation that was passed by the Senate during the 104th Congress, is vital to securing this Nation's commercial waste at a single, safe facility.

I believe an agreement for the consolidation of this Nation's commercial nuclear waste is long overdue. Today, old fuel is stored at over 100 facilities around the country. In 1980, the Department of Energy [DOE] recognized the danger of such a system and entered into an agreement with much of the nuclear power industry to fund the research and development of a central, permanent facility. DOE was to be responsible for collecting and storing the fuel starting in 1988. Since 1980, the DOE has collected over $11 billion of the taxpayers' dollars for this permanent facility. Last year, however, the DOE announced that it will not be able to begin storing waste from commercial reactors until at least the year 2010.

In my opinion, Michigan cannot wait that long. Michigan has four nuclear plants in operation today. All four were designed with some storage capacity, but none are capable of storing used fuel for an extended period of time. Indeed, the Palisades plant in Southaven, MI, has already run out of used fuel storage space. The plant now stores its nuclear waste in steel casks which sit on a platform about 100 yards from Lake Michigan. This storage arrangement illustrates the need for a new national storage policy.

Mr. President, Michigan needs a national storage facility for nuclear waste. I am pleased to be a cosponsor of the Nuclear Waste Policy Act and hope that both the House and Senate will move quickly to pass this legislation and present it to the President.

By Mr. MOYNIHAN:

S. 105. A bill to repeal the habeas corpus requirement that a Federal court defer to State court judgments and uphold a conviction regardless of whether the Federal court believes that the State court erroneously interpreted Constitutional law, except in cases where the Federal court believes the State court acted in an unreasonable manner; to the Committee on the Judiciary.

HABEAS CORPUS LEGISLATION

Mr. MOYNIHAN. Mr. President, I introduce this bill to repeal an unprecedented provision—unprecedented until the 104th Congress—to tamper with the constitutional protection of habeas corpus.

The provision reads:

(d) An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Last year we enacted a statute which holds that constitutional protections do not exist unless they have been unreasonably violated, an idea that would have confounded the framers. Thus, we introduced a virus that will surely spread throughout our system of laws.

Article I, section 9, clause 2 of the Constitution stipulates, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

We are mightily and properly concerned about the public safety, which is why we enacted the counterterrorism bill. But we have not been invaded, Mr. President, and the only rebellion at hand appears to be against the Constitution itself. We are dealing here, sir, with a fundamental provision of law, one of those essential civil liberties which precede and are the basis of political liberties.

The writ of habeas corpus is often referred to as the "Great Writ of Liberty." William Blackstone (1723–80) called it "the most celebrated writ in English law, and the great and efficacious writ in all manner of illegal imprisonment."

* * * * *

I repeat what I have said previously here on the Senate floor: If I had to choose between living in a country with habeas corpus but without free elections, or a country with free elections but without habeas corpus, I would choose habeas corpus every time. To say again, this is one of the fundamental civil liberties on which every democratic society of the world has built political liberties that have come subsequently.

I make the point that the abuse of habeas corpus—appeals of capital sentences—is hugely overstated. A 1995 study by the Department of Justice's Bureau of Justice Statistics determined that habeas corpus appeals by death row inmates constitute 1 percent of all Federal habeas filings. Total habeas filings make up 4 percent of the caseload of Federal district courts. And most Federal habeas petitions are disposed of in less than 1 year. The serious delays occur in State courts, which take an average of 5 years to dispose of habeas petitions. If there is delay, the delay is with the State courts.

It is troubling that Congress has undertaken to tamper with the Great Writ in a bill designed to respond to the tragic circumstances of the Oklahoma City bombing last year. Habeas corpus has little to do with terrorism. The Oklahoma City bombing was a Federal crime and will be tried in Federal courts.

Nothing in our present circumstance requires the suspension of habeas corpus, which was the practical effect of the provision in that bill. To require a Federal court to defer to a State court's judgment unless the State court's decision is "unreasonably wrong" effectively precludes Federal review. I find this disorienting.

Anthony Lewis has written of the habeas provision in that bill: "It is a new and remarkable concept in law: that mere wrongness in a constitutional decision is not to be noticed." We have agreed to this; to what will we be agreeing next? I restate Mr. Lewis' observation, a person of great experience, long a student of the courts, "It is a new and remarkable concept in law: that mere wrongness in a constitutional decision is not to be noticed." Backward reels the mind.

On December 8, 1995, four former U.S. Attorneys General, two Republicans and two Democrats, all persons with whom I have the honor to be acquainted, Benjamin R. Civiletti, Jr., Edward H. Levi, Nicholas Katzenbach, and Elliot Richardson—I served in administrations with Mr. Levi, Mr. Katzenbach, Mr. Richardson; I have the deepest regard for them—wrote President Clinton.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

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

December 8, 1995.

HON. WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The habeas corpus provisions in the Senate terrorism bill, which the House will soon take up, are unconstitutional. Though intended in large part to expedite the death penalty review process, the litigation and constitutional rulings will in fact delay and frustrate the imposition of the death penalty. We strongly urge you to communicate to the Congress your resolve, and your duty under the constitution, to prevent the enactment of such unconstitutional legislation and the consequent disruption of so critical of part of our criminal punishment system.

The constitutional infirmities reside in three provisions of the legislation: one requiring federal courts to defer to erroneous state court rulings on federal constitutional matters, one imposing time limits which could operate to completely bar any federal habeas corpus review at all, and one prevent the federal courts from hearing the evidence necessary to decide a federal courts from hearing the evidence necessary to decide a federal constitutional question. They violate the Habeas Corpus Suspension Clause, the judicial powers of Article III, and due process. None of these provisions appeared in the bill that you and Senator Biden worked out in the last Congress together with representatives of prosecutors' organizations.

The deference requirement would bar any federal court from granting habeas corpus relief where a state court has misapplied the United States Constitution, unless the constitutional error rose to a level of "unreasonableness." The time-limits provisions set a single period of the filing of both state and federal post-conviction petitions (six months in a capital case and one year in other cases), commencing with the date a state conviction become final on direct review. Under these provisions, the entire period could be consumed in the state process, through no fault of the prisoner or counsel, thus creating an absolute bar to the filing of federal habeas corpus petition. Indeed, the period could be consumed before counsel had even been appointed in the state process, so that the inmate would have no notice of the time limit or the fatal consequences of consuming all of it before filing a state petition.

Both of these provisions, by flatly barring federal habeas corpus review under certain circumstances, violate the Constitution's Suspension Clause, which provides: "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in the case of rebellion or invasion the public safety may require it" (Art. I, Sec. 9, cl. 1). Any doubt as to whether this guarantee applies to persons held in state as well as federal custody was removed by the passage of the Fourteenth Amendment and by the amendment's framers' frequent mention of habeas corpus as one of the privileges and immunities so protected.

The preclusion of access to habeas corpus also violates Due Process. A measure is subject to proscription under the due process clause if it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," as viewed by "historical practice." *Medina* v. *California*, 112 S.Ct. 2572, 2577 (1992). Independent federal court review of the constitutionality of state criminal judgments has existed since the founding of the Nation, first by writ of error, and since 1867 by writ of habeas corpus. Nothing else is more deeply rooted in America's legal traditions and conscience. There is no case in which "a state court's incorrect legal determination has ever been allowed to stand because it was reasonable," Justice O'Connor found in *Wright* v. *West*, 112 S.Ct. 2482, 2497; "We have always held that federal courts, even on habeas, have an independent obligation to say what the law is." Indeed, Alexander Hamilton argued, in The Federalist No. 84, that the existence of just two protections—habeas corpus and the prohibition against ex post facto laws—obviated the need to add a Bill of Rights to the Constitution.

The deference requirement may also violate the powers granted to the judiciary under Article III. By stripping the federal courts of authority to exercise independent judgment and forcing them to defer to previous judgments made by state courts, the provision runs afoul of the oldest constitutional mission of the federal courts: "the duty . . . to say what the law is." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Although Congress is free to alter the federal courts' jurisdiction, it cannot order them how to interpret the Constitution, or dictate any outcome on the merits. *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871). In 1996, the Supreme Court reiterated that Congress has no power to assign "rubber stamp work" to an Article III court. "Congress may be free to establish a . . . scheme that operates without court participation," the Court said, "but that is a matter quite different from instructing a court automatically to enter a judgment pursuant to a decision the court has not authority to evaluate." *Gutierrez de Martinez* v. *Lamagno*, 115 S. Ct 2227, 2234.

Finally, in prohibiting evidentiary hearings where the constitutional issue raised does not go to guilt or innocence, the legislation again violates Due Process. A violation

of constitutional rights cannot be judged in a vacuum. The determination of the facts assumes "and importance fully as great as the validity of the substantive rule of law to be applied." *Wingo* v. *Wedding*, 418 U.S. 461, 474 (1974).

Prior to 1996, the last time habeas corpus legislation was debated at length in constitutional terms was in 1968. A bill substantially eliminating federal habeas corpus review for state prisoners was defeated because, as Republican Senator Hugh Scott put it at the end of debate, "if Congress tampers with the great writ, its action would have about as much chance of being held constitutional as the celebrated celluloid dog chasing the asbestos cat through hell."

In more recent years, the habeas reform debate has been viewed as a mere adjunct of the debate over the death penalty. But when the Senate took up the terrorism bill this year, Senator Moynihan sought to reconnect with the large framework of constitutional liberties: "If I had to live in a country which had habeas corpus but not free elections," he said, "I would take habeas corpus every time." Senator Chafee noted that his uncle, a Harvard law scholar, has called habeas corpus "the most important human rights provision in the Constitution." With the debate back on constitutional grounds, Senator Biden's amendment to delete the deference requirement nearly passed, with 46 votes.

We respectfully ask that you insist, first and foremost, on the preservation of independent federal review, i.e., on the rejection of any requirement that federal courts defer to state court judgments on federal constitutional questions. We also urge that separate time limits be set for filing federal and state habeas corpus petitions—a modest change which need not interfere with the setting of strict time limits—and that they begin to run only upon the appointment of competent counsel. And we urge that evidentiary hearings be permitted wherever the factual record is deficient on an important constitutional issue. Congress can either fix the constitutional flaws now, or wait through several years of litigation and confusion before being sent back to the drawing board. Ultimately, it is the public's interest in the prompt and fair disposition of criminal cases which will suffer. The passage of an unconstitutional bill helps no one.

We respectfully urge you, as both President and a former professor of constitutional law, to call upon Congress to remedy these flaws before sending the terrorism bill to your desk. We request an opportunity to meet with you personally to discuss this matter so vital to the future of the Republic and the liberties we all hold dear.

Sincerely,

BENJAMIN R. CIVILETTI, Jr., *Baltimore, MD.*
EDWARD H. LEVI, *Chicago, IL.*
NICHOLAS DEB. KATZENBACH, *Princeton, NJ.*
ELLIOT L. RICHARDSON, *Washington, DC.*

Let me read excerpts from the letter:

"The habeas corpus provisions in the Senate bill . . . are unconstitutional. Though intended in large part to expedite the death penalty review process, the litigation and constitutional rulings will in fact delay and frustrate the imposition of the death penalty . . .

The constitutional infirmities . . . violate the Habeas Corpus Suspension Clause, the judicial powers of Article III, and due process . . .

. . . A measure is subject to proscription under the due process clause if it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," as viewed by "historical practice."

That language is Medina versus California, a 1992 decision. To continue,

Independent federal court review of the constitutionality of state criminal judgments has existed since the founding of the Nation, first by writ of error, and since 1867 by writ of habeas corpus.

Nothing else is more deeply rooted in America's legal traditions and conscience. There is no clause in which "a state court's incorrect legal determination has ever been allowed to stand because it was reasonable."

That is Justice O'Connor, in Wright versus West. She goes on, as the attorneys general quote. "We have always held that federal courts, even on habeas, have an independent obligation to say what the law is."

If I may interpolate, she is repeating the famous injunction of Justice Marshall in Marbury versus Madison.

The attorneys general go on to say,

Indeed, Alexander Hamilton argued, in The Federalist No. 84, that the existence of just two protections—habeas corpus and the prohibition against ex post facto laws—obviated the need to add a Bill of Rights to the Constitution.

The letter from the Attorneys General continues, but that is the gist of it. I might point out that there was, originally, an objection to ratification of the Constitution, with those objecting arguing that there had to be a Bill of Rights added. Madison wisely added one during the first session of the first Congress. But he and Hamilton and Jay, as authors of The "Federalist Papers," argued that with habeas corpus and the prohibition against ex post facto laws in the Constitution, there would be no need even for a Bill of Rights. We are glad that, in the end, we do have one. But their case was surely strong, and it was so felt by the framers.

To cite Justice O'Connor again: "A state court's incorrect legal determination has never been allowed to stand because it was reasonable."

Justice O'Connor went on: "We have always held that Federal courts, even on habeas, have an independent obligation to say what the law is."

Mr. President, we can fix this now. Or, as the Attorneys General state, we can "wait through several years of litigation and confusion before being sent back to the drawing board." I fear that we will not fix it now.

We Americans think of ourselves as a new nation. We are not. Of the countries that existed in 1914, there are only eight which have not had their form of government changed by violence since then. Only the United Kingdom goes back to 1787 when the delegates who drafted our Constitution established this Nation, which continues to exist. In those other nations, sir, a compelling struggle took place, from the middle of the 18th century until the middle of the 19th century, and beyond into the 20th, and even to the end of the 20th in some countries, to establish those basic civil liberties which are the foundation of political liberties and, of those, none is so precious as habeas corpus, the "Great Writ."

Here we are trivializing this treasure, putting in jeopardy a tradition of protection of individual rights by Federal courts that goes back to our earliest foundation. And the virus will spread. Why are we in such a rush to amend our Constitution? Why do we tamper with provisions as profound to our traditions and liberty as habeas corpus? The Federal courts do not complain. It may be that because we have enacted this, there will be some prisoners who are executed sooner than they otherwise would have been. You may take satisfaction in that or not, as you choose, but we have begun to weaken a tenet of justice at the very base of our liberties. The virus will spread.

This is new. It is profoundly disturbing. It is terribly dangerous. If I may have the presumption to join in the judgment of four Attorneys Generals, Mr. Civiletti, Mr. Levi, Mr. Katzenbach, and Mr. Richardson—and I repeat that I have served in administrations with three of them—this matter is unconstitutional and should be repealed from law.

Fifteen years ago, June 6, 1982, to be precise, I gave the commencement address at St. John University Law School in Brooklyn. I spoke of the proliferation of court-curbing bills at that time. I remarked:

* * * some people—indeed, a great many people—have decided that they do not agree with the Supreme Court and that they are not satisfied to Debate, Legislate, Litigate.

They have embarked upon an altogether new and I believe quite dangerous course of action. A new triumvirate hierarchy has emerged. Convene (meaning the calling of a constitutional convention), Overrule (the passage of legislation designed to overrule a particular Court ruling, when the Court's ruling was based on an interpretation of the Constitution), and Restrict (to restrict the jurisdiction of certain courts to decide particular kinds of cases).

Perhaps the most pernicious of these is the attempt to restrict courts' jurisdictions, for it is * * * profoundly at odds with our Nation's customs and political philosophy.

It is a commonplace that our democracy is characterized by majority rule and minority rights. Our Constitution vests majority rule in the Congress and the President while the courts protect the rights of the minority.

While the legislature makes the laws, and the executive enforces them, it is the courts that tell us what the laws say and whether they conform to the Constitution.

This notion of judicial review has been part of our heritage for nearly two hundred years. There is not a more famous case in American jurisprudence than Marbury v. Madison and few more famous dicta than Chief Justice Marshall's that

"It is emphatically the province and the duty of the judicial department to say what the law is."

But in order for the court to interpret the law, it must decide cases. If it cannot hear certain cases, then it cannot protect certain rights.

We need to deal resolutely with terrorism. And we have. But the guise of combating terrorism, we have diminished the fundamental civil liberties that Americans have enjoyed for two centuries; therefore the terrorists will have won.

My bill will repeal this dreadful, unconstitutional provision now in public law. I ask unanimous consent that the article entitled "First in Damage to Constitutional Liberties," by Nat Hentoff from the Washington Post of November 16, 1996; and the article entitled "Clinton's Sorriest Record" from the New York Times of October 14, 1996; be printed in the Record at the conclusion of my remarks.

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

[From the Washington Post, Nov. 16, 1996]

FIRST IN DAMAGE TO CONSTITUTIONAL LIBERTIES

(By Nat Hentoff)

There have been American presidents to whom the Constitution has been a nuisance to be overruled by an means necessary. In 1798, only seven years after the Bill of Rights was ratified, John Adams triumphantly led Congress in the passage of the Alien and Sedition Acts, which imprisoned a number of journalists and others for bringing the president or Congress into "contempt or disrepute." So much for the First Amendment.

During the Civil War, Abraham Lincoln actually suspended the writ of habeas corpus. Alleged constitutional guarantees of peaceful dissent were swept away during the First World War—with the approval of Woodrow Wilson. For example, there were more than 1,900 prosecutions for anti-war books, newspaper articles, pamphlets and speeches. And Richard Nixon seemed to regard the Bill of Rights as primarily a devilish source of aid to his enemy.

No American president, however, has done so much damage to constitutional liberties as Bill Clinton—often with the consent of Republicans in Congress. But it has been Clinton who had the power and the will to seriously weaken our binding document in ways that were almost entirely ignored by the electorate and the press during the campaign.

Unlike Lincoln, for example, Clinton did a lot more than temporarily suspend habeas corpus. One of his bills that has been enacted into law guts the rights that Thomas Jefferson insisted be included in the Constitution. A state prisoner on death row now has only a year to petition a federal court to review the constitutionality of his trial or sentence. In many previous cases of prisoners eventually freed after years of waiting to be executed, proof of their innocence has been discovered long after the present one year limit.

Moreover, the Clinton administration is—as the ACLU's Laura Murphy recently told the National Law Journal—"the most wiretap-friendly administration in history."

And Clinton ordered the Justice Department to appeal a unanimous 3rd circuit Court of Appeals decision declaring unconstitutional the Communications Decency Act censoring the Internet, which he signed into law.

There is a chilling insouciance in Clinton's elbowing the Constitution out of the way. He blithely, for instance, has stripped the courts of their power to hear certain kinds of cases. As Anthony Lewis points out in the New York Times, Clinton has denied many people their day in court.

For one example, says Lewis. "The new immigration law * * * takes away the rights of thousands of aliens who may be entitled to legalize their situation under a 1986 statute giving amnesty to illegal aliens." Cases involving as many as 300,000 people who may still qualify for amnesty have been waiting to be decided. All have now been thrown out of court by the new immigration law.

There have been other Clinton revisions of the Constitution, but in sum—as David Boaz of the Cato Institute has accurately put it—Clinton has shown "a breathtaking view of the power of the Federal government, a view directly opposite the meaning of 'civil libertarian.' "

During the campaign there was no mention at all of this breathtaking exercise of federal power over constitutional liberties. None by former senator Bob Dole who has largely been in agreement with this big government approach to constitutional "guarantees." Nor did the press ask the candidates about the Constitution.

Laura Murphy concludes that "both Clinton and Dole are indicative of how far the American people have slipped away from the notions embodied in the Bill of Rights." She omitted the role of the press, which seems focused primarily on that part of the First Amendment that protects the press.

Particularly revealing were the endorsements of Clinton by the New York Times, The Washington Post and the New Republic, among others. In none of them was the president's civil liberties record probed. (The Post did mention the FBI files at the White House.) Other ethical problems were cited, but nothing was mentioned about habeas corpus, court-stripping, lowering the content of the Internet to material suitable for children and the Clinton administration's decided lack of concern for privacy protections of the individual against increasingly advanced government technology.

A revealing footnote to the electorate's ignorance of this subverting of the Constitution is a statement by N. Don Wycliff, editorial page editor of the Chicago Tribune. He tells Newsweek that "people are not engaged in the [political] process because there are no compelling issues driving them to participate. It would be different if we didn't have peace and prosperity."

What more could we possibly want?

[From the New York Times, Oct. 14, 1996]

ABROAD AT HOME; CLINTON'S SORRIEST RECORD

(By Anthony Lewis)

Bill Clinton has not been called to account in this campaign for the worst aspect of his Presidency. That is his appalling record on constitutional rights.

The Clinton years have seen, among other things, a series of measures stripping the courts of their power to protect individuals from official abuse—the power that has been the key to American freedom. There has been nothing like it since the Radical Republicans, after the Civil War, acted to keep the courts from holding the occupation of the South to constitutional standards.

The Republican Congress of the last two years initiated some of the attacks on the courts. But President Clinton did not resist them as other Presidents have. And he proposed some of the measures trampling on constitutional protections.

Much of the worst has happened this year. President Clinton sponsored a counterterrorism bill that became law with a number of repressive features in it. One had nothing to do with terrorism: a provision gutting the power of Federal courts to examine state criminal convictions, on writs of habeas corpus, to make sure there was no violation of constitutional rights.

The Senate might well have moderated the habeas corpus provision if the President had put up a fight. But he broke a promise and gave way.

The counterterrorism law also allows the Government to deport a legally admitted alien, on the ground that he is suspected of a connection to terrorism, without letting him see or challenge the evidence. And it goes back to the McCarthy period by letting the Government designate organizations as "terrorist"—a designation that could have included Nelson Mandela's African National Congress before apartheid gave way to democracy in South Africa.

The immigration bill just passed by Congress has many sections prohibiting review by the courts of decisions by the Immigration and Naturalization Service or the Attorney General. Some of those provisions have drastic retroactive consequences.

For example, Congress in 1986 passed an amnesty bill that allowed many undocumented aliens to legalize their presence in this country. They had to file by a certain date, but a large number said they failed to do so because improper I.N.S. regulations discouraged them.

The Supreme Court held that those who could show they were entitled to amnesty but were put off by the I.N.S. rules could file late. Lawsuits involving thousands of people are pending. But the new immigration law throws all those cases—and individuals—out of court.

Another case, in the courts for years, stems from an attempt to deport a group of Palestinians. Their lawyer sued to block the deportation action; a Federal district judge, Stephen V. Wilson, a Reagan appointee, found that it was an unlawful selective proceeding against people for exercising their constitutional right of free speech. The new immigration law says the courts may not hear such cases.

The immigration law protects the I.N.S. from judicial scrutiny in a broader way. Over the years the courts have barred the service from deliberately discriminatory policies, for example the practice of disallowing virtually all asylum claims by people fleeing persecution in certain countries. The law bars all lawsuits of that kind.

Those are just a few examples of recent incursions on due process of law and other constitutional guarantees. A compelling piece by John Heilemann in this month's issue of Wired, the magazine on the social consequences of the computer revolution, concludes that Mr. Clinton's record on individual rights is "breathtaking in its awfulness." He may be, Mr. Heilemann says, "the worst civil liberties President since Richard Nixon." And even President Nixon did not leave a legacy of court-stripping statutes.

It is by no means clear that Bob Dole would do better. He supported some of the worst legislation in the Senate, as the Gingrich Republicans did in the House.

Why? The Soviet threat, which used to be the excuse for shoving the Constitution

aside, is gone. Even in the worst days of the Red Scare we did not strip the courts of their protective power. Why are we legislating in panic now? Why, especially, is a lawyer President indifferent to constitutional rights and their protection by the courts?

By Mrs. BOXER:

S. 106. A bill to require that employees who participate in cash or deferred arrangements are free to determine whether to be invested in employer real property and employer securities, and if not, to protect such employees by applying the same prohibited transaction rules that apply to traditional defined benefit pension plans, and for other purposes; to the Committee on Finance.

S. 107. A bill to require the offer in every defined benefit plan of a joint and ⅔ survivor benefit annuity option and to require comparative disclosure of all benefit options to both spouses; to the Committee on Finance.

S. 108. A bill to require annual, detailed investment reports by plans with qualified cash or deferred arrangements, and for other purposes; to the Committee on Labor and Human Resources.

LEGISLATION TO PROTECT AMERICAN PENSION FUNDS

Mrs. BOXER. Mr. President, today I am introducing three bills designed to protect Americans' pension funds.

I. THE 401(K) PENSION PLAN PROTECTION ACT

The first bill, the "401(k) Pension Plan Protection Act of 1997", would give employees who participate in a 401(k) plan the assurance that their employer cannot force them to invest their employee contributions in the company.

The 401(k) Pension Protection Act will increase employees' investment freedom and protect employees against low yielding and undiversified 401(k) investments in their employer. It allows employees to protect themselves against loss of jobs and pensions if their employer becomes bankrupt.

Unfortunately, such losses have already occurred. A year ago, Color Tile, -Inc., a nationwide retailer of floor and counter coverings, filed bankruptcy. Color Tile had one pension plan, a 401(k) plan. The 401(k) allowed employees no choice of investments. All investment decisions were made by Color Tile.

At the time of bankruptcy, 83 percent of the 401(k)'s investments were in 44 Color Tile stores. Many of those stores were closed in the bankruptcy. Those investments—and the employees retirement savings—are now at risk of a large, possibly total loss.

In 1991, in my own State, another bankruptcy resulted in a substantial loss to a 401(k) plan enrolling 10,000 employees. Carter Hawley Hales stores went bankrupt with more than 50 percent of its assets invested in Carter Hawley Hale stock. As a result of the bankruptcy, the stock lost 92 percent of its value. Many employees lost a pension and a job simultaneously.

The 401(k) Pension Protection Act is designed to prevent situations such as Color Tile and Carter Hawley Hale from reoccurring. The act would prevent a company from requiring that more than 10 percent of employee contributions to a 401(k) plan, contributions known as salary deferrals, be invested in the employer stock or employer real estate.

The act exempts a certain type of 401(k) plan from the 10 percent limit—where employees are free to direct how their contributions are invested and to move their investments in the 401(k) with reasonable frequency. In such situations, the 10 percent limitation does not apply and employees are free to assume the risk of undiversified investment in their employer.

The 401(k) Pension Protection Act would protect 23 million employees in 401(k) plans investing more than 675 million dollars in assets.

All 401(k) members need the 401(k) Pension Protection Act. Unlike traditional pension plans, companies sponsoring 401(k)s do not guarantee that investments will provide the promised pension. Instead, 401(k) participants bear all risk of undiversified investment in the employer.

Participants in 401(k)s also need the protections of the act because—unlike traditional pension plans—401(k)s are not insured against bankruptcy of the plan sponsor by the Pension Benefit Guaranty Corp., or PBGC.

II. THE PENSION BENEFITS FAIRNESS ACT OF 1997

The second bill that I offer today is the Pension Benefits Fairness Act of 1997. The act would require that traditional pension plans offer equal survivor retirement benefits to both spouses.

Current Federal law requires an unequal survivors retirement benefit option. Unless they voluntarily offer a better benefit, traditional pension plans are required to offer a benefit option that pays one spouse double the amount paid to other spouse, when one spouse dies. Many plans do not voluntarily offer an equal benefit.

Current law also requires that only one spouse be given a description of the retirement benefit option or options offered by the plan. This leaves one spouse in a marriage uninformed of a decision that affects their income for the rest of their life. It is doubly important that they understand the decision to accept a particular benefit because they can never change their decision.

Under current law, the spouse who gets the required description is also the spouse who gets a survivor benefit that is twice as large.

The preferred spouse is the spouse who participated in the retirement plan. This means that the unequal treatment disproportionately impacts women because women's jobs are less often covered by a pension plan. Women need better pension survivor benefits because three out of four marriages they outlive their husbands

The Pension Benefits Fairness Act would correct this problem by requiring that pension plans treat spouses equally with regard to benefits and disclosure of benefit options.

The act imposes no additional pension costs on plans, employers, or participants. The act would increase the benefits paid to the many surviving spouses while resulting in no material reduction in the pension paid to a typical couple.

III. THE SMALL 401(K) PENSION PLAN DISCLOSURE ACT OF 1997

The third pension bill that I introduce today is the Small 401(k) Pension Plan Disclosure Act of 1997.

Current Federal law requires that pension plans file an annual investment report with the Department of Treasury and make the report available if a participant asks for it. Participants in small 401(k)s should not be required to ask where their pension contributions are invested. Participants in small 401(k)s are often hesitant to request the information for fear of being identified as questioning their employer's handling of a 401(k). Participants in large plans, where there is greater anonymity, are less hesitant.

Participants in 401(k)s should know where their plan is invested. Unlike traditional, defined pension plan participants, 401(k) participants have neither a plan sponsor's guarantee nor PBGC insurance against poor investment return. Participants bear the risk themselves.

It is only fair that 401(k) participants be informed how their money is invested.

The Small 401(k) Pension Plan Disclosure Act of 1997 eliminates the need to ask. It requires that the Secretary of Labor issue regulations requiring that small 401(k)s to provide each participant with an annual investment report. The details of the report are left to the Secretary, but certain details are suggested as a guide.

The act also encourages the Secretary to provide for the delivery of reports through company e-mail. This should help minimize the cost of providing reports.

The act exempts 401(k) accounts where participants direct their investments because current law already requires that those participants receive investment descriptions and reports.

Mr. President, these bills increase the retirement security of the American work force, diversify 401(k) investments, require equal benefits for husband and wife, and inform employees in small 401(k) plans where their money is invested.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 109. A bill to provide Federal housing assistance to Native Hawaiians; to the Committee on Indian Affairs.

THE NATIVE HAWAIIAN HOUSING ASSISTANCE ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce the native Hawaiian Housing Assistance Act of 1997—a measure which seeks to provide housing assistance to those families most in need, both nationally and in my home state of Hawaii—native Hawaiians.

Less than 2 years ago, in 1995, the U.S. Department of Housing and Urban Development released a report entitled, "Housing Problems and Needs of Native Hawaiians." This report found, astoundingly, that native Hawaiians experience the highest percentage of housing problems in the Nation—49 percent—higher than even that of American Indians and Alaska Natives residing on reservation—44 percent—and substantially higher than that of all U.S. households—27 percent.

These findings, taken in conjunction with those of two other reports: The final report of the National Commission on American Indian, Alaska Native, and native Hawaiian Housing, "Building the Future: a Blueprint for Change" (1992) and the State Department of Hawaiian home lands report, "Department of Hawaiian Homelands Beneficiary Needs Study" (1995), document that:

Native Hawaiians have the worst housing conditions in the State of Hawaii and are seriously overrepresented in the Stat's homeless population, representing over 30 percent of the homeless population.

Among the native Hawaiian population, the needs of the native Hawaiians eligible to reside on lands set aside under the Hawaiian Homes Commission Act are the most severe. Ninety-five percent of the current applicants, approximately 13,000 native Hawaiians, are in need of housing, with one half of those applicant households facing overcrowding and one third paying more than 30 percent of their income for shelter; and under the Department of Housing and Urban Development [HUD] guidelines, 70.8 percent of the Department of Hawaiian Home Lands (DHHL) lessees and applicants fall below the HUD median family income, with more than half having incomes below 30 percent.

Mr. President, I find these statistics deplorable and unconscionable. They are the direct result of a pattern of purposeful neglect on the part of our Federal Government.

At the time of the arrival of Captain Cook to Hawaii's shores in 1778, there was a thriving community of nearly 1 million indigenous inhabitants. But over time, introduced diseases and the devastating physical, cultural, social, and spiritual effects of Western contact nearly decimated the native Hawaiian population. In 1826, less than 50 years later, the native Hawaiian population had decreased to an estimated 142,650, and by 1919, this number had dropped to 22,600.

In recognition of this catastrophic decline, and of the role the Federal Government played in facilitating such a decline, the Congress enacted The Hawaiian Homes Commission Act [HHCA], which set aside 200,000 acres of CEDED public lands for homesteading by native Hawaiians. As then Secretary of the Interior Franklin K. Lane was quoted in the committee report to the HHCA as saying: "One thing that impressed me—was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers, and many are in poverty." Congress thus sought to return the Hawaiian people to the land, thereby revitalizing a dying race.

And yet, despite what arguably were good intentions, the Congress subsequently and systematically failed to appropriate sufficient funds for the administration of the HHCA. Faced with no means of securing the necessary funding which would enable the development of infrastructure or housing, the administrators were forced to lease large tracts of the homelands to non-Hawaiians for commercial and other purposes in order to generate revenue to administer and operate the program. Hawaiians were thereby denied the benefits of residing on those very lands set aside for their survival as the indigenous inhabitants of Hawaii.

Over the years, I am sad to report, this Government has taken the anomalous legal position that native Hawaiians residing on these home lands must be excluded from access to existing Federal Housing and Infrastructure Development programs because the expenditure of Federal funds to benefit these lands was somehow deemed unconstitutional.

While the Clinton administration has reversed this position—arguing before the Ninth Circuit Court of Appeals that the home lands were not set aside exclusively for native Hawaiians—there are those who nonetheless seem to want it both ways. They want to deny that any Federal responsibility flows from the provisions of a Federal law, and yet they want to bar native people from their rights of access to existing Federal housing programs.

It is this reverse discrimination that I find repugnant and unacceptable. It is a mentality that enables the Federal Government to set aside lands for native Hawaiians, retain certain powers over the administration of these lands, and then deny those native Hawaiians residing on these lands access to programs made available to all others, including Indians residing on reservations, on the basis that the lands set aside by the United States only benefit native Hawaiians.

I am happy to report that, with the assistance of outgoing HUD Secretary Cisneros, we have worked to identify and remove some barriers which have prevented native Hawaiians residing on the home lands, from securing access to existing federally-assisted housing programs. For his understanding of and dedication toward these matters, I am most grateful. However, I would be the first to admit that much more remains to be done.

When the National Commission of American Indian, Alaska Native, and Native Hawaiian Housing issued its report, after full consideration of the deplorable housing conditions native Hawaiian families face, they submitted the following recommendation: That Congress enact a "Native Hawaiian Housing and Infrastructure Assistance Program" to alleviate and address the severe housing needs of native Hawaiians by extending to them the same Federal housing assistance available to American Indians and Alaska Natives.

This, Mr. President, is exactly what this bill is designed to accomplish. It amends the Native American Housing and Self-Determination Act of 1996 by creating a separate title to establish a parallel housing program for native Hawaiians. This program would not benefit all native Hawaiians, but is limited in scope to those most in need because this Government has consistently denied them access to existing housing programs—those native Hawaiians eligible to reside on the home lands.

This bill would provide funding, in the form of a block grant, to the department of Hawaiian Home Lands, to carry out affordable housing activities which are identical to those activities authorized under the Native American Housing Assistance and Self-Determination Act. The bill provides that, to the extent practicable, the Department shall employ private nonprofit organizations experienced in the planning and development of affordable housing for native Hawaiians. In addition, the bill authorizes the Secretary to adopt modifications which are deemed necessary in order to meet the unique needs of native Hawaiians.

Finally, an additional section of the bill creates a loan guarantee program similar to that which exists for American Indians. Neither of these programs would tap into existing tribal monies, but instead would authorize a separate funding stream.

Mr. President, this is a bill whose foundation is a dual one—one based on need, on statistics which show that native Hawaiians face the highest incidence of housing needs in the nation, and that among the native Hawaiian population, those native Hawaiians eligible to reside on the home lands are the most in need, and one based on the special historical relationship between the United States and the native Hawaiian people.

While history has shown that the Congress has fallen far short of its commitment to provide sufficient funding for the administration of the Hawaiian Homes Commission Act, let history also reflect, that in this, the 105th Congress, we sought to finally, balance the scales, by creating housing opportunities for native Hawaiians similar to those provided to other native Americans.

Mr. President, I thank you for your consideration of this most important measure and ask unanimous consent that the bill be printed in the RECORD in its entirety. I urge my colleagues to act favorably and expeditiously on this measure.

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

S. 109

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 "Native Hawaiian Housing Assistance Act of 1997".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) The Federal Government has a responsibility to promote the general welfare of the Nation by employing its resources to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income and by developing effective partnerships with governmental and private entities to accomplish these objectives.

(2) Based upon the status of the Kingdom of Hawaii as an internationally recognized and independent sovereign and the unique historical and political relationship between the United States and Native Hawaiians, the Native Hawaiian people have a continuing right to local autonomy in traditional and cultural affairs and an ongoing right of self-determination and self-governance that has never been extinguished.

(3) The authority of Congress under the Constitution of the United States to legislate and address matters affecting the rights of indigenous peoples of the United States includes the authority to legislate in matters affecting Native Hawaiians.

(4) In 1921, in recognition of the severe decline in the Native Hawaiian population, Congress enacted the Hawaiian Homes Commission Act, 1920, which set aside approximately 200,000 acres of the ceded public lands for homesteading by Native Hawaiians, thereby affirming the special relationship between the United States and the Native Hawaiians.

(5) In 1959, under the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4), the United States reaffirmed the special relationship between the United States and the Native Hawaiian people—

(A) by transferring what the United States deemed to be a trust responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but continuing Federal superintendence by retaining the power to enforce the trust, including the exclusive right of the United States to consent to land exchanges and any amendments to the Hawaiian Homes Commission Act, 1920, enacted by the legislature of the State of Hawaii affecting the rights of beneficiaries under such Act; and

(B) by ceding to the State of Hawaii title to the public lands formerly held by the United States, mandating that such lands be held "in public trust" for "the betterment of the conditions of Native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920", and continuing Federal superintendence by retaining the exclusive legal responsibility to enforce this public trust.

(6) In recognition of the special relationship that exists between the United States and the Native Hawaiian people, Congress has extended to Native Hawaiians the same rights and privileges accorded to American Indians and Alaska Natives under the Native American Programs Act of 1974, the American Indian Religious Freedom Act, the National Museum of the American Indian Act, the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act, the Native American Languages Act, the American Indian, Alaska Native and Native Hawaiian Culture and Arts Development Act, the Job Training and Partnership Act, and the Older Americans Act of 1965.

(7) The special relationship has been recognized and reaffirmed by the United States in the area of housing—

(A) through the authorization of mortgage loans insured by the Federal Housing Administration for the purchase, construction, or refinancing of homes on Hawaiian Home Lands under the National Housing Act;

(B) by mandating Native Hawaiian representation on the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing;

(C) by the inclusion of Native Hawaiians in the Native American Veterans' Home Loan Equity Act; and

(D) by enactment of the Hawaiian Home Lands Recovery Act, which establishes a process that enables the Federal Government to convey lands to the Department of Hawaiian Home Lands equivalent in value to lands acquired by the Federal Government.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To implement the recommendation of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing (in this Act referred to as the "Commission") that Congress establish a Native Hawaiian Housing and Infrastructure Assistance Program to alleviate and address the severe housing needs of Native Hawaiians by extending to them the same Federal housing assistance available to American Indians and Alaska Natives.

(2) To address the following needs of the Native Hawaiian population, as documented in the Final Report of the Commission, "Building the Future: A Blueprint for Change" (1992); the United States Department of Housing and Urban Development report, "Housing Problems and Needs of Native Hawaiians (1995);" and the State Department of Hawaiian Home Lands report "Department of Hawaiian Home Lands Beneficiary Needs Study" (1995):

(A) Native Hawaiians experience the highest percentage of housing problems in the Nation: 49 percent, compared to 44 percent for American Indian and Alaska Native households in tribal areas, and 27 percent for all United States households, particularly in the area of overcrowding (27 percent versus 3 percent nationally) with 36 percent of Hawaiian homelands households experiencing overcrowding.

(B) Native Hawaiians have the worst housing conditions in the State of Hawaii and are seriously over represented in the State's homeless population, representing over 30 percent.

(C) Among the Native Hawaiian population, the needs of the native Hawaiians eligible for Hawaiian homelands are the most severe. 95 percent of the current applicants, approximately 13,000 Native Hawaiians, are in need of housing, with one-half of those applicant households facing overcrowding and one-third paying more than 30 percent of their income for shelter. Under Department of Housing and Urban Development guidelines, 70.8 percent of Department of Hawaiian Homelands lessees and applicants fall below the Department of Housing and Urban Development median family income, with more than half having incomes below 30 percent.

SEC. 3. HOUSING ASSISTANCE.

The Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104–330) is amended by adding at the end the following new title:

"TITLE VIII—HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

"SEC. 801. DEFINITIONS.

"In this title—

"(1) the term 'Department of Hawaiian Home Lands' means the Department of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920;

"(2) the term 'Hawaiian Home Lands' means those lands set aside by the United States for homesteading by Native Hawaiians under the Hawaiian Homes Commission Act, 1920, and any other lands acquired pursuant to that Act; and

"(3) the term 'Native Hawaiian' has the same meaning as in section 201 of the Hawaiian Homes Commission Act, 1920.

"SEC. 802. BLOCK GRANTS FOR AFFORDABLE HOUSING ACTIVITIES.

"(a) AUTHORITY.—For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this title) make grants under this section on behalf of Native Hawaiian families to carry out affordable housing activities in the State of Hawaii. Under such a grant, the Secretary shall provide the grant amounts directly to the Department of Hawaiian Home Lands. The Department of Hawaiian Home Lands shall, to the maximum extent practicable, employ private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians, in order to carry out such activities.

"(b) APPLICABILITY OF OTHER PROVISIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), titles I through IV apply to assistance provided under this section in the same manner as titles I through IV apply to assistance provided on behalf of an Indian tribe under title I.

"(2) EXCEPTION.—The Secretary may by regulation provide for such modifications to the applicability of titles I through IV to assistance provided under this section as the Secretary determines to be necessary to meet the unique housing needs of Native Hawaiians.

"SEC. 803. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as may be necessary to carry out this title for each of fiscal years 1997, 1998, 1999, 2000, and 2001.".

SEC. 4. LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING.

Section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a) is amended—

(1) in subsection (k), by adding at the end the following new paragraphs:

"(10) The term 'Hawaiian Home Lands' means those lands set aside by the United States for homesteading by Native Hawaiians under the Hawaiian Homes Commission Act, 1920, and any other lands acquired pursuant to that Act.

"(11) The term 'Native Hawaiian' has the same meaning as in section 201 of the Hawaiian Homes Commission Act, 1920.

"(12) The term 'Native Hawaiian housing authority' means any public body (or agency or instrumentality thereof) established under the laws of the State of Hawaii, that is authorized to engage in or assist in the development or operation of low-income housing for Native Hawaiians, and includes the Department of Hawaiian Home Lands and the Office of Hawaiian Affairs."; and

(2) by adding at the end the following new subsection:

"(l) APPLICABILITY TO NATIVE HAWAIIAN HOUSING.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), subsections (a) through (k) apply to Native Hawaiian families, Native Hawaiian housing authorities, and private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians, in the same manner as those subsections apply to Indian families and to Indian housing authorities, respectively.

"(2) EXCEPTION.—The Secretary may by regulation provide for such modifications to the applicability of subsections (a) through (k) to Native Hawaiian families, Native Hawaiian housing authorities, and private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians as the Secretary determines to be necessary to meet the unique housing needs of Native Hawaiians.

"(3) LIMITATION.—Any assistance provided under this subsection, including any assistance provided to Native Hawaiians not residing on the Hawaiian Home Lands, shall be limited to the State of Hawaii.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.".

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 110. A bill to amend the Native American Graves Protection and Repatriation Act to provide for improved notification and consent, and for other purposes; to the Committee on Indian Affairs.

THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce a bill to amend the Native American Graves Protection and Repatriation Act to clarify certain provisions of that act as they pertain to Indian tribes and native Hawaiian organizations. This bill is similar to the bill I introduced in the last session of the Congress—a bill which passed this body by unanimous consent on September 13, 1996. Unfortunately, the House of Representatives failed to act on the measure prior to the adjournment of the 104th Congress.

In 1990, the Congress enacted the Native American Graves Protection and Repatriation Act [NAGPRA] to address the growing concern among Indian tribes, Alaska Native villages, and native Hawaiian organizations regarding the proper disposition of thousands of Native American human remains and sacred objects in the possession and control of museums and Federal agencies.

NAGPRA requires museums and Federal agencies to compile summaries and inventories of human remains, associated and unassociated funerary objects, sacred objects, and cultural patrimony, to notify an Indian tribe or native Hawaiian organization that have an ownership or possessory interest in the remains, objects or patrimony, and, upon request, to repatriate those remains or cultural items to the appropriate Indian tribe or native Hawaiian organization.

NAGPRA further provides a process governing the treatment of human remains or cultural items inadvertently discovered and intentionally excavated from Federal or tribal lands.

In the years since the enactment of NAGPRA, native Hawaiians have been at the forefront in the repatriation of ancestral remains and the treatment of ancestral remains inadvertently discovered on Federal lands.

Hundreds of native Hawaiian kupuna—ancestors—have been returned to Hawaii—released from the confines of more than 25 museums in the Untied States, Canada, Switzerland, and Austrialia—and returned to the land of their birth.

Despite these accomplishments, native Hawaiian organizations have experienced difficulty in ensuring the implementation of the act—ironically, not abroad, but in Hawaii.

In written testimony submitted to the Committee on Indian Affairs by Hui Malama I Na Kupuna O Hawaii Nei, a native Hawaiian organization recognized under NAGRPA, for a December 9, 1995 oversight hearing on the act, a number of concerns were raised—concerns which this bill seeks to address, namely: The lack of written consent where native American remains are excavated or removed from Federal lands for purposes of study; following an inadvertent discovery of Native American remains, the lack of assurances that the process for removal complies with the requirements that are associated with an intentional excavation; and the lack of required notification to native Hawaiian organizations when inadvertent discoveries of Native American human remains are made on Federal lands.

In addition to amendments which address these concerns, this bill also incorporates two technical amendments requested by the administration: a provision expanding the responsibility of the NAGPRA Review Committee to include associated funerary objects in the compilation of an inventory of culturally unidentifiable human remains; and provisions providing the Secretary of The Interior with authority to use fines collected to supplement the cost of enforcement-related activities.

As one of the original sponsors of the act, it is my view that these amendments are consistent with the original purpose, spirit, and intent of NAGPRA, and are necessary to clarify the existing law.

It is my expectation that if adopted, these amendments will ensure better cooperation by Federal agencies in the implementation of the act in the State of Hawaii and the rest of the United States. For while these amendments address concerns raised by the native Hawaiian people, they will also serve to benefit Indian country.

The responsibility borne by those who choose, or who are called upon to care for the remains of their ancestors is a heavy one. By acting favorably on this measure, I hope that we can assist these individuals and organizations as they continue in their efforts to bring their ancestors home and provide them with proper treatment when they are disturbed from sacred burial sites.

Mr. President, I thank you for this time today, and I urge my colleagues to support this bill when it comes before the Senate for consideration.

Mr. President, I ask unanimous consent that the test of the bill be printed in the RECORD.

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

S. 110

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.

(a) WRITTEN CONSENT REQUIRED IF NATIVE AMERICAN REMAINS ARE EXCAVATED OR REMOVED FOR PURPOSES OF STUDY.—Section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)) is amended—

(1) in paragraph (3), by striking "and" at the end of the paragraph;

(2) in paragraph (4), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(5) in the case of any intentional excavation or removal of Native American human remains for purposes of study, such remains are excavated or removed after written consent is obtained from—

"(A) lineal descendants, if known or readily ascertainable; or

"(B) each appropriate Indian tribe or Native Hawaiian organization.

The requirement under paragraph (1) shall not be interpreted as allowing or requiring, in the absence of the consent of each appropriate Indian tribe or Native Hawaiian organization, any recordation or analysis that is in addition to any recordation or analysis that is otherwise allowed or required under this Act.".

(b) REQUIREMENTS FOR INADVERTENT DISCOVERIES.—Section 3(d) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking "with respect to Federal lands" and inserting "with respect to those Federal lands";

(B) by inserting after the first sentence the following: "In any case in which a Federal agency or instrumentality receives notice of a discovery of Native American cultural items on lands with respect to which the Federal agency or instrumentality has management authority, the appropriate official of the Federal agency or instrumentality shall notify each appropriate Indian tribe or Native Hawaiian organization. The notification required under the preceding sentence shall be provided not later than 3 business days after the date on which the Federal agency or instrumentality receives notification of the discovery."; and

(C) in the last sentence, by inserting ", and, in the case of Federal lands, the appropriate official of the Federal agency or instrumentality with management authority over those lands notified each appropriate Indian tribe or Native Hawaiian organization by the date specified in this paragraph," after "that notification has been received,"; and

(2) in paragraph (2), by adding at the end the following new sentence: "Any person or entity that disposes of, or controls, a cultural item referred to in the preceding sentence shall comply with the applicable requirements of subsection (c).".

(c) REVIEW COMMITTEE.—Section 8(c)(5) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3006(c)(5)) is amended—

(1) by inserting "and associated funerary objects" after "culturally unidentifiable human remains"; and

(2) by striking "for developing a process for disposition of such remains" and inserting "for developing a process for the disposition of the remains and associated funerary objects".

(c) ENFORCEMENT.—Section 9 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3007) is amended by adding at the end the following:

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—Subject to paragraph (2), the amounts collected by the Secretary as penalties under this section shall be used to supplement the amounts made available by appropriations for conducting enforcement activities related to this section.

"(2) AUTHORITY OF SECRETARY.—In carrying out enforcement activities related to this section, the Secretary may—

"(A) pay any person who furnishes information that leads to the assessment of a civil penalty under this section (other than an officer or employee of the Federal Government or a State or local government (including a tribal government) who furnishes or who renders service in the performance of official duties) the lesser of—

"(i) half of the amount of the civil penalty; or

"(ii) $1,000; and

"(B) reduce the amount of a civil penalty that would otherwise be assessed under this section if the violator against whom the civil penalty is assessed agrees to pay to the aggrieved parties involved an aggregate amount of restitution not to exceed the amount of the reduction.".

By Mr. INOUYE:

S. 111. A bill to amend the Immigration and Nationality Act to facilitate the immigration to the United States of certain aliens born in the Philippines or Japan who were fathered by United States citizens; to the Committee on the Judiciary.

THE AMERASIAN IMMIGRATION ACT AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, today, I rise to introduce legislation which amends Public Law 97-359, the Amerasian Immigration Act, to include Amerasian children from the Philippines and Japan as eligible applicants. This legislation also expands the eligibility period for the Philippines to November 24, 1992, the date of the last United States military base closure and the date of enactment of the proposed legislation for Japan.

Under the Amerasian Immigration Act (Public Law 97-359) children born in Korea, Laos, Kampuchea, Thailand, and Vietnam after December 31, 1950, and before October 22, 1982, who were fathered by United States citizens, are allowed to immigrate to the United States. The initial legislation introduced in the 97th Congress included Amerasians born in the Philippines and Japan with no time limits concerning their births. The final version as enacted by the Congress included only those areas where the U.S. had engaged in active military combat from the Korea War onward. Consequently, Amerasians from the Philippines and Japan were excluded from eligibility.

Although the Philippines and Japan were not considered war zones from 1950 to 1982, the extent and nature of U.S. military involvement in both countries are not dissimilar to U.S. military involvement in other Asian countries during the Korean and Vietnam conflicts. The role of the Philippines and Japan as vital supply and stationing bases brought tens of thousands of U.S. military personnel to these countries. As a result, interracial relations in both countries were common, leading to a significant number of Amerasian children being fathered by U.S. citizens. There are now over 50,000 Amerasian children in the Philippines. According to the Embassy of Japan, there are 6,000 Amerasian children in Japan born between 1987 and 1992.

Public Law 97-359 was passed in the hope of redressing the situation of Amerasian children in Korea, Laos, Kampuchea, Thailand, and Vietnam who, due to their illegitimate or mixed ethnic make-up, their lack of a father or stable mother figure, or impoverished state, have little hope of escaping their plight. It became the ethical and social obligation of the United States to care for these children.

The stigmatization and ostracism felt by Amerasian children in those countries covered by the Amerasian Immigration Act also is felt by Amerasian children in the Philippines and Japan. These children of American citizens deserve the same viable opportunities of employment, education, and family life that is afforded their counterparts from Korea, Laos, Kampuchea, Thailand, and Vietnam.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204(f)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(f)(2)(A)) is amended—

(1) by inserting "(I)" after "born"; and

(2) by inserting after "subsection," the following: "(II) in the Philippines after 1950 and before November 24, 1992, or (III) in Japan after 1950 and before the date of enactment of this subclause,".

By Mr. MOYNIHAN:

S. 112. A bill to amend title 18, United States Code, to regulate the manufacture, importation, and sale of ammunition capable of piercing police body armor; to the Committee on the Judiciary.

LAW ENFORCEMENT OFFICERS PROTECTION ACT OF 1997

Mr. MOYNIHAN. Mr. President, I am introducing legislation today to amend Title 18 of the United States Code to strengthen the existing prohibition on handgun ammunition capable of penetrating policy body armor, commonly referred to as bullet-proof vests. This provision would require the Secretary of the Treasury and the Attorney General to develop a uniform ballistics test to determine with precision whether ammunition is capable of penetrating police body armor. The bill also prohibits the manufacture and sale of any handgun ammunition determined by the Secretary of the Treasury and the Attorney General to have armor-piercing capability.

I am encouraged that, on behalf of its 277,000 members, the Fraternal Order of Police has decided to support this bill. In addition the Law Enforcement Steering Committee, which represents eight of the largest Associations of law enforcement officers, has also indicated that they are in support of this bill.

I am also pleased that President Clinton has taken an avid interest in this subject. In a statement similar to remarks he made many times at campaign appearances around the country, President Clinton said to an audience in Cincinnati, Ohio on September 16, 1996:

So that's my program for the future—do more to break the gangs, ban those cop killer bullets, drug testing for parolees, improve the opportunities for community-based strategies that lower crime and give our kids something to say yes to.

Mr. President, it has been fifteen years since I first introduced legislation in the Senate to outlaw armor-piercing, or "cop-killer," bullets. In 1982, Phil Caruso of the Patrolman's Benevolent Association of New York City alerted me to the existence of a

Teflon-coated bullet capable of penetrating the soft body armor police officers were then beginning to wear. Shortly thereafter, I introduced the Law Enforcement Officers Protection Act of 1982 to prohibit the manufacture, importation, and sale of such ammunition.

At that time, armor-piercing bullets—most notably the infamous "Green Hornet"—were manufactured with a solid steel core. Unlike the softer lead composition of most other ammunition, this hard steel core prevented these rounds from deforming at the point of impact—thus permitting the rounds to penetrate the 18 layers of Kevlar in a standard-issue police vest or "flak-jacket." These bullets could go through a bullet-proof vest like a hot knife through butter. My legislation simply banned any handgun ammunition made with a core of steel or other hard metals.

Despite the strong support of the law enforcement community, it took four years before this seemingly non-controversial legislation was enacted into law. The National Rifle Association initially opposed it—that is, until the NRA realized that a large number of its members were themselves police officers who strongly supported banning these insidious bullets. Only then did the NRA lend its grudging support. The bill passed the Senate on March 6, 1986 by a vote of 97–1, and was signed by President Reagan on August 8, 1986 (Public Law 99–408).

That 1986 Act served us in good stead for 7 years. To the best of my knowledge, not a single law enforcement officer was shot with an armor-piercing bullet. Unfortunately, the ammunition manufacturers eventually found a way around the 1986 law. By 1993, a new Swedish-made armor-piercing round, the M39B, had appeared. This pernicious bullet evaded the 1986 statute's prohibition because of its unique composition. Like most common ammunition, it had a soft lead core, thus exempting it from the 1986 law. But this core was surrounded by a heavy steel jacket, solid enough to allow the bullet to penetrate body armor. Once again, our nation's law enforcement officers were at risk. Immediately upon learning of the existence of the new Swedish round, I introduced a bill to ban it.

Another protracted series of negotiations ensued before we were able to update the 1986 statute to cover the M39B. We did it with the support of law enforcement organizations, and with technical assistance from the Bureau of Alcohol, Tobacco and Firearms. In particular, James O. Pasco, Jr., then the Assistant Director of Congressional Affairs at BATF, worked closely with me and may staff to get it done. The bill passed the Senate by unanimous consent on November 19, 1993 as an amendment to the 1994 Crime Bill.

Despite these legislative successes, it was becoming evident that continuing "innovations" in bullet design would result in new armor-piercing rounds capable of evading the ban. It was at this time that some of us began to explore in earnest the idea of developing a new approach to banning these bullets based on their performance, rather than their physical characteristics. Mind, this concept was not entirely new; the idea had been discussed during our efforts in 1986, but the NRA had been immovable on the subject. The NRA's leaders, and their constituent ammunition manufacturers, felt that any such broad-based ban based on a bullet "performance standard" would inevitably lead to the outlawing of additional classes of ammunition. They viewed it as a slippery slope, much as they have regarded the assault weapons ban as a slippery slope. The NRA had agreed to the 1986 and 1993 laws only because they were narrowly drawn to cover individual types of bullets.

And so in 1993 I asked the ATF for the technical assistance necessary to write into law an armor-piercing bullet "performance standard." At the time, however, the experts at the ATF informed us that this could not be done. They argued that it was simply too difficult to control for the many variables that contribute to a bullet's capability to penetrate police body armor. We were told that it might be possible in the future to develop a performance-based test for armor-piercing capability, but at the time we had to be content with the existing content-based approach.

Well. Two years passed and the Office of Law Enforcement Standards of the National Institute of Standards and Technology wrote a report describing the methodology for just such a armor-piercing bullet performance test. The report concluded that a test to determine armor-piercing capability could be developed within six months.

So we know it can be done, if only the agencies responsible for enforcing the relevant laws have the will. The legislation I am introducing requires the Secretary of the Treasury, in consultation with the Attorney General, to establish performance standards for the uniform testing of handgun ammunition. Such an objective standard will ensure that *no* rounds capable of penetrating police body armor, regardless of their composition, will ever be available to those who would use them against our law enforcement officers.

I wish to assure the Senate that this measure would in no way infringe upon the rights of legitimate hunters and sportsmen. It would not affect legitimate sporting ammunition used in rifles. It would only restrict the availability of armor-piercing rounds, for which no one can seriously claim there is a genuine sporting use. These cop-killer rounds have no legitimate uses, and they have no business being in the arsenals of criminals. They are designed for one purpose: to kill police officers.

The 1986 and 1993 cop-killer bullet laws I sponsored kept us one step ahead of the designers of new armor-piercing rounds. When the legislation I have introduced today is enacted—and I hope it will be early in the 105th Congress—it will put them out of the cop-killer bullet business permanently.

Mr. President, I ask unanimous consent that the letter of support from the Fraternal Order of Police be printed in the RECORD.

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

JANUARY 16, 1997.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: On behalf of the 277,000 members of the Fraternal Order of Police, I am writing to advise you of our support of legislation which you plan to introduce banning "cop-killer" bullets.

Continuing innovations in the construction of ammunition place the vest-wearing police officer in jeopardy. Your bill requiring performance-based evaluations in order to restrict the availability of armor-piercing bullets for hand-guns will secure a greater measure of safety for all of America's law enforcement officers. And though no bill or piece of legislation can protect them fully from the dangers inherent to police work, your bill will enhance the value of the body armor, which, sometimes, is all that stands between life and death.

The F.O.P. supports this effort to quantify and identify "cop-killer" bullets for handguns based on their ability to penetrate body armor, to prevent them from being used against law enforcement officers. If I can be of assistance in working to pass this legislation, please do not hesitate to contact me, or Executive Director Jim Pasco, at (202) 547–8189.

Again, thank you for continued concern and support for the safety and protection of America's law enforcement officers.

Sincerely,

GILBERT G. GALLEGOS,
National President.

By Mr. INOUYE:

S. 113. A bill to amend title VII of the Public Health Service Act to establish a psychology post-doctoral fellowship program, and for other purposes; to the Committee on Labor and Human Resources.

THE PUBLIC HEALTH SERVICE ACT AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, I am introducing legislation today to amend Title VII of the Public Health Service Act to establish a psychology post-doctoral program.

Psychologists have made a unique contribution in serving the Nation's medically undeserved populations. Expertise in behavorial science is useful in addressing many of our most distressing concerns such as violence, addiction, mental illness, children's behavior disorders, and family disruption. Establishment of a psychology

post-doctoral program could be most effective in finding solutions to these pressing societal issues.

Similar programs supporting additional, specialized training in traditionally undeserved settings or with specific undeserved populations have been demonstrated to be successful in providing services to those same undeserved populations during the years following the training experience. That is, mental health professionals who have participated in these specialized federally funded programs have tended not only to meet their payback obligations, but have continued to work in the public sector or with the undeserved populations with whom they have been trained to work.

While the doctorate in psychology provides broad-based knowledge and mastery in a wide variety of clinical skills, the specialized post-doctoral fellowship programs provide particular diagnostic and treatment skills required to effectively respond to these underserved populations. For example, what looks like severe depression in an elderly person might be a withdrawal related to hearing loss, or what looks like poor academic motivation in a child recently relocated from Southeast Asia might be reflective of a cultural value of reserve rather than a disinterest in academic learning. Each Of these situations requires very different interventions, of course, and specialized assessment skills.

Domestic violence is not just a problem for the criminal justice system, it is a significant public health problem. A single aspect of the issue, domestic violence against women results in almost 100,000 days of hospitalization, 30,000 emergency room visits, and 40,000 visits to physicians each year. Rates of child and spouse abuse in rural areas are particularly high as are the rates of alcohol abuse and depression in adolescents. A post-doctoral fellowship program in the psychology of rural populations could be of special benefit in addressing these problems.

Given the changing demographics of the Nation—the increasing life span and numbers of the elderly, the rising percentage of minority populations within the country, as well as an increased recognition on the long-term sequel of violence and abuse—and given the demonstrated success and effectiveness of these kinds of specialized training programs, it is incumbent upon us to encourage participation in post-doctoral fellowship programs that respond to the needs of the Nation's underserved.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 113

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GRANTS FOR FELLOWSHIPS IN PSYCHOLOGY.

Part E of title VII of the Public Health Service Act (42 U.S.C. 294o) is amended by adding at the end thereof the the following:

"SEC. 779. GRANTS FOR FELLOWSHIPS IN PSYCHOLOGY.

"(a) IN GENERAL.—The Secretary shall establish a psychology post-doctoral fellowship program to make grants to and enter into contracts with eligible entities to encourage the provision of psychological training and services in underserved treatment areas.

"(b) ELIGIBLE ENTITIES.—

"(1) INDIVIDUALS.—In order to receive a grant under this section an individual shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require, including a certification that such individual—

"(A) has received a doctoral degree through a graduate program in psychology provided by an accredited institution at the time such grant is awarded;

"(B) will provide services in a medically underserved population during the period of such grant;

"(C) will comply with the provisions of subsection (c); and

"(D) will provide any other information or assurances as the Secretary determines appropriate.

"(2) INSTITUTIONS.—In order to receive a grant or contract under this section, an institution shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require, including a certification that such institution—

"(A) is an entity, approved by the State, that provides psychological services in medically underserved areas or to medically underserved populations (including entities that care for the mentally retarded, mental health institutions, and prisons);

"(B) will use amounts provided to such institution under this section to provide financial assistance in the form of fellowships to qualified individuals who meet the requirements of subparagraphs (A) through (C) of paragraph (2);

"(C) will not use in excess of 10 percent of amounts provided under this section to pay for the administrative costs of any fellowship programs established with such funds; and

"(D) will provide any other information or assurance as the Secretary determines appropriate.

"(c) CONTINUED PROVISION OF SERVICES.—Any individual who receives a grant or fellowship under this section shall certify to the Secretary that such individual will continue to provide the type of services for which such grant or fellowship is awarded for at least 1 year after the term of the grant or fellowship has expired.

"(d) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations necessary to carry out this section, including regulations necessary to carry out this section, including regulations that define the terms 'medically underserved areas' or 'medically unserved populations'.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $5,000,000 for each of the fiscal years 1998 through 2000.".

By Mr. INOUYE (for himself, Mr. THOMAS, Mr. COCHRAN, and Mr. STEVENS):

S. 114. A bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment; to the Committee on Finance.

Mr. INOUYE. Mr. President, I rise to introduce legislation to restore the business meals and entertainment tax deduction to 80 percent. I am joined by Senators THOMAS, COCHRAN, AND STEVENS. Restoration of this deduction is essential to the livelihood of the food service, travel and tourism, and entertainment industries throughout the United States. These industries are being economically harmed as a result of this reduction. All are major industries which employ millions of people. many of whom are already feeling the effects of the reduction.

The deduction for business meals and entertainment was reduced from 80 to 50 percent under the Omnibus budget Reconciliation Act of 1993, and went into effect on January 1, 1994. Many companies, small and large, have changed their policies and guidelines on travel and entertainment expenses as a result of the tax reduction in the business meals and entertainment expenses deduction. Businesses have also been forced to curtail company reimbursement policies because of the reduction in the business meals and entertainment expenses deduction. In some cases, businesses have eliminated their expense accounts. Consequently, restaurant establishments, which have replied heavily on business lunch and dinner services, are being adversely affected by the reduction in business meals. For example:

Jay's Restaurant in Dayton, Ohio, closed its lunch service on July 14, 1994, following a 15 percent decrease in lunch business. This decision was based on 2,000 fewer lunch customers from January through June 1994 as compared to the same period in 1993.

The Wall Street Restaurant in Des Moines, Iowa, an upscale restaurant serving American and Continental cuisine, has seen its revenues decline 40 percent since the beginning of 1994. Owner Joey Fasano reduced his staff from 50 to 35 employees.

The Boca in Middlesex County, New Jersey, averaged 40 to 60 lunches per day prior to 1994. The restaurant now serves between 5 to 15 lunches per day. Owner Robert Campione reduced his staff from 18 to 14 employees.

The 37th Street Hideaway Restaurant in New York City did 150 lunches a day prior to 1994. Owner Van Panopoulos now serves 40 lunches and his dinner business has dropped 30 to 40 percent. Mr. Panopoulos reduced his staff from 20 to 10 employees.

Bianco's in Denver, Colorado, closed its lunch service in April 1994 because of the decline in business. Owner Fred White reduced his staff from 26 to 15 employees.

Edward's at Kanoloa in Hawaii has seen its revenues decline by 15 percent since 1994. Owner Edward Frady attributes the decline in his business to the reduction in business meals and entertainment expense deduction.

I sincerely hope that the business meals reduction to 50 percent does not become a Luxury Tax Two, in which the Congress moves toward restoration only after the damage has been done and huge job losses have occurred. Accordingly, I urge my colleagues to join me in cosponsoring this important legislation.

Mr. President, I ask unanimous consent that the bill text be printed in the RECORD.

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

S. 114

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF REDUCTION IN BUSINESS MEALS AND ENTERTAINMENT TAX DEDUCTION.

(a) IN GENERAL.—Paragraph (1) of section 274(n) of the Internal Revenue Code of 1986 (relating to only 50 percent of meal and entertainment expenses allowed as deduction) is amended by striking "50 percent" and inserting "80 percent".

(b) CONFORMING AMENDMENT.—The heading for section 274(n) is amended by striking "50" and inserting "80".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December, 31, 1996.

By Mr. INOUYE:

S. 115. A bill to increase the role of the Secretary of Transportation in administering section 901 of the Merchant Marine Act, 1936, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MERCHANT MARINE LEGISLATION

Mr. INOUYE. Mr. President, the legislation I am introducing today would centralize the authority in the Secretary of Transportation for administering our cargo preference laws. The background of these laws, the need for them, and the problems with, in my view, necessitate the legislation, are succinctly stated in a Journal of Commerce article dated November 18, 1988. While the printing of this article was several years ago, the background it provides and the light it sheds on our present needs are still pertinent. I ask unanimous consent that the text of the bill and the article be printed in the RECORD.

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

S. 115

Be in enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRANSPORTATION IN AMERICAN VESSELS OF GOVERNMENT PERSONNEL AND CERTAIN CARGOES.

Section 901(b)(2) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241 (b)(2)), is amended to read as follows:

"(2)(A) The Secretary of Transportation shall have the sole responsibility for determining and designating the programs that are subject to the requirements of this subsection. Each department or agency that has responsibility for a program that is designated by the Secretary of Transportation pursuant to the preceding sentence shall, for the purposes of this subsection, administer such program pursuant to regulations promulgated by such Secretary.

"(B) The Secretary of Transportation shall—

"(i) review the administration of the programs referred to in subparagraph (A); and

"(ii) on an annual basis, submit a report to Congress concerning the administration of such programs.".

[From the Journal of Commerce, November 18, 1988]

CARGO PREFERENCE

What It Is: A series of statutes, going back to 1904, intended to assure U.S.-flag ships a minimum share of cargoes produced by U.S. government programs. It is the oldest U.S. maritime promotional program and while subsidies and financing aids have shrunk over the years, preference has survived.

Background: The preference laws began by tracking this country's extension of its military and naval power, starting with the Spanish-American War. More recently, they have come to reflect the expansion of government programs extending U.S. economic power and interest abroad.

The Military Transportation Act of 1904 was the first of the preference statutes and its requirement for U.S.-flag vessel use, 100 percent, is the highest.

In 1934 Congress adopted Public Resolution 17 to require that half of the exports financed by the Reconstruction Finance Corp. were to move in U.S.-flag vessels. Later that resolution was made to apply to financing of the Export-Import Bank, established originally to facilitate trade with the Soviet Union.

In the early postwar period, Congress acted each year to apply the resolution's 50 percent U.S.-flag share to foreign aid shipments. It permanently inserted the requirements into the 1954 Agricultural Trade Development and Assistance Act, better known as Food for Peace and PL-480.

Public Law 664 in 1961 made clear that preference should benefit and protect all U.S.-flag vessels, not just liners, and that all U.S. programs, including those where nonmilitary agencies procured equipment, materials or commodities for themselves or foreign governments, had to use U.S. flags to the extent of 50 percent.

Importance to Carriers: In the last year for which statistics are available, calendar 1986, U.S.-flag carriers hauled more than 33 million metric tons of ****preference**** ****cargo****, somewhat more than the 28.5 million tons of commercial shipments carried that year. As an industry, the revenue amounted to about $502 million.

Necessity for Preference: Preference statutes are formally predicated on the need for assured cargoes to encourage the existence of a U.S.-flag merchant fleet to act as a military auxiliary in times of national emergencies.

Past efforts to apply preference to commercial cargoes have failed, reflecting U.S. governmental sensitivity to objections by this country's trading partners as well as stern opposition from U.S. exporters, importers and agricultural interests. The availability of preference cargoes has unquestionably kept some U.S. carriers in business but critics argue that preference has encouraged keeping obsolete vessels in operation long after they should have been scrapped.

Extent of Program: The Defense Department, the Agriculture Department and the Agency for International Development are the agencies most heavily involved in utilizing shipping and observing cargo preference. But there are at least 10 others with the same cargo preference responsibilities although smaller volumes. The Export-Import Bank in 1987 reported an unusually high, 91 percent rate of U.S.-flag vessel use. It brought participating carriers some $14.5 million in revenue.

Problems: The Maritime Administration is responsible for monitoring other government agencies to try to make sure they live up to preference requirements. In fiscal year 1987, those agencies met the cargo share minimums for the most part. Among the exceptions were cases in which the cargo origins and destinations were such that U.S.-flag vessels were simply not available.

Despite Reagan administration pledges to honor cargo preference requirements, the Navy and the Agriculture Department have had a number of preference fights with the maritime industry.

One produced an agreement by which the carriers agreed to forgo preference claims on new Agriculture Department-supported export programs with commercial-like terms in return for increasing to 75 percent their share of giveaway relief food shipments.

In another such dispute, the Navy and the U.S. State Department were forced to negotiate a cargo-sharing agreement with Iceland for military shipments there. Iceland threatened the future of U.S. bases in that country if the United States didn't agree to a departure from 100 percent U.S.-flag carriage of defense shipments.

There have been other, largely budget-driven attempts to bypass preference, but carriers and their supporters in Congress generally have managed to forestall them.

Comment: Budgetary austerity and the Defense Department's strict insistence of competitive procurement have combined to make for increasing carrier dissatisfaction, especially with the Navy's Military Sealift Command.

Efforts already are under way to change the competitive procurement system the command uses. Carriers hope generally, to end the pressures they believe force rates downward to depressed levels.

The presidentially appointed Commission on Merchant Marine and Defense has recommended that all U.S.-flag preference requirements programs be raised to 100 percent but the tight budget and such interests as farmers and traders will work against such a step. Agricultural interests have tried unsuccessfully to have existing preference removed from government programs in the belief that they inhibit U.S. farm exports.

By Mr. INOUYE:

S. 116. A bill to restore the traditional day of observance of Memorial Day; to the Committee on the Judiciary.

MEMORIAL DAY LEGISLATION

Mr. INOUYE. Mr. President, in our effort to accommodate many Americans by making the last Monday in May, Memorial Day, we have lost sight of the significance of this day to our nation. My bill would restore Memorial Day to May 30 and authorize our flag to

fly at half mast on that day. In addition, this legislation would authorize the President to issue a proclamation designating Memorial Day and Veterans Day as days for prayer and ceremonies. This legislation would help restore the recognition our veterans deserve for the sacrifices they have made on behalf of our Nation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 116

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RESTORATION OF TRADITIONAL DAY OF OBSERVANCE OF MEMORIAL DAY.

(a) IN GENERAL.—Section 6103(a) of title 5, United States Code, is amended in the item relating to Memorial Day by striking out "the last Monday in May." and inserting in lieu thereof "May 30.".

(b) DISPLAY OF FLAG.—Section 2(d) of the joint resolution entitled "An Act to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America", approved June 22, 1942 (36 U.S.C. 174(d)), is amended by striking out "the last Monday in May;" and inserting in lieu thereof "May 30;".

(c) PROCLAMATION.—The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe Memorial Day as a day for prayer and ceremonies showing respect for American veterans of wars and other military conflicts.

By Mr. INOUYE:

S. 117. A bill to amend the Internal Revenue Code of 1986 to provide for the tax treatment of residential ground rents, and for other purposes; to the Committee on Finance.

RESIDENTIAL GROUND RENTS LEGISLATION

Mr. INOUYE. Mr. President, I rise today to speak on an issue of great importance to Hawaii's leasehold homeowners. In fiscal year 1992, at my request, the Congress appropriated $400,000 to study the feasibility of reforming the Internal Revenue Code to address ground lease rent payments and to determine what role, if any, the Federal Government should play in encouraging lease to fee conversions. The nationwide study was conducted by the Hawaii Real Estate and Research Center.

The legislation I am introducing today is based on the recommendations of this study. The bill would: First, provide a mortgage interest deduction for residential leasehold properties by allowing the nonredeemable ground lease rents to be claimed as an interest deduction; and second, include a tax credit for up to $5,000 for certain transaction costs on the transfer of certain residential leasehold land for a 5-year period, ending on December 31, 2001. Transaction costs include closing costs, attorneys' fees, surveys and appraisals, and telephone, office, and travel expenses.

In most private home ownership situations in this country, a homeowner owns both the building and land. Under a leasehold arrangement a homeowner owns the building—single-family home, condominium, or cooperative apartment—on leased land. The research conducted under the leasehold study shows that residential leaseholds are not uncommon in other parts of the United States and elsewhere in the world. Residential leaseholds exist in places such as Baltimore, MD, Irvine, CA, native American lands in Palm Springs, CA, Fairhope, AL, Pearl River Basin, MS, and New York, NY.

The study further indicates that there are few States that regulate residential leaseholds. Of those that do, the most common requirement applies only to condominium or time share units and is one requiring adequate disclosure of the lease terms. For the most part, States are unaware of any leasehold problems in their jurisdictions. However, residential leaseholds have proven to be problematic for the State of Hawaii.

The formation of Hawaii's land tenure system can be traced back to 1778 when British Capt. James Cook made his first contact with the Hawaiian civilization. Leasing was the preferred system to maintain control and retain a portfolio asset value. Residential leaseholds were first developed on the Island of Oahu after World War II. Population increases created a demand for housing and other types of real estate development. Federal income tax policy encouraged the retention of land to avoid payment of large capital gains taxes.

Hawaii's land tenure system is now anomalous to the rest of the United States because of the concentration of land in the hands of government, large charitable trusts, large agriculturally based companies and owners of small parcels or urban properties. High land prices and high renegotiated rents continue to create instability in Hawaii's residential leasehold system. In 1967, the Hawaii State Legislature enacted a Land Reform Act which did not become effective until the U.S. Supreme Court issued its 1984 decision in *Hawaii Housing Authority* v. *Midkiff*, 104 S. Ct. 231 (1984). The act and the Supreme Court decision basically divided the market into a "single-family home market in which leaseholds were subject to mandatory conversion, and a leasehold condominium market which did not come within the scope of the law."

Mandatory conversions on the single-family home market occurred from 1979 to 1982, and 1986 to 1990. As of 1992, there are approximately 4,600 single-family homes remaining in residential leaseholds. However, resolution over condominium leasehold reform remains uncertain. In 1990, the Honolulu City Council enacted legislation that would cap lease rent increases. The constitutionality of the law as challenged in U.S. District Court, District of Hawaii. The court found the law unconstitutional because the formula it used to arrive at permitted lease rent was illogical.

In 1991, due to the Hawaii State Legislature's unwillingness to address the leasehold problems, the Honolulu City Council again enacted a mandatory leasehold conversion law for leasehold condominiums, Ordinance 01–95. The constitutionality of this law is currently being challenged in the Federal court. Another bill which linked lease rent increases with the Consumer Price Index and the level of disposable income available to condominium owners was also considered. This bill, similar to the one enacted in 1990, was found to be unconstitutional.

The uncertainty in the residential leasehold market continues to create economic and emotional distress for the leasehold residents of Hawaii. Voluntary conversion has helped to ease the situation and substantially reduce the stock of leasehold residential units in Hawaii. Yet, voluntary conversion is not enough to resolve the residential leasehold problems.

My legislation will help reduce the economic hardship due to the uncertainty in Hawaii's residential leasehold system. The leasehold study contains an analysis of the tax revenue effects of this legislation by allowing individual tax deductions for residential ground rent. The analysis suggests that there are potential revenues to the Federal Government if this legislation is enacted into law.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MORTGAGE INTEREST DEDUCTION FOR QUALIFIED NON-REDEEMABLE GROUND RENTS.

(a) IN GENERAL.—Section 163(c) of the Internal Revenue Code of 1986 is amended to read as follows:

"(c) GROUND RENTS.—For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) or a qualified non-redeemable ground rent shall be treated as interest on an indebtedness secured by a mortgage."

(b) TREATMENT OF QUALIFIED NON-REDEEMABLE GROUND RENTS.—

(1) IN GENERAL.—Subsections (a), (b), and (d) of section 1055 of the Internal Revenue Code of 1986 (relating to redeemable ground rents) are amended by inserting "or qualified non-redeemable" after "redeemable" each place it appears.

(2) DEFINITION.—Section 1055 of such Code is amended by redesignating subsection (d)

as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED NON-REDEEMABLE GROUND RENT.—For purposes of this subtitle, the term 'qualified non-redeemable ground rent' means a ground rent with respect to which—

"(1) there is a lease of land which is for a term in excess of 15 years,

"(2) no portion of any payment is allocable to the use of any property other than the land surface,

"(3) the lessor's interest in the land is primarily a security interest to protect the rental payments to which the lessor is entitled under the lease, and

"(4) the leased property must be used as the taxpayer's principal residence (within the meaning of section 1034)."

(3) CONFORMING AMENDMENTS.—

(A) The heading for section 1055 of such Code is amended by striking "redeemable".

(B) The item relating to section 1055 in the table of sections for part IV of subchapter O of chapter 1 of subtitle A of such Code is amended by striking "Redeemable ground" and inserting "Ground".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, with respect to taxable years ending after such date.

SEC. 2. CREDIT FOR TRANSACTION COSTS ON THE TRANSFER OF LAND SUBJECT TO CERTAIN GROUND RENTS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by inserting after section 30A the following new section:

"SEC. 30B. CREDIT FOR TRANSACTION COSTS.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the transaction costs relating to any sale or exchange of land subject to ground rents with respect to which immediately after and for at least 1 year prior to such sale or exchange—

"(A) the transferee is the lessee who owns a dwelling unit on the land being transferred, and

"(B) the transferor is the lessor.

"(2) CREDIT ALLOWED TO BOTH TRANSFEROR AND TRANSFEREE.—The credit allowed under paragraph (1) shall be allowed to both the transferor and the transferee.

"(b) LIMITATIONS.—

"(1) LIMITATION PER DWELLING UNIT.—The amount of the credit allowed to a taxpayer under subsection (a) for any taxable year shall not exceed the lesser of—

"(A) $5,000 per dwelling unit, or

"(B) 10 percent of the sale price of the land.

"(2) LIMITATION BASED ON TAXABLE INCOME.—The amount of the credit allowed to a taxpayer under subsection (a) for any taxable year shall not exceed the sum of—

"(A) 20 percent of the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 28, 29, 30, and 30A plus

"(B) the alternative minimum tax imposed by section 55.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TRANSACTION COSTS.—

"(A) IN GENERAL.—The term 'transaction costs' means any expenditure directly associated with a transaction, the purpose of which is to convey to the lessee, by the lessor, land subject to ground rents.

"(B) SPECIFIC EXPENDITURES.—Such term includes closing costs, attorney fees, surveys and appraisals, and telephone, office, and travel expenses incurred in negotiations with respect to such transaction.

"(C) LOST RENTS NOT INCLUDED.—Such term does not include lost rents due to the premature termination of an existing lease.

"(2) DWELLING UNIT.—A dwelling unit shall include any structure or portion of any structure which serves as the principal residence (within the meaning of section 1034) for the lessee.

"(3) REDUCTION IN BASIS.—The basis of property acquired in a transaction to which this section applies shall be reduced by the amount of credit allowed under subsection (a).

"(4) ELECTION.—This section shall apply to any taxpayer for the taxable year only if such taxpayer elects to have this section so apply.

"(d) CARRYOVER OF CREDIT.—

"(1) CARRYOVER PERIOD.—If the credit allowed to the taxpayer under subsection (a) for any taxable year exceeds the amount of the limitation imposed by subsection (b)(2) for such taxable year (hereafter in this subsection referred to as the 'unused credit year'), such excess shall be a carryover to each of the 5 succeeding taxable years.

"(2) AMOUNT CARRIED TO EACH YEAR.—

"(A) ENTIRE AMOUNT CARRIED TO FIRST YEAR.—The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 5 taxable years to which (by reason of paragraph (1)) such credit may be carried.

"(B) AMOUNT CARRIED TO OTHER 4 YEARS.—The amount of unused credit for the unused credit year shall be carried to each of the remaining 4 taxable years to the extent that such unused credit may not be taken into account for a prior taxable year because of the limitation imposed by subsection (b)(2).

"(e) TERMINATION.—This section shall not apply to any transaction cost paid or incurred in taxable years beginning after December 31, 2001."

(b) CLERICAL AMENDMENT.—The table of sections for such subpart B is amended by inserting after the item relating to section 30A the following new item:

"Sec. 30B. Credit for transaction costs on the transfer of land subject to certain ground rents."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred in taxable years beginning after December 31, 1996.

By Mr. INOUYE:

S. 118. A bill to provide for the completion of the naturalization process for certain nationals of the Philippines; to the Committee on the Judiciary.

FILIPINO NATURALIZATION LEGISLATION

Mr. INOUYE. Mr. President, section 405 of the Immigration Act of 1990 was enacted to make naturalization under section 329 of the Immigration and Nationality Act available to those Filipino World War II veterans whose military service during the liberation of the Philippines makes them deserving of United States citizenship. The naturalization authority to allow the veterans to be naturalized in the Philippines was first granted under Section 113 of the fiscal year 1993 Departments of Commerce, Justice, State, Judiciary and related agencies appropriations bill.

The original intent of Congress in providing the Immigration and Naturalization Service [INS] with the authority to naturalize applicants in the Philippines was to relieve the unnecessary hardships that section 405 applicants would encounter by having to travel to the United States for an interview and naturalization ceremony, since many are elderly and have no relatives in the United States. The initial period for filing an application under this provision was from November 29, 1990 to November 30, 1992. Section 113 further extended the filing period to February 3, 1995.

Unfortunately, the authority to naturalize applicants in the Philippines has now expired. The legislation I am introducing today would immediately restore, for a 5-year period, the authority for the U.S. Embassy in Manila to complete the naturalization process of approximately 12,000 remaining applications which were properly filed under section 405 of the 1990 Act. The legislation does not extend the application period. The legislation also makes clear that naturalization is available only to those applicants who were found by the Recovered Personnel Division of the U.S. Army and the Guerrilla Affairs Division of the U.S. Army to deserve benefits from the U.S. Government.

Mr. President, I ask unanimous consent that the bill text be printed in the RECORD.

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

S. 118

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. ___. COMPLETION OF THE NATURALIZATION PROCESS FOR CERTAIN NATIONALS OF THE PHILIPPINES.

(a) IN GENERAL.—Section 405 of the Immigration and Nationality Act of 1990 (8 U.S.C. 1440 note) is amended—

(1) by striking subparagraph (B) of subsection (a)(1) and inserting the following:

"(B) who—

"(i) is listed on the final roster prepared by the Recovered Personnel Division of the United States Army of those who served honorably in an active duty status within the Philippine Army during the World War II occupation and liberation of the Philippines,

"(ii) is listed on the final roster prepared by the Guerrilla Affairs Division of the United States Army of those who received recognition as having served honorably in an active duty status within a recognized guerrilla unit during the World War II occupation and liberation of the Philippines, or

"(iii) served honorably in an active duty status within the Philippine Scouts or within any other component of the United States Armed Forces in the Far East (other than a component described in clause (i) or (ii)) at any time during the period beginning September 1, 1939, and ending December 31, 1946;";

(2) by adding at the end of subsection (a) the following new paragraph:

"(3)(A) For purposes of the second sentence of section 329(a) and section 329(b)(3) of the

Immigration and Nationality Act, the executive department under which a person served shall be—

"(i) in the case of an applicant claiming to have served in the Philippine Army, the United States Department of the Army;

"(ii) in the case of an applicant claiming to have served in a recognized guerrilla unit, the United States Department of the Army or, in the event the Department of the Army has no record of military service of such applicant, the General Headquarters of the Armed Forces of the Philippines; or

"(iii) in the case of an applicant claiming to have served in the Philippine Scouts or any other component of the United States Armed Forces in the Far East (other than a component described in clause (i) or (ii)) at any time during the period beginning September 1, 1939, and ending December 31, 1946, the United States executive department (or successor thereto) that exercised supervision over such component.

"(B) An executive department specified in subparagraph (A) may not make a determination under the second sentence of section 329(a) with respect to the service or separation from service of a person described in paragraph (1) except pursuant to a request from the Service."; and

(3) by adding at the end the following new subsection:

"(d) IMPLEMENTATION.—(1) Notwithstanding any other provision of law, for purposes of the naturalization of natives of the Philippines under this section—

"(A) the processing of applications for naturalization, filed in accordance with the provisions of this section, including necessary interviews, shall be conducted in the Philippines by employees of the Service designated pursuant to section 335(b) of the Immigration and Nationality Act; and

"(B) oaths of allegiance for applications for naturalization under this section shall be administered in the Philippines by employees of the Service designated pursuant to section 335(b) of that Act.

"(2) Notwithstanding paragraph (1), applications for naturalization, including necessary interviews, may continue to be processed, and oaths of allegiance may continue to be taken in the United States.".

(b) REPEAL.—Section 113 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1440 note), is repealed.

(c) EFFECTIVE DATE; TERMINATION DATE.—

(1) APPLICATION TO PENDING APPLICATIONS.—The amendment made by subsection (a) shall apply to applications filed before February 3, 1995.

(2) TERMINATION DATE.—The authority provided by the amendment made by subsection (a) shall expire February 3, 2001.

By Mr. INOUYE:

S. 119. A bill to amend title VII of the Public Health Service Act to ensure that social work students or social work schools are eligible for support under the Health Careers Opportunity Program, the Minority Centers of Excellence Program, and programs of grants for training projects in geriatrics, and to establish a social work training program; to the Committee on Labor and Human Resources.

PUBLIC HEALTH SERVICE ACT AMENDMENTS

Mr. INOUYE. Mr. President, on behalf of our Nation's clinical social workers, I am introducing legislation to amend the Public Health Service Act. This legislation will: First, establish a new social work training program; second, ensure that social work students are eligible for support under the Health Careers Opportunity Program and that social work schools are eligible for support under the Minority Centers for Excellence programs; Third, permit schools offering degrees in social work to obtain grants for training projects in geriatrics; and fourth, ensure that social work is recognized as a profession under the Public Health Maintenance Organization [HMO] Act.

Despite the impressive range of services social workers provide to the people of this Nation, particularly our elderly, disadvantaged, and minority populations, few Federal programs exist to provide opportunities for social work training in health and mental health care. This legislation builds on the health professions education legislation enacted by the 102d Congress enabling schools of social work to apply for AIDS training funding and resources to establish collaborative relationships with rural health care providers and schools of medicine or osteopathic medicine. This bill provides funding for traineeships and fellowships for individuals who plan to specialize in, practice, or teach social work, or for operating approved social work training programs; it assists disadvantaged students to earn graduate degrees in social work with concentrations in health or mental health; it provides new resources and opportunities in social work training for minorities; and it encourages schools of social work to expand programs in geriatrics. Finally, the recognition of social work as a profession merely codifies current social work practice and reflects the modifications made by the Medicare HMO legislation.

I believe it is important to ensure that the special expertise and skills social workers possess continue to be available to the citizens of this Nation. This legislation, by providing financial assistance to schools of social work and social work students, recognizes the long history and critical importance of the services provided by social work professionals. In addition since social workers have provided quality mental health services to our citizens for a long time and continue to be at the forefront of establishing innovative programs to serve our disadvantaged populations, I believe that it is time to provide them with the proper recognition of their profession that they have clearly earned and deserve.

Mr. President, I ask unanimous consent that the text of this bill be printed in the CONGRESSIONAL RECORD.

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

S. 119

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SOCIAL WORK STUDENTS.

(a) SCHOLARSHIPS, GENERALLY.—Section 737(a)(3) of the Public Health Service Act (42 U.S.C. 293a(a)(3)) is amended by striking "offering graduate programs in clinical psychology" and inserting "offering graduate programs in clinical psychology, graduate programs in clinical social work, or programs in social work".

(b) FACULTY POSITIONS.—Section 738(a)(3) of the Public Health Service Act (42 U.S.C. 293b(a)(3)) is amended by striking "offering graduate programs in clinical psychology" and inserting "offering graduate programs in clinical psychology, graduate programs in clinical social work, or programs in social work".

(c) HEALTH PROFESSIONS SCHOOL.—Section 739(h)(1)(A) of the Public Health Service Act (42 U.S.C. 293c(h)(1)(A)) is amended by striking "or a school of pharmacy" and inserting "a school of pharmacy, or a school offering graduate programs in clinical social work, or programs in social work".

(d) HEALTH CAREERS OPPORTUNITIES PROGRAM.—Section 740(a)(1) of the Public Health Service Act (42 U.S.C. 293d(a)(1)) is amended by striking "which offer graduate programs in clinical psychology" and inserting "offering graduate programs in clinical psychology or programs in social work".

SEC. 2. GERIATRICS TRAINING PROJECTS.

Section 777(b)(1) of the Public Health Service Act (42 U.S.C. 294o(b)(1)) is amended by inserting "schools offering degrees in social work," after "teaching hospitals,".

SEC. 3. SOCIAL WORK TRAINING PROGRAM.

Part E of title VII of the Public Health Service Act (42 U.S.C. 294n et seq.) is amended by adding at the end the following:

"SEC. 779. SOCIAL WORK TRAINING PROGRAM.

"(a) TRAINING GENERALLY.—The Secretary may make grants to, or enter into contracts with, any public or nonprofit private hospital, school offering programs in social work, or to or with a public or private nonprofit entity (which the Secretary has determined is capable of carrying out such grant or contract)—

"(1) to plan, develop, and operate, or participate in, an approved social work training program (including an approved residency or internship program) for students, interns, residents, or practicing physicians;

"(2) to provide financial assistance (in the form of traineeships and fellowships) to students, interns, residents, practicing physicians, or other individuals, who are in need thereof, who are participants in any such program, and who plan to specialize or work in the practice of social work;

"(3) to plan, develop, and operate a program for the training of individuals who plan to teach in social work training programs; and

"(4) to provide financial assistance (in the form of traineeships and fellowships) to individuals who are participants in any such program and who plan to teach in a social work training program.

"(b) ACADEMIC ADMINISTRATIVE UNITS.—

"(1) IN GENERAL.—The Secretary may make grants to or enter into contracts with schools offering programs in social work to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in social work.

"(2) PREFERENCE IN MAKING AWARDS.—In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant for such an award that agrees to expend the award for the purpose of—

"(A) establishing an academic administrative unit for programs in social work; or

"(B) substantially expanding the programs of such a unit.

"(c) DURATION OF AWARD.—The period during which payments are made to an entity from an award of a grant or contract under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

"(d) FUNDING.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1998 through 2000.

"(2) ALLOCATION.—Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than 20 percent for awards of grants and contracts under subsection (b).".

SEC. 4. CLINICAL SOCIAL WORKER SERVICES.

Section 1302 of the Public Health Service Act (42 U.S.C. 300e–1) is amended—

(1) in paragraphs (1) and (2), by inserting "clinical social worker," after "psychologist," each place it appears;

(2) in paragraph (4)(A), by striking "and psychologists" and inserting "psychologists, and clinical social workers"; and

(3) in paragraph (5), by inserting "clinical social work," after "psychology,".

By Mr. INOUYE:

S. 120. A bill to amend title VII of the Public Health Service Act to make certain graduate programs in clinical psychology eligible to participate in various health professions loan programs; to the Committee on Labor and Human Resources.

PUBLIC HEALTH SERVICE ACT AMENDMENTS

Mr. INOUYE. Mr. President, I am introducing legislation today to modify Title VII of the U.S. Public Health Service Act in order to provide students enrolled in graduate psychology programs with the opportunity to participate in various health professions loan programs.

Providing students enrolled in graduate psychology programs with eligibility for financial assistance in the form of loans, loan guarantees, and scholarships will facilitate a much needed infusion of behavioral science expertise into our public health efforts. There is a growing recognition of the valuable contribution that is being made by our nation's psychologists toward solving some of our Nation's most distressing problems such as domestic violence, addictions, occupational stress, child abuse, and depression.

The participation of students of all kinds is vital to the success of health care training. The Title VII programs play a significant role in providing financial support for the recruitment of minorities, women, and individuals from economically disadvantaged backgrounds. Minority therapists, for example, have an advantage in the provision of critical services to minority populations because they are more likely to understand or, perhaps, share the cultural background of their clients and are often able to communicate to them in their own language. Also significant is the fact that, when compared with non-minority graduates, ethnic minority graduates are less likely to work in private practice and more likely to work in community or non-profit settings, where ethnic minority and economically disadvantaged individuals are more likely to seek care.

It is important that a continued emphasis be placed on the needy populations of our nation and that continued support be provided for the training of individuals who are most likely to provide services in underserved areas.

Mr. President, I ask unanimous consent that the text of this bill be printed in the CONGRESSIONAL RECORD.

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

S. 120

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PARTICIPATION IN VARIOUS HEALTH PROFESSIONS LOAN PROGRAMS.

(a) LOAN AGREEMENTS.—Section 721 of the Public Health Service Act (42 U.S.C. 292q) is amended—

(1) in subsection (a), by inserting ", or any public or nonprofit schools that offer graduate programs in clinical psychology" after "veterinary medicine";

(2) in subsection (b)(4), by striking "or doctor of veterinary medicine or an equivalent degree" and inserting "doctor of veterinary medicine or an equivalent degree, or a graduate degree in clinical psychology"; and

(3) in subsection (c)(1), by inserting ", or schools that offer graduate programs in clinical psychology" after "veterinary medicine".

(b) LOAN PROVISIONS.—Section 722 of the Public Health Service Act (42 U.S.C. 292r) is amended—

(1) in subsection (b)(1), by striking "or doctor of veterinary medicine or an equivalent degree" and inserting "doctor of veterinary medicine or an equivalent degree, or a graduate degree in clinical psychology"; and

(2) in subsection (k)—

(A) in the matter preceding paragraph (1), by striking "or podiatry" and inserting "podiatry, or clinical psychology"; and

(B) in paragraph (4), by striking "or podiatric medicine" and inserting "podiatric medicine, or clinical psychology".

By Mr. MOYNIHAN (for himself, Mr. CHAFEE, Mr. KENNEDY, and Ms. MOSELEY-BRAUN):

S. 121. A bill to amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes; to the Committee on Finance.

THE HIGHER EDUCATION BOND PARITY ACT

S. 122. A bill to amend the Internal Revenue Code of 1986 to correct the treatment of tax-exempt financing of professional sports facilities; to the Committee on Finance.

THE STOP TAX-EXEMPT ARENA DEBT ISSUANCE ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce two tax bills which I introduced together for the first time last summer. The two bills are both significant in their own rights. Yet, when taken together, they correct a serious misallocation of our limited resources under present law: a tax subsidy that inures largely to the benefit of wealthy sports franchise owners and their players would be replaced with increased for higher education and research.

The first bill, the Higher Education Bond Parity Act of 1997, has been introduced several times previously by this Senator, with several of my distinguished colleagues as cosponsors. It would undo what ought never have been done. It would remove the "private activity" label from the tax-exempt bonds of private, nonprofits higher education institutions and other organizations, and thereby eliminate the arbitrary $150 million cap on the amount of tax-exempt bonds that such as institution may have outstanding.

The Tax Reform Act of 1986 imposed the "private activity" label (and a $150 million cap) on bonds issued on behalf on nonprofit institutions, collectively known as section 501(c)(3) organizations. This was a serious error. The cap has relegated private, higher education institutions to a diminished, restricted status, relative to their public counterparts.

Already, this has caused observable, harmful effects on many of our Nation's leading colleges and universities. Thirty-four of them presently are at or near the $150 million cap, and unlike their public counterparts are precluded from using tax-exempt to finance classrooms, libraries, research laboratories, and the like. A few years ago, as the $150 million cap was bargaining to take effect, 19 of the universities that ranked in the top 50 in research undertaking were private institutions. Today, only 14 of those 19 private institutions remain in the top 50, and all but one are foreclosed form tax-exempt financing as a result of the $150 million per institution limit.

We must act soon to restore the access of private colleges and universities to tax-exempt financing equal to that of their public counterparts. Otherwise, the vitality of our private institutions in higher education and research will be at risk. And we will lose a distinguishing feature of American society of inestimable value—the singular degree to which we maintain an independent sector—"private universit[ies] in the public service," to paraphrase the

motto of New York University. This is no longer so in most of the democratic world; it never was so in the rest. It is a treasure and a phenomenon that has clearly produced excellence—indeed, the envy of the world—and it must be sustained.

The practical effect of the $150 million cap is to deny tax-exempt financing to large, private, research-oriented educational institutions most in need of capital to carry out their research mission. This will have a predictable impact over a generation: the distribution of major research in this country will inevitably shift to public institutions. If I may use California as an example, we could look up one day and find Stanford to be still an institution of the greatest quality as an undergraduate teaching facility—with a fine law school and excellent liberal arts degree program—but with all the big science projects at Berkeley, the State institution.

By removing the "private activity" label, this legislation will restore the parity of treatment of private nonprofit institutions and their public counterparts, and reinstate proper recognition in the tax code of the essential public purposes served by such private institutions.

The capital needs of private colleges and universities merit the close attention of this body. The cost of these changes is modest, given their importance. The staff of the Joint Committee on Taxation has estimated the revenue loss previously at $308 million over 5 years. The Senate has twice passed legislation to remove the "private activity" label and the $150 million bond cap—in the Family Tax Fairness, Economic Growth, and Health Care Access Act of 1992 (H.R. 4210) and the Revenue Act of 1992 (H.R. 11)—only to have both bills vetoed for other reasons by President Bush. We should correct this error before it is too late. Otherwise, we will soon look up and find that we do not recognize the higher education sector.

Mr. President, the second tax bill I introduce today—the Stop Tax-exempt Arena Debt Issuance Act (or STADIA for short)—was introduced by this Senator for the first time last summer. Since that time, the bill has attracted the close scrutiny of bond counsel and their clients and has received much attention in the press almost all of which has been favorable.

Mr. Keith Olbermann, anchor of ESPN's Sportscenter program, even declared that the introduction of the bill was "paramount among all other sports stories" last year. Mr. Olbermann's support for this legislation is so emphatic that he compared its author to Dr. Jonas Salk. Passage of the bill, Mr. Olbermann says, is "the vaccine that * * * could conceivably at least towards the cure, if not cure immediately, almost all the ills of sports."

Mr. Olbermann is far too generous to this Senator, but he is right about the importance of this bill, both to sports fans and to taxpayers. This bill closes a big loophole, a loophole that ultimately injures State and local governments and other issuers of tax-exempt bonds, that provides an unintended Federal subsidy (in fact, contravenes Congressional intent), that underwrites bidding wars among cities battling for professional sports franchises, and that contributes to the enrichment of persons who need no Federal assistance whatsoever.

A decade ago, I was much involved in the drafting of the Tax Reform Act of 1986. A major objective of that legislation was to simplify the Tax Code by eliminating a large number of loopholes that had come to be viewed as unfair because they primarily benefited small groups of taxpayers. One of the loopholes we sought to close in 1986 was one that permitted builders of professional sports facilities to use tax-exempt bonds. Mind, we had nothing against new stadium construction, but we made the judgment that scarce Federal resources could surely be used in ways that would better serve the public good. The increasing proliferation of tax-exempt bonds had driven up interest costs for financing roads, schools, libraries, and other governmental purposes, led to mounting revenue losses to the U.S. Treasury, caused an inefficient allocation of capital, and allowed wealthy taxpayers to shield a growing amount of their investment income from income tax by purchasing tax-exempt bonds. Thus, we expressly forbade use of "private activity" bonds for sports facilities, intending to eliminate tax-exempt financing of these facilities altogether.

Unfortunately, our effort in 1986 backfired. Team owners, with help from clever tax counsel, soon recognized that the change could work to their advantage. As columnist Neal R. Pierce wrote recently, team owners "were not checkmated for long. They were soon exhibiting the gall to ask mayors to finance their stadiums with [governmental] purpose bonds." Congress did not anticipate this. After all, by law, governmental bonds used to build stadiums would be tax-exempt only if no more than 10 percent of the debt service is derived from stadium revenue sources. In other words, nonstadium governmental revenues (i.e., tax revenues, lottery proceeds, and the like) must be used to repay the bulk of the debt, freeing team owners to pocket stadium revenues. Who would have thought that local officials, in order to keep or get a team, would capitulate to team owners—granting concessionary stadium leases and committing limited government revenues to repay stadium debt, thereby hindering their own ability to provide schools, roads and other public investments?

The result has been a stadium construction boom unlike anything we have ever seen. In the last 6 years alone, over $4 billion has been spent on building 30 professional sports stadiums. According to Prof. Robert Baade, an economist at Lake Forest College in Illinois and a stadium finance expert, that amount could "completely refurbish the physical plants of the nation's public elementary and secondary schools." An additional $7 billion of stadiums are in the planning stages, and no end is in sight.

What is driving the demand for new stadiums? Mainly, team owners' bottom lines and rising player salaries. Although our existing stadiums are generally quite serviceable, team owners can generate greater income, increase their franchise values dramatically, and compete for high-priced free agents with new tax-subsidized, single-purpose stadiums equipped with luxury skyboxes, club seats and the like. Thus, using their monopoly power, owners threaten to move, forcing bidding wars among cities. End result: new, tax-subsidized stadiums with fancy amenities and sweetheart lease deals.

To cite a case in point, Mr. Art Modell recently moved the Cleveland Browns professional football team from Cleveland to Baltimore to become the Ravens. Prior to relocating, Mr. Modell had said, "I am not about to rape the city [of Cleveland] as others in my league have done. You will never hear me say 'if I don't get this I'm moving.' You can go to press on that one. I couldn't live with myself if I did that." Obviously, Mr. Modell changed his mind. And why? An extraordinary stadium deal with the State of Maryland.

The State of Maryland (and the local sports authority) provided the land on which the stadium is located, issued $87 million in tax-exempt bonds (yielding interest savings of approximately $60 million over a 30 year period as compared to taxable bonds), and contributed $30 million in cash and $64 million in state lottery revenues toward construction of the stadium. Mr. Modell agreed to contribute $24 million toward the project and, in return, receives rent-free use of the stadium (the franchise pays only for the operating and maintenance costs), $65 million in sales of rights to purchase season tickets (so called "personal seat licenses"), all revenues from selling the right to name the stadium luxury suites, premium seats, in-park advertising, and concessions, and 50 percent of all revenues from stadium events other than Ravens' games (with the right to control the booking of those events).

Financial World reports that the value of the Baltimore Ravens' franchise increased from $165 million in 1992 (i.e., before the move from Cleveland) to an estimated $250 million, after its first season in the new stadium. It's little wonder that Mr.

Modell recently stated: "The pride and presence of a professional football team is far more important than 30 libraries, and I say that with all due respect to the learning process."

Meanwhile, the City of Cleveland has agreed to construct a new, $225 million stadium to house an expansion football team. When Mr. Modell decided to move his team to Baltimore, the NFL agreed to create a new Cleveland football team with the same name: the Cleveland Browns. Most cities are not as fortunate when a team leaves.

We are even reaching a point at which stadiums are being abandoned before they have been used for 10 or 15 years. A recent article in Barron's reports that this owner-perceived "economic obsolescence" has doomed even recently-built venues:

The eight-year-old Miami Arena is facing a future without its two major tenants, the Florida Panthers hockey team and the Miami Heat basketball franchise, because of inadequate seating capacity and a paucity of luxury suites. The Panthers have already cut a deal to move to a new facility that nearby Broward County is building for them at a cost of around $200 million. Plans call for Dade County to build a new $210 million arena before the end of the decade, despite the fact that the move will leave local taxpayers stuck with servicing the debt on two Miami arenas rather than just one.

How do taxpayers benefit from all this? They don't. Tickets prices go way up—and stay up—after a new stadium opens. So while fans are asked to foot the bills through tax subsides, many no longer can afford the price of admission. A study of Newsday recently found that tickets prices rose by 32 percent in five new baseball stadiums, as compared to a major league average of 8 percent. Not to mention the refreshments and other concessions, which also cost more in the new venues.

According to Barron's the projects "cater largely to well-heeled fans, meaning the folks who can afford to pay for seats in glassed-in luxury boxes. While the suit-and-cell-phone crowd get all the best seats, the average taxpayer is consigned to 'cheap seats' in nosebleed land or, more often, for following his favorite team on television."

Nor do these new stadiums provide much, if any, economic benefit to their local communities. Professor Baade studied new stadiums in 30 metropolitan areas. He found no discernible positive impact on economic development in 27 of the areas, and a negative impact in the other 3.

Any job growth that does result is extremely expensive. The Congressional Research Service [CRS] reports that the new $177 million football stadium for the Baltimore Ravens is expected to cost $127,000 per job created. By contrast, the cost per job generated by Maryland's economic development program is just $6,250. Another recent study in New York found that a proposed $1 billion stadium for the Yankees would cost over $500,000 for every job created.

Finally, Federal taxpayers receive absolutely no economic benefit for providing this subsidy. As CRS points out, "Almost all stadium spending is spending that would have been made on other activities within the United States, which means that benefits to the nation as a whole are near zero." After all, these teams will invariably locate somewhere in the United States, it is just a matter of where. And should the Federal taxpayers in the team's current home town be forced to pay for the team's new stadium in the new city? The answer is unmistakably no.

The STADIA bill would save about $50 million a year now spent to subsidize professional sports stadiums. So I ask you once again this year, should we subsidize the commercial pursuits of wealthy team owners, encourage escalating player salaries, and underwrite bidding wars among cities seeking (or fighting to keep) professional sports teams, or, would our scarce resources be put to better use for public needs, like higher education and research? To my mind, this is not a difficult choice.

Mr. President, I ask unanimous consent that the two bills be printed in the RECORD, along with explanatory statements. I also ask unanimous consent that the following articles be printed in the RECORD following the bills and explanatory statements.

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

S. 121

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Higher Education Bond Parity Act".

SEC. 2. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO GOVERNMENTAL BONDS.

(a) IN GENERAL.—Section 150(a) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by striking paragraphs (2) and (4), by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following:

"(2) EXEMPT PERSON.—

"(A) IN GENERAL.—The term 'exempt person' means—

"(i) a governmental unit, or

"(ii) a 501(c)(3) organization, but only with respect to its activities which do not constitute unrelated trades or businesses as determined by applying section 513(a).

"(B) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term 'governmental unit' does not include the United States or any agency or instrumentality thereof.

"(C) 501(c)(3) ORGANIZATION.—The term '501(c)(3) organization' means any organization described in section 501(c)(3) and exempt from tax under section 501(a).".

(b) REPEAL OF QUALIFIED 501(c)(3) BOND DESIGNATION.—Section 145 of the Internal Revenue Code of 1986 (relating to qualified 501(c)(3) bonds) is repealed.

(c) CONFORMING AMENDMENTS.—

(1) Section 141(b)(3) of the Internal Revenue Code of 1986 is amended—

(A) in subparagraphs (A)(ii)(I) and (B)(ii), by striking "government use" and inserting "exempt person use";

(B) in subparagraph (B), by striking "a government use" and inserting "an exempt person use";

(C) in subparagraphs (A)(ii)(II) and (B), by striking "related business use" and inserting "related private business use";

(D) in the heading of subparagraph (B), by striking "RELATED BUSINESS USE" and inserting "RELATED PRIVATE BUSINESS USE"; and

(E) in the heading thereof, by striking "GOVERNMENT USE" and inserting "EXEMPT PERSON USE".

(2) Section 141(b)(6)(A) of such Code is amended by striking "a governmental unit" and inserting "an exempt person".

(3) Section 141(b)(7) of such Code is amended—

(A) by striking "government use" and inserting "exempt person use"; and

(B) in the heading thereof, by striking "GOVERNMENT USE" and inserting "EXEMPT PERSON USE".

(4) Section 141(b) of such Code is amended by striking paragraph (9).

(5) Section 141(c)(1) of such Code is amended by striking "governmental units" and inserting "exempt persons".

(6) Section 141 of such Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

"(e) CERTAIN ISSUES USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if any portion of the net proceeds of the issue are to be used (directly or indirectly) by an exempt person described in section 150(a)(2)(A)(ii) to provide residential rental property for family units. This paragraph shall not apply if the bond would not be a private activity bond if the section 501(c)(3) organization were not an exempt person.

"(2) EXCEPTION FOR BONDS USED TO PROVIDE QUALIFIED RESIDENTIAL RENTAL PROJECTS.—Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

"(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

"(B) qualified residential rental projects (as defined in section 142(d)), or

"(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

"(3) SUBSTANTIAL REHABILITATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

"(B) EXCEPTION.—For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

"(4) CERTAIN PROPERTY TREATED AS NEW PROPERTY.—Solely for purposes of determining under paragraph (2)(A) whether the

1st use of property is pursuant to tax-exempt financing—

"(A) IN GENERAL.—If—

"(i) the 1st use of property is pursuant to taxable financing,

"(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

"(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

"(B) SPECIAL RULE WHERE NO OPERATING STATE OR LOCAL PROGRAM FOR TAX-EXEMPT FINANCING.—If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) TAX-EXEMPT FINANCING.—The term 'tax-exempt financing' means financing provided by tax-exempt bonds.

"(ii) TAXABLE FINANCING.—The term 'taxable financing' means financing which is not tax-exempt financing.".

(7) Section 141(f) of such Code, as redesignated by paragraph (6), is amended—

(A) at the end of subparagraph (E), by adding "or";

(B) at the end of subparagraph (F), by striking ", or" and inserting a period; and

(C) by striking subparagraph (G).

(8) The last sentence of section 144(b)(1) of such Code is amended by striking "(determined" and all that follows to the period.

(9) Section 144(c)(2)(C)(ii) of such Code is amended by striking "a governmental unit" and inserting "an exempt person".

(10) Section 146(g) of such Code is amended—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(C) by striking "Paragraph (4)" and inserting "Paragraph (3)".

(11) The heading of section 146(k)(3) of such Code is amended by striking "GOVERNMENTAL" and inserting "EXEMPT PERSON".

(12) The heading of section 146(m) of such Code is amended by striking "GOVERNMENT" and inserting "EXEMPT PERSON".

(13) Section 147(b) of such Code is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(14) Section 147(h) of such Code is amended to read as follows:

"(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE REVENUE BONDS AND QUALIFIED STUDENT LOAN BONDS.—Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond.".

(15) Section 148(d)(3)(F) of such Code is amended—

(A) by striking "or which is a qualified 501(c)(3) bond"; and

(B) in the heading thereof, by striking "GOVERNMENTAL USE BONDS AND QUALIFIED 501(C)(3)" and inserting "EXEMPT PERSON".

(16) Section 148(f)(4)(B)(ii)(II) of such Code is amended by striking "(other than a qualified 501(c)(3) bond)".

(17) Section 148(f)(4)(C)(iv) of such Code is amended—

(A) by striking "a governmental unit or a 501(c)(3) organization" both places it appears and inserting "an exempt person";

(B) by striking "qualified 501(c)(3) bonds,"; and

(C) by striking the comma after "private activity bonds" the first place it appears.

(18) Section 148(f)(7)(A) of such Code is amended by striking "(other than a qualified 501(c)(3) bond)".

(19) Section 149(d)(2) of such Code is amended—

(A) by striking "(other than a qualified 501(c)(3) bond)"; and

(B) in the heading thereof, by striking "CERTAIN PRIVATE" and inserting "PRIVATE".

(20) Section 149(e)(2) of such Code is amended—

(A) in the second sentence, by striking "which is not a private activity bond" and inserting "which is a bond issued for an exempt person described in section 150(a)(2)(A)(i)"; and

(B) by adding at the end the following: "Subparagraph (D) shall not apply to any bond which is not a private activity bond but which would be such a bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person.".

(21) The heading of section 150(b) of such Code is amended by striking "TAX-EXEMPT PRIVATE ACTIVITY BONDS" and inserting "CERTAIN TAX-EXEMPT BONDS".

(22) Section 150(b)(3) of such Code is amended—

(A) in subparagraph (A), by inserting "owned by a 501(c)(3) organization" after "any facility";

(B) in subparagraph (A), by striking "any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond" and inserting "any bond which, when issued, purported to be a tax-exempt bond, and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person"; and

(C) by striking the heading thereof and inserting "BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—".

(23) Section 150(b)(5) of such Code is amended—

(A) in subparagraph (A), by striking "private activity";

(B) in subparagraph (A), by inserting "and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person" after "tax-exempt bond";

(C) by striking subparagraph (B) and inserting the following:

"(B) such facility is required to be owned by an exempt person, and"; and

(D) in the heading thereof, by striking "GOVERNMENTAL UNITS OR 501(C)(3) ORGANIZATIONS" and inserting "EXEMPT PERSONS".

(24) Section 150 of such Code is amended by adding at the end the following:

"(f) CERTAIN RULES TO APPLY TO BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

"(1) IN GENERAL.—Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person unless such bond satisfies the requirements of subsections (b) and (f) of section 147.

"(2) SPECIAL RULE FOR POOLED FINANCING OF 501(C)(3) ORGANIZATION.—

"(A) IN GENERAL.—At the election of the issuer, a bond described in paragraph (1) shall be treated as meeting the requirements of section 147(b) if such bond meets the requirements of subparagraph (B).

"(B) REQUIREMENTS.—A bond meets the requirements of this subparagraph if—

"(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

"(ii) each loan described in clause (i) satisfies the requirements of section 147(b) (determined by treating each loan as a separate issue),

"(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

"(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued).".

(25) Section 1302 of the Tax Reform Act of 1986 is repealed.

(26) Section 57(a)(5)(C) of such Code is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(27) Section 103(b)(3) of such Code is amended by inserting "and section 150(f)" after "section 149".

(28) Section 265(b)(3) of such Code is amended—

(A) in subparagraph (B), by striking clause (ii) and inserting the following:

"(ii) CERTAIN BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of clause (i)(II), there shall not be treated as a private activity bond any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A)).";

and

(B) in subparagraph (C)(ii)(I), by striking "(other than a qualified 501(c)(3) bond, as defined in section 145)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to bonds (including refunding bonds) issued with respect to capital expenditures made on or after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to bonds issued before January 1, 1997, for purposes of applying section 148(f)(4)(D) of the Internal Revenue Code of 1986.

HIGHER EDUCATION BOND PARITY ACT OF 1997

PRESENT LAW

Interest on State and local governmental bonds generally is excluded from income if the bonds are issued to finance direct activities of these governments (sec. 103). Interest

on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless a specific exception is included in the Code. One such exception is for private activity bonds issued to finance activities of private, charitable organizations described in Code section 501(c)(3) ("section 501(c)(3) organizations") when the activities do not constitute an unrelated trade business (sec. 141(e)(1)(G)).

Classification of section 501(c)(3) organization bonds as private activity bonds

Before enactment of the Tax Reform Act of 1986, States and local governments and section 501(c)(3) organizations were defined as "exempt persons," under the Code bond provisions. As exempt persons, section 501(c)(3) organizations were not treated as "private" persons, and their bonds were not "industrial development bonds" or "private loan bonds" (the predecessor categories to current private activity bonds). Under present law, a bond is a private activity bond if its proceeds are used in a manner violating either (a) a private business test or (b) a private loan test. The private business test is a conjunctive two-pronged test. First, the test limits private business use of governmental bonds to no more than 10 percent of the proceeds.[1] Second, no more than 10 percent of the debt service on the bonds may be secured by or derived from private business users of the proceeds. The private loan test limits to the lesser of 5 percent or $5 million the amount of governmental bond proceeds that may be used to finance loans to persons other than governmental units.

Special restrictions on tax-exemption for section 501(c)(3) organization bonds

Present law treats section 501(c)(3) organizations as private persons; thus, bonds for their use may only be issued as private activity "qualified 501(c)(3) bonds," subject to the restrictions of Code section 145. The most significant of these restrictions limits the amount of outstanding bonds from which a section 501(c)(3) organization may benefit to $150 million. In applying this "$150 million limit," all section 501(c)(3) organizations under common management or control are treated as a single organization. The limit does not apply to bonds for hospital facilities, defined to include only acute care, primarily impatient, organizations. A second restriction limits to no more than five percent the amount of the net proceeds of a bond issue that may be used to finance any activities (including all costs of issuing the bonds) other than the exempt purposes of the section 501(c)(3) organization.

Legislation enacted in 1988 imposed low-income tenant occupancy restrictions on existing residential rental property that is acquired by section 501(c)(3) organizations in tax-exempt-bond-financed transactions. These restrictions required that a minimum number of the housing units comprising the property be continuously occupied by tenants having a family incomes of 50 percent (60 percent in certain cases) of area median income for periods of up to 15 years. These same low-income tenant occupancy requirements apply to for-profit developers receiving tax-exempt private activity bond financing.

Other restrictions

Several restrictions are imposed on private activity bonds generally that do not apply to bonds used to finance State and local government activities. Many of these restrictions also apply to qualified 501(c)(3) bonds. No more than two percent of the proceeds of a bond issue may be used to finance the costs of issuing the bonds, and these monies are not counted in determining whether the bonds satisfy the requirement that at least 95 percent of the net proceeds of each bond issue be used for the exempt activities qualifying the bonds for tax-exemption.

The weighted average maturity of a bond issue may not exceed 120 percent of the average economic life of the property financed with the proceeds. A public hearing must be held and an elected public official must approve the bonds before they are issued (or the bonds must be approved by voter referendum).

If property financed with private activity bonds is converted to use not qualifying for tax-exempt financing, certain loan interest penalties are imposed.

Both governmental and private activity bonds are subject to numerous other Code restrictions, including the following:

1. The amount of arbitrage profits that may be earned on tax-exempt bonds is strictly limited, and most such profits must be rebated to the Federal Government;

2. Banks may not deduct interest they pay to the extent of their investments in most tax-exempt bonds; and

3. Interest on private activity bonds, other than qualified 501(c)(3) bonds, is a preference item in calculating the alternative minimum tax.

REASONS FOR CHANGE

A distinguishing feature of American society is the singular degree to which the United States maintains a private, non-profit sector of private higher education, health care, and other charitable institutions in the public service. It is important to assist these private institutions in their advancement of the public good. The restrictions of present law place these section 501(c)(3) organizations at a financial disadvantage relative to substantially identical governmental institutions, and are particularly inappropriate. For example, private, non-profit research universities are subject to the $150 million limitation on outstanding bonds, whereas State-sponsored universities competing for the same research projects do not operate under a comparable restriction. A public hospital generally has unlimited access to tax-exempt bond financing, while a private, non-profit hospital is subject to a $150 million limitation on outstanding bonds to the extent the bonds finance health care facilities that do not qualify under the present-law definition of hospital. These and other restrictions inhibit the ability of America's private, non-profit institutions to modernize their health care facilities and to build state-of-the-art research facilities for the advancement of science, medicine, and other educational endeavors.

Inhibiting the access of private, non-profit research institutions to sources of capital financing, in relation to their public counterparts, distorts the distribution of major research among the leading institutions, and over time will lead to the decline of research undertakings by private, non-profit universities. The tax-exempt bond rules should reduce these distortions by treating more equally State and local governments and those private organizations which are engaged in similar actions advancing the public good.

EXPLANATION OF PROVISION

The bill amends the tax-exempt bond provisions of the Code to conform generally the treatment of bonds for section 501(c)(3) organizations to that provided for bonds issued to finance direct State or local government activities, including construction of public hospitals and university facilities. Certain restrictions, described below, that have been imposed on qualified 501(c)(3) bonds (but not on governmental bonds) since 1986, and that address specialized policy concerns, are retained.

Repeal of private activity bond classification for bonds for section 501(c)(3) organizations

The concept of an "exempt person" that existed under the Code bond provisions before 1986, is reenacted. An exempt person is defined as (a) a State or local governmental unit or (b) a section 501(c)(3) organization, when carrying out its exempt activities under Code section 501(a). Thus, bonds for section 501(c)(3) organizations are generally no longer classified as private activity bonds. Financing for unrelated business activities of such organizations continue to be treated as a private activity for which tax-exempt financing is not authorized.

As exempt persons, section 501(c)(3) organizations are subject to the same limits as States and local governments on using their bond proceeds to finance private business activities or to make private loans. Thus, generally no more than 10 percent of the bond proceeds[2] can be used in a business use of a person other than an exempt person if the Code private payment test is satisfied, and no more than 5 percent ($5 million if less) can be used to make loans to such "non-exempt" persons.

Repeal of most additional special restrictions on section 501(c)(3) organization bonds

Persent Code section 145, which establishes additional restrictions on qualified 501(c)(3) bonds, is repealed, along with the restriction on bond-financed costs of issuance for section 501(c)(3) organization bonds (sec. 147(h)). This eliminates the $150 million limit on non-hospital bonds for section 501(c)(3) organizations.

Retention of certain specialized requirements for section 501(c)(3) organization bonds

The bill retains certain specialized restrictions on bonds for section 501(c)(3) organizations. First, the bill retains the requirement that existing residential rental property acquired by a section 501(c)(3) organization in a tax-exempt-bond-financed transaction satisfy the same low-income tenant requirements as similar housing financing for for-profit developers. Second, the bill retains the present-law maturity limitations applicable to bonds for section 501(c)(3) organizations, and the public approval requirements applicable generally to private activity bonds. Third, the bill continues to apply the penalties on changes in use of tax-exempt-bond-financed section 501(c)(3) organization property to a use not qualified for such financing.

Finally, the bill makes no amendments, other than technical conforming amendments, to the tax-exempt arbitrage restrictions, the alternative minimum tax tax-exempt bond preference, or the provisions generally disallowing interest paid by banks on monies used to acquire or carry tax-exempt bonds.

EFFECTIVE DATE

The provision is generally effective for bonds issued with respect to capital expenditures made after the date of enactment. The provision does not apply to bonds issued prior to January 1, 1997 for the purposes of applying the rebate requirements under Section 148(f)(4)(D).

FOOTNOTES

[1] No more than 5 percent of bond proceeds may be used in a private business use that is unrelated to

Footnotes at end of article.

the governmental purpose of the bond issue, the 10-percent debt service test, described below, likewise is reduced to 5 percent in the case of such "disproportionate" private business use.

[2]This limit would be reduced to 5 percent in the case of disproportionate private use as under the present-law governmental bond disproportionate private use limit.

S. 122

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 "Stop Tax-Exempt Arena Debt Issuance Act".

SEC. 2. TREATMENT OF TAX-EXEMPT FINANCING OF PROFESSIONAL SPORTS FACILITIES.

(a) IN GENERAL.—Section 141 of the Internal Revenue Code of 1986 (defining private activity bond and qualified bond) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) CERTAIN ISSUES USED FOR PROFESSIONAL SPORTS FACILITIES TREATED AS PRIVATE ACTIVITY BONDS.—

"(1) IN GENERAL.—For purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) to provide professional sports facilities exceeds the lesser of—

"(A) 5 percent of such proceeds, or

"(B) $5,000,000.

"(2) BOND NOT TREATED AS A QUALIFIED BOND.—For purposes of this title, any bond described in paragraph (1) shall not be a qualified bond.

"(3) PROFESSIONAL SPORTS FACILITIES.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'professional sports facilities' means real property or related improvements used for professional sports exhibitions, games, or training, regardless if the admission of the public or press is allowed or paid.

"(B) USE FOR PROFESSIONAL SPORTS.—Any use of facilities which generates a direct or indirect monetary benefit (other than reimbursement for out-of pocket expenses) for a person who uses such facilities for professional sports exhibitions, games, or training shall be treated as a use described in subparagraph (A).

"(4) ANTI-ABUSE REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including such regulations as may be appropriate to prevent avoidance of such purposes through related persons, use of related facilities or multiuse complexes, or otherwise."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendments made by this section shall apply to bonds issued on or after the first date of committee action.

(2) EXCEPTION FOR CONSTRUCTION, BINDING AGREEMENTS, OR APPROVED PROJECTS.—The amendments made by this section shall not apply to bonds—

(A) the proceeds of which are used for—

(i) the construction or rehabilitation of a facility—

(I) if such construction or rehabilitation began before June 14, 1996, and was completed on or after such date, or

(II) if a State or political subdivision thereof has entered into a binding contract before June 14, 1996, that requires the incurrence of significant expenditures for such construction or rehabilitation, and some of such expenditures are incurred on or after such date; or

(ii) the acquisition of a facility pursuant to a binding contract entered into by a State or political subdivision thereof before June 14, 1996, and

(B) which are the subject of an official action taken by relevant government officials before June 14, 1996—

(i) approving the issuance of such bonds, or

(ii) approving the submission of the approval of such issuance to a voter referendum.

(3) EXCEPTION FOR FINAL BOND RESOLUTIONS.—The amendments made by this section shall not apply to bonds the proceeds of which are used for the construction or rehabilitation of a facility if a State or political subdivision thereof has completed all necessary governmental approvals for the issuance of such bonds before June 14, 1996.

(4) SIGNIFICANT EXPENDITURES.—For purposes of paragraph (2)(A)(i)(II), the term "significant expenditures" means expenditures equal to or exceeding 10 percent of the reasonably anticipated cost of the construction or rehabilitation of the facility involved.

(5) EXCEPTION FOR CERTAIN CURRENT REFUNDINGS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any bond the proceeds of which are used exclusively to refund a qualified bond (or a bond which is a part of a series of refundings of a qualified bond) if—

(i) the amount of the refunding bond does not exceed the outstanding principal amount of the refunded bond,

(ii) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

(iii) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of clause (ii), average maturity shall be determined in accordance with section 147(b)(2)(A) of the Internal Revenue Code of 1986.

(B) QUALIFIED BOND.—For purposes of subparagraph (A), the term "qualified bond" means any tax-exempt bond to finance a professional sports facility (as defined in section 141(e)(3) of such Code, as added by subsection (a)) issued before the first date of committee action.

THE STOP TAX-EXEMPT ARENA DEBT ISSUANCE ACT

PRESENT LAW

Interest on State and local governmental bonds generally is excluded from income if the bonds are issued to finance direct activities of these governments (sec. 103). Interest on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless the bonds satisfy certain requirements. Private activity bonds must be within certain statewide volume limitations, must not violate the arbitrage and other applicable restrictions, and must finance activities within one of the categories specified in the Code. The Tax Reform Act of 1986 repealed the private activity bond category for sports facilities; therefore no private activity bonds may be issued for this purpose.

Bonds issued by State and local governments are considered to be government use bonds, unless the bonds are classified as private activity bonds. Bonds are deemed to be private activity bonds if both the (i) private business use test and (ii) private security or payment test are met. The private business use test is met if more than 10 percent of the bond proceeds, including facilities financed with the bond proceeds, is used in a nongovernmental trade or business. The private security or payment test is met if more than 10 percent of the bond repayments is secured by privately used property, or is derived from the payments of private business users. Additionally, bonds are deemed to be private activity bonds if more than five percent of the bond proceeds or $5 million are used to finance loans to persons other than governmental units.

REASONS FOR CHANGE

The use of tax-exempt financing for professional sports facilities provides an indirect and inefficient federal tax subsidy. Congress intended to eliminate this subsidy for professional sports facilities in the Tax Reform Act of 1986, by repealing the private activity bond category for sports facilities. Congress did not intend to continue the subsidy by allowing the use of tax-exempt bonds to finance the identical underlying private business use through alternative financing arrangements.

In addition, the use of tax-exempt bonds to finance professional sports facilities is particularly inappropriate where the facilities to be built are used to entice professional sports franchises to relocate.

EXPLANATION OF PROVISION

The bill would provide that bonds issued to finance professional sports facilities are private activity bonds, and that such bonds are not qualified bonds. Therefore, professional sports facilities will not qualify for tax-exempt bond financing.

A professional sports facility is defined to include real property and related improvements which are used for professional sports exhibitions, games, or training, whether or not admission of the public or press is allowed or paid. In addition, a facility that is used for a purpose other than professional sports will nevertheless be treated as being used for professional sports if the facility generates a direct or indirect monetary benefit (other than reimbursement for out-of-pocket expenses) for a person who uses the facility for professional sports. These benefits are intended to include an interest in revenues from parking fees, food and beverage sales, advertising and sports facility naming rights, television rights, ticket sales, private suites and club seats, and concessions.

Public use infrastructure improvements that connect to larger public-use systems, such as highway access ramps and sewer and water connections, are not intended to be subject to the bill. Thus, bonds issued to finance such improvements could still qualify for tax-exempt status, if such bonds otherwise qualify for such status under applicable tax-exempt bond rules. Improvements which generate a direct or indirect monetary benefit for a person who uses the facility for professional sports are meant to be covered by the bill. For example, if a professional sports team owner receives revenues from the use of a parking garage, the garage is not eligible for tax-exempt financing under the bill.

The Secretary of the Treasury is authorized to issue anti-abuse regulations to prevent transactions intended to improperly divert the indirect Federal subsidy for traditional governmental uses inherent in tax-exempt bonds for the benefit of professional sports facilities or professional sports teams.

It is intended that no tax-exempt bond proceeds may finance a ball park used for professional sports exhibitions, even if the ball park is made a part of a larger multi-use complex used 365 days a year for other purposes. In addition, it is intended that reciprocal usage of sports facilities by professional sports franchises that divide their usage among several facilities in order to avoid the 5% use test be aggregated for purposes of this provision.

No inference is intended regarding the rules under present law regarding the issuance or holding of, or interest paid or accrued on, any bonds issued prior to the effective date of this bill to finance sports facilities.

EFFECTIVE DATE

The bill is effective with respect to bonds issued on or after the first date of committee action.

The bill does not apply to bonds issued to finance a professional sports facility if actual construction or rehabilitation of the facility began prior to June 14, 1996 (or a State or political subdivision thereof had entered into a binding contract prior to that date to construct, rehabilitate or acquire the facility) and such bonds are the subject of appropriate official action approving the bonds or submitting approval to a voter referendum. In addition, the bill does not apply to bonds issued to finance a professional sports facility if a State or political subdivision thereof has completed all necessary governmental approvals for the issuance of such bonds.

The bill does not apply to the issuance of certain current refunding bonds, where the refunded bonds are qualified bonds issued prior to the first date of committee action, the average maturity and outstanding principal amount of the refunding bonds do not exceed that of the refunded bonds, the proceeds of the refunding bonds are used to redeem the refunded bonds within 90 days, and the refunding bonds are otherwise permissible under applicable provisions of the Code.

[From Barron's, August 19, 1996]

FOUL PLAY?

TEAM OWNERS GET SPORTS PALACES AND FAT CONCESSION DEALS

TAXPAYERS GET STUCK WITH THE TAB

(By Jonathan R. Laing)

Sports stadiums have come to play an almost religious role in American culture, a fact noted by observers as varied as famed architect Philip Johnson and best-selling author James Michener. Like cathedrals of yore, today's towering sports venues often dazzle the masses with their immense size and evoke fervent emotions with their ritual events. And for some fans, cheering along with a crowd of 60,000 people is about as close to a religious experience as they'll ever get.

This facet of American life is worth contemplating, if for no other reason than, in the 1990s alone, 30 professional sports palaces have been built in the U.S., at a total cost of over $4 billion. And the trend shows no signs of stopping. Over the next five to seven years, according to Fitch Investors Services, some 40 more major-league teams are likely to get new homes. Total price tag: an added $7 billion.

The surge of building activity is mind-boggling on a number of counts. To begin with, it is being financed mainly by state and local governments in spite of the fact that budgets are tight everywhere, leaving schools and social programs facing deep cutbacks. Yet in referendum after referendum, voters regularly approve large dollops of city and state backing to projects that will cater largely to well-heeled fans, meaning the folks who can afford to pay for seats in glassed-in luxury boxes. While the suit-and-cell-phone crowd get all the best seats for corporate entertaining, the average taxpayer is consigned to "cheap" seats in nosebleed land or, more often, to following his favorite team on cable television.

But voters don't seem to mind. In Cincinnati last March they decided to raise Hamilton County's sales tax to 6% from 5.5%, to help pay for a $540 million plan to eventually raze the city's Riverfront Stadium and replace it with separate, state-of-the-art edifices for the Bengals football squad and the Reds baseball team.

And even in places where referenda have failed, local politicians leap into the fray to rescue beleaguered projects. Example: When a proposal to use proceeds from a statewide lottery to fund a new ballpark for the Milwaukee Brewers went down to defeat, the Wisconsin State Legislature gave the venture new life by approving a hike in the sales tax in the five-county area around Milwaukee to finance the bulk of the proposed $250 million project. Likewise, two defeats for stadium referenda in Seattle were insufficient to keep the Washington State Legislature from meeting in emergency session to approve a financial package clearing the way for a new $300 million baseball stadium for the Seattle Mariners, complete with a retractable roof.

Even privately financed facilities, of which there are a handful, typically benefit from public subsidies in the form of land donations and free infrastructure improvements. The Carolina Panthers' new $170 million Ericsson Stadium in Charlotte, for instance, received plenty of such goodies, as will a proposed $250 million downtown baseball stadium for San Francisco's Giants.

Perhaps more bizarre, many of the stadiums that have already been demolished or are slated for abandonment are relatively new and in good condition. The days may be numbered, for example, for the multi-use ovals built in the early 'Seventies such as Veterans Stadium in Philadelphia and Three Rivers Stadium in Pittsburgh. Both of these facilities will likely lose their baseball and football teams. Such stadiums simply lack the skyboxes and other revenue-producing "fan amenities" demanded by today's team owners.

So-called "economic obsolesence" may also doom venues of even newer vintage. The eight-year-old Miami Arena is facing a future without its two major tenants, the Florida Panthers hockey team and the Miami Heat basketball franchise, because of inadequate seating capacity and a paucity of luxury suites.

The Panthers have already cut a deal to move to a new facility that nearby Broward County is building for them at a cost of around $200 million. Plans call for Dade County to build a new $210 million arena for the Heat before the end of the decade, despite the fact that the move will leave local taxpayers stuck with servicing the debt on two Miami arenas rather than just one.

"The shelf life on sports facilities seems to be ever-compressing as teams force local authorities and municipalities to build them new venues so that every conceivable source of revenue they can identify can be engineered into the new structure," observes Robert Baade, an economist at Lake Forest College in Illinois. "The situation of the Miami Arena and other modern facilities that are being scrapped is crazy. For the more than $4 billion that has so far been spent on new stadiums, we could completely refurbish the physical plants of the nation's public elementary and secondary schools."

The new stadiums befit the crass commercialism and endless cross-marketing of the current business era. The games themselves are almost submerged in a sea of collateral activity, including food courts, sports bars, interactive game rooms, private clubs and sports-merchandise stores. Inside the arenas, there are intrusive Jumbotron video systems and lavish corporate entertainment in skyboxes, which run as high as $250,000 a year at Boston's Fleet Arena, where the Celtics and Bruins now play.

No possible revenue source goes untapped. Corporations like United Airlines, BancOne and Coors buy the rights to put their names on stadiums for more than $1 million a year in some instances. The sensory overload of advertising signage is distracting, to say the least. No area is sacrosanct, including the wall behind homeplate. Teams in the National Basketball Association are now minting advertising revenues by selling ads that silently scroll on computer-controlled signboards at courtside.

The Portland Trail Blazers, owned by Microsoft billionaire Paul Allen, have taken high-tech amenities to an as-yet-unsurpassed level in their new Rose Garden arena. Some of its club seats feature fiber-optic wiring allowing spectators to play music, order food or punch up replays on their own video screens. The arena also plans to experiment with online kiosks that will hawk computer hardware and software.

Team owners argue that enhanced revenues are essential for acquiring or retaining top athletes in the high-stakes world of professional sports. But there is another factor at work. Unlike fees paid by television networks and general-admission revenues, a stadium's income from premium seats, concessions, stadium advertising, parking and the like generally doesn't have to be shared with other teams in the league.

Yet both the NFL and NBA have attempted to institute some controls on players' salaries by establishing league-wide team salary caps. And scant linkage has been established between the size of team payrolls and performance in baseball and hockey. Otherwise, the New York Yankees of the past two decades, with their bloated salary structure, might have enjoyed the dominance of the Yankee dynasties of yore.

Even so, a veritable stadium arms race seems only to be intensifying. Even teams in leagues with salary caps claim to need additional stadium revenues because the teams with the highest revenues keep driving up the averages upon which the caps are based. "This is certainly true in the NBA, where top-grossing teams like the Bulls, the Knicks and the Lakers are creating problems for the rest of the league," Jerry Reinsdorf, controlling partner of the Chicago Bulls and White Sox, explains. "All I can say is that I'm glad I have two new stadiums [the United Center and New Comiskey Park] with strong in-park revenues."

What's indisputable, though, is that new venues enrich team owners by fattening the teams' bottom lines and franchise values. It's no accident, for example, that four of the top 10 most valuable baseball franchises in Financial World magazine's latest annual survey—the Baltimore Orioles, Toronto blue Jays, Texas Rangers and Colorado Rockies—boast new stadiums, which give them the financial heft to compete with teams in larger advertising markets such as New York, Chicago and Los Angeles. Likewise, new stadiums have helped the Phoenix Suns, Detroit

Pistons and Chicago Bulls push the New York Knicks for the top spot among basketball franchises on Financial World's list.

And in all of professional sports, no team comes close to the Dallas Cowboys franchise, with its estimated value of $272 million. Team owner Jerry Jones was lucky to inherit a stadium already loaded with skyboxes in 1988 to which he added some 80 suites. In addition, he has inked stadium sponsorship agreements with the likes of Nike, PepsiCo. American Express and AT&T. As a result, Financial World estimates that the Cowboys earned revenues of nearly $40 million on their stadium, compared with a league average of just $6.2 million. Such riches gave Jones the bucks to exploit loopholes in the salary cap, enabling him to carry a payroll some 50% larger than the NFL average.

In Jones' case, he financed his own stadium improvements. But in the main, it's the taxpayer who ends up subsidizing the stadiums that shower such wealth on the owners. And these days, teams seem to hold all the cards in their negotiations with local politicians. For the demand for professional franchises from cities wanting the cachet of being "big league" far exceeds the supply of teams, even with the big leagues' steady expansion efforts. "No city can take its teams for granted or they will find another locale in which to realize team value," explains Reinsdorf, who cynically played of the state of Illinois against St. Petersburg, Fla, to win a $150 million in tax-exempt funding to build the New Comiskey Park in 1991.

Observers are still agog at the deal the former Los Angeles Rams football team negotiated to move to St. Louis last year. The city, state and St. Louis County incurred some $262 million in debt to provide the team with the 70,000-seat Trans World Dome. Then the city sold instruments called "personal seat licenses," requiring football-crazy fans to pay as much as $4,500 just for the privilege of buying season tickets for the stadium's best 45,000 seats. The $70 million or so in proceeds from these licenses didn't go toward the constructions costs of the new stadium, however. Instead, the Rams were allowed to use the funds to defray some $20 million in moving costs, build a $10 million practice facility and clean up some debts in their old home in Anaheim.

And that's not all. The Rams were able to lock in an annual rent over a 30-year lease period of just $250,000, the fifth-lowest rent rate in the NFL. Yet the Rams will receive 100% of the revenues from the stadium's 100 luxury suites and 6,250 club seats. On top of that, the team got the option to add 20 more luxury boxes and convert 4,500 more seats to club status, plus a guarantee that 85% of all suites and club seats will be sold over the next 15 years. The team also gets all concession revenues generated by the stadium, $4.5 million of the first $6 million received in stadium advertising and 90% of any ad revenues over $6 million. The Rams also get to pocket the $1.3 million a year that Trans World Airlines is paying for the stadium naming rights. Lastly, St. Louis agreed to build a store for the Rams to sell team merchandise.

The total package of the stadium construction costs, debt-service expense and other goodies doled out by St. Louis will end up costing area taxpayers more than $700 million, according to a reckoning by a St. Louis public-interest group. A consultant who represented the Rams was heard to crow, "This will be the best stadium deal ever in the NFL, except for the next one."

Truer words were never spoken, for the new Baltimore Ravens (formerly the Cleveland Browns) won an extraordinary deal on their $200 million stadium currently under construction in the shadow of Oriole Park at Camden Yards. The new stadium will be financed by state lottery proceeds and revenue bonds. In addition to being able to keep the $65 million in personal seat license fees, the Ravens will be charged no rent over their 30-year lease other than a 10% tax on all tickets. The team will be responsible only for covering operating and maintenance expenses of the facility.

The Ravens will be able to keep all stadium revenues from the luxury suites, premium seats, concessions and in-park advertising, plus it will garner 50% from all revenues at the stadium from non-football events. No wonder S&P described the deal cooked up by Ravens owner Art Modell as "Maryland throws the bomb."

Financial World estimates that after its first season in the new stadium (1998), the Ravens' franchise value will appreciate some 50%, to around $250 million, and could be second only to the Dallas Cowboys'.

In the stadium game, spin, bargaining ploys and fancy dancing are difficult to separate from concrete developments. Proposed new stadium packages are leaked to the local press only to go through myriad changes before ground is broken and financing is in place.

George Steinbrenner wants out of the Bronx. One month he is rumored to be looking at suburban New Jersey for his Yankees, the next he's said to be considering a proposal by New York City to build a facility on Manhattan's West Side that would cost $1 billion. Not to be outdone, the Mets are said to be angling for a new stadium next to Shea that would cost around $450 million and, perhaps, include a theme park in the complex.

Rick Horrow, a Miami-based stadium development consultant to the NFL, ticks off the names of 12 football teams that have unsettled stadium situations and are likely to move to new facilities in the years ahead: the Minnesota Vikings, Chicago Bears, Tampa Bay Buccaneers, San Francisco 49ers, Seattle Seahawks, Denver Broncos, Arizona Cardinals, Philadelphia Eagles, Pittsburgh Steelers, Washington Redskins, Detroit Lions and New England Patriots. One proposal calls for the Pats to move from Foxboro, Mass., to a domed stadium in downtown Boston that would be part of a $750 million convention-center megaplex.

These NFL teams should be able to exert plenty of leverage over their local politicians. According to Horrow, cities such as Houston, Los Angeles, Memphis, Orlando, Sacramento, Toronto and Mexico City all hunger for an NFL franchise. Various suburban locations also beckon.

Likewise, such arenas as the L.A. Forum, Houston's Summit Arena, Dallas's Reunion Arena, Charlotte Coliseum and Indianapolis's Market Square Arena are all likely to lose their NBA tenants despite the recent vintage of many of these facilities. The Detroit Pistons' Palace at Auburn Hills, with its rows of skyboxes encircling the arena, changed the entire economics of indoor venues following its opening in 1988.

Some obstacles could block this torrent of prospective stadium deals. Of greatest moment, perhaps, is a bill that was introduced two months ago by Sen. Daniel Patrick Moynihan (D.–N.Y.) that would outlaw tax-exempt bond financing for professional sports facilities. He argues that such financing in effect constitutes a subsidy by federal taxpayers that largely enriches team owners and serves no legitimate public purpose.

Even Moynihan concedes that the proposal has no chance of passing in the current session of Congress. Nor are the bill's prospects very bright next year. The U.S. Council of Mayors and other lobbying organizations have already mounted a jihad against the measure. And it doesn't hurt that professional sports has the stature of organized religion these days.

Nonetheless, the bill has temporarily cast a pall over certain stadium plans that are being considered. The fear is that the bill might someday pass in its current form. Particularly vulnerable would be new football and baseball stadiums. They almost always require some tax-exempt financing because of their high price tags—$200 million and up.

John Gillespie, a managing director of Bear Stearns's sports facility banking team, estimates that at current spreads, the cost of the typical stadium proposal would rise by 15%–20% if public authorities were forced to switch from the tax-exempt to the taxable public-debt market. Says Gillespie: "Clearly, a number of stadium deals wouldn't fly under these circumstances because even on a tax-exempt basis they were pushing the envelope on a feasibility basis. I don't think the bill has a prayer of passing, but then, I'm prejudiced."

Ironically, past attempts by Congress to curb the use of tax-exempt financing for sports stadiums have only exacerbated the problem. The Tax Reform Act of 1986, for example, declared that public financings of stadiums would lose their tax-exemption if more than 10% of the revenues earned by the facility were subsequently used to service the construction debt.

Rather than quashing such activity, the stricture left municipalities even more at the mercy of team owners. To retain local franchises or attract new teams, public officials were compelled to tap revenue streams other than the stadium to back construction debt. Today's stadium bonds are backed by general revenue sources as diverse as state lotteries, sales taxes, hotel and motel occupancy imposts, car-rental fees and alcohol and tobacco taxes.

The balance of power has shifted so dramatically in recent years that public stadium authorities consider themselves fortunate if pro sports teams pay enough rent to cover the operating costs of the facility, let alone contribute anything to debt service.

"The new structure is inequitable in that it forces broad categories of people in a given area to finance a facility that only benefits fans, team owners and athletes," asserted Dennis Zimmerman, an economist at the Library of Congress's Congressional Research Service, whose study on the subject of tax-exempt stadium financing helped spur the Moynihan bill. "Certainly federal taxpayers receive no benefits for granting this subsidy."

Cities try to make new stadiums more palatable to their electorates by offering up "economic impact" studies showing the gains in regional income and employment that the project will produce. The financial benefits trumpeted in such studies are so humongous that he multimillion-dollar cost of the sport palaces seems almost trivial by comparison.

The University of Cincinnati Center for Economic Education concluded last January, for example, that the $540 million project to build a new football stadium and a new baseball stadium in Cincinnati would generate more than $1.1 billion in economic activity. In subsequent years, the study said the Cincinnati area could count on $73 million annually in added spending by local consumers.

$4.4 million a year in taxes and $28 million per year in local spending by out-of-town fans.

But such impact studies are often flawed. Stanford University economist Roger Noll points out that the majority of fans attending games come from within a 20-mile radius of the venue. Any money they end up dropping at the ballpark would likely have been spent on other modes of local recreation or entertainment. Americans, after all, spend virtually all their income anyway. This "substitution effect" means that stadiums may actually represent very little, if any, net economic gain to local businesses.

The studies also play games with the multiplier or ripple effect of fan spending. They assume that all the munificence earned by the players, owners and concessionaires is repatriated to the local economy. Lake Forest College economist Robert Baade argues that the money frequently doesn't stay put and that this "leakage" can actually have a negative impact. He has, in fact, developed econometric models indicating that in some 36 instances new stadiums had a nonexistent or even negative impact on local job and income growth.

Few stadium projects have been as trumpeted as the Gateway Development in Cleveland. The site encompasses two new facilities, including the Indians' Jacobs Field, with its retro charm, and the Cavaliers' sleek Gund Arena. The two new venues draw sellout crowds totaling five million fans a year, and they are credited with having sparked a revival in the once-sagging fortunes of downtown Cleveland. But as the Indians streak toward their second straight pennant, the project's finances continue to deteriorate. The problem lies in construction cost overruns incurred by both facilities and the fact that Gateway Development Corp., the quasi-public authority that owns both venues, isn't getting enough from its leases with the Indians and Cavs to pay the debt service on some $120 million in bonds that helped finance the Gund project.

As a result, Cuyahoga County, which guaranteed the debt, has had to ante up some $23 million to cover Gateway's arrears, and will likely to be forced to lay out at least $70 million more over the next 16 years. At that point, Gateway will have the opportunity to renegotiate the Indians' lease and perhaps have a prayer of meeting its obligations.

Meantime, the city of Cleveland is taking a bath on some $40 million in bonds it sold to build two parking garages for the Gateway complex. The city is having to subsidize the debt service on the bonds because of lower-than-projected parking revenues.

"The facilities are beautiful, the teams are minting money, and the county and city taxpayers are left holding the bag," grouses Steve Letsky, Cuyahoga County's director of accounting. "We're paying a hell of a price for downtown economic redevelopment."

Even more gruesome was the bloodletting the Province of Ontario took on Toronto's Skydome, a combination stadium, hotel and entertainment complex that opened in 1989. Ontario got stuck with the huge cost overruns, and by late 1991 the province ended up taking a nearly $200 million loss when it dumped its controlling interest in the project for $110 million.

Even with that writedown, the Skydome's financial future is by no means secure. Attendance has waned from the halcyon days of the early 'Nineties as the Blue Jays have sunk in the standings. The all-important leases on the stadium's luxury suites are due to expire in two years, and revenues could take a tumble.

With deals like this going down, it's little wonder that the halo effect of having a new stadium seems to be diminishing. Brian McGough, a J.P. Morgan investment banker involved in stadium deals, reports that a recent study shows that new venues seem to spur attendance for just about three years. Comiskey Park and the Ballpark at Arlington, Texas, aren't packing in fans they way they did only a few years ago, despite the fact that both stadiums have baseball teams that are very much in contention for the pennant.

Resistance to the stadium-building boom does seem to be mounting. Several politicians have been forced to walk the plank recently for backing sales-tax increases to fund new baseball stadiums. Among the banished were a Maricopa County commissioner from Arizona's Sun City and a Wisconsin state senator from Racine, one of the five counties that will contribute tax revenues for the Milwaukee Brewers' new stadium.

Nonetheless, new stadium projects seem to have a dynamic that defies all considerations of economic prudence and taxpayer unrest. For when all else fails, public officials invariable justify their reflexive resort to the public purse by prattling on about pro sports' positive impact on civic pride and quality of life.

Perhaps new stadiums appeal to some deeply-rooted edifice complex-the plaque on the wall of the venue conferring a measure of immortality to the politicians who built it. Maybe it's true that without a vibrant pro sports scene, major corporation won't put their headquarters in certain cities. Or possibility the local citizenry walk just a little taller in burgs that are genuinely big-league. "Psychic reward," as economists call it.

Whatever the case, the surge in popularity of pro sports is a worldwide phenomenon. Social scientists advance in all kinds of theories to explain the boom. Increasing job specialization is deemed to have robbed modern man of satisfaction in his workaday world, forcing him to turn to sports for tangibility of results. Others commentators claim that pro athletes have become proxies for acting out the aggressions of increasingly alienated populations around the globe.

Rand Araskog, chairman of ITT Corp., obviously believes in a bright future for pro sports and franchise values. ITT teamed up with Cablevision in 1994 to buy Madison Square Garden, the New York Knicks and the Rangers from Viacom for $1 billion. The operation's cash flow has burgeoned since.

According to Araskog and ITT President Robert Bowman, a myriad of factors will propel the pro sports boom. More and more media and entertainment companies are buying pro sport franchises because they afford relatively cheap and compellingly dramatic programming. ComCast and Walt Disney are merely the most recent corporate entrants. Women are increasingly hooked on pro sports as a result of federal laws that require schools to spend equal amounts of men's and women's sports.

As for international interest, the National Basketball Association is just the first pro league in the U.S. to catch the worldwide tidal wave. Others will follow. And finally, technology, with its proliferation of sports delivery mechanisms and its promise of eventually bringing the playing field into the living room, will only enhance the appeal.

Bear Stearns's Gillespie goes so far as to predict that pro sports franchises will double in value in the next five to six years. One can only hope he's right. Maybe then team owners will stop hitting up taxpayers for new stadiums and pay the freight themselves.

COSTLY BUILDING BOOM

More than $4 billion has been spent on sports arenas, with $7 billion more expected.

Facility	Team	Approx total cost in millions	Opened	Debt type
Skydome	Toronto Blue Jays	$600	1989	P/P
TWA Dome at America's Center	St. Louis Rams	290	1995	Public
Molson Centre	Montreal Canadians	230	1996	Private
Coors Field	Colorado Rockies	215	1995	Public
Georgia Dome	Atlanta Falcons	214	1992	Public
CoreStates Center	Philadelphia Flyers/76ers	210	1996	Private
Orioles Park at Camden Yards	Baltimore Orioles	210	1992	Public
Corel Center (Palladium	Ottawa Senators	200	1996	P/P
Ballpark of Arlington	Texas Rangers	191	1994	P/P
Alamodome	San Antonio Spurs	186	1993	Public
GM Place	Vancouver Canucks/Grizzlies	180	1995	Private
United Center	Chicago Blackhawks/Bulls	180	1994	Private
Jacobs Field	Cleveland Indians	168	1994	P/P
San Jose Arena	San Jose Sharks	163	1993	P/P
Fleet Center	Boston Celtics/Bruins	160	1995	Private
Gund Arena	Cleveland Cavaliers	155	1994	P/P
Comiskey Park	Chicago White Sox	150	1991	Public
Rose Garden	Portland Trail Blazers	145	1995	P/P
Gator Bowl	Jacksonville Jaguars	136	1995	Public
Marine Midland Arena	Buffalo Sabres	128	1996	P/P
Arrowhead Pond of Anaheim	Anaheim Mighty Ducks	120	1993	P/P
Ice Palace	Tampa Bay Lightning	120	1996	P/P
Target Center	Minnesota Timberwolves	104	1990	P/P
America West Arena	Phoenix Suns	101	1992	P/P
Orlando Arena	Orlando Magic/Solar Bears	100	1989	P/P
Kiel Center	St. Louis Blues	99	1994	Private
Bradley Center	Milwaukee Bucks	80	1988	Private
Ericsson Stadium	Carolina Panthers	70	1996	Private
Palace of Auburn Hills	Detroit Pistons	70	1988	Private

Facility	Team	Approx total cost in millions	Opened	Debt type
Charlotte Coliseum	Charlotte Hornets	58	1988	Public
Delta Center	Utah Jazz	55	1991	Private
Miami Arena	Miami Heat/Florida Panthers	52	1988	P/P
Arco Arena	Sacramento Kings	40	1988	Private

[From the New York Times, July 27, 1996]

PICKING UP THE TAB FOR FIELDS OF DREAMS TAXPAYERS BUILD STADIUMS; OWNERS CASH IN

(By Leslie Wayne)

WASHINGTON.—In Baltimore, the Ravens, formerly the Cleveland Browns, are coming to a $200 million football stadium to be built on their behalf. Nashville has lured the Oilers from Houston with the promise of a sparkling new $389 million stadium. In New York, there is talk of a new ball-park for the Yankees, while discussion continues about replacing venerable Tiger Stadium in Detroit and Fenway Park in Boston, both now celebrating their 84th anniversaries.

But even as multimillion-dollar sports places are being proposed for assorted Bears, Bengals, Hawks, Vikings and other professional teams, a lot of people in Washington would like to clamp down on lucrative public subsidies that they contend do much more to help already-wealthy professional sports team owners than the communities that support the teams.

Senator Daniel Patrick Moynihan, a New York Democrat, has fired the opening shot by introducing legislation to end the use of tax-free dollars to build sports stadiums. But, retreating under a hail of lobbying fire, Mr. Moynihan admits his measure has no chance of being enacted this year. Still, that has not stopped him from vigorously arguing that Federal tax dollars would be better devoted to public needs like higher education than subsidizing the current stadium building boom.

"Building new professional sports facilities is fine by me," Mr. Moynihan said. "Let the new stadiums be built. But, please, do not ask the American taxpayer to pay for them."

With an estimated $6 billion of new sports stadiums and arenas on the drawing boards, the mere introduction of a bill that would prevent local governments from tapping the tax-exempt municipal bond market for such projects is sending shock waves through the world of sports finance. "The Moynihan bill has had an immediate, horrendous impact," said Howard Richard, a lawyer at Katten Muchin & Zavis in Chicago. "There's intense lobbying. No one believes this bill will pass, but it is wreaking havoc with the market".

The controversy over stadium financing dates back to the 1988 Tax Reform Act, which was though to have eliminated the public subsidies by forcing team owners to finance stadiums with taxable, rather than tax-free dollars.

That effort, however, backfired. With team owners precluded from tapping the public bond markets and reluctant to use more costly taxable debt, sports-starved cities stepped in to build and own the stadiums themselves, using municipal bonds.

And since the 1986 tax act prevents stadium revenues from being used to pay off any tax-free, stadium-related debt, a bizarre situation has developed. The municipality is often forced to pay with its own dollars for all of the borrowings, but the team owner virtually alone gets the revenues from the stadium. Under the tax code, only a small portion of the stadium revenues and lease payments—less than 10 percent—can be drawn on by municipalities to repay tax-free stadium debt.

Some of the newest, and most stylish, stadiums rely exclusively on public debt: Camden Yards and Ravens Stadium in Baltimore and the new Comiskey Park in Chicago are just a few of many. To pay off this debt, local governments have had to raise taxes, tap lottery proceeds or use other public revenues. Other stadiums, like the indoor America West Arena in Phoenix, were built as public-private partnerships, with some construction costs footed by the team owner; it all depends on the bargain struck. In all, $3.9 billion in public debt for stadiums has been issued since 1990.

Teams owners, to bring their franchise to town or to be persuaded to stay put, are demanding not just new and bigger stadiums, but more ways to make money from them: luxury skyboxes that rent for $50,000 to $200,000 a year; "personal seat licenses," which are options bought by ticket holders to insure season tickets in perpetuity; new tiers of "club seats" that cost more than regular seats. And then there are "pouring rights," which are paid by beverage companies to peddle their beers and soda; more "totem" space to sell advertising, and bigger car-parking concessions.

"We thought we shut down public financing to private sports stadiums in 1986," said Senator Byron L. Dorgan, a Democrat from North Dakota who is a supporter of the Moynihan measure. "Now a decade later, we see that the only remaining healthy public housing is in sports stadiums for wealthy team owners. We thought we closed a loophole and they found a way through it."

Brian McGough, who specializes in stadium financing for J.P. Morgan & Company, explained the unintended consequences of the legislation; "Congress forced public officials back into the arms of team owners. It was a sea change difference."

The effect of these changes has been to give team owners more financial leverage in bargaining with local governments. And experts say the new-found riches from stadium deals, television contracts and other sources have been an important factor in the escalating salaries in professional sports. When some team owners have more cash in hand, they bid up everyone's prices for top players—witness the $98 million, seven-year contract for the basketball player Juwan Howard to join the Miami Heat or the $121 million, seven-year contract for Shaquille O'Neal to move to the Los Angeles Lakers.

"A lot of these financial benefits flow to the talent because talent is key, especially in basketball," said Mr. Richard, the Chicago lawyer. "Look at the Chicago Bulls. You are seeing a $25 million raise for Micheal Jordan and millions for others. They say that this is creating the necessity for a new stadium because they need the skybox revenues to pay for the players. When you see all these salaries and the new stadiums, what is the cause and what is the effect?"

More troubling to critics is the evidence that the money spent on sports stadiums provides few economic benefits to the surrounding community. Indeed, several studies indicate that communities could benefit more if these investments, which cost taxpayers hundreds of millions of dollars a year, were spent on other forms of economic development.

"The economic research on whether these stadiums provide benefits for state and local taxpayers suggest that they do not," said Dennis Zimmerman, author of a Congressional Research Service report on stadium financing. "There are a lot more productive things that state and local governments could have done with this money."

Mr. Zimmerman, using data the State of Maryland offered in making the case for building the Ravens' new stadium, found that more jobs could be created by investing the same $177 million in the state's "Sunny Day" economic development fund. He also concluded that in many cases the money local governments saved by issuing tax-free municipal bonds to build these stadiums ended up costing Federal taxpayers more than the local benefit.

"It would be cheaper for the Federal Government to just give a subsidy for these stadiums," Mr. Zimmerman said.

Robert Baade, an economist at Lake Forest College, is one of the strongest critics of the present system. "The distribution of income and benefits is skewed: The owners and the players get the lion's share," Mr. Baade said, "If I've raised taxes to finance a stadium, I can't argue that every dollar of that stadium is a boon to the economy."

Opponents of Mr. Moynihan's measure argue that eliminating tax-free dollars for sports stadiums would take decision-making away from local officials and increase the costs to municipalities by forcing them to borrow in the taxable markets. Indeed, the only way some of these stadiums can be built, they say, is with lower-cost public debt. Football stadiums, in particular, could become endangered, since they often cost as much as $200 million, yet may be used for only eight to 10 games a year, making it hard to generate enough revenues to repay the debts.

"A stadium is not conceptually different from a lot of other public projects," said Micah Green, the Washington lobbyist for the Public Securities Association, a trade group representing the municipal bond industry. "If cities and states decide to raise taxes to pay for these stadiums, then that's O.K. That makes it a governmental bond. The local decision of the electorate is the best test."

(Sometimes, however, local sentiment has to be swayed. The Ravens Stadium proposal passed by only two votes amid controversy in the Maryland Senate. Cincinnati voters approved two new stadiums to replace Riverfront Stadium only after a hard-fought campaign by downtown boosters. In Nashville, opponents forced the city's first-ever bond referendum before the new Oilers stadium won approval.)

Six local government organizations, including the United States Conference of Mayors and the National League of Cities, sent a letter to Mr. Moynihan arguing against his proposal. "It is simply not good public policy to constrain local flexibility in deciding what projects to undertake on a tax-exempt basis," the letter said.

Cathy Spain, the Washington lobbyist for the Government Finance Officers Association, said her group opposes the strict restrictions that preclude the use of stadium-

related revenues from repaying municipal debt. Ms. Spain said the association's warnings to Congress about the problem went unheeded when the tax act was changed in 1986. Now, she said, her group would like to allow, say, 25 percent of stadium revenues to be diverted to municipalities instead of team owners.

Stadium financing experts say that regardless of the economics, the lure of professional sports is so strong that politicians and communities will still seek to attract and keep the limited number of sports teams available.

And what about cities that just say no? They may be better off in purely economic terms, but still left with an empty feeling.

"St. Louis lost the football Cardinals to Phoenix because they refused to build a new stadium," said James Gray, assistant director at the National Sports Law Institute in Milwaukee. "Now they are paying triple to lure the Rams from Los Angeles. Being part of a major league is something unique in our society. Lots of people believe it's a worthwhile investment and will do anything to keep a team there."

[From ESPNET Sports Zone, ESPN Studios]

YOUR TAX DOLLARS IN ACTION—FOR REAL

(By Keith Olbermann)

The biggest sports story of the week got about as little publicity as possible.

Legislation has been introduced in the U.S. Senate that would cripple so-called "Franchise Free Agency," stop the merry-go-round of teams blackmailing cities and cities bribing teams with public funds, and restore a little sanity to the ever decreasingly sane world of sports.

The "Stop Tax-Exempt Arena Debt Issuance Act," sponsored by Sen. Daniel Patrick Moynihan, D-N.Y., would make it illegal for states, counties or cities to try to float tax-free bonds to build new sports stadiums and arenas. It's what we've been crying for here for months, and as pathetic as most of our politicians are, I am ready to nominate Sen. Moynihan for Deity.

A Congressional Research Service report recently concluded that the most frequently-used justification for building a new park for a ballclub, that the ancillary financial benefits created by such a new facility more than make up for the huge expense, is a falsehood. Just as Stanford economist Roger Moll pointed out several months ago: if stadiums really made money, the teams would build them themselves, wouldn't they?

If passed, the measure would virtually stop the kind of rapacious marriages of glory-hungry politicians and money-hungry owners that greased the skids for the Cleveland Browns move to Baltimore. The Brewers need a new stadium in Milwaukee? Have a lovely time building it, Bud. Oh, you'll move to Charlotte instead: Have a lovely time getting a business loan to build Selig Stadium there. No more endless threats from George Steinbrenner to move the Yankees to New Jersey. No more repeat winners in Owner Blackmail like the Seattle Mariners. No more publicly-funded white elephants like ThunderDome in St. Petersburg or the Alamodome in San Antonio.

Enactment of this law might go even further toward righting the sports ship. If owners couldn't count on government to pull their chestnuts out of the financial fire, they could not possibly continue to permit salaries to spiral upward. They could not possibly continue to jack ticket prices upward as a prerequisite to not moving elsewhere (see "Whalers, Hartford"). Some of the less economically-skilled owners might even sell out, and might find that the only corporations willing to take the franchise off their hands would be the same kind of community-based, almost not-for-profit group that owns the Green Bay Packers—a team that if owned by a Bill Bidwill or a Georgia Frontiere would have moved out 20 years ago.

In short, this is genius—and, though I swore I'd never say anything like this about any issue: let your congressman or senator know how you feel. We'll keep you posted on the progress of Sen. Moynihan's measure in this cyberspace.

By Mr. INOUYE:

S. 123. A bill to amend title 10, United States Code, to increase the grade provided for the heads of the nurse corps of the Armed Forces; to the Committee on Armed Services.

THE U.S. MILITARY CHIEF NURSE CORPS AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce an amendment that would change existing law regarding the designated position and grade for the Chief Nurses of the United States Army, the United States Navy, and the United States Air Force. Currently the Chief Nurses of the three branches of the military are one-star level general officer grades; this law would change the current grade to Major General in the United States Army and Air Force and Rear Admiral (upper half) in the United States Navy. Our military Chief Nurses have an awesome responsibility—a degree of responsibility that is absolutely deserving of this change in grade.

You might be surprised at how big their scope of duties actually is. For example, the Chiefs are responsible for both peacetime and wartime health care doctrine, standards and policy for all nursing personnel within their respective branches. In fact, the Chief Nurses are responsible for more than 80,000 Army, 5,200 Navy, and 26,000 Air Force nursing personnel. This includes officer and enlisted nursing specialties in the active, reserve and guard components of the military. This level of responsibility certainly supports the need to change the grade for the Chief Nurses which would insure that they have a seat at the corporate table of policy and decision making.

There has been much discussion about the so-called glass ceilings that unfairly impact the ability of women to achieve the same status as their male counterparts. While I do not want to make this a gender-discrimination issue, the reality is that military nurses hit two glass ceilings: one as a nurse in a physician-dominated health care system and one as a woman in a male-dominated military system. The simple fact is that organizations are best served when the leadership is composed of a mix of specialty and gender groups—of equal rank—who bring their unique talents to the corporate table. For military nurses, the two-star level of general officer Chief Nurse will insure that nurses indeed get to the corporate executive table.

I strongly believe that it is very important, and past time, that we recognize the extensive scope and level of responsibility the military Chief Nurses have and make sure that future military health care organizations will continue to benefit from their expertise and unique contributions.

Mr. President, I request unanimous consent that the text of this bill be printed in the CONGRESSIONAL RECORD.

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

S. 123

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASED GRADE FOR HEADS OF NURSE CORPS.

(a) ARMY.—Section 3069(b) of title 10, United States Code, is amended by striking out "brigadier general" in the second sentence and inserting in lieu thereof "major general".

(b) NAVY.—The first sentence of section 5150(c) of such title is amended—

(1) by inserting "rear admiral (upper half) in the case of an officer in the Nurse Corps or" after "for promotion to the grade of"; and

(2) by inserting "in the case of an officer in the Medical Service Corps" after "rear admiral (lower half)".

(c) AIR FORCE.—Section 8069(b) of such title is amended by striking out "brigadier general" in the second sentence and inserting in lieu thereof "major general".

By Mr. GRAMM (for himself, Mr. MACK and Mrs. HUTCHINSON):

S. 124. A bill to invest in the future of the United States by doubling the amount authorized for basic science and medical research; to the Committee on Labor and Human Resources.

THE NATIONAL RESEARCH INVESTMENT ACT OF 1997

Mr. GRAMM. Mr. President, in 1965, 5.7 percent of the federal budget was spent on non-defense research and development. Thirty-two years later, that figure has dropped by two-thirds to 1.9 percent. In no year since 1970 has the United States spent as large a percentage of its GDP on non-defense research and development as Japan or Germany. Unfortunately, recent signs point to this situation becoming worse rather than better. From 1992 through 1995, for the first time in 25 years, real federal spending on research declined for 4 straight years. If we don't restore the high priority once afforded science and technology in the federal budget and increase federal investment in research, it will be impossible to maintain the United States' position as the technological leader of the world.

As a nation, we have an interest in the research funding decisions of the private sector. Investing in basic science and medical research can provide much needed help to all our technology companies without giving any

single company a special advantage over its competitors. Our goal should be to raise all the boats in the harbor, not just the ones belonging to the politically well-connected.

The United States simply does not spend enough on basic research. This bill would double the amount spent by the federal government on non-defense research over ten years in a dozen agencies, programs, and activities, from $32.5 billion in FY 1997 to $65 billion in FY 2007, making sure that within that amount the funding for the National Institutes of Health would double from $12.75 billion to $25.5 billion. At the same time, in order to be sure the increase in funding is spent wisely, the bill gives priority to investments in basic science and medical research in order to develop new scientific knowledge which will be available in the public domain. The legislation does not allow funds to be used for the commercialization of technologies, and allocates funds using a peer review system. Expanding the nations's commitment to basic research in science and medicine is a critically important investment in the future of our Nation.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 125. A bill to provide that the Federal medical assistance percentage for any State or territory shall not be less than 60 percent; to the Committee on Finance.

FEDERAL MEDICAL ASSISTANCE LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill, cosponsored by Senator D'Amoto, to revise the formula for determining the Federal Medical Assistance Percentage.

Medicaid services and associated administrative costs are financed jointly by the Federal government and the States. The formula for the Federal share of a State's payments for services, known as the Federal Medical Assistance Percentage [FMAP], was established when Medicaid was created as part of the Social Security Amendments of 1965. The Federal share of administrative costs is 50 percent for all States, though higher rates are applicable for specific items.

The FMAP is an exotic creature, derived from the Hill-Burton Hospital Survey and Construction Act of 1946, specifically designed to provide a higher Federal matching rate for states with lower per capita income. Rather than comparing per capita income directly, the HILL-BURTON formula is designed to exaggerate the differences between States' per capita income. A Senate colleague once described it to me as the South's revenge for the war between the States.

The Federal government's share depends upon the square of the ratio of state per capita income to national per capita income. Per capita income is only a proxy but not the only proxy for measuring the States' relative fiscal capacity. In March 1982, the Advisory Commission on Intergovernmental Relations stated that,

* * * the use of a single index, resident per capita income, to measure fiscal capacity, seriously misrepresents the actual ability of many governments to raise revenue. Because states tax a wide range of economic activities other than the income of their residents, the per capita income measure fails to account for sources of revenue to which income is only related in part. This misrepresentation results in the systematic over and understatement of the ability of many states to raise revenue. In addition, the recent evidence suggests that per capita income has deteriorated as a measure of capacity.

Sqaring the ratio of state per capita income to national per capita income exaggerates the differences between States with regard to this incomplete proxy. Suppose my income is $1 and your income $2. The difference we have to make up is $1. If we compare squares, the difference we have to make up is $3.

I proposed a change to the HILL-BURTON formula in June of 1977—at a commencement address at Kingsborough Community College in Brooklyn, New York—to compare square roots. Going back to our example, if we were to compare square roots, the difference would only be 59 cents—better than $3. Nonetheless, the idea has not caught on.

Current law stipulates that no State may have an FMAP lower than 50 percent or higher than 83 percent. In Fiscal Year 1997, 11 States and the District of Columbia receive the minimum 50 percent FMAP while Mississippi receives the highest FMAP of 77.22 percent. States are responsible for the nonfederal share of Medicaid costs. Meaning that a State with a FMAP of 50 percent puts up 50 percent of the money and the Federal government puts up 50 percent of the money. A State with a FMAP of 80 percent puts up 20 percent of the funds with a Federal match of 80 percent. This inequity has existed for over 50 years. It is time for change.

The bill I introduce today would change the minimum FMAP from 50 percent to 60 percent. A modest proposal. As I mentioned before, there are 11 States and the District of Columbia which receive 50 percent. An additional 14 States have an FMAP between 50 and 60 percent. All other States get more.

The Finance Committee passed this measure as part of its Budget Reconciliation Recommendations in 1995 but it never became law.

This legislation gives high cost States such as New York the flexibility to realize savings without cost to the Federal government. It does not propose to change the amount of Federal funds such States receive. With an FMAP of 50 percent, a State receiving $1000 in Federal funds would be required to match it with $1000. With a 60 percent FMAP, the same State would still receive $1000 in Federal funds but would only be required to put up $667, a one-third reduction in the amount of state money required.

Allocation formulas are designed to target Federal funds to States according to need. The FMAP does not. The savings realized by a 60 percent minimum would provide some relief for States with low matching rates and would make the FMAP a bit less regressive. Adjusted for the cost-of-living, New York has the fifth highest poverty rate in the nation. Yet it has an FMAP of 50 percent. Arkansas has the 24th highest poverty rate, yet has an FMAP of 73.29. Our current formula is a regressive one that needs repair.

I urge my colleagues to support this measure.

By Mr. INOUYE:

S. 126. A bill to amend title VII of the Public Health Service Act to revise and extend certain programs relating to the education of individuals as health professionals, and for other purposes; to the Committee on Labor and Human Resources.

PHYSICAL THERAPY AND OCCUPATION THERAPY EDUCATION ACT OF 1997

Mr. INOUYE. Mr. President, today, I am introducing The Physical Therapy and Occupational Therapy Education Act of 1997. This legislation will assist in educating physical therapy and occupational therapy practitioners to meet the growing demand for the valuable services they provide in our communities.

In its most recent report, the Department of Labor's Bureau of Labor Statistics projected that the demand for services provided by physical therapy practitioners will increase dramatically over the next decade. According to the Bureau, between 1994 and 2005 the increase in demand will create a need for 81,000 additional physical therapists, an 80 percent increase over 1994 figures. Demand for physical therapist assistants is expected to grow at an even faster rate, experiencing an 83 percent increase over the same time period.

The Bureau also predicts increasing demand for practitioners in the field of occupational therapy. Between 1994 and 2005 the increase in demand will create a need for 39,000 occupational therapists, a 72 percent increase over 1994 figures. Demand for occupational therapist assistants is projected to experience an 82 percent increase over the same time period.

Several factors contribute to the present need for Federal support in this area. The rapid aging of our nation's population, the demands of the AIDS crisis, increasing emphasis on health promotion and disease prevention, and the growth of home health care have out paced our ability to educate an

adequate number of physical therapy and occupational therapy practitioners. In addition, technological advances are allowing injured and disabled individuals to survive conditions that in the past would have proven fatal.

America's inability to educate an adequate number of physical therapists and occupational therapists has led to an increased reliance on foreign-educated, non-immigrant temporary workers (H–1B visa holders). The U.S. Commission on Immigration Reform has identified the physical therapy and occupational therapy fields as having among the highest number of H–1B visa holders in the U.S., second only to computer specialists.

According to the Immigration and Naturalization Service (INS), we know that 1,389 H–1B visa holders sought employment as physical therapists in 1994. This number represents 5.9 percent of the 23,500 arrivals for which the INS can verify their known occupation. An additional 82,399 holders of H–1B visas were reported to have entered the U.S. in 1994 for which the INS does not have occupation data. If we assume that the same percentage of H–1B visa holders are seeking employment in physical therapy as in the known-occupation pool, we can calculate that an additional 4,861 foreign-educated physical therapists were also seeking employment (5.9 percent of 82,399 aliens). Thus, the total number of foreign-educated physical therapists seeking employment in the U.S. during 1994 was approximately 6,250. In comparison, U.S. programs of physical therapy graduated a total of 5,846 physical therapists from 141 institutions nationwide in the same year.

While the INS does not categorize occupational therapy as a separate profession when tracking H–1B visa entrants, the National Board for Certification in Occupational Therapy documents that the percentage of newly certified occupational therapists who are foreign graduates has risen from 3 percent in 1985 to more than 20 percent in 1995.

The legislation I introduce today would provide necessary assistance to physical therapy and occupational therapy programs throughout the country to meet the health care demands of the 21st century. In awarding grants, preference would be given to those applicants that seek to educate and train practitioners at clinical sites in either rural or urban medically underserved communities.

In addition to a shortage of practitioners, the present shortage of physical therapy and occupational therapy faculty impedes the expansion of established programs. The critical shortage of doctoral-prepared physical therapists and occupational therapists has resulted in an almost nonexistent pool of potential faculty. Presently, there exist 117 faculty vacancies among the 131 accredited, professional-level physical therapy programs in the U.S. Similarly, during the '93-'94 academic year there existed 51 faculty vacancies among the 85 accredited, professional-level occupational therapy programs. The legislation I introduce today would assist in the development of a pool of qualified faculty by giving preference to those grant applicants seeking to develop and expand post-professional programs for the advanced training of physical therapists and occupational therapists.

The investment we make through passage of The Physical Therapy and Occupational Therapy Education Act of 1997 will help reduce America's dependence on foreign labor and help create high-skilled, high-wage employment opportunities for American citizens. I look forward to working with my colleagues in the Congress to enact this important legislation.

Mr. President, I ask unanimous consent that the text of this bill be printed in the CONGRESSIONAL RECORD.

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

S. 126

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 "Physical Therapy and Occupational Therapy Education Act of 1997".

SEC. 2. PHYSICAL THERAPY AND OCCUPATIONAL THERAPY.

Subpart II of part D of title VII of the Public Health Service Act (42 U.S.C. 294d et seq.) is amended by adding at the end the following:

"SEC. 768. PHYSICAL THERAPY AND OCCUPATIONAL THERAPY.

"(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, programs of physical therapy and occupational therapy for the purpose of planning and implementing projects to recruit and retain faculty and students, develop curriculum, support the distribution of physical therapy and occupational therapy practitioners in underserved areas, or support the continuing development of these professions.

"(b) PREFERENCE IN MAKING GRANTS.—In making grants under subsection (a), the Secretary shall give preference to qualified applicants that seek to educate physical therapists or occupational therapists in rural or urban medically underserved communities, or to expand post-professional programs for the advanced education of physical therapy or occupational therapy practitioners.

"(c) PEER REVIEW.—Each peer review group under section 798(a) that is reviewing proposals for grants or contracts under subsection (a) shall include not fewer than 2 physical therapists or occupational therapists.

"(d) REPORT TO CONGRESS.—

"(1) IN GENERAL.—The Secretary shall prepare a report that—

"(A) summarizes the applications submitted to the Secretary for grants or contracts under subsection (a);

"(B) specifies the identity of entities receiving the grants or contracts; and

"(C) evaluates the effectiveness of the program based upon the objectives established by the entities receiving the grants or contracts.

"(2) DATE CERTAIN FOR SUBMISSION.—Not later than February 1, 2001, the Secretary shall submit the report prepared under paragraph (1) to the Committee on Commerce and the Committee on Appropriations of the House of Representatives, the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate.

"(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $3,000,000 for each of the fiscal years 1997 through 2000.".

Mr. MOYNIHAN (for himself, Mr. ROTH, Mr. CHAFEE, Mr. BAUCUS, Mr. BINGAMAN, Mrs. BOXER, Mr. BRYAN, Mr. CRAIG, Mr. D'AMATO, Mr. FORD, Mr. GLENN, Mr. GRASSLEY, Mr. HATCH, Mr. KENNEDY, Mr. KERRY, Mr. KYL, Mr. LEAHY, Mr. LIEBERMAN, Mr. MCCONNELL, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. ROBB, Mr. ROCKEFELLER, Mr. SHELBY, Mr. TORRICELLI, and Mr. WYDEN):

S. 127. A bill to amend the Internal Revenue Code of 1986 to make permanent the exclusion for employer-provided educational assistance programs, and for other purposes; to the Committee on Finance.

THE EMPLOYEE EDUCATIONAL ASSISTANCE ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation that will make permanent the tax exclusion for employer-provided educational assistance under section 127 of the Internal Revenue Code. This bill, which is cosponsored by the distinguished chairman of the Committee on Finance, Senator ROTH, and by Senators BAUCUS, BOXER, BRYAN, CHAFEE, CRAIG, D'AMATO, FORD, GLENN, GRASSLEY, HATCH, KENNEDY, KERRY, KYL, LEAHY, LIEBERMAN, MCCONNELL, MOSELEY-BRAUN, MURRAY, ROBB, ROCKEFELLER, SARBANES, SHELBY, TORRICELLI, WYDEN, AND BINGAMAN ensures that employees may receive up to $5,250 annually in tuition reimbursements or similar educational benefits for both undergraduate and graduate education from their employers on a tax-free basis.

Section 127 is one of the most successful education programs that the Federal Government has ever undertaken. A million persons benefit from this provision every year. And they benefit in the most auspicious of circumstances. An employer recognizes that the worker is capable of doing work at higher levels and skills and says, "Will you go to school and get a degree so we can put you in a higher position than you have now—and with better compensation?" Unlike so many of our job training programs that have depended on the hope that in the aftermath of the training there will be a job, here you have a situation where

the worker already has a job and the employer agrees that the worker should enlarge his or her situation in a manner that is beneficial to all concerned.

This is a program that works. Yet, outside the organizations involved, not many people know of this program. It administers itself. It has no bureaucracy—there is no bureau in the Department of Education for employer-provided educational assistance, no titles, no confirmations, no assistant secretaries. There is nothing except individual contracts, employee and employer, with a great value-added.

Since its inception in 1978, section 127 has enabled millions of workers to advance their education and improve their job skills without incurring additional taxes and a reduction in take-home pay. Without section 127, workers will find that the additional taxes or reduction in take-home pay impose a significant, even prohibitive, financial obstacle to further education. For example, an unmarried clerical worker pursuing a college diploma who has income of $21,000 in 1997 and who receives tuition reimbursement for two semesters of night courses—worth approximately $4,000—would owe additional Federal income and payroll taxes of $866 on this educational assistance. If the worker has children and was receiving the earned income tax credit, the worker would owe additional taxes—including loss of the EITC benefits—of up to $1,708.

Section 127 makes an important contribution to simplicity in the tax law. Absent section 127, a worker receiving educational benefits from an employer is taxed on the value of the education received, unless the education is directly related to the worker's current job. Permanent reinstatement of section 127 will allow workers to receive employer-provided educational assistance on a tax-free basis, without the need to consult a tax advisor to determine whether the education is directly related to their current job.

A well-trained and educated work force is a key to our Nation's competitiveness in the global economy of the 21st century. Pressures from international competition and technological change require constant adjustment by our work force. Education and retraining will be necessary to maintain and strengthen American industry's competitive position. Section 127 has an important, perhaps vital, role to play in this regard. It permits employees to adapt and retrain without incurring additional tax liabilities and a reduction in take-home pay. By removing the tax burden from workers seeking education and retraining, section 127 helps to maintain American workers as the most productive in the industrialized and developing world.

Section 127 has also helped to improve the quality of America's public education system, at a fraction of the cost of direct-aid programs. A survey by the National Education Association a few years ago found that almost half of all American public school systems provide tuition assistance to teachers seeking advanced training and degrees. This has enabled thousands of public school teachers to obtain advanced degrees, augmenting the quality of instruction in our schools.

Our most recent extension of section 127 last year excluded expenses of pursuing graduate level education for courses beginning after June 30, 1996. This was a serious mistake. Historically, one quarter of the individuals who have used section 127 went to graduate schools. Ask major employer about their training systems, and they will say nothing is more helpful than being able to send a promising young person, or middle management person, to a graduate school to learn a new field that has developed since that person had his education.

When we eliminate graduate level education from section 127, we impose a tax increase on many citizens who work and go to graduate school at the same time. But not all of them. Only the ones whose education does not directly relate to their current jobs. For these unlucky persons, we have erected a barrier to their upward mobility. Who are these people? The engineer seeking a masters degree in geology to enter the field of environmental science. The bank teller seeking an MBA in finance or an MPA in accounting. The production line worker seeking an MBA in management.

Simple equity among taxpayers demands that section 127 be made permanent. Contrast each of the above examples with the following: The environmental geologist seeking a masters in geology, the bank accountant seeking an MPA, and the management trainee seeking an MBA each qualify for tax-free education. There is no justification for this difference in tax treatment.

Thus, section 127 removes a tax bias against lesser-skilled workers. The tax bias arises because lesser-skilled workers have narrower job descriptions, and a correspondingly greater difficulty proving that educational expenses directly relate to their current jobs. Less-skilled workers are in greater need of remedial and basic education. And they are the ones least able to afford the imposition of tax on their educational benefits.

It is important to note that employer-provided educational assistance is not an extravagant benefit for highly paid executives. It largely benefits low- and moderate-income employees seeking access to higher education and further job training. A study published by the National Association of Independent Colleges and Universities in December, 1995 found that 85 percent of section 127 recipients in the 1992–93 academic year earned less than $50,000, with the average recipient earning less than $33,000. An earlier Coopers & Lybrand study indicated that over 70 percent of recipients of section 127 benefits in 1986 were earning less than $30,000, and that participation rates decline as salary levels increase.

I hope that Congress will recognize the importance of this provision, and enact it permanently. Our on-again, off-again approach to section 127 creates great practical difficulties for the intended beneficiaries. Workers cannot plan sensibly for their educational goals, not knowing the extent to which accepting educational assistance may reduce their take-home pay. As for employers, the fits and starts of the legislative history of section 127 have been a serious administrative nuisance: there have been 8 retroactive extensions of this provision since 1978. If section 127 is in force, then there is no need to withhold taxes on educational benefits provided; if not, the job-relatedness of the educational assistance must be ascertained, a value assigned, and withholding adjusted accordingly. Uncertainty about the program's continuance magnifies this burden, and discourages employers from providing educational benefits.

For example, section 127 expired for a time after 1994. During 1995, employers did not know whether to withhold taxes or curtail their educational assistance programs. Workers did not know whether they would face large tax bills, and possible penalties and interest, and thus faced considerable risk in planning for their education. Some of my constituents who called my office reported that they were taking fewer courses—or no courses—due to this uncertainty. And when we failed to extend the provision by the end of 1995, employers had to guess as to how to report their worker's incomes on the W–2 tax statements, and employees had to guess whether to pay tax on the benefits they received. In the Small Business Job Protection Act of 1996 enacted last August, we finally extended the provision retroactively to the beginning of 1995. As a result, we had to instruct the IRS to expeditiously issue guidance to employers and workers on how to obtain refunds.

The provision expires after June 30, 1997. Will we subject our constituents, once again, to similar confusion? The legislation I introduce today would restore certainty to section 127 by extending it retroactively—from July 1, 1996—for graduate level education, and maintaining it on a permanent basis for all education.

Thomas Jefferson, as ever, was right to observe that American liberty depends on an educated electorate. In 1816, the year in which the Senate Committee on Finance was founded, Jefferson warned "If a nation expects

to be ignorant and free, in a state of civilization, it expects what never was and never will be."

Previous efforts to extend this provision have enjoyed broad and bipartisan support. Encouraging workers to further their education and to improve their job skills is an important national priority. It is crucial for preserving our competitive position in the global economy. Permitting employees to receive educational assistance on a tax-free basis, without incurring significant cuts in take-home pay, is a demonstrated, cost-effective means for achieving these objectives. This is a wonderful piece of unobtrusive social policy.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 127

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 "Employee Educational Assistance Act".

SEC. 2. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE PROGRAMS.

(a) PERMANENT EXTENSION.—Section 127 of the Internal Revenue Code of 1986 (relating to exclusion for educational assistance programs) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) REPEAL OF LIMITATION ON GRADUATE EDUCATION.—The last sentence of section 127(c)(1) of such Code is amended by striking ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree".

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1996.

(2) GRADUATE EDUCATION.—The amendment made by subsection (b) shall apply with respect to expenses relating to courses beginning after June 30, 1996.

(3) EXPEDITED PROCEDURES.—The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1996 or 1997 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee's signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee.

By Mr. INOUYE:

S. 128. A bill to amend the Public Health Service Act to provide health care practitioners in rural areas with training in preventive health care, including both physical and mental care, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH CARE TRAINING ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce the Rural Preventive Health Care Training Act of 1997, a bill that responds to the dire situation our rural communities face in obtaining quality health care and disease prevention programs.

Almost one fourth of Americans live in rural areas and thus frequently lack access to adequate physical and mental health care. For example, approximately 1,700 rural communities in virtually every state of the union suffer critical shortages of health care providers. As many as 21 million of the 34 million people living in underserved rural areas are without access to a primary care provider. In areas where providers exist, there are numerous limits to access, such as geography and distance, lack of transportation, and lack of knowledge about available resources. Additionally, due to the diversity of rural populations, ranging from native Americans to migrant farm workers, language and cultural obstacles are often a factor.

Compound these problems with slim financial resources and many of America's rural communities go without vital health care, especially preventive care. Children fail to receive immunizations and routine checkups. Preventable illnesses and injuries occur needlessly and lead to expensive hospitalizations. Early symptoms of emotional problems and substance abuse go undetected and often develop into full blown disorders.

An Institute of Medicine (IOM) report from their two-year study entitled, "Reducing Risks for Mental Disorders: Frontiers for Preventive Intervention Research" highlights the benefits of preventive care for all health problems. Rural health care providers face a lack of training opportunities. Training in prevention is crucial in order to meet the demand for care in underserved areas.

Beyond the scope of simple prevention training, interdisciplinary preventive training in rural health is important because of a growing array of evidence that links mental disorders to physical ailments. For example, it has been estimated that from fifty to seventy percent of visits to physicians for medical symptoms are due in part or whole to psychosocial problems. By encouraging interdisciplinary training, rural communities can integrate the behavioral, biological, and psychological sciences to form the most effective preventive care possible.

The problems with quality, access, and understanding of health care in rural areas all suggest that promoting interdisciplinary training of psychologists, nurses, and social workers is essential. The need becomes clearer when considering that many of the behavior-related problems afflicting rural communities are amenable to proven risk reduction strategies that are best provided by trained mental health care professionals.

Interdisciplinary team prevention training will facilitate both health and mental health clinics sharing single service sites and routine consultation between groups. Social workers, psychologists, clinical psychiatric nurse specialists, and paraprofessionals play an important role in extending rural mental health services to those in need. Linkage of these services can provide better utilization of existing mental health care personnel, increase awareness and understanding of mental health services, and contribute to the overall health of rural communities.

The Rural Preventive Health Care Training Act of 1997, targeted specifically toward rural communities, would implement the risk-reduction model described in the IOM study. This model is based on the identification of risk factors for a certain disorder and the implementation of specific preventive strategies to target groups with those risk factors. The IOM Committee aptly demonstrates that methods of risk reduction have proven highly successful in many health-related areas, such as cardiovascular disease, smoking reduction, and the numerous childhood diseases and conditions that are preventable by early prenatal care for pregnant women.

The cost of human suffering caused by poor health is immeasurable, but the huge financial burden placed on communities, families, and individuals is evident. By implementing preventive measures, the potential for savings in psychological and financial realms is enormous. This savings is the goal of the Rural Preventive Health Care Training Act of 1997.

Mr. President, I ask unanimous consent that the text of this bill be printed in the CONGRESSIONAL RECORD.

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

S. 128

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 "Rural Preventive Health Care Training Act of 1997".

SEC. 2. PREVENTIVE HEALTH CARE TRAINING.

Section 778 of the Public Health Service Act (42 U.S.C. 294p) is amended—

(1) in subsection (b)(3)(C), by striking "this section" and inserting "subsection (a)";

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively;

(3) by inserting after subsection (d) the following new subsection:

"(e) PREVENTIVE HEALTH CARE TRAINING.—

"(1) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, eligible applicants to enable such applicants to provide preventive health care training, in accordance with paragraph (3), to health care practitioners practicing in rural areas. Such training shall, to the extent practicable, include training in health care to prevent both

physical and mental disorders before the initial occurrence of such disorders. In carrying out this paragraph, the Secretary shall encourage, but may not require, the use of interdisciplinary training project applications.

"(2) LIMITATION.—To be eligible to receive training using assistance provided under paragraph (1), a health care practitioner shall be determined by the eligible applicant involved to be practicing, or desiring to practice, in a rural area.

"(3) USE OF ASSISTANCE.—Amounts received under a grant made or contract entered into under this subsection shall be used—

"(A) to provide student stipends to individuals attending rural community colleges or other institutions that service predominantly rural communities, for the purpose of enabling the individuals to receive preventive health care training;

"(B) to increase staff support at rural community colleges or other institutions that service predominantly rural communities to facilitate the provision of preventive health care training;

"(C) to provide training in appropriate research and program evaluation skills in rural communities;

"(D) to create and implement innovative programs and curricula with a specific prevention component; and

"(E) for other purposes as the Secretary determines to be appropriate.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, $5,000,000 for each of fiscal years 1998 through 2000."; and

(4) in subsection (g) (as so redesignated), by inserting "except subsection (e)," after "section,".

By Mr. INOUYE:

S. 129. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores; to the Committee on Armed Services.

FORMER PRISONERS OF WAR LEGISLATION

Mr. INOUYE. Mr. President, today I am introducing legislation to enable those former prisoners of war who have been separated honorably from their respective services and who have been rated to have a 30 percent service-connected disability to have the use of both the military commissary and post exchange privileges. While I realize that it is impossible to adequately compensate one who has endured long periods of incarceration at the hands of our Nation's enemies, I do feel that this gesture is both meaningful and important to those concerned. It also serves as a reminder that our Nation has not forgotten their sacrifices.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 129

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. USE OF COMMISSARY AND EXCHANGE STORES BY CERTAIN DISABLED FORMER PRISONERS OF WAR.

(a) IN GENERAL.—Chapter 54 of title 10, United States Code, is amended by inserting after section 1064 the following new section:

"§ 1064a. Use of commissary stores by certain disabled former prisoners of war

"(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, former prisoners of war described in subsection (b) may use commissary and exchange stores.

"(b) COVERED INDIVIDUALS.—Subsection (a) applies to any former prisoner of war who—

"(1) is separated from active duty in the armed forces under honorable conditions; and

"(2) has a service-connected disability rated by the Secretary of Veterans Affairs at 30 percent or more.

"(c) DEFINITIONS.—In this section:

"(1) The term 'former prisoner of war' has the meaning given the term in section 101(32) of title 38.

"(2) The term 'service-connected' has the meaning given the term in section 101(16) of title 38.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1064 the following new item:

"1064a. Use of commissary stores by certain disabled former prisoners of war.".

By Mr. INOUYE:

S. 130. A bill to amend the Internal Revenue Code of 1986 to provide a credit for the purchase of child restraint systems used in motor vehicles; to the Committee on Finance.

CHILD RESTRAINT SYSTEM AMENDMENTS ACT OF 1997

Mr. INOUYE. Mr. President, today I am introducing legislation to provide for a federal income tax credit for those families who purchase a child restraint system for their automobiles.

Accidents and injuries continue to cause almost half of the deaths of children between the ages of one and four, more than half of the deaths of children between five and fifteen, and continue to be the leading cause of death among children and young adults.

It is my understanding that although the Department of Transportation has made injury prevention among children a top priority, a significant number of parents either do not have adequate child restraint systems or do not have them properly installed.

It is imperative that we create this opportunity to provide America's parents with a financially accessible alternative to the insufficient level of child safety measures currently available for use in automobiles.

Mr. President, I ask unanimous consent that the text of this bill be printed in the Congressional RECORD.

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

S. 130

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREDIT FOR PURCHASE OF CHILD RESTRAINT SYSTEMS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by adding at the end the following:

"SEC. 25A. PURCHASE OF CHILD RESTRAINT SYSTEM.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the costs incurred by the taxpayer during such taxable year in purchasing a qualified child restraint system for any child of the taxpayer.

"(b) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED CHILD RESTRAINT SYSTEM.—The term 'qualified child restraint system' means any child restraint system which meets the requirements of section 571.213 of title 49 of the Code of Federal Regulations.

"(2) CHILD.—The term 'child' has the meaning given the term in section 151(c)(3).".

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25 the following:

"Sec. 25A. Purchase of child restraint system.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1996.

By Mr. MOYNIHAN (for himself, Mr. LIEBERMAN, and Mr. JEFFORDS):

S. 131. A bill to amend chapter 5 of title 13, United States Code, to require that any data relating to the incidence of poverty produced or published by the Secretary of Commerce for subnational areas is corrected for differences in the cost of living in those areas; to the Committee on Governmental Affairs.

THE POVERTY DATA CORRECTION ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise today to introduce the Poverty Data Correction Act of 1997, a bill to require that any data relating to the incidence of poverty in subnational areas be corrected for the differences in the cost of living in those areas. This legislation, cosponsored by Senators LIEBERMAN and JEFFORDS, would correct a long-standing inequity and would provide us with more accurate information on the number of Americans living in poverty.

Mr. President, residents of New York and Connecticut earn more than do the residents of Mississippi or Alabama. But they also must spend more. The 1990 Census of Population and Housing, for instance, determined that homeowner costs with a mortgage averaged $1,096 per month in Connecticut, $894 in New York State—not city, $555 in Alabama, and $511 in Mississippi. The national average was $737.

Yet, we have a national poverty threshold adjusted only by family size and composition, not by where the family lives. A family of four just above the poverty threshold in New York City is demonstrably worse off

than a family of four just below the threshold in, say, rural Arkansas. And yet the family in New York might be ineligible for aid, and will not count in the poverty population tallies used to allocate funds while the Arkansas family will receive aid, and will be counted.

An August 7, 1994 New York Times editorial endorsing a version of this bill introduced in the 104th Congress sums it up nicely:

The cost of food, rent and other consumer goods can be twice as high in Manhattan as in Little Rock, Ark. Yet the income cutoff for poverty programs is the same in both places, $14,769 for a family of four. That produces the ridiculous and unfair result that a Manhattan family earning $15,000 does not qualify for Federal nutrition or education programs while an Arkansas family earning $14,500—the equivalent of $29,000 in Manhattan—does.

* * * Federal poverty levels are supposed to identify families that cannot buy minimally decent food, clothes and shelter. To act as if living costs do not matter, or as if financially strapped states will pick up where Washington leaves off, amounts to a vicious attack on the poor who happen to live in high-cost states.

Professor Herman B. "Dutch" Leonard and Senior Research Associate Monica Friar of the Taubman Center for State and local government at Harvard have devised an index of poverty statistics that reflects the differences in the cost of living between States. If we look at the "Friar-Leonard State Cost-of-Living index," as it has come to be known, we find that New York has a cost-adjusted poverty rate of 20.4 percent, the fifth highest in the Nation. Florida has the 12th highest adjusted poverty rate; Arkansas drops from 14th to 24th. New York fifth; Arkansas 24th. Georgia as the 25th highest. It is no longer the case that the incidence of poverty is highest in the Mississippi Delta or Appalachia. The fifth highest poverty rate is in New York. We seem not to have grasped this.

In 1995, a National Academy of Sciences (NAS) panel of experts released a study on redefining poverty. Our poverty index dates back to the work of Social Security Administration economist Mollie Orshansky who, in the early 1960s, hit upon the idea of a nutritional standard, not unlike the "pennyloaf" of bread of the 18th century British poor laws. Our poverty standard would be three times the cost of the Department of Agriculture-defined minimally adequate "food basket." During consideration of the Family Support Act of 1988, I included a provision mandating the National Academy of Sciences to determine if our poverty measure is outdated and how it might be improved. The study, edited by Constance F. Citro and Robert T. Michael, is entitled Measuring Poverty: A New Approach. A Congressional Research Service review of the report states:

The NAS panel * * * makes several recommendations which, if fully adopted, could dramatically alter the way poverty in the U.S. is measured, how federal funds are allotted to the States, and how eligibility for many Federal programs is determined. The recommended poverty measure would be based on more items in the family budget, would take major noncash benefits and taxes into account, and would be adjusted for regional differences in living costs.

* * * Under the current measure the share of the poor population living in each region was: Northeast: 16.9 percent; Midwest: 21.7 percent; South: 40.0 percent; and West: 21.4 percent. Under the proposed new measure, the estimated share in each region would be: Northeast: 18.9 percent; Midwest: 20.0 percent; South 36.4 percent; and West: 24.5 percent.

Mr. President, our current poverty data are inaccurate. And these substandard data are used in allocation formulas used to distribute millions of Federal dollars each year. As a result, States with high costs of living—States like New York, Connecticut, Vermont, Hawaii, and California, just to name a few—are not getting their fair share of Federal dollars because differences in the cost of living are ignored. And the poor of these high cost States are penalized because they happen to live there. It is time to correct this inequity.

I ask unanimous consent that the New York Times editorial be inserted into the RECORD.

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

[From the New York Times, Aug. 7, 1994]

POVERTY IS UNFAIRLY DEFINED

The cost of food, rent and other consumer goods can be twice as high in Manhattan as in Little Rock, Ark. Yet the income cutoff for poverty programs is the same in both places, $14,764 for a family of four. That produces the ridiculous and unfair result that a Manhattan family earning $15,000 does not qualify for Federal nutrition or education programs while an Arkansas family earning $14,500—the equivalent of $29,000 in Manhattan—does.

The Federal definition of poverty is blind to the real costs paid by people struggling to purchase the necessities of life. That is why Senator Joseph Lieberman, Democrat of Connecticut, and Representative Dean Gallo, Republican of New Jersey, have proposed bills that would adjust poverty levels for state differences in the cost of living. That way poor families in Los Angeles and Philadelphia will get their fair share of the $20 billion or more that Congress spends on need-based programs. Senator Daniel Patrick Moynihan of New York, an expert on poverty, says that adjusting poverty levels for living costs will produce poverty rates in New York nearly as high as those in the Deep South.

The only argument against the bills is that high-income states like New York and California can afford to pay more to help their poor than can low-income states like Mississippi and South Carolina. But the poor in New York are not just the responsibility of taxpayers in New York; helping the poor is every American's duty, best carried out by Federal payments that take account of differences in the cost of living. Of course, wealthy states like New York will pay a disproportionate share of the taxes that support such payments.

The argument for letting rich states take care of "their" own poor fails for another reason: they will shirk. If state governments try to finance generous welfare, they trigger in-migration of the poor and out-migration of wealthy taxpayers. Therefore they underfinance welfare; over the past two decades, states welfare benefits have dwindled.

Federal poverty levels are supposed to identify families that cannot buy minimally decent food, clothes and shelter. To act as if living costs do not matter, or as if financially strapped states will pick up where Washington leaves off, amounts to a vicious attack on the poor who happen to live in high-cost states.

By Mr. MOYNIHAN:

S. 132. A bill to prohibit the use of certain ammunition, and for other purposes. A bill to prohibit the use of certain ammunition, and for other purposes; to the Committee on the Judiciary.

S. 133. A bill to amend the Internal Revenue Code of 1986 to increase the tax on handgun ammunition, to impose the special occupational tax and registration requirements on importers and manufacturers of handgun ammunition, and for other purposes; to the Committee on Finance.

LEGISLATION TO CONTROL DESTRUCTIVE AMMUNITION

Mr. MOYNIHAN. Mr. President, I introduce two measures to help fight the epidemic of bullet-related violence in America: the Real Cost of Destructive Ammunition Act and the Destructive Ammunition Prohibition Act of 1997. The purpose of these bills is to prevent from reaching the marketplace some of the most deadly rounds of ammunition ever produced.

Some of my colleagues may remember the Black Talon. It is a hollow-tipped bullet, singular among handgun ammunition in its capacity for destruction. Upon impact with human tissue, the bullet produces razor-sharp radial petals that produce a devastating wound. It is the very same bullet that a crazed gunman fired at unsuspecting passengers on a Long Island Railroad train in December 1993, Killing the husband of now Congresswoman CAROLYN MCCARTHY and injuring her son. That same month, it was also used in the shooting of Officer Jason E. White of the District of Columbia Metropolitan Police Department, just 15 blocks from the Capitol.

I first learned of the Black Talon in a letter I received from Dr. E.J. Gallagher, director of Emergency Medicine at Albert Einstein College of Medicine at the Municipal Hospital Trauma Center in the Bronx. Dr. Gallagher wrote that he has never seen a more lethal projectile. On November 3, 1993, I introduced a bill to tax the Black Talon at 10,000 percent. Nineteen days later, Olin Corp., the manufacturer of the

Black Talon, announced that it would withdraw sale of the bullet to the general public. Unfortunately, the 103d Congress came to a close without the bill having won passage.

As a result, there is nothing in law to prevent the reintroduction of this pernicious bullet, nor is there any existing impediment to the sale of similar rounds that might be produced by another manufacturer. So today I reintroduce the bill to tax the Black Talon as well as a bill to prohibit the sale of the Black Talon to the public. Both bills would apply to any bullet with the same physical characteristics as the Black Talon. These bullets have no place in the armory of criminals.

It has been estimated that the cost of hospital services for treating bullet-related injuries is $1 billion per year, with the total cost to the economy of such injuries approximately $14 billion. We can ill afford further increases in this number, but this would surely be the result if bullets with the destructive capacity of the Black Talon are allowed onto the streets.

Mr. President, despite the fact that the national crime rate has decreased in recent months, the number of deaths and injuries caused by bullet wounds is still at an unconscionable level. It is time we took meaningful steps to put an end to the massacres that occur daily as a result of gunshots. How better a beginning than to go after the most insidious culprits of this violence? I urge my colleagues to support these measures and to prevent these bullets from appearing on the market.

By Mr. MOYNIHAN:

S. 134. A bill to amend title 18, United States Code, with respect to the licensing of ammunition manufacturers, and for other purposes; to the Committee on the Judiciary.

THE HANDGUN AMMUNITION CONTROL ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise today to introduce a measure to improve our information about the regulation and criminal use of ammunition and to prevent the irresponsible production of ammunition. This bill has three components. First, it would require importers and manufacturers of ammunition to keep records and submit an annual report to the Bureau of Alcohol, Tobacco and Firearms [BATF] on the disposition of ammunition, including the amount, caliber and type of ammunition imported or manufactured. Second, it would require the Secretary of the Treasury, in consultation with the National Academy of Sciences, to conduct a study of ammunition use and make recommendations on the efficacy of reducing crime by restricting access to ammunition. Finally, it would amend title 18 of the United States Code to raise the application fee for a license to manufacture certain calibers of ammunition.

While there are enough handguns in circulation to last well into the 22d century, there is perhaps only a 4-year supply of ammunition. But how much of what kind of ammunition? Where does it come from? Where does it go? There are currently no reporting requirements for manufacturers or importers of ammunition; earlier reporting requirements were repealed in 1986. The Federal Bureau of Investigation's annual Uniform Crime Reports, based on information provided by local law enforcement agencies, does not record the caliber, type, or quantity of ammunition used in crime. In short, our data base is woefully inadequate.

I supported the Brady law, which requires a waiting period before the purchase of a handgun, and the recent ban on semi-automatic weapons. But while the debate over gun control continues, I offer another alternative: Ammunition control. After all, as I have said before, guns do not kill people; bullets do.

Ammunition control is not a new idea. In 1982 Phil Caruso of the New York City Patrolmen's Benevolent Association asked me do something about armor-piercing bullets. Jacketed in tungsten or other materials, these rounds could penetrate four police flak jackets and five Los Angeles County telephone books. They are of no sporting value. I introduced legislation, the Law Enforcement Officers Protection Act, to ban the cop-killer bullets in the 97th, 98th, and 99th Congresses. It enjoyed the overwhelming support of law enforcement groups and, ultimately, tacit support from the National Rifle Association. It was finally signed into law by President Reagan on August 28, 1986.

The crime bill enacted in 1994 contained may amendment to broaden the 1986 ban to cover new thick steel-jacketed armor-piercing rounds.

Out cities are becoming more ware of the benefits to be gained from ammunition control. The District of Columbia and some other cities prohibit a person from possessing ammunition without a valid license for a firearm of the same caliber or gauge as the ammunition. Beginning in 1990, the city of Los Angeles banned the sale of all ammunition 1 week prior to Independence Day and New Year's Day in an effort to reduce injuries and deaths caused by the firing of guns into the air. And in September 1994, the city of Chicago became the first in America to ban the sale of all handgun ammunition.

Such efforts are laudable. But they are isolated attempts to cure what is in truth a national disease. We need to do more, but to do so, we need information to guide policymaking. This bill would fulfill that need by requiring annual reports to BATF by manufacturers and importers and by directing a study by the National Academy of Sciences. We also need to encourage manufacturers of ammunition to be more responsible. By substantially increasing application fees for licenses to manufacturer .25 caliber, .32 caliber, and 9-mm ammunition, this bill would discourage the reckless production of unsafe ammunition or ammunition which causes excesses damage.

I urge my colleagues to support this measure.

By Mr. MOYNIHAN:

S. 135. A bill to provide for the collection and dissemination of information on injuries, death, and family dissolution due to bullet-related violence, to require the keeping of records with respect to dispositions of ammunition and to increase taxes on certain bullets; to the Committee on Finance.

THE VIOLENT CRIME CONTROL ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill that comprehensively seeks to control the epidemic proportions of violence in America. This legislation, the Violent Crime Control Act of 1997, combines most of the provisions of two of the other crime-related bills I am introducing today as well.

By including two different crime-related provisions, my bill attacks the crime epidemic on more than just one front. If we are truly serious about confronting our Nation's crime problem, we must learn more about the nature of the epidemic of bullet-related violence and ways to control it. To do this, we must require records to be keep on the disposition of ammunition.

In October 1992, the Senate Finance Committee received testimony that public health and safety experts have, independently, concluded that there is an epidemic of bullet-related violence. The figures are staggering.

In 1995, bullets were in the murders of 23,673 people in the United States. By focusing on bullets, and not guns, we recognize that much like nuclear waste, guns remain active for centuries. With minimum care, they do not deteriorate. However, bullets are consumed. Estimates suggest we have only a 4-years supply of them.

Not only am I proposing that we tax bullets used disproportionately in crimes, 9 millimeter, .25 and .32 caliber bullets, I also believe we must set up a Bullet Death and Injury Control Program within the Centers for Disease Control's National Center for Injury Prevention and Control. This Center will enhance our knowledge of the distribution and status of bullet-related death and injury and subsequently make recommendations about the extent and nature of bullet-related violence.

So that the Center would have substantive information to study and analyze, this bill also requires importers and manufacturers of ammunition to keep records and submit an annual report to the Bureau of Alcohol, Tobacco,

and Firearms [BATF] on the disposition of ammunition. Currently, importers and manufacturers of ammunition are not required to do so.

Clearly, it will take intense effort on all of our parts to reduce violent crime in America. We must confront this epidemic from several different range, recognizing that there is no simple solution.

By Mr. MOYNIHAN:

S. 136. A bill to amend chapter 44 of title 18, United States Code, to prohibit the manufacture, transfer, or importation of .25 caliber and .32 caliber and 9 millimeter ammunition; to the Committee on the Judiciary.

VIOLENT CRIME REDUCTION ACT

S. 137. A bill to tax 9 millimeter, .25 caliber, and .32 caliber bullets; to the Committee on Finance.

REAL COST OF HANDGUN AMMUNITION ACT OF 1997

Mr. MOYNIHAN. Mr. President, I introduce two bills: the Violent Crime Reduction Act of 1997 and the Real Cost of Handgun Ammunition Act of 1997. Their purposes are to ban or heavily tax .25 caliber, .32 caliber, and 9 mm ammunition. These calibers of bullets are used disproportionately in crime. They are not sporting or hunting rounds, but instead are the bullets of choice for drug dealers and violent felons. Every year they contribute overwhelmingly to the pervasive loss of life caused by bullet wounds.

Today marks the fourth time in as many Congresses that I have introduced legislation to ban or tax these pernicious bullets. As the terrible gunshot death toll in the United States continues unabated, so too does the need for these bills, which, by keeping these bullets out of the hands of criminals, would save a significant number of lives.

The number of Americans killed or wounded each year by bullets demonstrates their true cost to American society. Just look at the data:

In 1995, 13,673 people—68.2 percent of all people murdered—were murdered by gunshot. In addition, others lost their lives to bullets by shooting themselves, either purposefully or accidentally. And although no national statistics are kept on bullet-related injuries, studies suggest they occur two to five times more frequently than do deaths.

The lifetime risk of death from homicide in U.S. males is 1 in 164, about the same as the risk of death in battle faced by U.S. servicemen in the Vietnam war. For black males, the lifetime risk of death from homicide is 1 in 28, twice the risk of death in battle faced by Marines in Vietnam.

As noted by Susan Baker and her colleagues in the book "Epidemiology and Health Policy," edited by Sol Levine and Abraham Lilienfeld:

> There is a correlation between rates of private ownership of guns and gun-related death rates; guns cause two-thirds of family homicides; and small easily concealed weapons comprise the majority of guns used for homicides, suicides and unintentional death.

Baker states that:

> * * * these facts of the epidemiology of firearm-related deaths and injuries have important implications. Combined with their lethality, the widespread availability of easily concealed handguns for impetuous use by people who are angry, drunk, or frightened appears to be a major determinant of the high firearm death rate in the United States. Each contributing factor has implications for prevention. Unfortunately, issues related to gun control have evoked such strong sentiments that epidemiologic data are rarely employed to good advantage.

Strongly held views on both sides of the gun control issue have made the subject difficult for epidemiologists. I would suggest that a good deal of energy is wasted in this never-ending debate, for gun control as we know it misses the point. We ought to focus on the bullets and not the guns.

I would remind the Senate of our experience in controlling epidemics. Although the science of epidemiology traces its roots to antiquity—Hippocrates stressed the importance of considering environmental influences on human diseases—the first modern epidemiological study was conducted by James Lind in 1747. His efforts led to the eventual control of scurvy. It wasn't until 1795 that the British Navy accepted his analysis and required limes in shipboard diets. Most solutions are not perfect. Disease is rarely eliminated. But might epidemiology be applied in the case of bullets to reduce suffering? I believe so.

In 1854 John Snow and William Farr collected data that clearly showed cholera was caused by contaminated drinking water. Snow removed the handle of the Broad Street pump in London to prevent people from drawing water from this contaminated water source and the disease stopped in that population. His observations led to a legislative mandate that all London water companies filter their water by 1857. Cholera epidemics subsided. Now treatment of sewage prevents cholera from entering our rivers and lakes, and the disinfection of drinking water makes water distribution systems uninhabitable for cholera vibrio, identified by Robert Koch as the causative agent 26 years after Snow's study.

In 1900, Walter Reed identified mosquitos as the carriers of yellow fever. Subsequent mosquito control efforts by another U.S. Army doctor, William Gorgas, enabled the United States to complete the Panama Canal. The French failed because their workers were too sick from yellow fever to work. Now that it is known that yellow fever is caused by a virus, vaccines are used to eliminate the spread of the disease.

These pioneering epidemiology success stories showed the world that epidemics require an interaction between three things: the host—the person who becomes sick or, in the case of bullets, the shooting victim); the agent—the cause of sickness, or the bullet); and the environment—the setting in which the sickness occurs or, in the case of bullets, violent behavior. Interrupt this epidemiological triad and you reduce or eliminate disease and injury.

How might this approach applies to the control of bullet-related injury and death? Again, we are contemplating something different from gun control. There is a precedent here. In the middle of this century it was recognized that epidemiology could be applied to automobile death and injury. From a governmental perspective, this hypothesis was first adopted in 1959, late in the administration of Gov. Averell Harriman of New York State. In the 1960 Presidential campaign, I drafted a statement on the subject which was released by Senator John F. Kennedy as part of a general response to enquiries from the American Automobile Association. Then Senator Kennedy stated:

> Traffic accidents constitute one of the greatest, perhaps the greatest of the nation's public health problems. They waste as much as 2 percent of our gross national product every year and bring endless suffering. The new highways will do much to control the rise of the traffic toll, but by themselves they will not reduce it. A great deal more investigation and research is needed. Some of this has already begun in connection with the highway program. It should be extended until highway safety research takes its place as an equal of the many similar programs of health research which the federal government supports.

Experience in the 1950's and early 1960's prior to passage of the Motor Vehicle Safety Act, showed that traffic safety enforcement campaigns designed to change human behavior did not improve traffic safety. In fact, the death and injury toll mounted. I was Assistant Secretary of Labor in the mid-1960's when Congress was developing the Motor Vehicle Safety Act, and I was called to testify.

It was clear to me and others that motor vehicle injuries and deaths could not be limited by regulating driver behavior. Nonetheless, we had an epidemic on our hands and we needed to do something about it. My friend William Haddon, the first Administrator of the National Highway Traffic Safety Administration, recognized that automobile fatalities were caused not by the initial collision, when the automobile strikes some object, but by a second collision, in which energy from the first collision is transferred to the interior of the car, causing the driver and occupants to strike the steering wheel, dashboard, or other structures in the passenger compartment. The second collision is the agent of injury to the hosts—the car's occupants.

Efforts to make automobiles crashworthy follow examples used to control

infectious disease epidemics. Reduce or eliminate the agent of injury. Seatbelts, padded dashboards, and airbags are all specifically designed to reduce, if not eliminate, injury caused by the agent of automobile injuries, energy transfer to the human body during the second collision. In fact, we've done nothing revolutionary. All of the technology used to date to make cars crashworthy, including airbags, was developed prior to 1970.

Experience shows the approach worked. Of course, it could have worked better, but it worked. Had we been able to totally eliminate the agent—the second collision—the cure would have been complete. Nonetheless, merely by focusing on simple, achievable remedies, we reduced the traffic death and injury epidemic by 30 percent. Motor vehicle deaths declined in absolute terms by 13 percent from 1980 to 1990, despite significant increases in the number of drivers, vehicles, and miles driven. Driver behavior is changing, too. National seatbelt usage is up dramatically, 60 percent now compared to 14 percent in 1984. These efforts have resulted in some 15,000 lives saved and 100,000 injuries avoided each year.

We can apply that experience to the epidemic of murder and injury from bullets. The environment in which these deaths and injuries occur is complex. Many factors likely contribute to the rise in bullet-related injury. Here is an important similarity with the situation we faced 25 years ago regarding automobile safety. We found we could not easily alter the behavior of millions of drivers, but we could—easily—change the behavior of three or four automobile manufacturers. Likewise, we simply cannot do much to change the environment—violent behavior—in which gun-related injury occurs, nor do we know how. We can, however, do something about the agent causing the injury: bullets. Ban them. At least the rounds used disproportionately to cause death and injury; that is, the .25 caliber, .32 caliber, and 9 millimeter bullets. These three rounds account for the ammunition used in about 13 percent of licensed guns in New York City, yet they are involved in one-third of all homicides. They are not, as I have said, useful for sport or hunting. They are used for violence. If we fail to confront the fact that these rounds are used disproportionately in crimes, innocent people will continue to die.

I have called on Congress during the past several sessions to ban or heavily tax these bullets. This would not be the first time that Congress has banned a particular round of ammunition. In 1986, it passed legislation written by the Senator from New York banning the so-called "cop-killer" bullet. This round, jacketed with tungsten alloys, steel, brass, or any number of other metals, had been demonstrated to penetrate no fewer than four police flak jackets and an additional five Los Angeles County phonebooks at one time. In 1982, the New York Police Benevolent Association came to me and asked me to do something about the ready availability of these bullets. The result was the Law Enforcement Officers Protection Act, which we introduced in 1982, 1983, and for the last time during the 99th Congress. In the end, with the tacit support of the National Rifle Association, the measure passed the Congress and was signed by the President as Public Law 99-408 on August 28, 1986. In the 1994 crime bill, we enacted my amendment to broaden the ban to include new thick steel-jacketed armor-piercing rounds.

There are some 220 million firearms in circulation in the United States today. They are, in essence, simple machines, and with minimal care, remain working for centuries. However, estimates suggest that we have only a 4-year supply of bullets. Some 2 billion cartridges are used each year. At any given time there are some 7.5 billion rounds in factory, commercial, or household inventory.

In all cases, with the exception of pistol whipping, gun-related injuries are caused not by the gun, but by the agents involved in the second collision: the bullets. Eliminating the most dangerous rounds would not end the problem of handgun killings. But it would reduce it. A 30-percent reduction in bullet-related deaths, for instance, would save over 10,000 lives each year and prevent up to 50,000 wounds.

Water treatment efforts to reduce typhoid fever in the United States took about 60 years. Slow sand filters were installed in certain cities in the 1880's, and water chlorination treatment began in the 1910's. The death rate from typhoid in Albany, NY, prior to 1889, when the municipal water supply was treated by sand filtration, was about 100 fatalities per 100,000 people each year. The rate dropped to about 25 typhoid deaths per year after 1889, and dropped again to about 10 typhoid deaths per year after 1915, when chlorination was introduced. By 1950, the death rate from typhoid fever had dropped to zero. It will likely take longer than 60 years to eliminate bullet-related death and injury, but we need to start with achievable measures to break the deadly interactions between people, bullets, and violent behavior.

The bills I introduce today would begin the process. They would begin to control the problem by banning or taxing those rounds used disproportionately in crime—the .25-caliber, .32-caliber, and 9-millimeter rounds. The bills recognize the epidemic nature of the problem, building on findings contained in the June 10, 1992 issue of the Journal of the American Medical Association which was devoted entirely to the subject of violence, principally violence associated with firearms.

Mr. President, it is time to confront the epidemic of bullet-related violence. I urge my colleagues to support these bills.

By Mr. DASCHLE (for himself, Mr. HOLLINGS, Mr. KENNEDY, Ms. MIKULSKI, Mr. LEVIN, Ms. MOSELEY-BRAUN, Mrs. BOXER, Mrs. FEINSTEIN, Mr. INOUYE, Mrs. MURRAY, Mr. JOHNSON, Mr. BRYAN, Mr. SARBANES, Mr. FORD, and Mr. LAUTENBERG):

S. 143. A bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer; to the Committee on Labor and Human Resources.

THE BREAST CANCER PATIENT PROTECTION ACT OF 1997

Mr. DASCHLE. Mr. President, today Senator HOLLINGS and I are introducing the Breast Cancer Patient Protection Act of 1997. I want to thank Senators KENNEDY, MILULSKI, MOSELEY-BRAUN, BOXER, FEINSTEIN, LEVIN, INOUYE, MURRAY, JOHNSON, BRYAN, SARBANES, FORD and LANDRIEU, for joining us as original cosponsors. We welcome the support of all of our colleagues, on both sides of the aisle, for this important legislation. Our bill is a companion to H.R. 135, which was introduced in the House of Representatives by Representatives DELAURO, DINGELL, and ROUKEMA on January 7, 1997.

I bring this bill to the Senate both to put an end to the relatively new practice of forcing women to have mastectomies on an outpatient basis and to begin a discussion on how to develop and maintain policies that protect patients and ensure continued access to affordable high quality medical care.

Every 3 minutes another woman is diagnosed with breast cancer. This year alone, more than 180,000 women will find out they have breast cancer. This disease strikes at the core of American families, taking our mothers, wives, sisters, and daughters on an often terrifying tour of our health care system.

The Breast Cancer Patient Protection Act seeks to make the journey less worrisome by requiring insurance companies to provide at least a minimum amount of inpatient hospital care for patients undergoing mastectomies or lymph node dissections for the treatment of breast cancer. The language is modeled after last year's carefully drafted and unanimously supported compromise agreement that established a similar policy

to end the practice of drive-through deliveries.

The bill was designed in part to counter a consulting firm's recommendation to its insurance company clients that both mastectomies and lymph node dissections be performed on an outpatient basis. As a result, some surgeons have been forced to send patients home still groggy from anesthesia and with drainage tubes in place. Yet, with few exceptions, hospitalization following major breast cancer surgery is necessary not only to control pain and manage postoperative care, but also to provide a supportive environment for women who have undergone an undeniably traumatic and challenging surgery.

Under this targeted legislation, women would be guaranteed at least 48 hours of impatient care following a mastectomy, and a minimum of 24 hours following lymph node dissection for the treatment of breast cancer. patients and their physicians—not insurance companies—could jointly decide whether it is appropriate for the patient to leave the hospital earlier. These timeframes, which were designed in consultation with surgeons who specialize in this area, reflect the minimum amount of inpatient care thought to be necessary following these procedures. It is our hope that insurers would choose to make an investment in the future health of their enrollees by allowing coverage for as long as the provider determines to be medically appropriate to ensure a proper recovery.

I would also like to call to your attention Senator KENNEDY's forthcoming bill that will require insurance companies who cover mastectomies to also cover reconstruction surgery. Too often, women and their physicians are faced with having to justify to the insurance carrier the clear need for reconstruction surgery following amputation of a diseased breast. This is wrong. Women who have undergone difficult and disfiguring surgery for breast cancer should not have to undergo additional hardship while simply seeking to be made physically whole again. Senator KENNEDY'S bill, which I will cosponsor, will address this important issue.

While these bills respond to ill-conceived policies that we believe have dangerous implications for women with breast cancer, let them serve as reminders of our broken health care system. Addressing health insurance problems relating to quality of care and patient protection issues on a piecemeal basis may be our only way to accomplish meaningful reforms in this increasingly important area.

With one in eight women likely to develop breast cancer, it is increasingly likely that all of our families will be in some way affected by this devastating disease. Let us take this small step to ensure the experience is not aggravated by unnecessarily difficult encounters with the companies that have agreed under contract to stand by us not only in health but also in sickness.

This bill is strongly supported by the National Breast Cancer Coalition, the National Alliance of Breast Cancer Organizations, the American College of Surgeons, the American Society of Plastic and Reconstructive Surgeons, the Y-Me National Breast Cancer Organization, the American Cancer Society, Families USA, and the Women's Legal Defense Fund.

Together, I am hopeful that we can put critical health care decisions back in the hands of breast cancer patients and their physicians.

Mr. President, I ask that the full text of the Breast Cancer Patient Protection Act be inserted following my remarks.

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

S. 143

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 "Breast Cancer Patient Protection Act of 1997".

SEC. 2. COVERAGE OF MINIMUM HOSPITAL STAY FOR CERTAIN BREAST CANCER TREATMENT.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

(A) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act, as amended by section 703(a) of Public Law 104–204, is amended by adding at the end the following new section:

"SEC. 2706. STANDARDS RELATING TO BENEFITS FOR CERTAIN BREAST CANCER TREATMENT.

"(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY FOLLOWING MASTECTOMY OR LYMPH NODE DISSECTION.—

"(1) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, may not—

"(A) except as provided in paragraph (2)—

"(i) restrict benefits for any hospital length of stay in connection with a mastectomy for the treatment of breast cancer to less than 48 hours, or

"(ii) restrict benefits for any hospital length of stay in connection with a lymph node dissection for the treatment of breast cancer to less than 24 hours, or

"(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

"(2) EXCEPTION.—Paragraph (1)(A) shall not apply in connection with any group health plan or health insurance issuer in any case in which the decision to discharge the woman involved prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the woman.

"(b) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

"(1) deny to a woman eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

"(2) provide monetary payments or rebates to women to encourage such women to accept less than the minimum protections available under this section;

"(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

"(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

"(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

"(c) RULES OF CONSTRUCTION.—

"(1) Nothing in this section shall be construed to require a woman who is a participant or beneficiary—

"(A) to undergo a mastectomy or lymph node dissection in a hospital; or

"(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

"(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

"(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

"(d) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 713(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.

"(e) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

"(f) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

"(1) IN GENERAL.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 2723(d)(1)) for a State that regulates such coverage that is described in any of the following subparagraphs:

"(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at

least a 24-hour hospital length of stay following a lymph node dissection for treatment of breast cancer.

"(B) Such State law requires, in connection with such coverage for surgical treatment of breast cancer, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the woman involved.

"(2) CONSTRUCTION.—Section 2723(a)(1) shall not be construed as superseding a State law described in paragraph (1).".

(B) CONFORMING AMENDMENT.—Section 2723(c) of such Act (42 U.S.C. 300gg–23(c)), as amended by section 604(b)(2) of Public Law 104–204, is amended by striking "section 2704" and inserting "sections 2704 and 2706".

(2) ERISA AMENDMENTS.—

(A) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as amended by section 702(a) of Public Law 104–204, is amended by adding at the end the following new section:

"SEC. 713. STANDARDS RELATING TO BENEFITS FOR CERTAIN BREAST CANCER TREATMENT.

"(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY FOLLOWING MASTECTOMY OR LYMPH NODE DISSECTION.—

"(1) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, may not—

"(A) except as provided in paragraph (2)—

"(i) restrict benefits for any hospital length of stay in connection with a mastectomy for the treatment of breast cancer to less than 48 hours, or

"(ii) restrict benefits for any hospital length of stay in connection with a lymph node dissection for the treatment of breast cancer to less than 24 hours, or

"(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

"(2) EXCEPTION.—Paragraph (1)(A) shall not apply in connection with any group health plan or health insurance issuer in any case in which the decision to discharge the woman involved prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the woman.

"(b) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

"(1) deny to a woman eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

"(2) provide monetary payments or rebates to women to encourage such women to accept less than the minimum protections available under this section;

"(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

"(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

"(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

"(c) RULES OF CONSTRUCTION.—

"(1) Nothing in this section shall be construed to require a woman who is a participant or beneficiary—

"(A) to undergo a mastectomy or lymph node dissection in a hospital; or

"(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

"(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

"(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

"(d) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a)(1), for purposes of assuring notice of such requirements under the plan; except that the summary description required to be provided under the last sentence of section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.

"(e) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

"(f) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

"(1) IN GENERAL.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 731(d)(1)) for a State that regulates such coverage that is described in any of the following subparagraphs:

"(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection for treatment of breast cancer.

"(B) Such State law requires, in connection with such coverage for surgical treatment of breast cancer, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the woman involved.

"(2) CONSTRUCTION.—Section 731(a)(1) shall not be construed as superseding a State law described in paragraph (1).".

(B) CONFORMING AMENDMENTS.—

(i) Section 731(c) of such Act (29 U.S.C. 1191(c)), as amended by section 603(b)(1) of Public Law 104–204, is amended by striking "section 711" and inserting "sections 711 and 713".

(ii) Section 732(a) of such Act (29 U.S.C. 1191a(a)), as amended by section 603(b)(2) of Public Law 104–204, is amended by striking "section 711" and inserting "sections 711 and 713".

(iii) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

"Sec. 713. Standards relating to benefits for certain breast cancer treatment.".

(b) INDIVIDUAL HEALTH INSURANCE.—

(1) IN GENERAL.—Part B of title XXVII of the Public Health Service Act, as amended by section 605(a) of Public Law 104–204, is amended by inserting after section 2751 the following new section:

"SEC. 2752. STANDARDS RELATING TO BENEFITS FOR CERTAIN BREAST CANCER TREATMENT.

"(a) IN GENERAL.—The provisions of section 2706 (other than subsection (d)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

"(b) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 713(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.

"(c) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—

"(1) IN GENERAL.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 2723(d)(1)) for a State that regulates such coverage that is described in any of the following subparagraphs:

"(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection for treatment of breast cancer.

"(B) Such State law requires, in connection with such coverage for surgical treatment of breast cancer, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the woman involved.

"(2) CONSTRUCTION.—Section 2762(a) shall not be construed as superseding a State law described in paragraph (1).".

(2) CONFORMING AMENDMENT.—Section 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2)), as added by section 605(b)(3)(B) of Public Law 104–204, is amended by striking "section 2751" and inserting "sections 2751 and 2752".

(c) EFFECTIVE DATES.—

(1) GROUP MARKET.—The amendments made by subsection (a) shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.

(2) INDIVIDUAL MARKET.—The amendment made by subsection (b) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after such date.

Ms. MOSELEY-BRAUN. Mr. President, I am pleased to join the list of cosponsors of the Breast Cancer Patient Protection Act of 1997. I think this act is vitally important to prevent health providers from cutting costs at the expense of women's health.

Breast cancer is the most common cancer among women. This year alone approximately 184,300 women will be diagnosed with breast cancer while another 44,300 women will die of the disease. Breast cancer is a disease that will affect one in every eight women. With statistics like these, it is possible that every family in America will feel the effects of this disease.

This act would ensure that health insurers which already provide for the treatment of breast cancer cover a minimum hospital stay of 48 hours for patients undergoing mastectomies and 24 hours for those undergoing lymph node removal if she and her doctor choose. I am cosponsoring this bill to ensure that breast cancer surgery is not relegated to routine outpatient surgery.

The average hospital stay of a breast cancer patient has dwindled from 4–6 to 2–3 days and currently some patients are sent home a few hours after their operation. Both the American College of Surgeons and the American Medical Association believe that most patients require hospital stays that are longer than the current trends. In addition, accepted practice has shown that breast cancer surgery patients require at least 48 hours in the hospital after a mastectomy and 24 hours' hospital stay after a lymph node removal.

The important aspect of this matter is that women are being sent home after breast cancer surgery before they are neither physically nor emotionally ready to be released from the hospital. The reason for sending these women home has nothing to do with medical standards of care and everything to do with the bottom line. I support the Breast Cancer Patient Protection Act because it will allow the decisions on how long to stay in the hospital to be determined by the patient and her doctor. If it is determined that the patient is not in need of a 48-hour stay, the doctor may release the patient from hospital care. The crucial distinction between this scenario and what is currently being practiced is that insurers will not be able to force someone out on a purely arbitrary basis. Decisions will be made based on the needs of the patient rather than the fiscal concerns of the insurer.

This legislation enjoys the support of the National Breast Cancer Coalition, the National Association of Breast Care Organizations, the Y-me National Breast Cancer Organization, the Families USA foundation, the Women's Legal Defense Fund, and the American Society of Plastic and Reconstructive Surgeons.

I have given careful consideration to the issues involved and believe that this act will ensure that American women receive the health care treatment and coverage that they are entitled to. I strongly encourage all of my colleagues to endorse this effort.

Mr. FORD. Mr. President, I rise in support of the Breast Cancer Protection Act introduced earlier today by my friend the Democratic Leader, Senator Tom DASCHLE. I am pleased to be an original cosponsor of this important legislation to provide women with breast cancer the best care and health coverage available.

I come here not as an authority on this subject, but as one of the many Americans who have been touched by this disease. My own daughter is a breast cancer survivor, as is a former staff member. Unfortunately, another member of my staff for 18 years, Martha Moloney, was not so lucky. After a long battle with breast cancer, she died in November 1995.

It is for these women, and the thousands of others affected by this disease, that I lend my support to this effort to ensure all women with breast cancer are treated with dignity and respect. Rather than being rushed out the door hours after a breast cancer surgery, women deserve to consult with their physician to determine the appropriate hospital stay. That is why I am supporting the Breast Cancer Protection Act to provide a minimum hospital stay of 48 hours for mastectomies and 24 hours for lymph node removals.

Over the past 10 years, the length of hospitalization for patients undergoing breast cancer surgery has decreased significantly. Today, hospitalization time for patients undergoing mastectomies has dwindled to a mere 2–3 days, down from 4–6 days, 10 years ago.

Under pressure to cut costs, surgeons have been instructed by managed care companies to perform lymph node dissections and even mastectomies as outpatient surgery. I have heard stories about companies that require patients to be sent home a few hours after their surgery, even though they may be in severe pain, groggy from anesthesia, and have surgical tubes still in place. Some companies have even denied women hospitalization on the day of their surgery. These situations place doctors in the difficult position of having to choose between delivering the quality care their patients deserve and a penalty for failing to follow an insurer's guidelines.

Mr. President, women with breast cancer suffer not only from physical pain but also emotional and psychological trauma. They should not have to worry whether their physician is struggling to comply with an arbitrary length of stay guideline or their own best health interests. The Breast Cancer Protection Act will help ease their anxiety by ensuring that crucial health decisions are left in the hands of doctors and patients, not accountants.

I am pleased to support this important effort to provide women with breast cancer the thorough health care coverage they deserve.

Mr. JOHNSON. Mr. President, I am proud and grateful to be here today as a co-sponsor of The Breast Cancer Patient Protection Act of 1997. I am proud because this bill is the right thing to do—it's a common sense measure that protects women undergoing breast cancer treatments. And I am grateful because, as the husband of a woman who has suffered from breast cancer, I know that every step makes a difference in preserving and protecting the quality of life for those afflicted with this disease.

As health care costs spiral out of control, more and more decisions are being made based on the bottom-line rather than on the needs of the patient. A twenty-four hour stay is not always long enough for a mother and newborn child. And a twenty-four hour stay is often not long enough for a woman who has undergone surgical treatment for breast cancer.

I know this not just from literature or fact sheets or discussions with health care professionals. I know that twenty-four hours isn't long enough for everyone because I helped my wife home from the hospital after her cancer surgery. With tubes running everywhere, we brought her into our home twenty-two hours after her surgery. Many families aren't equipped to give the care needed. And many women aren't well enough to give themselves the care needed. An additional twenty-four hours in the hospital can decrease the risk of infection, allow women to rest more comfortably, and ensure that any crucial health care decision is being made in the best possible environment.

My wife and I are not alone. Nearly one out of every eight women will develop breast cancer. Approximately, 185,000 women will be diagnosed with the disease this year. Sadly, more than 44,000 women will also die from this disease in the next 365 days. The numbers of those afflicted with this disease must decrease, but the options must increase.

These are our grandmothers, our mothers, our daughters, our sisters, our wives. They deserve the best that we can give.

This bill does not do it all, but, as we look for a cure and other innovative treatments, it is part of a package to ease the pain of this invasive disease. I will do all that I can to make sure this bill becomes law.

Mr. HOLLINGS. Mr. President, first I want to thank my colleague, Senator DASCHLE, for introducing this legislation in the Senate. Also, I must thank Congresswoman ROSA DELAURO for

taking the lead in the House in protecting mastectomy patients from new Health Management Organization [HMO] payment guidelines. Today, one in eight American women develop breast cancer, and they and their families will thank her when the bipartisan members of this Congress act to ensure that medical decisions for mastectomy patients are made by the doctors and patients involved in the case, rather than by HMO's or insurers.

When I notified one constituent that I would help introduce legislation to guarantee women at least 48 hours of hospital coverage for mastectomies and 24 hours for lymph node removals, he asked "what have we come to when we need legislation like this?" What have we come to, indeed.

Most Senators are not doctors, but common sense dictates that mastectomy is not generally an outpatient procedure. Not only the pain, but also the need to tend drainage tubes and the psychological shock usually require at least two days of medical care and adjustment, and often more. Unfortunately, managed care payment rules have led to cases where women are forced out of the hospital on the same day as their mastectomies, before spending a night in the hospital.

These extreme cases are part of a nationwide reduction in hospital stays for women with breast cancer. Outpatient mastectomies have risen from less than two percent of mastectomies 5 years ago to nearly 8 percent now. Mastectomy patients overall now spend only half of the time in the hospital that they would have ten years ago—2–3 days rather than 4–6. Medical experts know that sometimes a shorter stay is appropriate or even requested by a patient who wants to get home and has access to adequate follow-up care. But we obviously need to take note of increased pressure to send women home early. Medical and personal considerations between the patient and attending physician, and not HMO financial rules, should be the determining factor.

I am still collecting data in my home State of South Carolina, which is among the States least affected so far by HMO's. With our more personalized medicine, we have not seen the same-day discharges without an overnight stay. But South Carolina has a relatively high number of mastectomies and it appears that many South Carolina women stay 21 hours, or 23 hours in the hospital after their surgery. Again, something is wrong when patients tell me that they felt like the stay was too short, the newfound pain was still there, and the medical practitioners speak in terms of 21 or 23 hours. Obviously, this is someone's attempt to call a procedure "outpatient" by not covering 24 hours in the hospital, and it represents a more subtle affect of insurance payment rules on medicine which this Congress should consider.

Mr. President, I will also join my colleagues, Senator D'AMATO and Senator SNOWE, in introducing slightly broader legislation. I am heartened that so many Senators of both parties are anxious to pass legislation in this area and I commend their bipartisanship. I invite all of my colleagues to join these efforts to make sure in this Congress that doctors and breast cancer patients, rather than insurers, determine the best length of stay in the hospital for each mastectomy case.

Mr. KENNEDY. Mr. President, I join Senator DASCHLE in introducing legislation to ban the abusive practice of drive-by" mastectomies. This legislation will respond to the concerns of women throughout the country who fear that, in dealing with the cruel disease of breast cancer, their health plan's bottom line will take precedence over their health needs. This legislation will require health insurers to provide coverage for a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer. The legislation allows outpatient surgery when the patient and the doctor decide that a hospital stay is not necessary, but it prohibits a health plan from forcing patients to go home on the same day that they have these major surgical procedures.

The Daschle bill is a companion to bipartisan legislation (H.R.135) introduced by Representative ROSA DELAURO in the House of Representatives. It will ban an abusive practice that even the health plans themselves have recognized should not be tolerated.

This legislation is of major importance to millions of women. Breast cancer is the most common solid tissue cancer among women. In 1996, approximately 184,000 new cases of invasive breast cancer were diagnosed. It is now the leading cause of death in women between the ages of 40 and 55.

This legislation is supported by the National Breast Cancer Coalition the National Association of Breast Care Organizations, the Y-me National Breast Cancer Organization, the Families USA Foundation, the Women's Legal Defense Fund, and the American Society of Plastic and Reconstructive Surgeons. It prohibits plans from requiring hospital stays shorter than 48 hours for patients after mastectomy and 24 hours after lymph node dissection.

Decisions about the need for hospital care after such surgery should be made by a woman and her doctor. The social, medical, geographic and health issues unique to each person must be considered in deciding the required amount of in-hospital care. In certain circumstances and with proper support, it may be possible for some women to undergo these procedures with a shorter hospital stay, or even on occasion as an outpatient. Each circumstance is unique.

This bill preserves every woman's ability to avail herself of needed services without fear of penalty or prejudice. It does not require a stay in the hospital for any fixed period of time. Rather, it guarantees that hospital care will be provided when it is needed.

Last year, Congress voted overwhelmingly to ban the practice of health plans forcing excessively short stays after delivery of a baby. This legislation is a further needed step to protect consumers against a particularly abusive practice, and I look forward to its early bipartisan approval by Congress.

By Mr. MOYNIHAN (for himself and Mr. KERREY):

S. 144. A bill to establish the Commission to Study the Federal Statistical System, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL STATISTICAL SYSTEM LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to reintroduce, along with Senator KERREY of Nebraska, legislation to establish a commission to study the Federal Statistical System.

Statistics are part of our constitutional arrangement, which provides for a decennial census that, among other purposes, is the basis for apportionment of membership in the House of Representatives. I quote from Article I, Section I:

> * * * enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

But, while the Constitution directed that there be a census, there was, initially, no Census Bureau. The earliest censuses were conducted by U.S. marshals. Later on, statistical bureaus in State governments collected the data, with a Superintendent of the Census overseeing from Washington. It was not until 1902 that a permanent Bureau of the Census was created by the Congress, housed initially in the Interior Department. In 1903 the Bureau was transferred to the newly established Department of Commerce and Labor.

The Statistics of Income Division of the Internal Revenue Service, which was originally an independent body, began collecting data in 1866. It too was transferred to the new Department of Commerce and Labor in 1903, but then was put in the Treasury Department in 1913 following ratification of the 16th amendment, which gave Congress the power to impose an income tax.

A Bureau of Labor, created in 1884, was also initially in the Interior Department. The first Commissioner, appointed in 1885, was Colonel Carroll D. Wright, a distinguished Civil War veteran of the New Hampshire Volunteers.

A self-trained social scientist, Colonel Wright pioneered techniques for collecting and analyzing survey data on income, prices, and wages. He had previously served as chief of the Massachusetts Bureau of Statistics, a post he held for 15 years, and in that capacity had supervised the 1880 Federal census in Massachusetts.

In 1888, the Bureau of Labor became an independent agency. In 1903 it was once again made a Bureau, joining other statistical agencies in the Department of Commerce and Labor. When a new Department of Labor was formed in 1913, giving labor an independent voice—as labor was "removed" from the Department of Commerce and Labor—what we now know as the Bureau of Labor Statistics was transferred to it.

And so it went. Statistical agencies sprung up as needed. And they moved back and forth as new executive departments were formed. Today, some 89 different organizations in the Federal Government comprise parts of our national statistical infrastructure. Eleven of these organizations have as their primary function the generation of data. These 11 organizations are:

Agency	Department	Date Established
National Agricultural Statistical Service	Agriculture	1863
Statistics of Income Division, IRS	Treasury	1866
Economic Research Service	Agriculture	1867
National Center for Education Statistics	Education	1867
Bureau of Labor Statistics	Labor	1884
Bureau of the Census	Commerce	1902
Bureau of Economic Analysis	Commerce	1912
National Center for Health Statistics	Health and Human Services.	1912
Bureau of Justice Statistics	Justice	1968
Energy Information Administration	Energy	1974
Bureau of Transportation Statistics	Transportation	1991

NEED FOR LEGISLATION

President Kennedy once said:

Democracy is a difficult kind of government. It requires the highest qualities of self-discipline, restraint, a willingness to make commitments and sacrifices for the general interest, and also it requires knowledge.

That knowledge often comes from accurate statistics. You cannot begin to solve a problem until you can measure it.

This legislation would require the new commission to conduct a comprehensive examination of our current statistical system and focus particularly on the agencies that produce data as their primary product—agencies such as the Bureau of Economic Analysis [BEA] and the Bureau of Labor Statistics [BLS].

In September 1996, prior to the first introduction of this bill, I received a letter from nine former chairmen of the Council of Economic Advisers [CEA] endorsing this legislation. Excluding the two most recent chairs, who were still serving in the Clinton administration, the signatories include virtually every living chair of the CEA. While acknowledging that the United States "possesses a first-class statistical system," these former chairmen remind us that "problems periodically arise under the current system of widely scattered responsibilities." They concludeas follows:

Without at all prejudging the appropriate measures to deal with these difficult problems, we believe that a thoroughgoing review by a highly qualified and bipartisan Commission as provided in your Bill has great promise of showing the way to major improvements.

The letter is signed by: Michael J. Boskin, Martin Feldstein, Alan Greenspan, Paul W. McCracken, Raymond J. Saulnier, Charles L. Schultze, Beryl W. Sprinkel, Herbert Stein, and Murray Weidenbaum.

I ask unanimous consent that the full text of this letter be printed in the RECORD following my statement.

It happens that this Senator's association with the statistical system in the executive branch began over three decades ago. I was Assistant Secretary of Labor for Policy and Planning in the administration of President John F. Kennedy. This was a new position in which I was nominally responsible for, inter alia, the Bureau of Labor Statistics. I say nominally out of respect for the independence of that venerable institution, which as I noted earlier long predated the Department of Labor itself. The then-Commissioner of the BLS, Ewan Clague, could not have been more friendly and supportive. And so were the statisticians, who undertook to teach me to the extent I was teachable. They even shared professional confidences. And so it was that I came to have some familiarity with the field.

For example, we had just received a report on price indexes from a committee led by George J. Stigler, who later won a Nobel prize in economics.

The Committee stressed the importance of accurate and timely statistics, noting that:

The periodic revision of price indexes, and the almost continuous alterations in details of their calculation, are essential if the indexes are to serve their primary function of measuring the average movements of prices.

And while the recently released Final Report of the Advisory Commission To Study The Consumer Index (The Boskin Commission) focused primarily on the extent to which changes in the CPI overstate inflation, the Boskin Commission also addressed issues related to the effectiveness of Federal statistical programs and recommended that:

Congress should enact the legislation necessary for the Department of Commerce and Labor to share information in the interest of improving accuracy and timeliness of economic statistics and to reduce the resources consumed in their development and production.

Our Government officials are not oblivious to the growing need for reform. In fact, Under Secretary of Commerce for Economic Affairs Everett M. Ehrlich has been most forthcoming on this point. In a November 24, 1996 New York Times article, Under Secretary Ehrlich states:

Our statistical system is failing to keep track with a rapidly changing economy. The data we provide give us a good picture of where we are in the business cycle but risk misrepresenting such long-term phenomena as inflation, productivity growth and the economy's changing composition.

To address this problem, Under Secretary Ehrlich has proposed a 3-year program to improve the Department of Commerce's measurement of statistics.

There is, of course, a long history of attempts to reform our Nation's statistical infrastructure. Between 1903 and 1990, 16 different committees, commissions, and study groups have convened to assess our statistical infrastructure, but in most cases little or no action has been taken on their recommendations. The result of this inaction has been an ever-expanding statistical system. It continues to grow in order to meet new data needs, but with little or no regard for the overall objectives of the system. Janet L. Norwood, former Commissioner of the BLS, writes in her book Organizing to Count:

The U.S. system has neither the advantages that come from centralization nor the efficiency that comes from strong coordination in decentralization. As presently organized, therefore, the country's statistical system will be hard pressed to meet the demands of a technologically advanced, increasingly internationalized world in which the demand for objective data of high quality is steadily rising.

In this era of government downsizing and budget cutting it is unlikely that Congress will appropriate more funds for statistical agencies. It is clear that to preserve and improve the statistical system we must consider reforming it, yet we must not attempt to reform the system until we have heard from experts in the field. It is also clear there is a need for a comprehensive review of the Federal statistical infrastructure. For if the public loses confidence in our statistics, they are likely to lose confidence in our policies as well.

DESCRIPTION OF LEGISLATION

The legislation established the Commission to Study the Federal Statistical System. The Commission would consist of 13 members: 5 appointed by the President with no more than 3 from the same political party, 4 appointed by the President pro tempore of the Senate with no more than 2 from the same political party, and 4 appointed by the Speaker of the House with no more than 2 from the same political party. A chairman would be selected by the President from the appointed members. The members must have expertise in statistical policy with a background in disciplines such as actuarial science, demography, economics, finance, and management.

The Commission will conduct a comprehensive study of all matters relating to the Federal statistical infrastructure, including: and examination

of multipurpose statistical agencies such as the Bureau of Labor Statistics [BLS]; a review and evaluation of the mission and organizational structure of statistical agencies, including activities that should be expanded or eliminated and the advantages and disadvantages of a centralized statistical agency; an examination of the methodology involved in producing data and the accuracy of the data itself; a review of interagency coordination and standardization of collection procedures; a review of information technology and an assessment of how data is disseminated to the public; an identification and examination of issues regarding individual privacy in the context of statistical data; a comparison of our system with the systems of other nations; and recommendations for a strategy to maintain a modern and efficient statistical infrastructure.

All of these objectives will be addressed in an interim report due no later than June 1, 1998, with a final report due January 15, 1999.

The Commission is expected to spend $10 million: $2.5 million in 1997, $5 million in 1998, and $2.5 million in 1999. The Commission will cease to exist 90 days after the final report is submitted.

This legislation is only a first step, but an essential one. The Commission will provide Congress with a blueprint for reform. It will be up to us to finally take action after nearly a century of inattention to this very important issue.

Mr. President, I ask unanimous consent that the text of the legislation be printed in the RECORD immediately after my statement.

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

S. 144

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 "Commission to Study the Federal Statistical System Act of 1997".

SEC. 2. FINDINGS.

The Congress, recognizing the importance of statistical information in the development and administration of policies for the private and public sector, finds that—

(1) accurate Federal statistics are required to develop, implement, and evaluate government policies and laws;

(2) Federal spending consistent with legislative intent requires accurate and appropriate statistical information;

(3) business and individual economic decisions are influenced by Federal statistics and contracts are often based on such statistics;

(4) statistical information on the manufacturing and agricultural sectors is more complete than statistical information regarding the service sector which employs more than half the Nation's workforce;

(5) experts in the private and public sector have long-standing concerns about the accuracy and adequacy of numerous Federal statistics, including the Consumer Price Index, gross domestic product, trade data, wage data, and the poverty rate;

(6) Federal statistical data should be accurate, consistent, continuous, and be designed to best serve explicitly stated purposes;

(7) the Federal statistical infrastructure should be modernized to accommodate the increasingly complex and ever changing American economy;

(8) Federal statistical agencies should utilize all practical technologies to disseminate statistics to the public;

(9) the Federal statistical infrastructure should maintain the privacy of individuals; and

(10) the Federal statistical system should be designed to limit redundancy of activities while achieving the maximum practical level of knowledge, expertise, and data.

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Commission to Study the Federal Statistical System (hereafter in this Act referred to as the "Commission").

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 13 members of whom—

(A) 5 shall be appointed by the President;

(B) 4 shall be appointed by the President pro tempore of the Senate, in consultation with the Majority Leader and Minority Leader of the Senate; and

(C) 4 shall be appointed by the Speaker of the House of Representatives, in consultation with the Majority Leader and Minority Leader of the House of Representatives.

(2) POLITICAL PARTY LIMITATION.—(A) Of the 5 members of the Commission appointed under paragraph (1)(A), no more than 3 members may be members of the same political party.

(B) Of the 4 members of the Commission appointed under subparagraphs (B) and (C) of paragraph (1), respectively, no more than 2 members may be members of the same political party.

(3) CONSULTATION BEFORE APPOINTMENTS.—In making appointments under paragraph (1), the President, the President pro tempore of the Senate, and the Speaker of the House of Representatives shall consult with the National Academy of Sciences and appropriate professional organizations, such as the American Economic Association and the American Statistical Association.

(4) QUALIFICATIONS.—An individual appointed to serve on the Commission—

(A) shall have expertise in statistical policy and a background in such disciplines as actuarial science, demography, economics, finance, and management;

(B) may not be a Federal officer or employee; and

(C) should be an academician, a statistics user in the private sector, a corporate manager with experience related to information technology, or a former government official with experience related to—

(i) the Bureau of Labor Statistics of the Department of Labor; or

(ii) the Bureau of Economic Analysis or the Bureau of the Census of the Department of Commerce.

(5) DATE.—The appointments of the members of the Commission shall be made no later than 150 days after the date of the enactment of this Act.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) MEETINGS.—The Commission shall meet at the call of the Chairman.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRMAN.—The President shall designate a Chairman of the Commission from among the members.

SEC. 4. FUNCTIONS OF THE COMMISSION.

(a) STUDY.—

(1) IN GENERAL.—The Commission shall conduct a comprehensive study of all matters relating to the Federal statistical infrastructure, including longitudinal surveys conducted by private agencies and partially funded by the Federal Government, for the purpose of identifying opportunities to improve the quality of statistics in the United States.

(2) STUDY AND RECOMMENDATIONS.—The matters studied by and recommendations of the Commission shall include—

(A) an evaluation of the accuracy and appropriateness of key statistical indicators and recommendations on ways to improve such accuracy and appropriateness so that the indicators better serve the major purposes for which they were intended;

(B) an examination of multipurpose statistical agencies that collect and analyze data of broad interest across department and functional areas, such as the Bureau of Economic Analysis and the Bureau of the Census of the Commerce Department, and the Bureau of Labor Statistics of the Labor Department, for the purpose of understanding the interrelationship and flow of data among agencies;

(C) a review and evaluation of the collection of data for purposes of administering such programs as Old-Age, Survivors and Disability Insurance and Unemployment Insurance under the Social Security Act;

(D) a review and evaluation of the mission and organization of various statistical agencies, including—

(i) recommendations with respect to statistical activities that should be expanded or eliminated;

(ii) the order of priority such activities should be carried out;

(iii) a review of the advantages and disadvantages of a centralized statistical agency or a partial consolidation of the agencies for the Federal Government; and

(iv) an assessment of which agencies could be consolidated into such an agency;

(E) an examination of the methodology involved in producing official data and recommendations for technical changes to improve statistics;

(F) a review of interagency coordination of statistical data and recommendations of methods to standardize collection procedures and surveys, as appropriate, and presentation of data throughout the Federal system;

(G) a review of information technology and recommendations of appropriate methods for disseminating statistical data, with special emphasis on resources, such as the Internet, that allow the public to obtain and report information in a timely and cost-effective manner;

(H) an identification and examination of issues regarding individual privacy in the context of statistical data;

(I) a comparison of the United States statistical system to statistical systems of

other nations for the purposes of identifying best practices and developing a system of maintaining best practices over time;

(J) a consideration of the coordination of statistical data with other nations and international agencies, such as the Organization for Economic Cooperation and Development; and

(K) a recommendation of a strategy for maintaining a modern and efficient Federal statistical infrastructure to produce meaningful information as the United States society and economy change.

(b) REPORT.—

(1) INTERIM REPORT.—No later than June 1, 1998, the Commission shall submit an interim report on the study conducted under subsection (a) to the President and to the Congress.

(2) FINAL REPORT.—No later than January 15, 1999, the Commission shall submit a final report to the President and the Congress which shall contain a detailed statement of the findings and conclusions of the Commission, and recommendations for such legislation and administrative actions as the Commission considers appropriate.

SEC. 5. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 6. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) IN GENERAL.—Subject to paragraph (2), each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(2) CHAIRMAN.—The Chairman shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level III of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission. Such travel may include travel outside the United States.

(c) STAFF.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission shall, without regard to the provisions of title 5, United States Code, relating to the competitive service, appoint an executive director who shall be paid at a rate equivalent to a rate established for the Senior Executive Service under section 5382 of title 5, United States Code. The Commission shall appoint such additional personnel as the Commission determines to be necessary to provide support for the Commission, and may compensate such additional personnel without regard to the provisions of title 5, United States Code, relating to the competitive service.

(2) LIMITATION.—The total number of employees of the Commission (including the executive director) may not exceed 30.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 7. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits the final report of the Commission.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $2,500,000 for fiscal year 1997, $5,000,000 for fiscal year 1998, and $2,500,000 for fiscal year 1999 to the Commission to carry out the purposes of this Act.

SEPTEMBER 23, 1996.

Hon. DANIEL P. MOYNIHAN,
Hon. J. ROBERT KERREY,
U.S. Senate,
Washington, DC.

DEAR SENATORS MOYNIHAN AND KERREY: All of us are former Chairmen of the Council of Economic Advisers. We write to support the basic objectives and approach of your Bill to establish the Commission to Study the Federal Statistical System.

The United States possesses a first-class statistical system. All of us have in the past relied heavily upon the availability of reasonably accurate and timely federal statistics on the national economy. Similarly, our professional training leads us to recognize how important a good system of statistical information is for the efficient operations of our complex private economy. But we are also painfully aware that important problems of bureaucratic organization and methodology need to be examined and dealt with if the federal statistical system is to continue to meet essential public and private needs.

All of us have particular reason to remember the problems which periodically arise under the current system of widely scattered responsibilities. Instead of reflecting a balance among the relative priorities of one statistical collection effort against others, statistical priorities are set in a system within which individual Cabinet Secretaries recommend budgetary tradeoffs between their own substantive programs and the statistical operations which their departments, sometimes by historical accident, are responsible for collecting. Moreover, long range planning of improvements in the federal statistical system to meet the changing nature and needs of the economy is hard to organize in the present framework. The Office of Management and Budget and the Council of Economic Advisers put a lot of effort into trying to coordinate the system, often with success, but often swimming upstream against the system.

We are also aware, as of course are you, of a number of longstanding substantive and methodological difficulties with which the current system is grappling. These include the increasing importance in the national economy of the service sector, whose output and productivity are especially hard to measure, and the pervasive effect both on measures of national output and income and on the federal budget of the accuracy (or inaccuracy) with which our measures of prices capture changes in the quality of the goods and services we buy.

Without at all prejudging the appropriate measures to deal with these difficult problems, we believe that a thoroughgoing review by a highly qualified and bipartisan Commission as provided in your Bill has great promise of showing the way to major improvements.

Sincerely,

Professor Michael J. Boskin, Stanford University; Dr. Martin Feldstein, National Bureau of Economic Research; Alan Greenspan; Professor Paul W. McCracken, University of Michigan; Raymond J. Saulnier; Charles L. Schultze, The Brookings Institution; Beryl W. Sprinkel; Herbert Stein, American Enterprise Institute; Professor Murray Weidenbaum, Center for the Study of American Business.

By Mr. MOYNIHAN:

S. 145. A bill to repeal the prohibition against government restrictions on communications between government agencies and the INS; to the Committee on the Judiciary.

GOVERNMENT AGENCIES LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation to repeal section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and subsections (a) and (b) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 434 of the first act provides that:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service (INS) information regarding the immigration status, lawful or unlawful, of an alien in the United States.

This provision, along with portions of section 642 of the aforementioned illegal immigration law, conflicts with an executive order, issued by the mayor of New York in 1985, prohibiting city employees from reporting suspected illegal aliens to the Immigration and Naturalization Service unless the alien has been charged with a crime. The executive order, which is similar to local laws in other States and cities, was intended to ensure that fear of deportation does not deter illegal aliens from seeking emergency medical attention, reporting crimes, and so forth.

On September 8, 1995, during Senate consideration of H.R. 4, the Work Opportunity Act of 1995, Senators

SANTORUM and NICKLES offered this provision as an amendment. The amendment was adopted by a vote of 91 to 6. The Senators who voted "no" were: AKAKA, CAMPBELL, INOUYE, MOSELEY-BRAUN, MOYNIHAN, and SIMON.

Four of these six—Senators AKAKA, MOSELEY-BRAUN, SIMON, and the Senator from New York—were also among the 11 Democrats who voted against H.R. 4 when it passed the Senate 11 days later on September 19, 1995. The provision remained in H.R. 3734, the welfare bill recently signed by President Clinton.

Mayor Rudolph W. Giuliani of New York City filed suit last year to challenge section 434 of the new welfare law and section 642 of the illegal immigration law in U.S. District Court and I introduced a similar bill at the time. The mayor's lawsuit deserves to succeed for the same reason this legislation deserves to pass: the provisions at issue are onerous and represent bad public policy.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 145

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF THE PROHIBITION AGAINST GOVERNMENT RESTRICTIONS ON COMMUNICATIONS BETWEEN GOVERNMENT AGENCIES AND THE INS.

(a) WELFARE.—Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, 110 Stat. 2275) is repealed.

(b) IMMIGRATION.—Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208, 110 Stat 3009–1834) is amended—

(1) by striking subsections (a) and (b); and

(2) in subsection (c), by striking "(c) OBLIGATION TO RESPOND TO INQUIRIES.—".

By Mr. FRIST (for Mr. ROCKEFELLER (for himself and Mr. FRIST)):

S. 146. A bill to permit medicare beneficiaries to enroll with qualified provider-sponsored organizations under title XVIII of the Social Security Act, and for other purposes; to the Committee on Finance.

THE PROVIDER-SPONSORED ORGANIZATION ACT OF 1997

• Mr. ROCKEFELLER. Mr. President. I am extremely pleased to be introducing legislation with my colleague from Tennessee, Senator FRIST, that will give Medicare beneficiaries the opportunity to receive their health care services from a locally-based, provider-owned and operated, health care plan.

In my own State of West Virginia, the health care landscape is changing rapidly. Managed care is becoming more prominent, and, with it, a concern that profits are being put ahead of a patient's health care needs. My constituents want to be sure that their doctor is making his or her own medical decisions on patient care and treatment. They do not want to be told that their care is being directed by anonymous insurance officials in another State available only through a 1–800 phone number.

Under current law, Medicare beneficiaries have a choice of receiving their health care services under traditional Medicare fee-for-service or from a Health Maintenance Organization (HMO). Our legislation would allow seniors to choose another option and would make sure that patient care and treatment decisions remain in the hands of health care providers. This is accomplished by allowing provider-sponsored organizations [PSOs] to directly provide benefits to Medicare beneficiaries without the insurance middleman. Our bill would mean that insurance administrative and overhead costs would be reduced, freeing funds which are better spent on patient care costs.

Our legislation is necessary because insurance regulations in most States do not take into account the unique characteristics of a PSO. Only 4 States have adopted licensure requirements aimed at encouraging the development of provider sponsored organizations. Our bill carves out a time-limited Federal role of 4 years for direct federal Medicare certification as a qualified PSO. During those 4 years, a PSO could apply directly to the Medicare Program to be designated as a qualified PSO that would be paid on a capitated prospective basis and could serve Medicare beneficiaries. Beginning on January 1, 2002, State licensure would replace the Federal certification process as long as a State's standards for PSOs were sufficiently similar to Federal PSO standards. PSOs could continue to apply for a Federal waiver after the initial 4 years if a State failed to act on a PSO's application within a reasonable time period or if a State continued to apply unfair or unreasonable criteria for PSOs to enter the market.

Mr. President, our bill is actually quite similar to legislation enacted in the early 70s directed at promoting and fostering the growth of HMOs. According to a recent issue briefing prepared by the Congressional Research Service on the HMO debate in the 1970s, "state solvency requirements were seen as excessive and unappreciative of the unique resources available to a HMO . . . the outcome of the debate was the Health Maintenance Organization Act . . . which enabled HMOs meeting Federal requirements to be exempt from specific State laws." In many States, the State HMO requirements that evolved were designed to address issues presented by large, insurer-owned and operated HMOs, not smaller community-based provider organizations.

Our bill does not in any way weaken quality assurance or solvency standards for PSOs that choose to contract directly with the Medicare program. Our legislation is very specific on the solvency and quality standards that must be met in order for a PSO to be federally qualified. Overall, I believe, our standards are even more detailed and explicit than current Medicare law relating to quality and solvency for HMOs.

Our bill retains all of the consumer protections in current law that apply to health plans that serve Medicare beneficiaries. Beneficiaries would continue to be protected from incurring any financial liability if a health care plan became insolvent. In addition, rules on open enrollment and arranging for continuing Medigap coverage—without any pre-existing condition limitations—would apply as they do under current Medicare law. Our legislation would also require Medicare to contract with local agencies for ongoing monitoring of PSO performance and beneficiary access to services.

Specifically on solvency, our legislation builds on fiscal soundness and solvency standards that were developed by the National Association of Insurance Commissioners [NAIC]. Our bill slightly modifies the HMO Model Act to take into account how affiliation arrangements are structured within PSOs. It also recognizes a variety of alternative means, that many States already use, of meeting the solvency standards. In this way, our approach goes beyond earlier PSO legislative proposals which merely required the Secretary to develop specific solvency standards. I believe this approach will address concerns raised by some that complete secretarial discretion on fiscal soundness and solvency would somehow result in weakened solvency standards.

In 1972, a proxy measure for quality was enacted by Congress which required health plans to meet an arbitrary standard of plan enrollment. Under the so-called "50–50 rule," a health plan's Medicare and Medicaid enrolles cannot exceed 50 percent of its total enrollment. The underlying premise of the 50–50 rule is that if a plan has a significant enrollment of private or commercial enrolles its quality will be higher than a health plan strictly serving Medicaid or Medicare beneficiaries. This is an issue that is especially important in rural States like West Virginia. Many rural provider networks—which this bill seeks to encourage—would be unable to meet a 50–50 enrollment quota because a disproportionate share of the elderly reside in rural areas.

Also, since adoption of the 50–50 rule, there have been significant advances made in measuring and assuring quality care. While still far from perfect, I believe that we have gained sufficient

knowledge to adopt an approach that relies on specific quality standards, rather than a rough proxy based on a plan's enrollment mix. Quality assurance will continue to be a work in progress, but our bill begins to lay the groundwork for explicitly setting and measuring the quality of health care received by Medicare beneficiaries. Under our bill, the 50–50 rule would be waived for any health plan that contracts with the Medicare Program if the plan meets the enhanced quality requirements in our bill and also has experience in providing managed or coordinated care. PSOs would go further by adhering to additional standards governing utilization review to reduce intrusions into the doctor patient relationship, as well as how physicians participate in PSO networks.

Mr. President, last year Congress debated a variety of ways to improve quality and to put an end to medical decision-making driven by a desire to earn hefty profits for a company's stockholders. Our bill gives health care providers the opportunity to get back in the driver's seat. In addition, by cutting out the insurance company middleman, more money could be spent on providing patient care instead of on processing claims and realizing profits.

I look forward to discussing this issue and pursuing the goal of this new bill later this year with my colleagues in the Finance Committee as we look at a variety of ways to improve and strengthen the Medicare program.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 146

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Provider-Sponsored Organization Act of 1997".

(b) REFERENCES TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

SEC. 2. QUALIFIED PROVIDER-SPONSORED ORGANIZATIONS AS MEDICARE HEALTH PLAN OPTION.

Section 1876(b) (42 U.S.C. 1395mm(b)) is amended to read as follows:

"(b)(1) For purposes of this section, the term 'eligible organization' means a public or private entity (which may be a health maintenance organization, a competitive medical plan, or a qualified provider-sponsored organization) that—

"(A) is organized and licensed under State law to offer prepaid health services or health benefits coverage in each State in which the entity seeks to enroll individuals who are entitled to benefits under this title; and

"(B) is described in paragraph (2), (3), or (4).

"(2) An entity is described in this paragraph if the entity is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act).

"(3)(A) An entity is described in this paragraph if the entity—

"(i) provides to enrolled members health care services that include at least—

"(I) physicians' services performed by physicians (as defined in section 1861(r)(1));

"(II) inpatient hospital services;

"(III) laboratory, X-ray, emergency, and preventive services; and

"(IV) out-of-area coverage;

"(ii) is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member;

"(iii) provides physicians' services primarily—

"(I) directly through physicians who are either employees or partners of such organization; or

"(II) through contracts with individual physicians or 1 or more groups of physicians (organized on a group practice or individual practice basis);

"(iv) except as provided in subsection (i), assumes full financial risk on a prospective basis for the provision of health care services listed in clause (i), except that such entity may—

"(I) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in clause (i), the aggregate value of which exceeds $5,000 in any year;

"(II) obtain insurance or make other arrangements for the cost of health care services listed in clause (i) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity;

"(III) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year; and

"(IV) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions; and

"(v) has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

"(B) Subparagraph (A)(i)(II) shall not apply to an entity that has contracted with a single State agency administering a State plan approved under title XIX for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.

"(4) An entity is described in this paragraph if the entity is a qualified provider-sponsored organization (as defined in subsection (l)(1)(A)).".

SEC. 3. PARTIAL RISK ARRANGEMENTS.

Section 1876 (42 U.S.C. 1395mm) is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (h) the following:

"(i) The Secretary may enter into a partial risk contract with an eligible organization under which—

"(1) notwithstanding subsection (b)(3)(A)(iv), the organization and the program established under this title share the financial risk associated with the services the organization provides to individuals entitled to benefits under part A and enrolled under part B or enrolled under part B only;

"(2) notwithstanding subsections (a)(1) and (h)(2), payment is based on—

"(A) a blend of—

"(i) the payments that would otherwise be made to such organization under a risk-sharing contract under subsection (g); and

"(ii) the payments that would be made to such organization under a reasonable cost reimbursement contract under subsection (h); or

"(B) any other methodology agreed upon by the Secretary and the organization; and

"(3) adjustments, if appropriate, are made to payments to the organization under this section to reflect any risk assumed by such program.".

SEC. 4. STANDARDS AND REQUIREMENTS FOR QUALIFIED PROVIDER-SPONSORED ORGANIZATIONS.

Section 1876 (42 U.S.C. 1395mm), as amended by section 3 of this Act, is amended by adding at the end the following:

"(l)(1)(A) For purposes of this section, the term 'qualified provider-sponsored organization' means a provider-sponsored organization that—

"(i) provides a substantial proportion (as defined by the Secretary, in accordance with subparagraph (C) and the regulations established under section 1889) of the health care items and services under the contract under this section directly through the provider or through an affiliated group of providers that comprise the organization; and

"(ii) is certified under section 1890 as meeting the regulations established under section 1889, which, except as provided in the succeeding paragraphs of this subsection, shall be based on the requirements that apply to an organization described in subsection (b)(3) with a risk contract under subsection (g).

"(B) For purposes of this section, the term 'provider-sponsored organization' means a public or private entity that is a provider or a group of affiliated providers organized to deliver a spectrum of health care services (including basic hospital and physicians' services) under contract to purchasers of such services.

"(C) In defining a 'substantial proportion' for purposes of subparagraph (A)(i), the Secretary—

"(i) shall take into account the need for such an organization to assume responsibility for providing—

"(I) significantly more than the majority of the items and services under the contract under this section through its own affiliated providers; and

"(II) most of the remainder of the items and services under the contract through providers with which the organization has an agreement to provide such items and services,

in order to assure financial stability and to address the practical considerations involved in integrating the delivery of a wide range of service providers;

"(ii) shall take into account the need for such an organization to provide a limited proportion of the items and services under the contract through providers that are neither affiliated with nor have an agreement with the organization; and

"(iii) may allow for variation in the definition of substantial proportion among such organizations based on relevant differences among the organizations, such as their location in an urban or rural area.

"(D) For purposes of this paragraph, a provider is 'affiliated' with another provider if, through contract, ownership, or otherwise—

"(i) one provider, directly or indirectly, controls, is controlled by, or is under the control of the other;

"(ii) each provider is a participant in a lawful combination under which each provider shares, directly or indirectly, substantial financial risk in connection with their operations;

"(iii) both providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986; or

"(iv) both providers are part of an affiliated service group under section 414 of such Code.

"(E) For purposes of subparagraph (D), control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance rights of another.

"(2)(A) Subject to subparagraph (B), subsection (b)(1)(A) (relating to State licensure) shall not apply to a qualified provider-sponsored organization.

"(B) Beginning on January 1, 2002, subsection (b)(1)(A) shall only apply (and subparagraph (A) of this paragraph shall no longer apply) to a qualified provider-sponsored organization in a State if—

"(i) the financial solvency and capital adequacy standards for licensure of the organization under the laws of the State are identical to the regulations established under section 1889; and

"(ii) the standards for licensure of the organization under the laws of the State (other than the standards referred to in clause (i)) are substantially equivalent to the standards established by regulations under section 1889.

"(C)(i) A provider-sponsored organization, to which subsection (b)(1)(A) applies by reason of subparagraph (B), that seeks to operate in a State under a full risk contract under subsection (g) or a partial risk contract under subsection (i) may apply for a waiver of the requirement of subsection (b)(1)(A) for that organization operating in that State.

"(ii) The Secretary shall act on such a waiver application within 60 days after the date it is filed and shall grant a waiver for an organization with respect to a State if the Secretary determines that—

"(I) the State did not act upon a licensure application within 90 days after the date it was filed; or

"(II)(aa) the State denied a licensure application; and

"(bb) the State's licensing standards or review process are determined by the Secretary to impose unreasonable barriers to market entry, including through the imposition of any requirements, procedures, or other standards on such organization that are not generally applicable to any other entities engaged in substantially similar activities.

"(iii) In the case of a waiver granted under this paragraph for an organization—

"(I) the waiver shall be effective for a 24-month period, except that it may be renewed based on a subsequent application filed during the last 6 months of such period;

"(II) if the State failed to meet the requirement of clause (ii)(I)—

"(aa) any application for a renewal may be made on the basis described in clause (ii)(I) only if the State does not act on a pending licensure application during the 24-month period specified in subclause (I);

"(bb) any application for renewal (other than one made on the basis described in clause (ii)(I)) may be made only on the basis described in clause (ii)(II); and

"(cc) the waiver shall cease to be effective on approval of the licensure application by the State during such 24-month period; and

"(III) any provisions of State law that relate to the licensing of the organization and prohibit the organization from providing coverage pursuant to a contract under this title shall be superseded during the period for which such waiver is effective.

"(D) Nothing in this paragraph shall be construed as—

"(i) limiting the number of times such a waiver may be renewed under subparagraph (C)(iii)(I); or

"(ii) affecting the operation of section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

"(3) The requirement of subsection (b)(3)(A)(i) (relating to benefit package for commercial enrollees) shall not apply to a qualified provider-sponsored organization.

"(4) The requirement of subsection (b)(3)(A)(iii) (relating to delivery of physicians' services) shall apply to a qualified provider-sponsored organization, except that the Secretary shall by regulation specify alternative delivery models or arrangements that may be used by such organizations in lieu of the models or arrangements specified in such subsection.

"(5) The requirement of subsection (b)(3)(A)(iv) (relating to risk assumption) shall apply to a qualified provider-sponsored organization, except that any such organization with a full risk contract under subsection (g) may (with the approval of the Secretary) obtain insurance or make other arrangements for covering costs in excess of those permitted to be covered by such insurance and any arrangements under subsection (b)(3)(A)(iv)(III).

"(6)(A) A qualified provider-sponsored organization shall be treated as meeting the requirement of subsection (b)(3)(A)(v) (relating to adequate provision against risk of insolvency) if the organization is fiscally sound.

"(B) A qualified provider-sponsored organization shall be treated as fiscally sound for purposes of subparagraph (A) if the organization—

"(i) has a net worth that is not less than the required net worth (as defined in subparagraph (C)); and

"(ii) has established adequate claims reserves (as defined in subparagraph (D)).

"(C) For purposes of subparagraph (B)(i), the term 'required net worth' means—

"(i) in the case of an organization with a full risk contract under subsection (g), a net worth (determined in accordance with statutory accounting principles for insurance companies and health maintenance organizations), not less than the greatest of—

"(I) $1,500,000 at the time of application and $1,000,000 thereafter,

"(II) the sum of—

"(aa) 8 percent of the cost of health services that are not provided directly by the organization or its affiliated providers to enrollees; and

"(bb) 4 percent of the estimated annual costs of health services provided directly by the organization or its affiliated providers to enrollees; or

"(III) 3 months of uncovered expenditures; and

"(ii) in the case of an organization with a partial risk contract under subsection (i), an amount determined in accordance with clause (i), except that in applying subclause (II) of such clause, the Secretary shall substitute for the percentages specified in such subclause such lower percentages as are appropriate to reflect the risk-sharing arrangements under the contract.

"(D) For purposes of subparagraph (B)(ii), the term 'adequate claims reserves' means, with respect to an organization, reserves for claims that are—

"(i) incurred but not reported; or

"(ii) reported but unpaid,

that are determined in accordance with statutory accounting principles for insurance companies and health maintenance organizations and with professional standards of actuarial practice and are certified by an independent actuary as adequate in light of the operations and contracts of the organization.

"(E) In applying statutory accounting principles for purposes of determining the net worth of an organization under subparagraph (B)(i), the Secretary shall—

"(i) treat as 'admitted assets'—

"(I) land, buildings, and equipment of the organization used for the direct provision of health care services;

"(II) any receivables from governmental programs due for more than 90 days; and

"(III) any other assets designated by the Secretary; and

"(ii) recognize, as a contribution to surplus, amounts received under subordinated debt (meeting such requirements as the Secretary may specify).

"(F) The Secretary shall recognize ways of complying with the requirement of subparagraph (A) other than by means of subparagraph (B), including (alone or in combination)—

"(i) letters of credit from a bank;

"(ii) financial guarantees from financially strong parties including affiliates;

"(iii) unrestricted fund balances;

"(iv) diversity of lines of business and presence of nonrisk related revenue;

"(v) certification of fiscal soundness by an independent actuary;

"(vi) reinsurance ceded to, or stop loss insurance purchased through, a recognized commercial insurance company; and

"(vii) any other methods that the Secretary determines are acceptable for such purpose.

"(7)(A) A qualified provider-sponsored organization shall not be treated as meeting the requirements of subsection (c)(6) (relating to an ongoing quality assurance program) unless the quality assurance program of the organization meets the requirements of subparagraphs (B) and (C).

"(B) A quality assurance program meets the requirements of this subparagraph if the program—

"(i) stresses health outcomes;

"(ii) provides opportunities for input by physicians and other health care professionals;

"(iii) monitors and evaluates high volume and high risk services and the care of acute and chronic conditions;

"(iv) evaluates the continuity and coordination of care that enrollees receive;

"(v) establishes mechanisms to detect both underutilization and overutilization of services;

"(vi) after identifying areas for improvement, establishes or alters practice parameters;

"(vii) takes action to improve quality and assess the effectiveness of such action through systematic followup;

"(viii) makes available information on quality and outcomes measures to facilitate beneficiary comparison and choice of health coverage options (in such form and on such quality and outcomes measures as the Secretary determines to be appropriate); and

"(ix) is evaluated on an ongoing basis as to its effectiveness.

"(C) If a qualified provider-sponsored organization utilizes case-by-case utilization review, the organization shall—

"(i) base such review on written protocols developed on the basis of current standards of medical practice; and

"(ii) implement a plan under which—

"(I) such review is coordinated with the quality assurance program of the organization; and

"(II) a transition is made from relying predominantly on case-by-case review to review focusing on patterns of care.

"(D) A qualified provider-sponsored organization shall be treated as meeting the requirements of subparagraphs (A) and (B) and the requirements of subsection (c)(6) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization meets standards that are no less stringent than the standards established under section 1889 to carry out this paragraph and subsection (c).".

SEC. 5. EXEMPTION FROM CERTAIN ENROLLMENT REQUIREMENTS FOR ELIGIBLE ORGANIZATIONS MEETING ENHANCED QUALITY ASSURANCE REQUIREMENTS.

(a) IN GENERAL.—Section 1876 of the Social Security Act (42 U.S.C. 1395mm), as amended by section 4 of this Act, is amended by adding at the end the following:

"(m)(1) An eligible organization shall be deemed to meet the requirements of subsection (f) (relating to enrollment composition) if the organization demonstrates that it—

"(A) is capable of providing coordinated care in accordance with the quality assurance standards established under subsections (c)(6) and (l)(7)(B); and

"(B) has experience, under a past or present arrangement, providing coordinated care to individuals (other than individuals who are entitled to benefits under this title) who are enrollees, participants, or beneficiaries of a health plan or a State plan approved under title XIX.

"(2) An eligible organization shall be treated as meeting the quality assurance standards referred to in paragraph (1)(A) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization meets standards that are no less stringent than the requirements of that subparagraph.

"(3) For purposes of paragraph (1), the term 'health plan' means—

"(A) any contract of insurance, including any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, that is provided by a carrier; and

"(B) an employee welfare benefit plan insofar as the plan provides health benefits and is funded in a manner other than through the purchase of one or more policies or contracts described in subparagraph (A).

"(4) For purposes of paragraph (3), the term 'carrier' means a licensed insurance company, a hospital or medical service corporation (including an existing Blue Cross or Blue Shield organization), or any other entity licensed or certified by a State to provide health insurance or health benefits.".

(b) SIZE REQUIREMENT FOR ELIGIBLE ORGANIZATIONS.—Section 1876(g)(1) (42 U.S.C. 1395mm(g)(1)) is amended—

(1) by striking "5000" and inserting "1500"; and

(2) by striking "fewer" and inserting "500 or more".

(c) CONFORMING AMENDMENT.—Section 1876(f)(1) (42 U.S.C. 1395mm(f)(1)) is amended by striking "Each eligible" and inserting "Except as provided in subsection (m), each eligible".

SEC. 6. ADJUSTED COMMUNITY RATE FOR A QUALIFIED PROVIDER-SPONSORED ORGANIZATION.

Section 1876(g) (42 U.S.C. 1395mm(g)) is amended by adding at the end the following:

"(7) In the case of a qualified provider-sponsored organization, the adjusted community rate under subsection (e)(3) and paragraph (2) may be computed (in a manner specified by the Secretary) using data in the general commercial marketplace or (during a transition period) based on the costs incurred by the organization in providing such a product.".

SEC. 7. PROCEDURES RELATING TO PARTICIPATION OF A PHYSICIAN IN A QUALIFIED PROVIDER-SPONSORED ORGANIZATION.

Section 1876 (42 U.S.C. 1395mm), as amended by section 5 of this Act, is amended by adding at the end the following:

"(n) A qualified provider-sponsored organization shall not be treated as meeting the requirements of this section unless the organization—

"(1) establishes reasonable procedures, as determined by the Secretary, relating to the participation (under an agreement between a physician or group of physicians and the organization) of physicians under contracts under this section, including procedures to provide—

"(A) notice of the rules regarding participation;

"(B) written notice of a participation decision that is adverse to a physician; and

"(C) a process within the organization for appealing an adverse decision, including the presentation of information and views of the physician regarding such decision; and

"(2) consults with physicians who have entered into participation agreements with the organization regarding the organization's medical policy, quality, and medical management procedures.

Paragraph (1)(C) shall not be construed to require a live evidentiary hearing, a verbatim record, or representation of the appealing party by legal counsel.".

SEC. 8. ESTABLISHMENT OF REGULATIONS; CERTIFICATION PROCEDURES.

Part C of title XVIII (42 U.S.C. 1395x et seq.) is amended by inserting after section 1888 (42 U.S.C. 1395yy) the following:

"ESTABLISHMENT OF REGULATIONS FOR QUALIFIED PROVIDER-SPONSORED ORGANIZATIONS

"SEC. 1889. (a) INTERIM REGULATIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations to implement the requirements for qualified provider-sponsored organizations under section 1876. Such regulations shall be issued on an interim basis, but shall become effective upon publication and shall remain in effect until the end of December 31, 2001.

"(2) CONSULTATION.—In developing regulations under this subsection, the Secretary shall consult with the National Association of Insurance Commissioners, the American Academy of Actuaries, State health departments, associations representing provider-sponsored organizations, quality experts (including private accreditation organizations), and medicare beneficiaries.

"(3) CONTRACTS WITH STATE AGENCIES.—The Secretary shall enter into contracts with appropriate State agencies to monitor performance and beneficiary access to services provided under this title during the period in which interim regulations are in effect under this subsection.

"(b) PERMANENT REGULATIONS.—

"(1) IN GENERAL.—Not later than July 1, 2001, the Secretary shall issue permanent regulations to implement the requirements for qualified provider-sponsored organizations under section 1876.

"(2) CONSULTATION.—In developing regulations under this subsection, the Secretary shall consult with the organizations and individuals listed in subsection (a)(2).

"(3) EFFECTIVE DATE.—The permanent regulations developed under this subsection shall be effective on and after January 1, 2002.

"CERTIFICATION OF PROVIDER-SPONSORED ORGANIZATIONS

"SEC. 1890. (a) IN GENERAL.—

"(1) PROCESS FOR CERTIFICATION.—The Secretary shall establish a process for the certification of provider-sponsored organizations as qualified provider-sponsored organizations under section 1876. Such process shall provide that an application for certification shall be approved or denied not later than 90 days after receipt of a complete application.

"(2) FEES.—The Secretary may impose user fees on entities seeking certification under this subsection in such amounts as the Secretary deems sufficient to pay the costs to the Secretary resulting from the certification process.

"(b) DECERTIFICATION.—If a qualified provider-sponsored organization is decertified under this section, the organization shall notify each enrollee with the organization under section 1876 of such decertification.".

SEC. 9. DEMONSTRATION OF COORDINATED ACUTE AND LONG-TERM CARE BENEFITS; QUALIFIED PROVIDER-SPONSORED ORGANIZATIONS UNDER MEDICAID PROGRAMS.

(a) DEMONSTRATION OF COORDINATED ACUTE AND LONG-TERM CARE BENEFITS.—The Secretary of Health and Human Services shall provide, in not less than 10 States, for demonstration projects that permit State medicaid programs under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to be treated as eligible organizations under section 1876 of that Act (42 U.S.C. 1395mm) for the purpose of demonstrating the delivery of primary, acute, and long-term care through an integrated delivery network that emphasizes noninstitutional care to individuals who are—

(1) eligible to enroll with an organization under such section; and

(2) eligible to receive medical assistance under a State program approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) PROVIDER-SPONSORED ORGANIZATIONS UNDER MEDICAID PROGRAMS.—Section 1903(m)(1)(A) (42 U.S.C. 1396b(m)(1)(A)) is amended, in the matter preceding clause (i), by inserting "(which may be a provider-sponsored organization, as defined in section 1876(l)(1)(B))" after "public or private organization".

(c) CONFORMING AMENDMENTS.—

(1) Section 1866(a)(1)(O) is amended by striking "1876(i)(2)(A)" and inserting "1876(j)(2)(A)".

(2) Section 1877(e)(3)(B)(i)(II) is amended by striking "1876(i)(8)(A)(ii)" and inserting "1876(j)(8)(A)(ii)".

SEC. 10. REPORT ON MEDICARE CONTRACTS INVOLVING PARTIAL RISK.

(a) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall submit a report to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate.

(b) CONTENTS OF REPORT.—The report described in subsection (a) shall include—

(1) the number and type of partial-risk contracts entered into by the Secretary under section 1876(i) of the Social Security Act (42 U.S.C. 1395mm(i));

(2) the type of eligible organizations operating such contracts;

(3) the impact such contracts have had on increasing beneficiary access and choice under the medicare program under title XVIII of that Act (42 U.S.C. 1395 et seq.); and

(4) a recommendation as to whether the Secretary should continue to enter into partial-risk contracts under section 1876(i) of that Act (42 U.S.C. 1395mm(i)).

SEC. 11. EFFECTIVE DATES; INTERIM FINAL REGULATIONS.

(a) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(2) ELIGIBLE ORGANIZATION AMENDMENTS.—The amendments made by sections 2 through 8 shall take effect on the date of enactment of this Act and shall apply to contract years beginning on or after January 1, 1998.

(b) USE OF INTERIM FINAL REGULATIONS.—In order to carry out the amendments made by this Act in a timely manner for eligible organizations under section 1876 of the Social Security Act (42 U.S.C. 1395mm), excluding organizations described in subsection (b)(4) of that section, the Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and opportunity for public comment.•

Mr. FRIST. Mr. President, earlier today the President of the United States announced that in his budget, which will be released on February 6, that he would aim to achieve approximately $138 billion in savings in the Medicare program. He described this as a first gesture, which I think should be applauded because the President clearly recognized the importance of saving Medicare and strengthening it for future generations.

The real issue is what policy lies behind that number of $138 billion in savings. And to make it a legitimate first step, a first step that really does start the debate in Medicare, we need to make sure that there is policy which does things like expand choice for senior citizens, give them the same options that most other people today have. The structural reform I think should include looking at some of the payment methodology, another element that relates to this choice in the structural reform. We have to accomplish this structural reform if we are going to truly strengthen the Medicare program and not just play with numbers.

Again, we will be looking at a lot of numbers over the next several weeks. I, as a physician, will keep coming back to the importance of having true structural reform built into the program, both part A and part B, in the overall Medicare program so that we truly will strengthen the system and make sure it is there for not only the 38 million Americans today, senior citizens and individuals with disabilities, but is there 5 years from now, 10 years from now, 15, 20 years from now on into the future.

I say all that to preface my reason for rising today, and that is to introduce a bill, the Provider Sponsored Organization Act of 1997, to be introduced along with my distinguished colleague from West Virginia, Mr. ROCKEFELLER. This bill, I believe, offers one of those very important structural components which does expand choice for our senior citizens, which when injected into the Medicare system today will do something very important, and that is inject quality into the considerations of options and choices among Medicare recipients. I will explain this shortly.

Provider sponsored organizations, or PSOs, are integrated health care delivery systems that are sponsored by local health care providers, physicians in hospitals at the local level. Their purpose is to deliver a full spectrum of health services. Very specifically, this bill establishes the Federal solvency requirements, the licensing requirements and those quality standards that PSOs, provider sponsored organizations, must meet in order to come to the table and participate in the Medicare Program.

It was more than 20 years ago that Congress really stepped up to the plate and, I think, quite innovatively provided Federal guidance for the entry of a brand-new phenomenon, and that was of HMOs, health maintenance organizations. HMOs were established with the primary purpose of coordinating health care delivery in such a way that there could be competition and in some way control those skyrocketing costs that previously had been associated with the fee-for-service programs. What it did, it allowed a combining of the financing delivery system to the health care delivery system.

Today Senator ROCKEFELLER and I are proposing to level the playing field once again with our bill to allow PSOs, for the first time, to have access to the Medicare market. Our bill sets the national rules by which these locally-based networks of providers may compete head to head with the traditional managed care organizations. All of that is done with the hope that the providers, the physicians, the hospitals, the frontline people who are taking care of patients, will be able to more actively participate in coordinating the overall health care for Medicare beneficiaries. We trust that free and fair competition will give Medicare beneficiaries more choices and ultimately improve the cost, and as I will discuss shortly, the quality of the services they receive.

All of us know that today's health care market in its broadest sense is in the midst of dynamic change. The cost of care does continue to rise rapidly. There are a growing number of Americans all across this country who are shifting from a traditional fee-for-service model to a managed-care model. Today's paper, the Washington Post, released new figures that show that 75 percent, three-quarters of all working Americans today, receive their health insurance benefits through some type of managed care. Unfortunately, I think, in many ways, the accompanying perception with this shift of managed care, although it is not always fair, has been that managed care companies focus almost entirely on cutting costs, and then only after costs are cut is the quality issue discussed.

In addition, physicians who have to clear practice decisions through managed care organizations, and I can recall before coming to the U.S. Senate 3 years ago picking up the telephone and calling a bureaucrat or someone sitting 200, 300 and 400 miles away, to ask if I could discharge my patient, or if my patient met criteria for discharge, whether the hematic or blood count was appropriate, this intrusion is really resented by physicians, that health care delivery which really is in this country a pact, a relationship between a doctor and a patient.

The mother-may-I mentality that has emerged has frustrated both parties and providers and led them to question who is in charge. Is it the physician, working with the patient, taking care, who knows that patient, who has been trained to take care of that patient, or is it a bureaucrat or somebody hundreds of miles away?

On the other side of the coin, it is very clear that managed care has been very successful in forcing an out-of-date delivery system to be more accountable. This has had very important benefits for patients. That leads me to think of how outcomes, data and results are studied very carefully by most managed care organizations, driving us into the whole realm of quality assessment. That has been a huge contribution of managed care, as well as HMOs. Much of that would not have occurred without HMOs or managed care.

Amidst all this change is a great deal of uncertainty. We have senior citizens who are scared to death to change anything, and that was reinforced in the recent campaigns where huge advertising campaigns were put on television, "Don't change anything."

Today, purchasers, consumers and providers are really forcing attention back to that issue of quality. As a physician, I find that very encouraging.

People will still tell you today though, as you travel across Tennessee or our respective States, that their fear of managed care stems a great deal from the fact that they feel their physician is no longer in charge of their case, that somebody who is watching just the dollars and cents or some bureaucrat is now in charge of their care.

Now, this has generated, and it really starts at a grassroots level, has generated a lot of proposals in the last several months, both at the State level and at the Federal level. That includes the ban on the gag rule clauses and various length-of-stay proposals after various procedures that are done in the hospital.

America's largest health care payer today is the Federal Medicare Program. It has had difficulty, interestingly enough, in attracting seniors to managed care. The figure that I just mentioned, three-quarters of all people today being in managed care, contrasts with those senior citizens, all of whom are in Medicare. Only 11 percent, only 11 percent compared to 75 percent of Medicare beneficiaries are signed up to participate. It is very clear that our senior citizens have a great fear today of being herded into the traditional managed care plans where they have a fear they will not include the physician they choose or the hospital that they might choose.

The outmoded blank check mentality, on the other hand, of fee-for-service system is not sustainable over time. It can be one of the choices, but it cannot be and will not be the only choice. Given that Medicare's own trustees have reported that the program is going to be bankrupt in 4 to 5 years, Medicare clearly has to find a way to have its growth slowed.

Medicare beneficiaries who fear managed care may well feel much more secure knowing that they have the choice of a health care plan that is actually run by providers—doctors working with hospitals, and not just a business, not just a traditional insurance company.

PSOs will help push the market to elevate the level of quality at all levels of plans of negotiation and delivery because of the direct involvement of physicians with hospitals, of the people who are actually delivering that care in every step of the process. Quality, all of a sudden, becomes the primary goal. Once at the negotiating table, you bring physicians into the room.

Many see all of this as an "us-versus-them scenario." In fact, neither group acts alone when funds are limited, whether care is paid for by a Government program, an employer, an insurer, an individual. Medicare providers and plan administrators simply must work together to increase the value of health care dollars.

Before coming to the U.S. Senate, as one who used to negotiate, as a transplant surgeon and running a large transplant center I negotiated with managed care plans. Based on that negotiation, all too often quality was not the issue, really, at the table. People would come in and say, "I need a discount of 10 percent, of 15 percent or 20 percent." What was missing at that table was someone—a group of providers, physicians with hospitals, working together—who would ask those questions about quality. Why do they ask the questions about quality? Because they are on the frontline. At the table we will bring physicians who are delivering that care to individuals.

That to me is one of the most exciting things about this bill. It injects quality back into the marketplace. Is there any evidence today that senior citizens will respond to this alternative? This year the Health Care Financing Administration established the demonstration project called Medicare Choices.

This pilot project is examining ways of expanding the choice of health care plan options available to Medicare beneficiaries. Included in this demonstration are a number of PSO's. Senator MACK recently shared with me his experience in Florida with this new demonstration project during its first 3 weeks of enrollment. A participating PSO in Orlando received 5,500 phone calls from interested beneficiaries in the first 5 days. They have already processed enrollment for 400 Medicare beneficiaries. They started out holding 13 informational seminars each week and had 600 attendees. They are now conducting 15 seminars a week with 700 attendees. In addition, the PSO staffs have been making home visits to those beneficiaries who are unable to come to the seminars, and as a result of those home visits, they are enrolling seven to nine individuals a day. The Orlando PSO has already enrolled another 400 beneficiaries just for February. So, yes, I think our senior citizens will respond to this new option, this new option that expands choice, when we bring physicians and hospitals through a PSO entity to the table.

Clearly, we can make managed care options more attractive to America's seniors by allowing PSO's to participate in the Medicare program. What are the other advantages that provider-sponsored organizations offer? These groups offer many advantages.

First, "one-stop shopping" for a coordinated package of health care services really saves time and the expense of negotiating with individual provider contracts.

Second, because it is the providers who are coordinating care, clinical decisions and utilization reviews are conducted by the providers themselves and not by a faceless third party charged with conducting these reviews.

Third, incentives to control costs are borne by the only group that can truly deliver systematic quality improvement and cost efficiency over the long run. Why? Because it is the providers who are monitoring that quality. It is the physicians and hospitals who are actually providing that care and, thus, they are in a position to best monitor that quality.

Finally, PSO's simply tend to have much lower startup and administrative costs, making it easier for them to enter the market in those key areas that we need to look at, and that is the rural areas. These rural areas have a real risk of being underserved without this new entity, a PSO.

What are the advantages of the PSO's—provider-sponsored organizations—for the country as a whole? The managed care industry has been able to change our paradigms about health care tremendously over the last 10 years. Health care is becoming less costly and more efficient. But now we have to come back to quality and inject quality back into the system and the effectiveness of that health care delivery. By bringing providers, the people delivering that care every day, to the table for the first time in Medicare, PSO's will create that opportunity.

The PSO's are really in the health care business day in and day out. Remember, it is a group of physicians who, every day, are taking care of patients who we are bringing to the table for the first time. PSO's are in the health care business, not in the insurance business, and they are currently excluded from fair participation in the market by a system ill-suited to their needs. Let me give a couple of examples.

Providers navigating the complex State licensure process for the first time are really at a significant disadvantage compared to the very large insurance companies and the large managed care plans. In a competitive marketplace, the timing of entry is critical.

Even though PSO's do not take on the same level of insurance risk as other players, PSO's are now required to submit the same State-defined solvency tests and net worth requirements as HMO's. Since the law now only allows Medicare to contract with organizations that are licensed by the States as HMO's, many PSO's are forced to perform administrative contortions in order to serve Medicare patients—contortions that make them look like insurance companies, even though, in reality, they are not.

How does the Provider Sponsored Organization Act develop solutions to the problem?

First, it recognizes the potential for PSO's to serve beneficiaries by enabling them to contract directly with

Medicare, thus expanding the range of choices available to each Medicare beneficiary.

Second, it will provide Federal leadership to the States in fashioning a more nationally consistent, streamlined PSO approval process.

However, with access must come accountability. This bill will also require PSO's to meet strict standards that ensure that they are able to take on the financial risks associated with delivering health care services for a set fee, but these are tailored to their primary role as providers, as physicians and hospitals; it will require collective accountability, where quality and cost are both measured by overall practice patterns across the entire PSO, not by case-by-case utilization review; finally, it will set a standard for quality assurance, a standard that will set the pace for the rest of the industry.

This legislation—I need to be very clear about this—does not, in any way, eclipse other health care plans. Rather, it complements, adds to the existing menu of health care services. Qualified provider-sponsored organizations will challenge all health care organizations participating with Medicare to meet the goal of an integrated health system, a system which truly provides an environment with lower costs, better care, higher quality, and preserved relationships between caregivers and their patients.

Mr. President, I send the bill to the desk and ask that it be referred to the appropriate committee.

The PRESIDING OFFICER. The bill will be appropriately referred.

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

Mr. FRIST. I ask unanimous consent that a letter of endorsement from a wide variety of hospital associations be printed in the RECORD.

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

JANUARY 21, 1997.

Hon. BILL FRIST,
U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: We endorse enthusiastically "The Provider Sponsored Organization Act of 1997" which you are introducing in the Senate today. This legislation provides an important new health care choice for Medicare beneficiaries, the Provider Sponsored Organization (PSO) option.

Medicare beneficiaries deserve a greater variety of high quality health care options from which they can choose—and PSOs provide an outstanding additional choice for them. Medicare PSOs will hold down health care costs by directly managing both the use of services and the cost of providing those services. These PSOs will offer affordable, high-quality and coordinated care and be sponsored by organizations that are concerned about the health of the entire community. Because the PSO is focused on the Community, its medical management policies are locally focused rather than nationally driven. And, in a PSO plan, a consumer is more likely to maintain stable relationships with his or her personal physician and community hospital, whereas other health plans may change their rosters of participating providers from year to year.

Your legislation recognizes that Medicare PSOs will not be in the insurance business, but will focus on what has been their primary business for years, the delivery of high quality care. The bill requires, however, high solvency standards for those participating in the program and organizational arrangements that assure the plans are integrated, fully operational, and responsive to the needs of the Medicare beneficiaries that they will serve. Also, Medicare PSOs will reduce administrative expenses in comparison to many of the options offered to Medicare beneficiaries today by streamlining the organization of administrative functions between the provider and the Medicare program.

In short, Medicare beneficiaries need and deserve additional health care choices built from the base of their local community of hospitals and doctors. And they should be assured the uniformity of plan standards that only federal regulation can bring.

We look forward to working with you to seek enactment of this important legislation in the first session of the 105th Congress.

Sincerely,

American Hospital Association; Association of American Medical Colleges; Catholic Health Association; Federation of American Health Systems; InterHealth; National Association of Childrens' Hospitals; National Association of Public Hospitals; Premier, Inc.; Voluntary Hospitals of America.

By Mr. DASCHLE (for himself, Mr. CHAFEE, Mr. KENNEDY, Mr. JOHNSON, and Mr. REID):

S. 147. A bill to amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the Medicaid program, and for other purposes; to the Committee on Finance.

THE MEDICAID SUBSTANCE ABUSE TREATMENT ACT

By Mr. DASCHLE (for himself, Mr. CHAFEE, Mr. BINGAMAN, Mr. INOUYE, Mrs. MURRAY, Mr. JOHNSON, Mr. CAMPBELL and Mr. REID):

S. 148. A bill to amend the Public Health Service Act to provide a comprehensive program for the prevention of Fetal Alcohol Syndrome; to the Committee on Labor and Human Resources.

THE COMPREHENSIVE FETAL ALCOHOL SYNDROME PREVENTION ACT

Mr. DASCHLE. Mr. President, today I am introducing two bipartisan bills to help prevent the tragic occurrence of alcohol-related birth defects, including both fetal alcohol syndrome [FAS] and fetal alcohol effects [FAE]. I speak on behalf of all cosponsors when I say we are hopeful we can move these two simple, but important, pieces of legislation this year.

FAS and FAE are devastating, complex birth defects. Many people fail to realize that FAS is the leading cause of mental retardation. Too many women remain uninformed about the real dangers of alcohol consumption during pregnancy. And, unfortunately, misconceptions about the impact of alcohol intake during pregnancy are not limited to the general public. Even some health care providers are unaware of the danger of drinking during pregnancy, and for many years it was widely held that moderate alcohol consumption during pregnancy was beneficial. I am happy to report that several medical schools have begun teaching their students about FAS and FAE, and I remain hopeful that medical professionals will continue to learn more about how to appropriately diagnose and counsel women who are pregnant or are considering pregnancy.

Recent estimates indicate that up to 12,000 children are born each year in the United States with FAS. Thousands more are born with FAE. It is estimated that the incidence of FAS may be as high as one per 100 in some Native American communities.

The costs associated with caring for individuals with FAS are staggering. The Centers for Disease Control and Prevention estimates that the lifetime cost of treating an individual with FAS is almost $1.4 million. The total cost in terms of health care and social services to treat all Americans with FAS was estimated to be $2.7 billion in 1995. This is an extraordinary and unnecessary expense, especially when one considers that all alcohol-related birth defects are 100 percent preventable.

The first step toward illuminating this devastating disease is raising the public's consciousness about FAS/FAE. Although great strides have been made in this regard, much more work remains to be done. The Comprehensive Fetal Alcohol Syndrome Prevention Act attempts to fill in the gaps in our current FAS/FAE prevention system. It contains four major components, representing the provisions of the original legislation that have not yet been enacted. These provisions include the initiation of a coordinated education and public awareness campaign; increased support for basic and applied epidemiologic research into the causes, treatment and prevention of FAS/FAE; widespread dissemination of FAS/FAE diagnostic criteria; and the establishment of an interagency task force to coordinate the wide range of Federal efforts in combating FAS/FAE.

A prevention strategy cannot succeed in the absence of increased access to comprehensive treatment programs for pregnant addicted women. Many pregnant substance abusers are denied treatment because facilities refuse to accept them, or the women cannot accept treatment because they lack adequate child care for their existing children while they receive treatment. In fact, many treatment programs specifically exclude pregnant women or

women with children. To make matters worse, while Medicaid covers some services associated with substance abuse, like outpatient treatment and detoxification, it rails to cover non-hospital based residential treatment, which is considered by most health care professionals to be the most effective method of overcoming addiction.

The Medicaid Substance Abuse Treatment Act would permit coverage of residential alcohol and drug treatment for pregnant women and certain family members under the Medicaid program, thereby assuring a stable source of funding for States that wish to establish these programs. The bill has three primary objectives. First, it would facilitate the participation of pregnant women who are substance abusers in alcohol and drug treatment programs. Second, by increasing the availability of comprehensive and effective treatment programs for pregnant women and, thus, improving a woman's chances of bearing healthy children, it would help combat the serious and ever-growing problem of drug-impaired infants and children, many of whom are born with FAS and FAE. Third, it would address the unique situation of pregnant addicted Native American and Alaska Native women in Indian Health Service areas.

Mr. President, the cost of prevention is substantially less than the downstream costs in money and human capital of caring of children and adults who have been impaired due to prenatal exposure to alcohol and drugs. These prevention and treatment services are an investment that yields substantial long-term dividends—both on a societal level, as costs and efforts associated with taking care of children born with alcohol-related birth defects decline, and on an individual level, as mothers plagued by alcohol and drug addiction are given the means to heal themselves and give their unborn children a healthier start in life.

FAS and FAE represent a national tragedy that reaches across economic and social boundaries. With researchers from Columbia University reporting that at least one of every five pregnant women uses alcohol and/or other drugs during pregnancy, the demand for a comprehensive and determined response to this devastating problem is clear. I welcome the support of my colleagues on these important bills.

Mr. President, I ask unanimous consent that the text of the bills be printed in the RECORD.

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

S. 147

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 "Medicaid Substance Abuse Treatment Act of 1997".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) a woman's ability to bear healthy children is threatened by the consequences of alcoholism and drug addiction and particularly by the use of alcohol and drugs during pregnancy;

(2) hundreds of thousands of infants each year are born drug-exposed, approximately 12,000 infants are born each year with fetal alcohol syndrome, and thousands more are born each year with fetal alcohol effects, a less severe version of fetal alcohol syndrome;

(3) drug use during pregnancy can result in low birthweight, physical deformities, mental retardation, learning disabilities, and heightened nervousness and irritability in newborns;

(4) fetal alcohol syndrome is the leading identifiable cause of mental retardation in the United States and the only cause that is 100 percent preventable;

(5) drug-impaired individuals pose extraordinary societal costs in terms of medical, educational, foster care, residential, and support services over the lifetimes of such individuals;

(6) women, in general, are underrepresented in drug and alcohol treatment programs;

(7) due to fears among service providers concerning the risks pregnancies pose, pregnant women face more obstacles to substance abuse treatment than do other addicts and many substance abuse treatment programs, in fact, exclude pregnant women or women with children;

(8) residential alcohol and drug treatment is an important prevention strategy to prevent low birthweight, transmission of AIDS, and chronic physical, mental, and emotional disabilities associated with prenatal exposure to alcohol and other drugs;

(9) effective substance abuse treatment must address the special needs of pregnant women who are alcohol or drug dependent, including substance-abusing women who may often face such problems as domestic violence, incest and other sexual abuse, poor housing, poverty, unemployment, lack of education and job skills, lack of access to health care, emotional problems, chemical dependency in their family backgrounds, single parenthood, and the need to ensure child care for existing children while undergoing substance abuse treatment;

(10) nonhospital residential treatment is an important component of comprehensive and effective substance abuse treatment for pregnant addicted women, many of whom need long-term, intensive habilitation outside of their communities to recover from their addiction and take care of themselves and their families; and

(11) a gap exists under the medicaid program for the financing of comprehensive residential care in the existing continuum of covered alcoholism and drug abuse treatment services for pregnant medicaid beneficiaries.

(b) PURPOSES.—The purposes of this Act are—

(1) to increase the ability of pregnant women who are substance abusers to participate in alcohol and drug treatment;

(2) to ensure the availability of comprehensive and effective treatment programs for pregnant women, thus promoting a woman's ability to bear healthy children;

(3) to ensure that nonhospital residential treatment is available to those low-income pregnant addicted women who need long-term, intensive habilitation to recover from their addiction;

(4) to create a new optional medicaid residential treatment service for alcoholism and drug dependency treatment; and

(5) to define the core services that must be provided by treatment providers to ensure that needed services will be available and appropriate.

SEC. 3. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES FOR PREGNANT WOMEN, CARETAKER PARENTS, AND THEIR CHILDREN.

(a) COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES.—

(1) OPTIONAL COVERAGE.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)—

(i) in paragraph (24), by striking "and" at the end;

(ii) by redesignating paragraph (25) as paragraph (26); and

(iii) by inserting after paragraph (24) the following new paragraph:

"(25) alcoholism and drug dependency residential treatment services (to the extent allowed and as defined in section 1931); and"; and

(B) in the sentence following paragraph (26), as so redesignated—

(i) in subparagraph (A), by striking "or" at the end;

(ii) in subparagraph (B), by striking the period and inserting "; or"; and

(iii) by inserting after subdivision (B) the following:

"(C) any such payments with respect to alcoholism and drug dependency residential treatment services under paragraph (25) for individuals not described in section 1932(d).".

(2) ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES DEFINED.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(A) by redesignating section 1932 as section 1933; and

(B) by inserting after section 1931, the following:

"ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES

"SEC. 1932. (a) ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL TREATMENT SERVICES.—The term 'alcoholism and drug dependency residential treatment services' means all the required services described in subsection (b) which are provided—

"(1) in a coordinated manner by a residential treatment facility that meets the requirements of subsection (c) either directly or through arrangements with—

"(A) public and nonprofit private entities;

"(B) licensed practitioners or federally qualified health centers with respect to medical services; or

"(C) the Indian Health Service or a tribal or Indian organization that has entered into a contract with the Secretary under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) or section 502 of the Indian Health Care Improvement Act (25 U.S.C. 1652) with respect to such services provided to women eligible to receive services in Indian Health Facilities; and

"(2) pursuant to a written individualized treatment plan prepared for each individual, which plan—

"(A) states specific objectives necessary to meet the individual's needs;

"(B) describes the services to be provided to the individual to achieve those objectives;

"(C) is established in consultation with the individual;

"(D) is periodically reviewed and (as appropriate) revised by the staff of the facility in consultation with the individual;

"(E) reflects the preferences of the individual; and

"(F) is established in a manner which promotes the active involvement of the individual in the development of the plan and its objectives.

"(b) REQUIRED SERVICES DEFINED.—

"(1) IN GENERAL.—The required services described in this subsection are as follows:

"(A) Counseling, addiction education, and treatment provided on an individual, group, and family basis and provided pursuant to individualized treatment plans, including the opportunity for involvement in Alcoholics Anonymous and Narcotics Anonymous.

"(B) Parenting skills training.

"(C) Education concerning prevention of HIV infection.

"(D) Assessment of each individual's need for domestic violence counseling and sexual abuse counseling and provision of such counseling where needed.

"(E) Room and board in a structured environment with on-site supervision 24 hours-a-day.

"(F) Therapeutic child care or counseling for children of individuals in treatment.

"(G) Assisting parents in obtaining access to—

"(i) developmental services (to the extent available) for their preschool children;

"(ii) public education for their school-age children, including assistance in enrolling them in school; and

"(iii) public education for parents who have not completed high school.

"(H) Facilitating access to prenatal and postpartum health care for women, to pediatric health care for infants and children, and to other health and social services where appropriate and to the extent available, including services under title V, services and nutritional supplements provided under the special supplemental food program for women, infants, and children (WIC) under section 17 of the Child Nutrition Act of 1966, services provided by federally qualified health centers, outpatient pediatric services, well-baby care, and early and periodic screening, diagnostic, and treatment services (as defined in section 1905(r)).

"(I) Ensuring supervision of children during times their mother is in therapy or engaged in other necessary health or rehabilitative activities, including facilitating access to child care services under title IV and title XX.

"(J) Planning for and counseling to assist reentry into society, including appropriate outpatient treatment and counseling after discharge (which may be provided by the same program, if available and appropriate) to assist in preventing relapses, assistance in obtaining suitable affordable housing and employment upon discharge, and referrals to appropriate educational, vocational, and other employment-related programs (to the extent available).

"(K) Continuing specialized training for staff in the special needs of residents and their children, designed to enable such staff to stay abreast of the latest and most effective treatment techniques.

"(2) REQUIREMENT FOR CERTAIN SERVICES.—Services under subparagraphs (A), (B), (C), and (D), of paragraph (1) shall be provided in a cultural context that is appropriate to the individuals and in a manner that ensures that the individuals can communicate effectively, either directly or through interpreters, with persons providing services.

"(3) LIMITATIONS ON COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), services described in paragraph (1) shall be covered in the amount, duration, and scope therapeutically required for each eligible individual in need of such services.

"(B) RESTRICTIONS ON LIMITING COVERAGE.—A State plan shall not limit coverage of alcoholism and drug dependency residential treatment services for any period of less than 12 months per individual, except in those instances where a finding is made that such services are no longer therapeutically necessary for an individual.

"(c) FACILITY REQUIREMENTS.—The requirements of this subsection with respect to a facility are as follows:

"(1) The agency designated by the chief executive officer of the State to administer the State's alcohol and drug abuse prevention and treatment activities and programs has certified to the single State agency under section 1902(a)(5) that the facility—

"(A) is able to provide all the services described in subsection (b) either directly or through arrangements with—

"(i) public and nonprofit private entities;

"(ii) licensed practitioners or federally qualified health centers with respect to medical services; or

"(iii) the Indian Health Service or with a tribal or Indian organization that has entered into a contract with the Secretary under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) or section 502 of the Indian Health Care Improvement Act (25 U.S.C. 1652) with respect to such services provided to women eligible to receive services in Indian Health Facilities; and

"(B) except for Indian Health Facilities, meets all applicable State licensure or certification requirements for a facility of that type.

"(2)(A) The facility or a distinct part of the facility provides room and board, except that—

"(i) subject to subparagraph (B), the facility shall have no more than 40 beds; and

"(ii) subject to subparagraph (C), the facility shall not be licensed as a hospital.

"(B) The single State agency may waive the bed limit under subparagraph (A)(i) for one or more facilities subject to review by the Secretary. Waivers, where granted, must be made pursuant to standards and procedures set out in the State plan and must require the facility seeking a waiver to demonstrate that—

"(i) the facility will be able to maintain a therapeutic, family-like environment;

"(ii) the facility can provide quality care in the delivery of each of the services identified in subsection (b);

"(iii) the size of the facility will be appropriate to the surrounding community; and

"(iv) the development of smaller facilities is not feasible in that geographic area.

"(C) The Secretary may waive the requirement under subparagraph (A)(ii) that a facility not be a hospital, if the Secretary finds that such facility is located in an Indian Health Service area and that such facility is the only or one of the only facilities available in such area to provide services under this section.

"(3) With respect to a facility providing the services described in subsection (b) to an individual eligible to receive services in Indian Health Facilities, such a facility demonstrates (as required by the Secretary) an ability to meet the special needs of Indian and Native Alaskan women.

"(d) ELIGIBLE INDIVIDUALS.—

"(1) IN GENERAL.—A State plan shall limit coverage of alcoholism and drug dependency residential treatment services under section 1905(a)(24) to the following individuals otherwise eligible for medical assistance under this title:

"(A) Women during pregnancy, and until the end of the 12th month following the termination of the pregnancy.

"(B) Children of a woman described in subparagraph (A).

"(C) At the option of a State, a caretaker parent or parents and children of such a parent.

"(2) INITIAL ASSESSMENT OF ELIGIBLE INDIVIDUALS.—An initial assessment of eligible individuals specified in paragraph (1) seeking alcoholism and drug dependency residential treatment services shall be performed by the agency designated by the chief executive officer of the State to administer the State's alcohol and drug abuse treatment activities (or its designee). Such assessment shall determine whether such individuals are in need of alcoholism or drug dependency treatment services and, if so, the treatment setting (such as inpatient hospital, nonhospital residential, or outpatient) that is most appropriate in meeting such individual's health and therapeutic needs and the needs of such individual's dependent children, if any.

"(e) OVERALL CAP ON MEDICAL ASSISTANCE AND ALLOCATION OF BEDS.—

"(1) TOTAL AMOUNT OF SERVICES AS MEDICAL ASSISTANCE.—

"(A) IN GENERAL.—The total amount of services provided under this section as medical assistance for which payment may be made available under section 1903 shall be limited to the total number of beds allowed to be allocated for such services in any given year as specified under subparagraph (B).

"(B) TOTAL NUMBER OF BEDS.—The total number of beds allowed to be allocated under this subparagraph (subject to paragraph (2)(C)) for the furnishing of services under this section and for which Federal medical assistance may be made available under section 1903 is for calendar year—

"(i) 1998, 1,080 beds;

"(ii) 1998, 2,000 beds;

"(iii) 2000, 3,500 beds;

"(iv) 2001, 5,000 beds;

"(v) 2002, 6,000 beds; and

"(vi) 2003 and for calendar years thereafter, a number of beds determined appropriate by the Secretary.

"(2) ALLOCATION OF BEDS.—

"(A) INITIAL ALLOCATION FORMULA.—For each calendar year, a State exercising the option to provide the services described in this section shall be allocated from the total number of beds available under paragraph (1)(B)—

"(i) in calendar years 1998 and 1999, 20 beds;

"(ii) in calendar years 2000, 2001, and 2002, 40 beds; and

"(iii) in calendar year 2003 and for each calendar year thereafter, a number of beds determined based on a formula (as provided by the Secretary) distributing beds to States on the basis of the relative percentage of women of childbearing age in a State.

"(B) REALLOCATION OF BEDS.—The Secretary shall provide that in allocating the number of beds made available to a State for the furnishing of services under this section that, to the extent not all States are exercising the option of providing services under this section and there are beds available that have not been allocated in a year as provided in paragraph (1)(B), that such beds shall be reallocated among States which are furnishing services under this section based on a formula (as provided by the Secretary) distributing beds to States on the basis of the

relative percentage of women of childbearing age in a State.

"(C) INDIAN HEALTH SERVICE AREAS.—In addition to the beds allowed to be allocated under paragraph (1)(B) there shall be an additional 20 beds allocated in any calendar year to States for each Indian Health Service area within the State to be utilized by Indian Health Facilities within such an area and, to the extent such beds are not utilized by a State, the beds shall be reapportioned to Indian Health Service areas in other States.".

(3) MAINTENANCE OF STATE FINANCIAL EFFORT AND 100 PERCENT FEDERAL MATCHING FOR SERVICES FOR INDIAN AND NATIVE ALASKAN WOMEN IN INDIAN HEALTH SERVICES AREAS.—Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end the following new subsections:

"(x) No payment shall be made to a State under this section in a State fiscal year for alcoholism and drug dependency residential treatment services (described in section 1932) unless the State provides assurances satisfactory to the Secretary that the State is maintaining State expenditures for such services at a level that is not less than the average annual level maintained by the State for such services for the 2-year period preceding such fiscal year.

"(y) Notwithstanding the preceding provisions of this section, the Federal medical assistance percentage for purposes of payment under this section for services described in section 1932 provided to individuals residing on or receiving services in an Indian Health Service area shall be 100 percent.".

(b) PAYMENT ON A COST-RELATED BASIS.—Section 1902(a)(13) of the Social Security Act (42 U.S.C. 1396a(a)(13)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by adding "and" at the end of subparagraph (F); and

(3) by adding at the end the following new subparagraph:

"(G) for payment for alcoholism and drug dependency residential treatment services which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide all the services listed in section 1932(b) in conformity with applicable Federal and State laws, regulations, and quality and safety standards and to assure that individuals eligible for such services have reasonable access to such services;".

(c) CONFORMING AMENDMENTS.—

(1) CLARIFICATION OF OPTIONAL COVERAGE FOR SPECIFIED INDIVIDUALS.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended, in the matter following subparagraph (F)—

(A) by striking "; and (XIII)" and inserting ", (XIII)"; and

(B) by inserting before the semicolon at the end the following: ", and (XIII) the making available of alcoholism and drug dependency residential treatment services to individuals described in section 1932(d) shall not, by reason of this paragraph, require the making of such services available to other individuals".

(2) CONTINUATION OF ELIGIBILITY FOR ALCOHOLISM AND DRUG DEPENDENCY TREATMENT FOR PREGNANT WOMEN FOR 12 MONTHS FOLLOWING END OF PREGNANCY.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended in subsection (e)(5) by striking "under the plan," and all through the period at the end and inserting "under the plan—

"(A) as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends; and

"(B) for alcoholism and drug dependency residential treatment services under section 1932 through the end of the 1-year period beginning on the last day of her pregnancy.".

(3) REDESIGNATIONS.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is further amended in subsection (a)(10)(C)(iv), by striking "(24)" and inserting "(25)".

(d) ANNUAL EDUCATION AND TRAINING IN INDIAN HEALTH SERVICE AREAS.—The Secretary of Health and Human Services in cooperation with the Indian Health Service shall conduct on at least an annual basis training and education in each of the 12 Indian Health Service areas for tribes, Indian organizations, residential treatment providers, and State health care workers regarding the availability and nature of residential treatment services available in such areas under the provisions of this Act.

(e) EFFECTIVE DATE; TRANSITION.—(1) The amendments made by this section apply to alcoholism and drug dependency residential treatment services furnished on or after January 1, 1998, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State under title XIX of the Social Security Act with regard to alcoholism and drug dependency residential treatment services (as defined in section 1932(a) of such Act) made available under such title on or after January 1, 1998, before the date the Secretary issues final regulations to carry out the amendments made by this section, if the services are provided under its plan in good faith compliance with such amendments.

S. 148

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 "Comprehensive Fetal Alcohol Syndrome Prevention Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) Fetal Alcohol Syndrome is the leading known cause of mental retardation, and it is 100 percent preventable;

(2) each year, up to 12,000 infants are born in the United States with Fetal Alcohol Syndrome, suffering irreversible physical and mental damage;

(3) thousands more infants are born each year with Fetal Alcohol Effects, which are lesser, though still serious, alcohol-related birth defects;

(4) children of women who use alcohol while pregnant have a significantly higher infant mortality rate (13.3 per 1000) than children of those women who do not use alcohol (8.6 per 1000);

(5) Fetal Alcohol Syndrome and Fetal Alcohol Effects are national problems which can impact any child, family, or community, but their threat to American Indians and Alaska Natives is especially alarming;

(6) in some American Indian communities, where alcohol dependency rates reach 50 percent and above, the chances of a newborn suffering Fetal Alcohol Syndrome or Fetal Alcohol Effects are up to 30 times greater than national averages;

(7) in addition to the immeasurable toll on children and their families, Fetal Alcohol Syndrome and Fetal Alcohol Effects pose extraordinary financial costs to the Nation, including the costs of health care, education, foster care, job training, and general support services for affected individuals;

(8) the total cost to the economy of Fetal Alcohol Syndrome was approximately $2,500,000,000 in 1995, and over a lifetime, health care costs for one Fetal Alcohol Syndrome child are estimated to be at least $1,400,000;

(9) researchers have determined that the possibility of giving birth to a baby with Fetal Alcohol Syndrome or Fetal Alcohol Effects increases in proportion to the amount and frequency of alcohol consumed by a pregnant woman, and that stopping alcohol consumption at any point in the pregnancy reduces the emotional, physical, and mental consequences of alcohol exposure to the baby; and

(10) though approximately 1 out of every 5 pregnant women drink alcohol during their pregnancy, we know of no safe dose of alcohol during pregnancy, or of any safe time to drink during pregnancy, thus, it is in the best interest of the Nation for the Federal Government to take an active role in encouraging all women to abstain from alcohol consumption during pregnancy.

SEC. 3. PURPOSE.

It is the purpose of this Act to establish, within the Department of Health and Human Services, a comprehensive program to help prevent Fetal Alcohol Syndrome and Fetal Alcohol Effects nationwide. Such program shall—

(1) coordinate, support, and conduct basic and applied epidemiologic research concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects;

(2) coordinate, support, and conduct national, State, and community-based public awareness, prevention, and education programs on Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

(3) foster coordination among all Federal agencies that conduct or support Fetal Alcohol Syndrome and Fetal Alcohol Effects research, programs, and surveillance and otherwise meet the general needs of populations actually or potentially impacted by Fetal Alcohol Syndrome and Fetal Alcohol Effects.

SEC. 4. ESTABLISHMENT OF PROGRAM.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following:

"PART O—FETAL ALCOHOL SYNDROME PREVENTION PROGRAM

"SEC. 399G. ESTABLISHMENT OF FETAL ALCOHOL SYNDROME PREVENTION PROGRAM.

"(a) FETAL ALCOHOL SYNDROME PREVENTION PROGRAM.—The Secretary shall establish a comprehensive Fetal Alcohol Syndrome and Fetal Alcohol Effects prevention program that shall include—

"(1) an education and public awareness program to—

"(A) support, conduct, and evaluate the effectiveness of—

"(i) training programs concerning the prevention, diagnosis, and treatment of Fetal Alcohol Syndrome and Fetal Alcohol Effects;

"(ii) prevention and education programs, including school health education and school-based clinic programs for school-age children, concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

"(iii) public and community awareness programs concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects;

"(B) provide technical and consultative assistance to States, Indian tribal governments, local governments, scientific and academic institutions, and nonprofit organizations concerning the programs referred to in subparagraph (A); and

"(C) award grants to, and enter into cooperative agreements and contracts with, States, Indian tribal governments, local governments, scientific and academic institutions, and nonprofit organizations for the purpose of—

"(i) evaluating the effectiveness, with particular emphasis on the cultural competency and age-appropriateness, of programs referred to in subparagraph (A);

"(ii) providing training in the prevention, diagnosis, and treatment of Fetal Alcohol Syndrome and Fetal Alcohol Effects;

"(iii) educating school-age children, including pregnant and high-risk youth, concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects, with priority given to programs that are part of a sequential, comprehensive school health education program; and

"(iv) increasing public and community awareness concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects through culturally competent projects, programs, and campaigns, and improving the understanding of the general public and targeted groups concerning the most effective intervention methods to prevent fetal exposure to alcohol;

"(2) an applied epidemiologic research and prevention program to—

"(A) support and conduct research on the causes, mechanisms, diagnostic methods, treatment, and prevention of Fetal Alcohol Syndrome and Fetal Alcohol Effects;

"(B) provide technical and consultative assistance and training to States, Tribal governments, local governments, scientific and academic institutions, and nonprofit organizations engaged in the conduct of—

"(i) Fetal Alcohol Syndrome prevention and early intervention programs; and

"(ii) research relating to the causes, mechanisms, diagnosis methods, treatment, and prevention of Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

"(C) award grants to, and enter into cooperative agreements and contracts with, States, Indian tribal governments, local governments, scientific and academic institutions, and nonprofit organizations for the purpose of—

"(i) conducting innovative demonstration and evaluation projects designed to determine effective strategies, including community-based prevention programs and multicultural education campaigns, for preventing and intervening in fetal exposure to alcohol;

"(ii) improving and coordinating the surveillance and ongoing assessment methods implemented by such entities and the Federal Government with respect to Fetal Alcohol Syndrome and Fetal Alcohol Effects;

"(iii) developing and evaluating effective age-appropriate and culturally competent prevention programs for children, adolescents, and adults identified as being at-risk of becoming chemically dependent on alcohol and associated with or developing Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

"(iv) facilitating coordination and collaboration among Federal, State, local government, Indian tribal, and community-based Fetal Alcohol Syndrome prevention programs;

"(3) a basic research program to support and conduct basic research on services and effective prevention treatments and interventions for pregnant alcohol-dependent women and individuals with Fetal Alcohol Syndrome and Fetal Alcohol Effects;

"(4) a procedure for disseminating the Fetal Alcohol Syndrome and Fetal Alcohol Effects diagnostic criteria developed pursuant to section 705 of the ADAMHA Reorganization Act (42 U.S.C. 485n note) to health care providers, educators, social workers, child welfare workers, and other individuals; and

"(5) the establishment, in accordance with subsection (b), of an interagency task force on Fetal Alcohol Syndrome and Fetal Alcohol Effects to foster coordination among all Federal agencies that conduct or support Fetal Alcohol Syndrome and Fetal Alcohol Effects research, programs, and surveillance, and otherwise meet the general needs of populations actually or potentially impacted by Fetal Alcohol Syndrome and Fetal Alcohol Effects.

"(b) INTERAGENCY TASK FORCE.—

"(1) MEMBERSHIP.—The Task Force established pursuant to paragraph (5) of subsection (a) shall—

"(A) be chaired by the Secretary or a designee of the Secretary, and staffed by the Administration; and

"(B) include representatives from all relevant agencies and offices within the Department of Health and Human Services, the Department of Agriculture, the Department of Education, the Department of Defense, the Department of the Interior, the Department of Justice, the Department of Veterans Affairs, the Bureau of Alcohol, Tobacco and Firearms, the Federal Trade Commission, and any other relevant Federal agency.

"(2) FUNCTIONS.—The Task Force shall—

"(A) coordinate all Federal programs and research concerning Fetal Alcohol Syndrome and Fetal Alcohol Effects, including programs that—

"(i) target individuals, families, and populations identified as being at risk of acquiring Fetal Alcohol Syndrome and Fetal Alcohol Effects; and

"(ii) provide health, education, treatment, and social services to infants, children, and adults with Fetal Alcohol Syndrome and Fetal Alcohol Effects;

"(B) coordinate its efforts with existing Department of Health and Human Services task forces on substance abuse prevention and maternal and child health; and

"(C) report on a biennial basis to the Secretary and relevant committees of Congress on the current and planned activities of the participating agencies.

"(c) SCIENTIFIC RESEARCH AND TRAINING.—The Director of the National Institute on Alcohol Abuse and Alcoholism, with the cooperation of members of the interagency task force established under subsection (b), shall establish a collaborative program to provide for the conduct and support of research, training, and dissemination of information to researchers, clinicians, health professionals and the public, with respect to the cause, prevention, diagnosis, and treatment of Fetal Alcohol Syndrome and the related condition know as Fetal Alcohol Effects.

"SEC. 399H. ELIGIBILITY.

"To be eligible to receive a grant, or enter into a cooperative agreement or contract under this part, an entity shall—

"(1) be a State, Indian tribal government, local government, scientific or academic institution, or nonprofit organization; and

"(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may prescribe, including a description of the activities that the entity intends to carry out using amounts received under this part.

"SEC. 399I. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this part, such sums as are necessary for each of the fiscal years 1997 through 2001.".

Mr. DASCHLE. Mr. President, today I am reintroducing two bipartisan bills to help prevent the tragic occurrence of alcohol-related birth defects, including both fetal alcohol syndrome [FAS] and fetal alcohol effects [FAE]. I speak on behalf of all cosponsors when I say we are hopeful we can move these two simple, but important pieces of legislation this year.

Recent estimates indicate that up to 12,000 children are born each year in the United States with FAS. Thousands more are born with FAE. It is estimated that the incidence of FAS may be as high as one per 100 in some Native American communities.

FAS and FAE are devastating, complex birth defects. Many people fail to realize that FAS is the leading cause of mental retardation. Too many women remain uninformed about the real dangers of alcohol consumption during pregnancy. In fact, at least one recently published popular pregnancy book actually recommends a drink or two to relax later in pregnancy. And, unfortunately, misconceptions about the impact of alcohol intake during pregnancy are not limited to the general public. For many years it was widely, though mistakenly, believed in the medical community that moderate alcohol consumption during pregnancy was beneficial. These misperceptions are not only frightening, but life threatening. Children born to women who drink alcohol during pregnancy have a 50 percent higher infant mortality rate than the children of women who abstain. Fortunately, several medical and nursing schools have begun offering a course specifically on FAS and FAE. I remain hopeful that medical professionals will continue to learn more about how to appropriately counsel women who are pregnant or are considering pregnancy and how to recognize and diagnose children who may be suffering from FAS or FAE.

The costs associated with caring for the individual with FAS and FAE are staggering. The Centers for Disease Control and Prevention estimates that the lifetime cost of treating an individual with FAS is almost $1.4 million. The total costs in terms of health care and social services to treat all Americans with FAS was estimated to be $2.7 billion 1995. This is an extraordinary and unnecessary expense, especially when one considers that all alcohol-related birth defects are 100% preventable.

The first step eliminating this devastating disease is raising the public's

consciousness about FAS/FAE. Although great strides have been made in this regard, much more work remains to be done. The Comprehensive Fetal Alcohol Syndrome Prevention Act attempts to fill in the gaps in our current FAS/FAE prevention system. In contains four major components, representing the provisions of the original legislation that have not yet been enacted. These provisions include the initiation of a coordinated education and public awareness campaign; increased support for basic and applied epidemiologic research into the causes, treatment and prevention of FAS/FAE; widespread dissemination of FAS/FAE diagnostic criteria; and the establishment of an inter-agency task force to coordinate the wide range of federal efforts in combating FAS/FAE.

A prevention strategy cannot succeed in the absence of increases access to comprehensive treatment programs for pregnant addicted women. Many pregnant substance abusers are denied treatment because facilities specifically exclude them, or they cannot find or afford adequate child care for their existing children while they receive residential treatment. To make matters worse, while Medicaid covers some services associated with substance abuse, like outpatient treatment and detoxification, it fails to cover non-hospital based residential treatment, which is considered by most health care professionals to be the most effective method of overcoming addiction.

The Medicaid Substance Abuse Treatment Act would create an optional Medicaid benefit that would permit coverage of non-hospital based residential alcohol and drug treatment for Medicaid-eligible pregnant women and their children. This would assure a stable source of funding for states that wish to establish these programs. The bill has three primary objectives. First, it would facilitate the participation of pregnant women who are substance abusers in alcohol and drug treatment programs. Second, by increasing the availability of comprehensive and effective treatment programs for pregnant women and, thus, improving a woman's ability to bear health children, it would help combat the serious and ever-growing problem of drug-impaired infants and children, many of whom are also born with FAS or FAE. Third, it would address the unique situation of pregnant, addicted Native American and Alaska Native women in Indian Health Service areas.

Mr. President, the cost of prevention is substantially less than the downstream costs in money and human capital of caring for children and adults who have been impaired due to prenatal exposure to alcohol and drugs. These prevention and treatment services are an investment that yields substantial long-term dividends—both on a societal level, as costs and efforts associated with taking care of children born with alcohol-related birth defects decline and on a individual level, as mothers plagued by alcohol and drug addiction are given the means to heal themselves and give their unborn children a healthier start in life.

FAS and FAE represent a national tragedy that reaches across economic and social boundaries. With researchers from Columbia University reporting that at least one of every five pregnant women uses alcohol and/or other drugs during pregnancy, the demand for a comprehensive and determined response to this devastating problem is clear. I welcome the support of my colleagues on these important bills.

By Mr. MOYNIHAN (for himself and Mr. GRASSLEY):

S. 149. A bill to amend the National Narcotics Leadership Act of 1988 to establish qualification standards for individuals nominated to be the Deputy Director of Demand Reduction in the Office of National Drug Control Policy; to the Committee on Labor and Human Resources.

NATIONAL DRUG CONTROL POLICY LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill, cosponsored by Senator CHARLES E. GRASSLEY, to amend the Anti-Drug Abuse Act of 1988 to establish qualification standards for individuals nominated for the position of Deputy Director of Demand Reduction in the Office of National Drug Control Policy.

On May 17, 1988, then-Senate Majority Leader ROBERT S. BYRD established a working group on substance abuse which I was to co-chair with Senator Sam Nunn of Georgia. Interdiction and crackdown were then all the rage. My role on the working group was to assert that, other than to raise the price of drugs somewhat, interdiction was not going to have the slightest effect on supply. We saw the failure of supply side measures during Prohibition and in the French Connection model of cutting off production abroad. Accordingly, any comprehensive legislation should place at least equal emphasis on demand.

The Anti-Drug Abuse Act of 1988, which became law on November 18 of that year, did just that. Section 2012 sets out the purposes of the law. They include: To increase to the greatest extent possible the availability and quality of treatment services so that treatment on request may be provided to all individuals desiring to rid themselves of their substance abuse problem.

The legislation established an Office of National Drug Control Policy in the executive office of the President. It was headed by a so-called czar and included a deputy director of supply reduction and a deputy director for demand reduction. The Deputy Director for Demand would seek a clinical device, a pharmacological block, similar to methadone treatment for heroin. The Deputy Director would know the chemistry of the subject enough to promote some treatment beyond the sort of psychiatric treatment currently available.

President Bush made extraordinary, fine appointments. He appointed Dr. William Bennett as the head of the office. As the Deputy Director for Demand Reduction he appointed Dr. Herbert Kleber, a physician at the Yale Medical School, a research scientist, and exactly the person you would want for this.

Then, after a while, Bennett left, and Kleber also left. Kleber has gone to Columbia College of Physicians and Surgeons and is working at the New York Psychiatric Institute in this field.

Nobody succeeded him in a scientific role. There have been a number of persons in the job. I am sure they are good persons, but they are nothing like what we had in mind in the legislation.

The bill I introduce today would require that the Deputy Director of Demand Reduction have a scientific background and be a leader in the field of substance abuse prevention or treatment. This is no more than what the 1988 Act intended. We enacted a good statute which has been trivialized. If we are serious about getting hold of the drug dealer epidemic in this country, we must have an individual eminent in the field of substance abuse prevention leading the charge on demand reduction.

Mr. GRASSLEY. Mr. President, Senator MOYNIHAN and I are introducing Legislation today to spell out more specifically the requirements for the office of Deputy Director for Demand Reduction at the Office of National Drug Control Policy. I know it is Senator MOYNIHAN'S view, and mine, that this office requires an incumbent of the highest qualifications in the demand reduction area. This is especially true at this time. We have seen 4 years of rising teenage drug use in this country. We have seen initiatives that move us perilously close to legalizing a dangerous drug. We have seen the cynical exploitation of the public's trust in order to do this. In response, we need credible, visible leadership of the highest caliber in the Nation's chief demand reduction office. These qualifications were what Congress had in mind when we created the Drug Czar's office and the position of Deputy Director for Demand Reduction. Today, we are introducing legislation that will spell out more clearly this intent.

Last year, Congress increased funding to restore the Drug Czar's office to effective staffing levels. This year we will be reviewing the reauthorization of the office. Congress remains deeply interested in ONDCP and I and others will be working to ensure that it is meeting the expectations that we have in it.

As we work during this Congress to ensure a drug-free future for our children, we must have an individual in charge of our national demand reduction efforts who can command the respect of parents, doctors, treatment and prevention specialist, and the public. I am pleased to join Senator MOYNIHAN in this effort. Our legislation will ensure that we will see candidates for this important post who command universal respect. I welcome the support of our colleagues. I look forward to having someone of outstanding capabilities with whom we can work and in whom the public can have confidence.

By Mr. MOYNIHAN (for himself, Mr. D'AMATO, and Mr. DODD):

S. 150. A bill to amend section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), to provide for disclosure of information relating to individuals who committed Nazi war crimes, and for other purposes; to the Committee on the Judiciary.

THE WAR CRIMES DISCLOSURE ACT

Mr. MOYNIHAN. Mr. President, today I am joined by Senators D'AMATO and DODD in introducing the War Crime Disclosure Act. This legislation is a companion to a measure introduced in the House, sponsored by Representative MALONEY.

The measure is a simple one. It requires the disclosure of information under the Freedom of Information Act regarding individuals who participated in Nazi war crimes.

Ideally, such documents would be made available to the public without further legislation and without having to go through the slow process involved in getting information through the Freedom of Information Act [FOIA]. Unfortunately, this is not the case. Researchers seeking information on Nazi war criminals are denied access to relevant materials in the possession of the U.S. Government, even when the disclosure of these documents no longer poses a threat to national security—if indeed such disclosure ever did.

With the passing of time it becomes ever more important to document Nazi war crimes, lest the enormity of those crimes be lost to history. The greater access which this legislation provides will add clarity of this important effort. I applaud those researchers who continue to pursue this important work.

I would also like to call to the attention of my colleagues the excellent work of the Office of Special Investigations of the Department of Justice. This office has a monumental task and I would not wish to add to that burden or divert its officials from their primary goal of pursuing Nazi war criminals. To that end, I would note that this legislation does not apply to the Office of Special Investigations, as it is not identified in paragraph (1)(B) of the bill as a "specified agency." I would also add that there is a provision in the bill which specifically prohibits the disclosure of information which would compromise the work of the Office of Special Investigations.

I would like to thank Representative MALONEY for her original work on this subject in the House of Representatives. I would also thank Senators D'AMATO and DODD for joining me in this effort here in the Senate.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

[From the New York Times, June 25, 1996]

MS. MALONEY AND MR. WALDHEIM

(By A.M. Rosenthal)

For a full half-century, with determination and skill, and with the help of the law, U.S. intelligence agencies have kept secret the record of how they used Nazis for so many years after World War II, what the agencies got from these services—and what they gave as payback.

Despite the secrecy blockade, we do know how one cooperative former Wehrmacht officer and war crimes suspect was treated. We know the U.S. got him the Secretary Generalship of the U.N. as reward and base.

For more than two years, Congress has had legislation before it to allow the public access to information about U.S.-Nazi intelligence relations—a bill introduced by Representative Carolyn B. Maloney, a Manhattan Democrat, and now winding through the legislative process.

If Congress passes her War Crimes Disclosure Act, H.R. 1281, questions critical to history and the conduct of foreign affairs can be answered and the power of government to withhold them reduced. The case of Kurt Waldheim is the most interesting example—the most interesting we know of at the moment.

Did the U.S. know when it backed him for Secretary General that he had been put on the A list of war-crime suspects, adopted in London in 1948, for his work as a Wehrmacht intelligence officer in the Balkans, when tens of thousands of Yugoslavs, Greeks, Italians, Jew and non-Jew, were being deported to death?

If not, isn't that real strange, since the U.S. representative on the War Crimes Commission voted to list him. A report was sent to the State Department. Didn't State give the C.I.A. a copy—a peek?

And when he was running for Secretary General why did State Department biographies omit any reference to his military service—just as he forgot to mention it in his autobiographies?

If all that information was lost by teams of stupid clerks, once the Waldheim name came up for the job why did not the U.S. do the obvious thing—check with Nazi and war-crime records in London and Berlin to see if his name by any chance was among those dearly wanted?

Didn't the British know? They voted for the listing too. And the Russians—Yugoslavia moved to list him when it was a Soviet satellite. Belgrade never told Moscow?

How did Mr. Waldheim repay the U.S. for its enduring fondness to him? Twice it pushed him successfully for the job. The third time it was among few countries that backed him again but lost. Nobody can say the U.S. was not loyal to the end.

Did he also serve the Russians and British? One at a time? Or was he a big-power groupie, serving all?

One thing is not secret any longer, thanks to Prof. Robert Herzstein of the University of South Carolina history department. He has managed through years of perseverance to pry some information loose. He found that while Mr. Waldheim worked for the Austrian bureaucracy, the U.S. Embassy in Vienna year after year sent in blurby reports about his assistance to American foreign policy—friendly, outstanding, cooperative, receptive to American thinking. All the while, this cuddly fellow was on the A list, which was in the locked files or absent with official leave.

On May 24, 1994, I reported on Professor Herzstein's findings and the need for opening files of war-crime suspects. Representative Maloney quickly set to work on her bill to open those files to Freedom of Information requests—providing safeguards for personal privacy, on-going investigations and national security if ever pertinent.

Her first bill expired in the legislative machinery and in 1995 she tried again. She got her hearing recently thanks to the chairman of her subcommittee of the Government Reform Committee—Stephen Horn, the California Republican.

If the leaders of Congress will it, the Maloney bill can be passed this year. I nominate my New York Senators to introduce it in the Senate. It will be a squeeze to get it passed before the end of the year, so kindly ask your representatives and senators to start squeezing.

If not, the laborious legislative procedure will have to be repeated next session. Questions about the Waldheim connection will go unanswered, and also about other cases that may be in the files or strangely misplaced, which will also be of interest.

By Mr. MOYNIHAN:

S. 151. A bill for the relief of Dr. Yuri F. Orlov of Ithaca, New York; to the Committee on Governmental Affairs.

SOVIET DISSIDENT LEGISLATION

Mr. MOYNIHAN. Mr. President, today I rise to introduce a bill to recognize the immeasurable debt which we owe to a leading Soviet dissident. Dr. Yuri F. Orlov, a founding member of the Soviet chapter of Amnesty International and founder of the Moscow Helsinki Watch Group (the first nationwide organization in Soviet history to question government actions), who now lives in Ithaca, New York, is threatened by poverty. Yuri Orlov could not be stopped by the sinister forces of the Soviet Union and, no doubt, he will not be stopped by poverty. But I rise today in hopes that it will not come to that.

Dr. Orlov's career as a dissident began while he was working at the famous Institute for Theoretical and Experimental Physics in Moscow. At the Institute in 1956 he made a pro-democracy speech which cost him his position and forced him to leave Moscow. He was able to return in 1972, whereupon he began his most outspoken criticism of the Soviet regime.

On September 13, 1973, in response to a government orchestrated-public

smear campaign against Audrei Sakharov, Orlov sent "Thirteen Questions to Brezhnev," a letter which advocated freedom of the press and reform of the Soviet economy. One month later, he became a founding member of the Soviet chapter of Amnesty International. His criticism of the Soviet Union left him unemployed and under constant KGB surveillance, but he would not be silenced.

In May, 1976 Dr. Orlov founded the Moscow Helsinki Watch Group to pressure the Soviet Union to honor the human rights obligations it had accepted under the Helsinki Accords signed in 1975. His leadership of the Helsinki Watch Group led to his arrest and, eventually, to a show trial in 1978. He was condemned to seven years in a labor camp and five years in exile.

After having served his prison sentence, and while still in exile, Dr. Orlov was able to immigrate to the United States in 1986 in an exchange arranged by the Reagan Administration. A captured Soviet spy was returned in exchange for the release of Dr. Orlov and a writer for U.S. News & World Report who had been arrested in Moscow, Nicholas Daniloff.

Since then, Dr. Orlov has served as a senior scientist at Cornell University in the Newman Laboratory of Nuclear Studies. Now that he is 72 years old, he is turning his thoughts to retirement. Unfortunately, since he has only been in the United States for 10 years, his retirement income from the Cornell pension plus Social Security will be insufficient: only a fraction of what Cornell faculty of comparable distinction now get at retirement.

His scientific colleagues, Nobel physicist Dr. Hans A. Bethe, Kurt Gottfried of Cornell, and Sidney Drell of Stanford, have made concerted efforts to raise support for Dr. Orlov's retirement, but they are in further need.

To this end, I have agreed to assist these notable scientists in their endeavor to secure a more appropriate recompense for this heroic dissident. That is the purpose that brings me here to the Senate floor today, on the first day of the 105th Congress, to introduce a bill on Dr. Orlov's behalf. While I acknowledge the daunting prospects that face private relief bills these days, I offer the bill at least as a step toward bringing the kind of attention to Dr. Orlov's situation which he deserves.

To understand Dr. Orlov's contributions to ending the Cold War, I would draw my colleagues attention to his autobiography, Dangerous Thoughts: Memoirs of a Russian Life. It captures the fear extant in Soviet society and the courage of men like Orlov, Sakharov, Sharansky, Solzhenitsyn, and others who defied the Soviet regime. Dr. Orlov, who spent 7 years in a labor camp and two years in Siberian exile, never ceased protesting against oppression. Despite deteriorating health and the harsh conditions of the camp, Dr. Orlov smuggled out messages in support of basic rights and nuclear arms control. His bravery and that of his dissident colleagues played no small role in the dissolution of the Soviet Union. I am sure many would agree that we owe them a tremendous debt. This then is a call to all those who agree with that proposition. Dr. Orlov is now in need; please join our endeavor.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 152. A bill to provide for the relief and payment of an equitable claim to the estate of Dr. Beatrice Braude of New York, New York; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill, cosponsored by Senator D'AMATO, to provide for the relief and payment of an equitable claim to the estate of Dr. Beatrice Braude.

Mr. President, this is a measure of justice which brings back memories of an old and awful time. Dr. Braude, a linguist fluent in several languages, was dismissed from her position at the United States Information Agency (USIA) in 1953 as a result of accusations of disloyalty to the United States. The accusations were old; two years earlier, the State Department's Loyalty Security Board had investigated and unanimously voted to dismiss them. The Board sent a letter to Dr. Braude stating "there is no reasonable doubt as to your loyalty to the United States Government or as to your security risk to the Department of State."

Dr. Braude was terminated one day after being praised for her work and informed that she probably would be promoted. USIA officials told her that the termination was due to budgetary constraints. Congress had funded the USIA at a level 27 percent below the President's request. The Supplemental Appropriation Act of 1954 (Public Law 83-207) authorized a reduction in force commensurate to the budget cut. Fair enough. As Dr. Braude remarked years later, "I never felt that I had a lien on a government job." But what Dr. Braude did not know is that she was selected for termination because of the old—and answered—charges against her. And because she did not know the real reason for her dismissal, she was denied certain procedural rights (the right to request a hearing, for instance).

The true reason for her dismissal was kept hidden from her. When she was unable, over the next several years, to secure employment anywhere else within the Federal Government—even in a typing pool despite a perfect score on the typing test—she became convinced that she had been blacklisted. She spent the next 30 years fighting to regain employment and restore her reputation. Though she succeeded in 1982 (at the age of 69) in securing a position in the CIA as a language instructor, she still had not been able to clear her name by the time of her death in 1988. The irony of the charges against Dr. Braude is that she was an anti-communist, having witnessed first-hand communist-sponsored terrorism in Europe while she was an assistant cultural affairs officer in Paris and, for a brief period, an exchange officer in Bonn during the late 1940s and early 1950s.

Mr. President, I would like to review the charges against Dr. Braude because they are illustrative of that dark era and instructive to us even today. There were a total of four. First, she was briefly a member of the Washington Book Shop at Farragut Square that the Attorney General later labeled subversive. Second, she had been in contact with Mary Jane Keeney, a Communist Party activist employed at the United Nations. Third, she had been a member of the State Department unit of the Communist-dominated Federal Workers' Union. Fourth, she was an acquaintance of Judith Coplon.

With regard to the first charge, Dr. Braude had indeed joined the Book Shop shortly after her arrival in Washington in 1943. She was eager to meet congenial new people and a friend recommended the Book Shop, which hosted music recitals in the evenings. I must express some sensitivity here: my F.B.I. records report that I was observed several times at a "leftist musical review" in suburban Hampstead while I was attending the London School of Economics on a Fulbright Fellowship.

Dr. Braude was aware of the undercurrent of sympathy with the Russian cause at the Book Shop, but her membership paralleled a time of close U.S.-Soviet collaboration. She drifted away from the Book Shop in 1944 because of her distaste for the internal politics of other active members. Her membership at the Book Shop was only discovered when her name appeared on a list of delinquent dues. It appears that her most sinister crime while a member of the book shop was her failure to return a book on time.

Dr. Braude met Mary Jane Keeney on behalf of a third woman who actively aided Nazi victims after the war and was anxious to send clothing to another woman in occupied Germany. Dr. Braude knew nothing of Keeney's political orientation and characterized the meeting as a transitory experience.

With regard to the third charge, Dr. Braude, in response to an interrogatory from the State Department's Loyalty Security Board, argued that she belonged to an anti-Communist faction of the State Department unit of the Federal Workers' Union.

Remember that the Loyalty Security Baird invested these charges and exonerated her.

The fourth charge, which Dr. Braude certainly did not—or could not—deny, was her friendship with Judith Coplon. Braude met Coplon in the summer of 1945 when both women attended a class Herber Marcuse taught at American University. They saw each other infrequently thereafter. In May 1948, Coplon wrote to Braude, then stationed in Paris and living in a hotel on the Left Bank, to announce that she would be visiting shortly and needed a place to stay. Dr. Braude arranged for Coplon to stay at the hotel. Coplon stayed for 6 weeks, during which time Dr. Braude found her behavior very trying. The two parted on unfriendly terms. The friendship they had prior to parting was purely social.

Mr. President, Judith Coplon was a spy. She worked in the Justice Department's Foreign Agents Registration Division, an office integral to the FBI's counter-intelligence efforts. She was arrested early in 1949 while handing over notes on counterintelligence operations to Soviet citizen Valentine Gubitchev, a United Nations employee. Coplon was tried and convicted—there was no doubt of her guilt—but the conviction was overturned on a technicality. Gubitchev was also convicted but was allowed to return to the U.S.S.R. because of his quasi-diplomatic status.

My involvement in Dr. Braude's case dates back to early 1979, when Dr. Braude came to me and my colleague at the time, Senator Javits, and asked us to introduce private relief legislation on her behalf. In 1974, after filing a Freedom of Information Act request and finally learning the true reason for her dismissal, she filed suit in the Court of Claims to clear her name and seek reinstatement and monetary damages for the time she was prevented from working for the Federal Government. The Court, however, dismissed her case on the grounds that the statute of limitations had expired. On March 5, 1979, Senator Javits and I together introduced a bill, S. 546, to waive the statute of limitations on Dr. Braude's case against the U.S. Government and to allow the Court of Claims to render judgment on her claim. The bill passed the Senate on January 30, 1980. Unfortunately, the House failed to take action on the bill before the 96th Congress adjourned.

In 1988, and again in 1990, 1991, and 1993, Senator D'AMATO and I re-introduced similar legislation on Dr. Braude's behalf. Our attempts met with repeated failure. Until at last, on September 21, 1993, we secured passage of Senate Resolution 102, which referred S. 840, the bill we introduced for the relief of the estate of Dr. Braude, to the Court of Claims for consideration as a congressional reference action. The measure compelled the Court to determine the facts underlying Dr. Braude's claim and to report back to Congress on its findings.

The Court held a hearing on the case in November of 1995 and on March 7 of last year Judge Roger B. Andewelt of the Court of Federal Claims issued his verdict that the USIA had wrongfully dismissed Dr. Braude and intentionally concealed the reason for her termination. He concluded that such actions constituted an equitable claim for which compensation is due. Forty-three years after her dismissal from the USIA and 8 years after her death, the Court found in favor of the estate of Dr. Braude.

Senator D'AMATO and I wish to express our profound admiration for Judge Andewelt's decision in which he absolved Dr. Beatrice Braude of the surreptitious charges of disloyalty with which she was never actually confronted. The Court declared that Dr. Braude "cared about others deeply and was loyal to her friends, family and country."

We are equally grateful to Christopher N. Sipes and William Livingston, Jr. of Covington & Burling, two of the many lawyers who have handled Dr. Braude's case on a pro bono basis over the years. Mr. Sipes quite properly remarked that the decision represents an important page in the annals of U.S. history: "The Court of the United States has said it recognizes that this conduct is out of bounds. It tells the government it must acknowledge its wrongs and pay for them."

Justice Department attorneys have reached a settlement with lawyers representing the estate of Dr. Beatrice Braude concerning monetary damages equitably due for the wrongful dismissal of Dr. Braude from her Federal job in 1953 and subsequent blacklisting. The estate will receive $200,000 in damages. Family members have announced that the funds—which Congress must now appropriate—will be donated to Hunter College, the institution from which Dr. Braude received her bachelor's degree.

Now that the parties to the Braude case have reached an agreement on the monetary damages equitably due to Dr. Braude's estate, Senator D'AMATO and I are offering legislation to release the $200,000 to her estate. I hope that we will have the unqualified and unanimous support of our colleagues.

What happened to Dr. Braude was a personal tragedy. But it was also part of a national tragedy, too. This Nation lost, prematurely and unnecessarily, the exceptional services of a gifted and dedicated public servant. Stanley I. Kutler, a professor of constitutional history at the University of Wisconsin, estimates that Dr. Braude was one of about 1,500 Federal employees who were dismissed as security risks between 1953 and 1956. Another 6,000 resigned under the pressure of security and loyalty inquiries, according to Professor Kutler, who testified as an expert witness on Dr. Braude's behalf. It was, as I said earlier, an awful time. We had settled "as on a darkling plain, Swept with confused alarm of struggle and flight, Where ignorant armies clash by night." It must not happen again.

Mr. MOYNIHAN (for himself and Mr. ASHCROFT):

S. 153. A bill to amend the Age Discrimination in Employment Act of 1967 to allow institutions of higher education to offer faculty members who are serving under an arrangement providing for unlimited tenure, benefits on voluntary retirement that are reduced or eliminated on the basis of age, and for other purposes; to the Committee on Labor and Human Resources.

THE FACULTY RETIREMENT INCENTIVE ACT

Mr. MOYNIHAN. Mr. President, today I rise to introduce the Faculty Retirement Incentive Act. This bill will amend the Age Discrimination in Employment Act of 1967 (ADEA) to allow the use of age-based incentives for the voluntary retirement of tenured faculty at colleges and universities. I am pleased that Senator Ashcroft is an original cosponsor of this legislation.

Since the late 1950s, there has been a vast expansion in the number of individuals pursuing careers in academia. Now, an unusually large cohort of tenured faculty make it difficult for universities to hire more recent graduates. As a practical matter, it is extremely difficult or costly or both for institutions to bring on new tenured faculty except where tenure positions open up as a result of retirement. In order for academic institutions to remain effective centers of teaching and scholarship they must have a balance of old and new faculty. This balance, however, is threatened by continuing uncertainties created by recent legislation.

I support the ADEA, but when it was amended in 1986 to extend the protections of the act to individuals age 70 and over, I expressed concern that the application of this change to the unique situation of tenured faculty members at colleges and universities would affect teaching and scholarship at these institutions. While it did include an exemption from the provisions for the bill for tenured faculty, the exemption only lasted seven years. Therefore, I was pleased when that bill included a request for the National Academy of Sciences (NAS) to appoint a commission to study the impact of removing the mandatory retirement age for faculty members at colleges and universities.

When the National Research Council released this study, Ending Mandatory Retirement for Tenured Faculty: The Consequences for Higher Education, on

behalf of NAS in 1991, the report concluded that diminished faculty turnover—particularly at research universities—could increase costs and limit institutional flexibility in responding to changing academic needs, particularly with regard to necessary hires in new and existing disciplines. In concluding that there was "no strong basis for continuing the exemption for tenured faculty," the NAS report presumed that the Federal government would allow "Practical steps" such as age-based early-retirement incentives to mitigate the impact of an uncapped retirement age for tenured faculty. Specifically, the NAS report stated: "The committee recommends that Congress, the Internal Revenue Service, and the Equal Employment Opportunity Commission permit colleges and universities to offer faculty voluntary-retirement incentive programs that are not classified as an employee benefit, include an upper age limit for participants and limit participation on the basis of institutional needs."

These practical steps, however, were not taken although the exemption was allowed to run out. Instead, passage of the Older Workers Benefit Protection Act of 1990 (OWBPA) further confused the issue. OWBPA made early-retirement incentives permissible in the context of defined-benefit retirement plans but did not address the status of such incentives in the context of defined-contribution retirement plans. Defined-contribution retirement plans are most popular with tenured faculty due to their pension portability. The OWBPA did not preclude defined-contribution retirement plans, but by not addressing the issue at all, it added to the ambiguity surrounding the matter. Functionally, early-retirement incentives operate in the same manner for both types of plans. There is continued uncertainty, however, whether early-retirement incentives with an upper-age limit that are offered to tenured faculty conflict with the purpose of ADEA of prohibiting arbitrary age discrimination.

I am troubled by the continued uncertainty created by these bills, and I hope that the Faculty Retirement Incentive Act will provide a "safe harbor" for colleges and universities by clarifying that the early retirement incentives are permitted by the ADEA. Universities must ensure that older faculty members retire at an appropriate age, not simply to "make room" for younger faculty, but to maintain a contemporary, innovative, and creative atmosphere at our nation's colleges and universities.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 154. A bill to improve Orchard Beach, New York; to the Committee on Environment and Public Works.

THE ORCHARD BEACH, NEW YORK IMPROVEMENT ACT OF 1997

Mr. MOYNIHAN. Mr. President, I rise today to introduce a most important piece of legislation for the State of New York, and to ask my Senate colleagues for their support. This bill directs the Secretary of the Army to repair a section of waterfront parkland in the Bronx, New York, known as Orchard Beach. My colleague in New York City, Bronx Borough President Fernando Ferrer, has worked hard for many years to get this beach—so beloved by the citizens of the Bronx—restored to its former glory.

Orchard Beach is a splendid natural sanctuary and recreational spot within the Bronx, which is one of New York City's most urbanized areas. Orchard Beach provides a welcome respite from urban living and is particularly valued by low-income families with children who cannot afford summer homes or trips to the tonier beach resorts on Long Island or the Jersey shore. Over two million people visit Orchard Beach annually. For many of New York's working families, it offers the only affordable and convenient place for their children to play in the sea and sand.

In addition, the beach and surrounding wetlands and salt marshes provide a vital habitat for many marine creatures, including crabs, lobsters, striped bass and winter flounder, as well as numerous species of overwintering waterfowl.

But today, the beach is in urgent need of repair—there is widespread erosion due to repeated storm damage, threatening both the recreational utility of the beach and the stability of the animal and ocean life habitats. It seems only appropriate that we come to the rescue of this treasure now before irreversible damage is done.

In the Water Resources Development Acts of 1992 and 1996, a total of $5.6 million was authorized to study and then conduct an Orchard Beach shoreline protection project to address storm damage prevention, recreation, and environmental restoration. The bill I introduce today would help to ensure that this important project for New York goes forward.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 155. A bill to redesignate General Grant National Memorial as Grant's Tomb National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MOYNIHAN. Mr. President, I rise to introduce, along with my friend and colleagues, Senator D'Amato, a bill to designate President Grant's tomb a national monument. This April 27 will be the centennial of the dedication of the tomb. I can think of no better observance than to pass this designation and the other provisions in this bill that would protect and preserve the tomb and make it more attractive to visitors.

The Nation owes President Grant a great debt for his efforts during the Civil War alone. He proved to be the capable general President Lincoln lacked in the early years of that conflict. Grant provided the leadership, strategy, determination, and courage to do what was necessary to win the war. He should also be remembered for his efforts to include Blacks in the Union Army and later for his relentless opposition to the Ku Klux Klan. Many Southerners appreciated his generous terms with General Lee, which included allowing Lee's men to keep their horses for the spring plowing. Grant went on to become the eighteenth President and to serve two terms.

In 1881 the former President moved to New York City, and four years later to Mount McGregor near Saratoga. He died in 1885. In the next few years, 90,000 people contributed to a fundraising effort that brought in $600,000. This was enough to build structure on Riverside Drive in Manhattan modeled on the tombs of the Emperor Hadrian in Rome, Napoleon in Paris, and King Mausolis in Turkey. Inside are two eight-and-a-half ton sarcophagi made of Wisconsin red granite and a great mural depicting Lee's surrender to Grant at Appomattox.

The tomb became a leading attraction for New York residents and for tourists. However, the neighborhood around the tomb has changed in recent years and visitorship is down. Vandalism is an ongoing concern. This bill takes several steps that are past due to protect and preserve the tomb.

The bill would make Grant's Tomb a National Monument and require the Secretary of the Interior to "administer, repair, restore, preserve, maintain, and promote" the tomb in accordance with the law applicable to all National Monuments. It requires the Secretary to build a visitors center. It also calls for a study over two years to plan interpretive programs, restoration, and security and maintenance.

This bill addresses the needs at Grant's Tomb. It can again become a leading attraction in New York. More important, the bill does what is right for the memory of our eighteenth President.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 156. A bill to provide certain benefits of the Pick-Sloan Missouri River Basin program to the Lower Brule Sioux Tribe, and for other purposes; to the Committee on Energy and Natural Resources.

THE LOWER BRULE SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND ACT OF 1997

Mr. DASCHLE. Mr. President, I am pleased to introduce the Lower Brule

Sioux Tribe Infrastructure Development Trust Fund of 1997. This legislation is the companion bill to the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, which was signed by President Clinton on October 1, 1996.

When the Senate considered the Crow Creek Sioux bill last fall, I told my colleagues it is important to enact legislation to address similar claims by the Lower Brule Sioux and Cheyenne River Sioux tribes. The introduction of this legislation is intended to start that process for the Lower Brule Sioux Tribe. I intend to introduce similar legislation for the Cheyenne River Sioux Tribe later in this session.

The need for this legislation is great. In 1944, Congress passed the Flood Control Act, authorizing the Pick-Sloan Plan to build five dams on the Missouri River. Four of the Pick-Sloan dams are located in South Dakota. While the Pick-Sloan Project has been instrumental in providing the region with irrigation, hydropower and flood control capabilities, its construction took a serious toll on many Native American tribes, who were forced to cede land to the project and suffer the turmoil associated with relocating entire communities.

Like many of the tribes along the Missouri River, the Lower Brule Sioux Tribe shouldered a disproportionate amount of the cost to implement the Pick-Sloan project. Three decades ago, the Big Bend and Fort Randall dams flooded more than 22,000 acres of the Lower Brule Sioux land. Over 70 percent of the tribe's residents were forced to settle elsewhere. The tribe suffered the loss of fertile and productive land along the river that provided many of the tribe's basic staples, including wood for fuel and construction, edible plants, and wildlife habitat that supported the game on which the tribe relied for food. This land, which once played such an important role in the day-to-day lives of the tribal members, now lies underneath the Missouri River reservoirs. The tribe was never adequately compensated for this extraordinary loss.

It was not until 1992 that Congress formally acknowledged the federal government's failure to provide the tribes with adequate compensation. The passage of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, which I cosponsored, established a recovery fund to compensate these tribes. This fund is financed entirely from Pick-Sloan power revenues, and payments to the fund are structured in such a way that they will not result in rate increases to power customers. This is appropriate and fair. As with any well-run business, the revenues from the project should be used to pay its costs.

With the legislation that I am introducing today, we have an opportunity to finally compensate the Lower Brule Sioux Tribe for the sacrifices it has had to bear since being relocated forcibly decades ago. We have an opportunity to mitigate the effects of dislocating the tribal communities and inundating the natural resources that the tribe depended upon for its survival. This legislation will help the Lower Brule Sioux Tribe build new facilities and improve existing infrastructure. Hopefully, by doing so, it will improve the lives of tribal residents in a meaningful and lasting way and promote greater economic self-sufficiency.

Under this legislation, a fund similar to the Crow Creek Sioux Infrastructure Development Trust Fund will be established for the Lower Brule Sioux Tribe. The trust fund will be capitalized from hydropower revenues until the fund accumulates $39.3 million—a figure well documented by Dr. Michael Lawson in his study of the history of this issue entitled An Analysis of the Impact of Pick-Sloan Dam Projects on the Lower Brule Sioux Tribe. The tribe will be able to use the interest generated from the fund to finance its own economic development priorities according to a plan prepared in conjunction with the Bureau of Indian Affairs and the Indian Health Service.

Mr. President, in conclusion I want to emphasize the broad support this legislation enjoys in South Dakota. Senator TIM JOHNSON is a cosponsor and Governor Bill Janklow has endorsed this bill. Establishing this fund for the Lower Brule Sioux Tribe benefits the entire state of South Dakota, as well as the tribal members. It will spur greater economic activity within the state and help the Lower Brule Sioux Tribe establish the infrastructure necessary to participate more fully in the region's economy.

It is my hope that my colleagues will join with me in supporting this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 156

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 "Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) under the Act of December 22, 1994, commonly known as the "Flood Control Act of 1994" (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et seq.) Congress approved the Pick-Sloan Missouri River Basin program—

(A) to promote the general economic development of the United States;

(B) to provide for irrigation above Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the Fort Randall and Big Bend projects are major components of the Pick-Sloan Missouri River Basin program, and contribute to the national economy by generating a substantial amount of hydropower and impounding a substantial quantity of water;

(3) the Fort Randall and Big Bend projects overlie the western boundary of the Lower Brule Indian Reservation, having inundated the fertile, wooded bottom lands of the Tribe along the Missouri River that constituted the most productive agricultural and pastoral lands of the Lower Brule Sioux Tribe and the homeland of the members of the Tribe;

(4) Public Law 85–923 (72 Stat. 1773 et seq.) authorized the acquisition of 7,997 acres of Indian land on the Lower Brule Indian Reservation for the Fort Randall project and Public Law 87–734 (76 Stat. 698 et seq.) authorized the acquisition of 14,299 acres of Indian land on the Lower Brule Indian Reservation for the Big Bend project;

(5) Public Law 87–734 (76 Stat. 698 et seq.) provided for the mitigation of the effects of the Fort Randall and Big Bend projects on the Lower Brule Indian Reservation, by directing the Secretary of the Army to—

(A) as necessary, by reason of the Big Bend project, protect, replace, relocate, or reconstruct—

(i) any essential governmental and agency facilities on the reservation, including schools, hospitals, offices of the Public Health Service and the Bureau of Indian Affairs, service buildings, and employee quarters existing at the time that the projects were carried out; and

(ii) roads, bridges, and incidental matters or facilities in connection with those facilities;

(B) provide for a townsite adequate for 50 homes, including streets and utilities (including water, sewage, and electricity), taking into account the reasonable future growth of the townsite; and

(C) provide for a community center containing space and facilities for community gatherings, tribal offices, tribal council chamber, offices of the Bureau of Indian Affairs, offices and quarters of the Public Health Service, and a combination gymnasium and auditorium;

(6) the requirements under Public Law 87–734 (76 Stat. 698 et seq.) with respect to the mitigation of the effects of the Fort Randall and Big Bend projects on the Lower Brule Indian Reservation have not been fulfilled;

(7) although the national economy has benefited from the Fort Randall and Big Bend projects, the economy on the Lower Brule Indian Reservation remains underdeveloped, in part as a consequence of the failure of the Federal Government to fulfill the obligations of the Federal Government under the laws referred to in paragraph (4);

(8) the economic and social development and cultural preservation of the Lower Brule Sioux Tribe will be enhanced by increased tribal participation in the benefits of the Fort Randall and Big Bend components of the Pick-Sloan Missouri River Basin program; and

(9) the Lower Brule Sioux Tribe is entitled to additional benefits of the Pick-Sloan Missouri River Basin program.

SEC. 3. DEFINITIONS.

In this Act:

(1) FUND.—The term "Fund" means the Lower Brule Sioux Tribe Infrastructure Development Trust Fund established under section 4(a).

(2) PLAN.—The term "plan" means the plan for socioeconomic recovery and cultural preservation prepared under section 5.

(3) PROGRAM.—The term "Program" means the power program of the Pick-Sloan Missouri River Basin program, administered by the Western Area Power Administration.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) TRIBE.—The term "Tribe" means the Lower Brule Sioux Tribe of Indians, a band of the Great Sioux Nation recognized by the United States of America.

SEC. 4. ESTABLISHMENT OF LOWER BRULE SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.

(a) LOWER BRULE SIOUX TRIBE INFRASTRUCTURE DEVELOPMENT TRUST FUND.—There is established in the Treasury of the United States a fund to be known as the "Lower Brule Sioux Tribe Infrastructure Development Trust Fund".

(b) FUNDING.—Beginning with fiscal year immediately following the fiscal year during which the aggregate of the amounts deposited in the Crow Creek Sioux Tribe Infrastructure Development Trust Fund is equal to the amount specified in section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (110 Stat. 3026 et seq.), and for each fiscal year thereafter, until such time as the aggregate of the amounts deposited in the Fund is equal to $39,300,000, the Secretary of the Treasury shall deposit into the Fund an amount equal to 25 percent of the receipts from the deposits to the Treasury of the United States for the preceding fiscal year from the Program.

(c) INVESTMENTS.—The Secretary of the Treasury shall invest the amounts deposited under subsection (b) only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(d) PAYMENT OF INTEREST TO TRIBE.—

(1) ESTABLISHMENT OF ACCOUNT AND TRANSFER OF INTEREST.—The Secretary of the Treasury shall, in accordance with this subsection, transfer any interest that accrues on amounts deposited under subsection (b) into a separate account established by the Secretary of the Treasury in the Treasury of the United States.

(2) PAYMENTS.—

(A) IN GENERAL.—Beginning with the fiscal year immediately following the fiscal year during which the aggregate of the amounts deposited in the Fund is equal to the amount specified in subsection (b), and for each fiscal year thereafter, all amounts transferred under paragraph (1) shall be available, without fiscal year limitation, to the Secretary of the Interior for use in accordance with subparagraph (C).

(B) WITHDRAWAL AND TRANSFER OF FUNDS.—For each fiscal year specified in subparagraph (A), the Secretary of the Treasury shall withdraw amounts from the account established under paragraph (1) and transfer such amounts to the Secretary of the Interior for use in accordance with subparagraph (C). The Secretary of the Treasury may only withdraw funds from the account for the purpose specified in this paragraph.

(C) PAYMENTS TO TRIBE.—The Secretary of the Interior shall use the amounts transferred under subparagraph (B) only for the purpose of making payments to the Tribe.

(D) USE OF PAYMENTS BY TRIBE.—The Tribe shall use the payments made under subparagraph (C) only for carrying out projects and programs pursuant to the plan prepared under section 5.

(3) PROHIBITION ON PER CAPITA PAYMENTS.—No portion of any payment made under this subsection may be distributed to any member of the Tribe on a per capita basis.

(e) TRANSFERS AND WITHDRAWALS.—Except as provided in subsection (d)(1), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

SEC. 5. PLAN FOR SOCIOECONOMIC RECOVERY AND CULTURAL PRESERVATION.

(a) PLAN.—

(1) IN GENERAL.—The Tribe shall, not later than 2 years after the date of enactment of this Act, prepare a plan for the use of the payments made to the Tribe under section 4(d)(2). In developing the plan, the Tribe shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

(2) REQUIREMENTS FOR PLAN COMPONENTS.—The plan shall, with respect to each component of the plan—

(A) identify the costs and benefits of that component; and

(B) provide plans for that component.

(b) CONTENT OF PLAN.—The plan shall include the following programs and components:

(1) EDUCATIONAL FACILITY.—The plan shall provide for an educational facility to be located on the Lower Brule Indian Reservation.

(2) COMPREHENSIVE INPATIENT AND OUTPATIENT HEALTH CARE FACILITY.—The plan shall provide for a comprehensive inpatient and outpatient health care facility to provide essential services that the Secretary of Health and Human Services, in consultation with the individuals and entities referred to in subsection (a)(1), determines to be—

(A) needed; and

(B) unavailable through facilities of the Indian Health Service on the Lower Brule Indian Reservation in existence at the time of the determination.

(3) WATER SYSTEM.—The plan shall provide for the construction, operation, and maintenance of a municipal, rural, and industrial water system for the Lower Brule Indian Reservation.

(4) RECREATIONAL FACILITIES.—The plan shall provide for recreational facilities suitable for high-density recreation at Lake Sharpe at Big Bend Dam and at other locations on the Lower Brule Indian Reservation in South Dakota.

(5) OTHER PROJECTS AND PROGRAMS.—The plan shall provide for such other projects and programs for the educational, social welfare, economic development, and cultural preservation of the Tribe as the Tribe considers to be appropriate.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this Act, including such funds as may be necessary to cover the administrative expenses of the Fund.

SEC. 7. EFFECT OF PAYMENTS TO TRIBE.

(a) IN GENERAL.—No payment made to the Tribe pursuant to this Act shall result in the reduction or denial of any service or program to which, pursuant to Federal law—

(1) the Tribe is otherwise entitled because of the status of the Tribe as a federally recognized Indian tribe; or

(2) any individual who is a member of the Tribe is entitled because of the status of the individual as a member of the Tribe.

(b) EXEMPTIONS; STATUTORY CONSTRUCTION.—

(1) POWER RATES.—No payment made pursuant to this Act shall affect Pick-Sloan Missouri River Basin power rates.

(2) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed as diminishing or affecting—

(A) any right of the Tribe that is not otherwise addressed in this Act; or

(B) any treaty obligation of the United States.

By Mr. INOUYE:

S. 157. A bill to amend title XIX of the Social Security Act to provide for coverage of services provided by nursing school clinics under State medicaid programs; to the Committee on Finance.

THE NURSING SCHOOL CLINICS ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce the Nursing School Clinics Act of 1997, a bill that has two main purposes. First, it builds on our concerted efforts to provide access to quality health care for all Americans by furnishing grants and incentives for nursing schools to establish primary care clinics in areas where additional medical services are most needed. Second, it provides the opportunity for nursing schools to enhance the scope of their students' training and education by giving them firsthand clinical experience in primary care facilities.

Any good manager knows that when major problems are at hand and resources are tight, the most important act is the one that makes full use of all available resources. The American health care system is particularly deficient in this regard. We all know only too well that many individuals in the Nation have no or inadequate access to health care services, especially if they live in many of our rural towns and villages or inhabit our Indian communities. Many good people are trying to deliver services that are so vitally needed, but we need to do more. We must make full use of all health care practitioners, especially those who have been long waiting to give the nation the full measure of their professional abilities.

Nursing is one of the noblest professions, with an enduring history of offering effective and sensitive care to those in need. Yet it is only in the last few years that we have begun to recognize the role that nurses can play as independent providers of care. Only recently, in 1990, Medicare was changed to authorize direct reimbursements to nurse practitioners. Medicaid is gradually being reformed to incorporate their services more effectively. The Nursing School Clinics Act continues the progress toward fully incorporating nurses in the delivery of health care services. Under the act, nursing schools will be able to establish clinics, supervised and staffed by nurse practitioners and nurse practitioner students, that provide primary care targeted to medically underserved rural and native American populations.

In the process of giving direct ambulatory care to their patients, these clinics will also furnish the forums in

which both public and private schools of nursing can design and implement clinical training programs for their students. Simultaneous school-based education and clinical training have been a traditional part of physician development, but nurses have enjoyed fewer opportunities to combine classroom instruction with the practical experience of treating patients. This bill reinforces the principle for nurses of joining schooling with the actual practice of health care.

To accomplish these objectives, title XIX of the Social Security Act is amended to designate that the services provided in these nursing school clinics are reimbursable under Medicaid. The combination of grants and the provision of Medicaid reimbursement furnishes the incentives and operational resources to start the clinics and to keep them going.

To meet the increasing challenges of bringing cost-effective and quality health care to all Americans, we are going to have to think about and debate a variety of proposals, both large and small. Most important, however, we must approach the issue of health care with creativity and determination, ensuring that all reasonable avenues are pursued. Nurses have always been an integral part of health care delivery. The Nursing School Clinics Act of 1997 recognizes the central role they can perform as care givers to the medically underserved.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MEDICAID COVERAGE OF SERVICES PROVIDED BY NURSING SCHOOL CLINICS.

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) in paragraph (24), by striking "and" at the end;

(2) by redesignating paragraph (25) as paragraph (26); and

(3) by inserting after paragraph (24), the following:

"(25) nursing school clinic services (as defined in subsection (t)) furnished by or under the supervision of a nurse practitioner or a clinical nurse specialist (as defined in section 1861(aa)(5)), whether or not the nurse practitioner or clinical nurse specialist is under the supervision of, or associated with, a physician or other health care provider; and".

(b) NURSING SCHOOL CLINIC SERVICES DEFINED.—Section 1905 of such Act (42 U.S.C. 1396d) is amended by adding at the end the following:

"(t) The term 'nursing school clinic services' means services provided by a health care facility operated by an accredited school of nursing which provides primary care, long-term care, mental health counseling, home health counseling, home health care, or other health care services which are within the scope of practice of a registered nurse.".

(c) CONFORMING AMENDMENTS.—Section 1902 of such Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)(C)(iv), by striking "through (24)" and inserting "through (25)"; and

(2) in subsection (j), by striking "through (25)" and inserting "through (26)".

(d) EFFECTIVE DATE.—The amendments made by this Act shall be effective with respect to payments made under a State plan under title XIX of the Social Security Act for calendar quarters commencing with the first calendar quarter beginning after the date of the enactment of this Act.

By Mr. INOUYE:

S. 158. A bill to amend title XVII of the Social Security Act to provide improved reimbursement for clinical social worker services under the medicare program, and for other purposes; to the Committee on Finance.

THE CLINICAL SOCIAL WORKER SERVICES ACT OF 1997

Mr. INOUYE. Mr. President, today I am introducing legislation to amend Title XVIII of the Social Security Act to correct discrepancies in the reimbursement of clinical social workers covered through Medicare, Part B. The three proposed changes that are contained in this legislation are necessary to clarify the current payment process for clinical social workers and to establish a reimbursement methodology for the profession that is similar to other health care professionals reimbursed through the Medicare program.

First, this legislation would set payment for clinical social worker services according to a fee schedule established by the Secretary. Currently, the methodology for reimbursing clinical social workers' services is set at a percentage of the fee for another nonphysician provider group, creating a greater differential in charges than that which exists in the marketplace. I am aware of no other provision in the Medicare statute where one nonphysician's reimbursement rate is tied to that of another nonphysician provider. This is a precedent that clinical social workers understandably wish to change. I also wish to see that clinical social workers' services are valued on their own merit.

Second, this legislation makes it clear that services and supplies furnished incident to a clinical social worker's services are a covered Medicare expense, just as these services are currently covered for other mental health professionals in Medicare. Third, the bill would allow a clinical social worker to be reimbursed for services provided to a client who is hospitalized.

Clinical social workers are valued members of our health care provider team. They are legally regulated in every state of our nation and are recognized as independent providers of mental health care throughout the health care system. Clinical social worker services were made available to Medicare beneficiaries through the Omnibus Budget Reconciliation Act of 1989. I believe that it is time now to correct the reimbursement problems that this profession has experienced through Medicare.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 158

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IMPROVED REIMBURSEMENT FOR CLINICAL SOCIAL WORKER SERVICES UNDER MEDICARE.

(a) IN GENERAL.—Section 1833(a)(1)(F)(ii) of the Social Security Act (42 U.S.C. 1395l(a)(1)(F)(ii)) is amended to read as follows: "(ii) the amount determined by a fee schedule established by the Secretary,".

(b) DEFINITION OF CLINICAL SOCIAL WORKER SERVICES EXPANDED.—Section 1861(hh)(2) of such Act (42 U.S.C. 1395x(hh)(2)) is amended by striking "services performed by a clinical social worker (as defined in paragraph (1))" and inserting "such services and such services and supplies furnished as an incident to such services performed by a clinical social worker (as defined in paragraph (1))".

(c) CLINICAL SOCIAL WORKER SERVICES NOT TO BE INCLUDED IN INPATIENT HOSPITAL SERVICES.—Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by striking "and services" and inserting "clinical social worker services, and services".

(d) TREATMENT OF SERVICES FURNISHED IN INPATIENT SETTING.—Section 1832(a)(2)(B)(iii) of such Act (42 U.S.C. 1395k(a)(2)(B)(iii)) is amended by striking "and services" and inserting "clinical social worker services, and services".

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective with respect to payments made for clinical social worker services furnished on or after January 1, 1998.

By Mr. INOUYE:

S. 159. A bill to amend title XVIII of the Social Security Act to remove the restriction that a clinical psychologist or clinical social worker provide services in a comprehensive outpatient rehabilitation facility to a patient only under the care of a physician, and for other purposes; to the Committee on Finance.

MEDICARE LEGISLATION

Mr. INOUYE. Mr. President, today I am introducing legislation to authorize the autonomous functioning of clinical psychologists and clinical social workers within the Medicare comprehensive outpatient rehabilitation facility program.

In my judgment, it is truly unfortunate that programs such as this currently require clinical supervision of the services provided by certain health professionals and do not allow each of

the various health professions to truly function to the extent of their state practice acts. In my judgment, it is especially appropriate that those who need the services of outpatient rehabilitation facilities have access to a wide range of social and behavioral science expertise. Clinical psychologists and clinical social workers are recognized as independent providers of mental health care services through the Federal Employee Health Benefits Program, the Civilian Health and Medical Program of the Uniformed Services, the Medicare (Part B) Program, and numerous private insurance plans.

Mr. President, I ask unanimous consent that the text of this bill be printed in the CONGRESSIONAL RECORD.

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

S. 159

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REMOVAL OF RESTRICTION THAT A CLINICAL PSYCHOLOGIST OR CLINICAL SOCIAL WORKER PROVIDE SERVICES IN A COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY TO A PATIENT ONLY UNDER THE CARE OF A PHYSICIAN.

(a) IN GENERAL.—Section 1861(cc)(2)(E) of the Social Security Act (42 U.S.C. 1395x(cc)(2)(E)) is amended by inserting before the semicolon "(except with respect to services provided by a clinical psychologist or a clinical social worker)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to services provided on or after January 1, 1998.

By Mr. INOUYE:

S. 160. A bill to amend title 5, United States Code, to require the issuance of a prisoner-of-war medal to civilian employees of the Federal Government who are forcibly detained or interned by a enemy government or a hostile force under wartime conditions; to the Committee on Governmental Affairs.

PRISONER OF WAR MEDAL LEGISLATION

Mr. INOUYE. Mr. President, all too often we find that our nation's civilians who have been captured by a hostile government do not receive the recognition they deserve. My bill would correct this inequity and provide a prisoner of war medal for civilian employees of the federal government.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 160

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PRISONER-OF-WAR MEDAL FOR CIVILIAN EMPLOYEES OF THE FEDERAL GOVERNMENT.

(a) AUTHORITY TO ISSUE PRISONER-OF-WAR MEDAL.—(1) Subpart A of part III of title 5, United States Code, is amended by inserting after chapter 23 the following new chapter:

"CHAPTER 25—MISCELLANEOUS AWARDS

"Sec.
"2501. Prisoner-of-war medal: issue.

"§ 2501. Prisoner-of-war medal: issue

"(a) The President shall issue a prisoner-of-war medal to any person who, while serving in any capacity as an officer or employee of the Federal Government, was forcibly detained or interned, not as a result of such person's own willful misconduct—

"(1) by an enemy government or its agents, or a hostile force, during a period of war; or

"(2) by a foreign government or its agents, or a hostile force, during a period other than a period of war in which such person was held under circumstances which the President finds to have been comparable to the circumstances under which members of the armed forces have generally been forcibly detained or interned by enemy governments during periods of war.

"(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

"(c) Not more than one prisoner-of-war medal may be issued to a person under this section or section 1128 of title 10. However, for each succeeding service that would otherwise justify the issuance of such a medal, the President (in the case of service referred to in subsection (a) of this section) or the Secretary concerned (in the case of service referred to in section 1128(a) of title 10) may issue a suitable device to be worn as determined by the President or the Secretary, as the case may be.

"(d) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

"(e) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled, the medal may be issued to the person's representative, as designated by the President.

"(f) Under regulations to be prescribed by the President, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

"(g) In this section, the term 'period of war' has the meaning given such term in section 101(11) of title 38.".

(2) The table of chapters at the beginning of part III of such title is amended by inserting after the item relating to chapter 23 the following new item:

"25. Miscellaneous Awards ..... 2501".

(b) APPLICABILITY.—Section 2501 of title 5, United States Code, as added by subsection (a), applies with respect to any person who, after April 5, 1917, is forcibly detained or interned as described in subsection (a) of such section.

By Mr. INOUYE:

S. 161. A bill to amend title 38, United States Code, to revise certain provisions relating to the appointment of clinical and counseling psychologist in the Veterans Health Administration, and for other purposes; to the Committee on Veterans Affairs.

THE VETERANS' HEALTH ADMINISTRATION ACT OF 1997

Mr. INOUYE. Mr. President, I am introducing legislation today to amend chapter 74 of title 38, United States Code, to revise certain provisions relating to the appointment of clinical and counseling psychologists in the Veterans Health Administration (VHA).

The VHA has a long history of maintaining a staff of the very best health care professionals to provide care to those men and women who have served their country in the Armed Forces. It is certainly fitting that this should be done.

Recently a quite distressing situation regarding the care of our veterans has come to my attention. In particular, the recruitment and retention of psychologists in the VHA of the Department of Veterans Affairs has become a significant problem.

The Congress has recognized the important contribution of the behavioral sciences in the treatment of several conditions from which a significant portion of our veterans suffer. For example, programs related to homelessness, substance abuse, and post traumatic stress disorder [PTSD] have received funding from the Congress in recent years.

Certainly, psychologists, as behavioral science experts, are essential to the successful implementation of these programs. However, the high vacancy and turnover rates for psychologists in the VHA (over 11 percent and 18 percent respectively as reported in one recent survey) might seriously jeopardize these programs and will negatively impact overall patient care in the VHA.

Recruitment of psychologists by the VHA is hindered by a number of factors including a pay scale not commensurate with private sector rates of pay as well as by the low number of clinical and counseling psychologists appearing on the register of the Office of Personnel Management [OPM]. Most new hires have no post-doctoral experience and are hired immediately after a VA internship. Recruitment, when successful, takes up to six months or more.

Retention of psychologists in the VA system poses an even more significant problem. I have been informed that almost 40 percent of VHA psychologists had five years or less of post-doctoral experience. Without doubt, our veterans would benefit from a higher percentage of senior staff who are more experienced in working with veterans and their particular concerns. My bill provides incentives for psychologists to continue their work with the VHA and seek additional education and training.

Several factors are associated with the difficulties in retention of VHA psychologists including low salaries and lack of career advancement opportunities. It seems that psychologists are apt to leave the VA system after five years because they have almost reached peak levels for salary and professional development in the VHA. Furthermore, under the present system psychologists cannot be recognized nor

appropriately compensated for excellence or for taking on additional responsibilities such as running treatment programs.

In effect, the current system for hiring psychologists in the VHA supports mediocrity, not excellence and mastery. Our veterans with behavioral disorders and mental health problems are deserving of better psychological care from more experienced professionals than they are currently receiving.

A hybrid title 38 appointment authority for psychologists would help ameliorate the recruitment and retention problems in several ways. The length of time it takes to recruit psychologists could be abbreviated by eliminating the requirement for applicants to be rated by the Office of Personnel Management. This would also facilitate the recruitment of applicants who are not recent VA interns by reducing the amount of time between identifying a desirable applicant and being able to offer that applicant a position.

It is expected that problems in retention of behavioral science experts will be greatly alleviated with the implementation of a hybrid title 38 system for VA psychologists, primarily through offering financial incentives for psychologists to pursue professional development with the VHA. Achievements that would merit salary increases under title 38 should include such activities as assuming supervisory responsibilities for clinical programs, implementing innovative clinical treatments that improve the effectiveness and/or efficiency of patient care, making significant contributions to the science of psychology, earning the ABPP diplomate status, and becoming a Fellow of the American Psychological Association.

Currently, psychologists are the only doctoral level health care providers in the VHA who are not included in title 38. This is, without question, a significant factor in the recruitment and retention difficulties that I have addressed. Ultimately, an across-the-board salary increase might be necessary. However, the conversion of psychologists to a hybrid title 38, as proposed by this amendment, would provide relief for these difficulties and enhance the quality of care for our Nations' veterans and their families.

Mr. President, I ask unanimous consent that the text of this bill be printed in the CONGRESSIONAL RECORD.

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

S. 161

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REVISION OF AUTHORITY RELATING TO APPOINTMENT OF CLINICAL AND COUNSELING PSYCHOLOGISTS IN THE VETERANS HEALTH ADMINISTRATION.

(a) IN GENERAL.—Section 7401(3) of title 38, United States Code, is amended by striking out "who hold diplomas as diplomates in psychology from an accrediting authority approved by the Secretary".

(b) CERTAIN OTHER APPOINTMENTS.—Section 7405(a) of such title is amended—

(1) in paragraph (1)(B), by striking out "Certified or" and inserting in lieu thereof "Clinical or counseling psychologists, certified or"; and

(2) in paragraph (2)(B), by striking out "Certified or" and inserting in lieu thereof "Clinical or counseling psychologists, certified or".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of enactment of this Act.

(d) APPOINTMENT REQUIREMENT.—Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall begin to make appointments of clinical and counseling psychologists in the Veterans Health Administration under section 7401(3) of title 38, United States Code (as amended by subsection (a)), not later than 1 year after the date of enactment of this Act.

By Mr. INOUYE:

S. 162. A bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

TRAVEL PRIVILEGES LEGISLATION

Mr. INOUYE. Mr. President, today I am introducing a bill which is of great importance to a group of patriotic Americans. This legislation is designed to extend space-available travel privileges on military aircraft to those who have been totally disabled in the service of our country.

Currently, retired members of the Armed Forces are permitted to travel on a space-available basis on nonscheduled military flights within the continental United States and on scheduled overseas flights operated by the Military Airlift Command. My bill would provide the same benefits for 100 percent service-connected disabled veterans.

Surely, we owe these heroic men and women, who have given so much to our country, a debt of gratitude. Of course, we can never repay them for the sacrifice they have made on behalf of our nation but we can surely try to make their lives more pleasant and fulfilling. One way in which we can help is to extend military travel privileges to these distinguished American veterans. I have received numerous letters from all over the country attesting to the importance attached to this issue by veterans. Therefore, I ask that my colleagues show their concern and join me in saying "thank you" by supporting this legislation.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 162

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRAVEL ON MILITARY AIRCRAFT OF CERTAIN DISABLED FORMER MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding after section 1060a the following new section:

"§1060b. Travel on military aircraft: certain disabled former members of the armed forces

"The Secretary of Defense shall permit any former member of the armed forces who is entitled to compensation under the laws administered by the Secretary of Veterans Affairs for a service-connected disability rated as total to travel, in the same manner and to the same extent as retired members of the armed forces, on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Military Airlift Command. The Secretary of Defense shall permit such travel on a space-available basis.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the item relating to section 1060a the following new item:

"1060b. Travel on military aircraft: certain disabled former members of the armed forces.".

By Mr. INOUYE:

S. 163. A bill to recognize the organization known as the National Academies of Practice; to the Committee on the Judiciary.

THE NATIONAL ACADEMIES OF PRACTICE RECOGNITION ACT OF 1997

Mr. INOUYE. Mr. President, today I am introducing legislation that would provide a federal charter for the National Academies of Practice. This organization represents outstanding practitioners who have made significant contributions to the practice of applied psychology, medicine, dentistry, nursing, optometry, podiatry, social work, and veterinary medicine. When fully established, each of the nine academies will possess 100 distinguished practitioners selected by their peers. This umbrella organization will be able to provide the Congress of the United States and the executive branch with considerable health policy expertise, especially from the perspective of those individuals who are in the forefront of actually providing health care.

As we continue to grapple with the many complex issues surrounding the delivery of health care services, it is clearly in our best interest to ensure that the Congress have systematic access to the recommendations of an interdisciplinary body of health care practitioners.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 163

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHARTER.

The National Academies of Practice organized and incorporated under the laws of the District of Columbia, is hereby recognized as such and is granted a Federal charter.

SEC. 2. CORPORATE POWERS.

The National Academies of Practice (hereafter referred to in this Act as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State in which it is incorporated and subject to the laws of such State.

SEC. 3. PURPOSES OF CORPORATION.

The purposes of the corporation shall be to honor persons who have made significant contributions to the practice of applied psychology, dentistry, medicine, nursing, optometry, osteopathy, podiatry, social work, veterinary medicine, and other health care professions, and to improve the practices in such professions by disseminating information about new techniques and procedures.

SEC. 4. SERVICE OF PROCESS.

With respect to service of process, the corporation shall comply with the laws of the State in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

SEC. 5. MEMBERSHIP.

Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

SEC. 6. BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES.

The composition and the responsibilities of the board of directors of the corporation shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

SEC. 7. OFFICERS OF THE CORPORATION.

The officers of the corporation and the election of such officers shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

SEC. 8. RESTRICTIONS.

(a) USE OF INCOME AND ASSETS.—No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) LOANS.—The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) POLITICAL ACTIVITY.—The corporation, any officer, or any director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) ISSUANCE OF STOCK AND PAYMENT OF DIVIDENDS.—The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) CLAIMS OF FEDERAL APPROVAL.—The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

SEC. 9. LIABILITY.

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SEC. 10. MAINTENANCE AND INSPECTION OF BOOKS AND RECORDS.

(a) BOOKS AND RECORDS OF ACCOUNT.—The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors.

(b) NAMES AND ADDRESSES OF MEMBERS.—The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote in any proceeding of the corporation.

(c) RIGHT TO INSPECT BOOKS AND RECORDS.—All books and records of the corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time.

(d) APPLICATION OF STATE LAW.—Nothing in this section shall be construed to contravene any applicable State law.

SEC. 11. AUDIT OF FINANCIAL TRANSACTIONS.

The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended—

(1) by redesignating paragraph (72) as paragraph (71);

(2) by designating the paragraph relating to the Non Commissioned Officers Association of the United States of America, Incorporated, as paragraph (72);

(3) by redesignating paragraph (60), relating to the National Mining Hall of Fame and Museum, as paragraph (73); and

(4) by adding at the end the following:

"(75) National Academies of Practice.".

SEC. 12. ANNUAL REPORT.

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit for such fiscal year required by section 3 of the Act referred to in section 11 of this Act. The report shall not be printed as a public document.

SEC. 13. RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER.

The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

SEC. 14. DEFINITION.

For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 15. TAX-EXEMPT STATUS.

The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986 or any corresponding similar provision.

SEC. 16. TERMINATION.

If the corporation fails to comply with any of the restrictions or provisions of this Act the charter granted by this Act shall terminate.

By Mr. INOUYE:

S. 164. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect, to be conducted by a clinical social worker; to the Committee on the Judiciary.

THE PSYCHIATRIC AND PSYCHOLOGICAL EXAMINATIONS ACT OF 1997

Mr. INOUYE. Mr. President, today I am introducing legislation to amend Title 18 of the United States Code to allow our nation's clinical social workers to provide their mental health expertise to the federal judiciary.

I feel that the time has come to allow our nation's judicial system to have access to a wide range of behavioral science and mental health expertise. I am confident that the enactment of this legislation would be very much in our nation's best interest.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 164

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXAMINATIONS BY CLINICAL SOCIAL WORKERS.

Section 4247(b) of title 18, United States Code, is amended in the first sentence by—

(1) striking out "or" after "certified psychiatrist" and inserting a comma; and

(2) inserting after "psychologist," the following: "or clinical social worker,".

By Mr. INOUYE:

S. 165. A bill for the relief of Donald C. Pence; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. INOUYE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 165

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELIEF OF DONALD C. PENCE.

(a) RELIEF.—The Secretary of the Treasury shall pay, out of any moneys in the Treasury not otherwise appropriated, to Donald C. Pence, of Sanford, North Carolina, the sum of $31,128 in compensation for the failure of the Department of Veterans Affairs to pay dependency and indemnity compensation to Kathryn E. Box, the now-deceased mother of Donald C. Pence, for the period beginning on July 1, 1990, and ending on March 31, 1993.

(b) LIMITATION ON FEES.—Not more than a total of 10 percent of the payment authorized by subsection (a) shall be paid to or received by agents or attorneys for services rendered in connection with obtaining such payment, any contract to the contrary notwithstanding. Any person who violates this subsection shall be fined not more than $1,000.

By Mr. INOUYE:

S. 166. A bill to amend section 1086 of title 10, United States Code, to provide for payment under CHAMPUS of certain health care expenses incurred by certain members and former members

of the uniformed services and their dependents to the extent that such expenses are not payable under Medicare, and for other purposes; to the Committee on Armed Services.

THE CHAMPUS AMENDMENT ACT OF 1997

Mr. INOUYE. Mr. President, I feel that it is very important that our nation continue its firm commitment to those individuals and their families who have served in the Armed Forces and made us the great nation that we are today. As this population becomes older, they are unfortunately finding that they need a wider range of health services, some of which are simply not available under Medicare. These individuals made a commitment to their nation, trusting that when they needed help the nation would honor that commitment. The bill that I am recommending today would ensure the highest possible quality of care for these dedicated citizens and their families, who gave so much for us.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 166

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF MEDICARE EXCEPTION TO THE PROHIBITION OF CHAMPUS COVERAGE FOR CARE COVERED BY ANOTHER HEALTH CARE PLAN.

(a) AMENDMENT AND REORGANIZATION OF EXCEPTIONS.—Subsection (d) of section 1086 of title 10, United States Code, is amended to read as follows:

"(d)(1) Section 1079(j) of this title shall apply to a plan contracted for under this section except as follows:

"(A) Subject to paragraph (2), a benefit may be paid under such plan in the case of a person referred to in subsection (c) for items and services for which payment is made under title XVIII of the Social Security Act.

"(B) No person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs.

"(2) If a person described in paragraph (1)(A) receives medical or dental care for which payment may be made under both title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and a plan contracted for under subsection (a), the amount payable for that care under the plan may not exceed the difference between—

"(A) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under that title; and

"(B) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under the plan.

"(3) A plan contracted for under this section shall not be considered a group health plan for the purposes of paragraph (2) or (3) of section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)).

"(4) A person who, by reason of the application of paragraph (1), receives a benefit for items or services under a plan contracted for under this section shall provide the Secretary of Defense with any information relating to amounts charged and paid for the items and services that, after consulting with the other administering Secretaries, the Secretary requires. A certification of such person regarding such amounts may be accepted for the purposes of determining the benefit payable under this section.".

(b) REPEAL OF SUPERSEDED PROVISION.—Such section is further amended—

(1) by striking out subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

SEC. 2. CONFORMING AMENDMENT.

Section 1713(d) of title 38, United States Code, is amended by striking out "section 1086(d)(1) of title 10 or".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to health care items or services provided on and after the date of enactment of this Act.

By Mr. INOUYE:

S. 167. A bill for the relief of Alfredo Tolentino of Honolulu, Hawaii; to the Committee on Governmental Affairs.

PRIVATE RELIEF LEGISLATION

Mr. INOUYE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 167

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 8337(b) of title 5, United States Code, Alfredo Tolentino of Honolulu, Hawaii may file an application no later than 60 days after the date of the enactment of this Act with the Office of Personnel Management for a claim of disability retirement under the provisions of such section.

By Mr. DEWINE:

S. 168. A bill to reform criminal procedure, and for other purposes; to the Committee on the Judiciary.

THE TRIGGERLOCK ACT OF 1997

Mr. DEWINE. Mr. President, there are two truly fundamental issues we need to address in the area of crime. First, what is the proper role of the Federal Government in fighting crime in this country? Second, despite all the rhetoric, what really works in law enforcement?

What matters? What doesn't matter?

Today, I would like to discuss one issue that I believe really matters: How do we go about protecting America from armed career criminals?

I am talking about repeat violent criminals who use a gun while committing a crime.

In this area, too, we need to be asking: What works? And what level of Government should do it?

In the area of gun crimes, we have a pretty good answer.

We all know that there is some controversy over whether general restrictions on gun ownership would help to reduce crime. But there is no controversy over whether taking guns away from felons would reduce crime.

There is legitimate disagreement over whether the Brady bill would reduce crime. Similarly, reasonable people can disagree on the question of whether a ban on assault weapons would reduce crime. I happen to support both those measures—but I recognize that some people think they are not effective.

But what I am talking about today is something on which there is absolutely no controversy. There's simply no question that taking the guns away from armed career criminals will reduce crime.

No question, Mr. President. When it comes to felons, unilateral disarmament of the thugs is the best policy. Let's disarm the people who hurt people.

We have actually tried it—and we know it works. One of the most successful crime-fighting initiatives of recent years was known as Project Triggerlock. This project was wildly successful precisely because it addresses a problem squarely—and places the resources where they are most needed.

Let me tell you a little about project Triggerlock. The U.S. Justice Department began Project Triggerlock in May 1991. The program targeted for prosecution—in Federal court—armed and violent repeat offenders.

Under Triggerlock, U.S. Attorneys throughout the country said to State and local prosecutors: If you catch a felon with a gun, and if you want us to, we—the Federal prosecutors—will take over the prosecution.

We will prosecute him. We will convict him. We will hit him with a stiff Federal mandatory sentence. And we will lock him up in a Federal prison at no cost to the State or local community.

That's what Triggerlock did. Triggerlock was an assault on the very worst criminals in America. And it worked.

This program took 15,000 criminals off the streets in an 18-month period.

Incredibly, the Clinton Justice Department abandoned Project Triggerlock. It was the most effective Federal program in recent history for targeting and removing armed career criminals. But the Justice Department stopped Triggerlock dead in its tracks.

What I am proposing in this bill is that we resurrect Project Triggerlock.

My bill requires the U.S. attorneys in every jurisdiction in this country to make a montly report to the Attorney General in Washington on the number of arrests, prosecutions, and convictions they have gotten on gun-related offenses. The Attorney General should then report, semi-annually, to the Congress on the work of these prosecutors.

Like all prosecutors, U.S. attorneys have limited resources. So—like all prosecutors—U.S. attorneys have to exercise discretion about whom to prosecute. We all recognize the Congress can't dictate to prosecutors whom they should prosecute—but it's clear that we should go on record with the following proposition: There's nothing more important than getting armed career criminals off the streets.

Mr. President, I think Project Triggerlock is a very important way to keep the focus on the prosecution of gun crimes. Getting gun criminals off the streets is a major national priority—and we ought to behave accordingly.

MANDATORY MINIMUMS

Mr. President, the second thing we need to do is change the law. We need to toughen the law against those who use a gun to commit a crime. My bill would say to career criminals—if you possess a gun after being convicted for gun crimes, you will get a mandatory 15-year sentence.

Under current law, a first-time felon gets a 5-year mandatory minimum sentence. A third-time felon gets a mandatory minimum of 15 years. But there is a gap—there's no mandatory minimum for a second-time felon.

My legislation would fix that. It would provide a mandatory minimum of 10 years for a second-time felon.

That would make it a lot easier for police to get gun criminals off our streets.

BAIL REFORM

A third thing we have to do is reform the bail system.

Under current law—the Bail Reform Act—certain dangerous accused criminals can be denied bail detention if they have been charged with crimes of violence. But it's unclear under current law whether possession of firearms should be considered a crime of violence.

Mr. President, let us do a reality check on this. If someone who is a known convicted felon is walking around with a gun, what's the likelihood that person is carrying the gun for law-abiding purposes?

I think it is perfectly reasonable to consider that person prima facie dangerous. We should deny bail—and keep that convicted felon off the streets while awaiting trial on the new charge.

My legislation would eliminate the ambiguity in current law. My bill would define a "crime of violence" specifically to include possession of a firearm by a convicted felon.

If you are a convicted felon, and you're walking around with a gun—you're dangerous. You need to be kept off the streets. We need to give prosecutors the legal right to protect the community from these people while they are awaiting trial.

CRACK DOWN ON ILLEGAL GUN SUPPLIERS

A fourth way we can crack down on gun crimes is to go after those who knowingly provide the guns to felons. Under current law, you can be prosecuted for providing a gun only if you know for certain that it will be used in a crime.

The revision I propose would make it illegal to provide a firearm if you have reasonable cause to believe that it's going to be used in a crime.

The is the best way to go after the illegal gun trade—those who provide guns to the predators on society. We will no longer allow these gun providers to pretend ignorance. They are helping felons—and they need to be stopped.

All of these proposals are motivated by a single purpose: I—along with the police officers of this country—believe that we have to get the guns away from the gun criminals.

Project Triggerlock is one major initiative we can pursue at the Federal level to help make this happen. Imposing stiff mandatory minimums and cracking down on illegal gun providers are also important measures.

All of the gun proposals contained in my crime legislation have the same goal. They are designed to assure American families who are living in crime-threatened communities that we're going to do what it takes to get guns off your streets.

We are going to go after the armed career criminals. We're going to prosecute them. We're going to convict them. We are going to keep them off the streets.

This is why we have a government in the first place—to protect the innocent, to keep ordinary citizens safe from violent, predatory criminals.

I think Government needs to do a much better job at this fundamental task—and that's why targeting the armed career criminals is such a major component of this bill.

By Mr. CRAIG:

S. 169. A bill to amend the Immigration and Nationality Act with respect to the admission of temporary H–2A workers; to the Committee on the Judiciary.

THE AGRICULTURAL WORK FORCE STABILITY AND PROTECTION ACT

Mr. CRAIG. Mr. President, I rise to introduce the Agricultural Work Force Stability and Protection Act. This bill would make needed reforms to the so-called "H–2A Program," the program intended by Congress in the Immigration and Nationality Act to allow for a reliable supply of legal, temporary, immigrant workers in the agricultural sector, under terms that also provide reasonable worker protections, when there is a shortage of domestic labor in this sector.

Last year, Senator Alan Simpson, then the Chairman of the Judiciary Committee's Subcommittee on Immigration, and then this body as a whole, acknowledged the importance of this issue by agreeing to including in the Illegal Immigration Reform conference report some compromise language regarding the Sense of the Congress on the H–2A Program and requiring the General Accounting Office to review the effectiveness of the program.

The language included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was essentially the same as language agreed to in the conference report on fiscal year 1997 Agriculture Appropriations. With these provisions, the Congress went on record twice on the importance of having a program that helps ensure an adequate workforce for agricultural producers.

This is an issue that is of the utmost importance to this country's farmers and ranchers, especially in light of the impact that immigration reform will have on the supply of agricultural labor. There is very real concern among Idaho farmers and throughout the country that these reforms will reduce the availability of agricultural workers.

Farmers need access to an adequate supply of workers and want to have certainty that they are hiring a legal work force. In 1995, the total agricultural work force was about 2.5 million people. That equals 6.7 percent of our labor force, which is directly involved in production agriculture and food processing.

Hired labor is one of the most important and costly inputs in farming. U.S. farmers spent more than $15 billion on hired labor expenses in 1992—one of every eight dollars of farm production expenses. For the labor-intensive fruit, vegetable and horticultural sector, labor accounts for 35 to 45 percent of production costs.

The competitiveness of U.S. agriculture, especially in the fruit, vegetable and horticultural specialty sectors, depends on the continued availability of hired labor at a reasonable cost. U.S. farmers, including producers of labor-intensive perishable commodities, compete directly with producers in other countries for market share in both U.S. and foreign commodity markets.

Wages of U.S. farmworkers will not be forced up by eliminating alien labor, because growers' production costs are capped by world market commodity prices. Instead, a reduction in the work force available to agriculture will force U.S. producers to reduce production to the level that can be sustained by a smaller work force.

Over time, wages for these farm workers have actually risen faster than non-farm worker wages. Between 1986–1994, there was a 34.6 percent increase in average hourly earnings for farm workers, while non-farm workers only saw a 27,1 percent increase.

Even with this increase in on-farm wages, this country has historically

been unable to provide a sufficient number of domestic workers to complete the difficult manual labor required in the production of many agricultural commodities. In Idaho, this is especially true for producers of fruit, sugar beets, onions and other specialty crops.

The difficulty in obtaining sufficient domestic workers is primarily due to the fact that domestic workers prefer the security of full-time employment in year round positions. As a result the available domestic work force tends to prefer the long term positions, leaving the seasonal jobs unfilled. In addition, many of the seasonal agricultural jobs are located in areas where it is necessary for workers to migrate into the area and live temporarily to do the work. Experience has shown that foreign workers are more likely to migrate than domestic workers. As a result of domestic short supply, farmers and ranchers have had to rely upon the assistance of foreign workers.

The only current mechanism available to admit foreign workers for agricultural employment is the H–2A program. The H–2A program is intended to serve as a safety valve for times when domestic labor is unavailable. Unfortunately, the H–2A program isn't working.

Despite efforts to streamline the temporary worker program in 1986, it now functions so poorly that few in agriculture use it without risking an inadequate work force, burdensome regulations and potential litigation expense. In fact, usage of the program has actually decreased from 25,000 workers in 1986 to only 17,000 in 1995.

The bill I am introducing would provide some much-needed reforms to the H–2A program. I urge my colleagues to consider the following reasonable modifications of the H–2A program.

First, the bill would reduce the advance filing deadline from 60 to 40 days before workers are needed. In many agricultural operations, 60 days is too far in advance to be able to predict labor needs with the precision required in H–2A applications. Furthermore, virtually all referrals of U.S. workers who actually report for work are made close to the date of need. The advance application period serves little purpose except to provide time for litigation.

Second, in lieu of the present certification letter, the Department of Labor [DOL] would issue the employer a domestic recruitment report indicating that the employer's job offer meets the statutory criteria and lists the number of U.S. workers referred. The employer would then file a petition with INS for admission of aliens, including a copy of DOL's domestic recruitment report and any countervailing evidence concerning the adequacy of the job offer and/or the availability of U.S. workers. The Attorney General would make the admission decision. The purpose is to restore the role of the Labor Department to that of giving advice to the Attorney General on labor availability, and return decision making to the Attorney General.

Third, the Department of Labor would be required to provide the employer with a domestic recruitment report not later than 20 days before the date of need. The report either states sufficient domestic workers are not available or gives the names and Social Security numbers of the able, willing and qualified workers who have been referred to the employer. The Department of Labor now denies certification not only on the basis of workers actually referred to the employer, but also on the basis of reports or suppositions that unspecified numbers of workers may become available. The proposed change would assure that only workers actually identified as available would be the basis for denying foreign workers.

Fourth, the Immigration and Naturalization Service [INS] would provide expedited processing of employers' petitions, and, if approved, notify the visa issuing consulate or port of entry within 15 calendar days. This would ensure timely admission decisions.

Fifth, INS would provide expedited procedures for amending petitions to increase the number of workers admitted on 5 days before the date of need. This is to reduce the paperwork and increase the timeliness of obtaining needed workers very close to or after the work has started.

Sixth, DOL would continue to recruit domestic workers and make referrals to employers until 5 days before the date of need. This method is needed to allow the employer at a date certain to complete his hiring, and to operate without having the operation disrupted by having to displace existing workers with new workers.

Seventh, the bill would enumerate the specific obligations of employers in occupations in which H–2A workers are employed. The proposed definition would define jobs that meet the following criteria as not adversely affecting U.S. workers:

1. The employer offers a competitive wage for the position.

2. The employer would provide approved housing, or a reasonable housing allowance, to workers whose permanent place of residence is beyond normal commuting distance.

3. The employer continues to provide current transportation reimbursement requirements.

4. A guarantee of employment is provided for at least three-quarters of the anticipated hours of work during the actual period of employment.

5. The employer would provide workers' compensation or equivalent coverage.

6. Employer must comply with all applicable Federal, State, and local labor laws with respect to both United States and alien workers.

This combination of employment requirements would eliminate the discretion of Department of Labor to specify terms and conditions of employment on a case-by-case basis. In addition, the scope for litigation would be reduced since employers (and the courts) would know with particularity the required terms and conditions of employment.

Eighth, the bill would provide that workers must exhaust administrative remedies before engaging their employers in litigation.

Ninth, certainty would be given to employers who comply with the terms of an approved job order. If at a later date the Department of Labor requires changes, the employer would be required to comply with the law only prospectively. This very important provision removes the possibility of retroactive liability if an approved order is changed.

As the Illegal Immigration Reform law is implemented, action on these H–2A reforms will be necessary in the coming months to avoid jeopardizing the labor supply for American agriculture.

Therefore, I am introducing this bill at this time and invite and urge my colleagues to sign on as cosponsors. It is time to begin in earnest to discuss these issues and examine these vitally-needed reforms. I hope and expect the Senate will pass constructive legislation along these lines this year.

Thank you, Mr. President. At this time, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMMARY OF THE AGRICULTURAL WORK FORCE STABILITY AND PROTECTION ACT

The following proposed changes to the H–2A program would improve its timeliness and utility for agricultural employers in addressing agricultural labor shortages, while providing wages and benefits that equal or exceed the median level of compensation in non-H–2A occupations, and reducing the vulnerability of the program to being hamstrung and delayed by litigation.

1. Reduce the advance filing deadline from 60 to 40 days before workers are needed.

Rationale. In many agricultural operations, 60 days is too far in advance to be able to predict labor needs with the precision required in H–2A applications. Furthermore, virtually all referrals of U.S. workers who actually report for work are made close to the date of need. The advance application period serves little purpose except to provide time for litigation.

2. In lieu of the present certification letter, DOL would issue the employer a domestic recruitment report indicating that the employer's job offer meets the statutory criteria (or the specific deficiencies in the order) and the number of U.S. workers referred, per #3 below. The employer would file a petition with INS for admission of aliens (or transfer of aliens already in the United States), including a copy of DOL's domestic recruitment report and any countervailing evidence concerning the adequacy of the job offer and/or the availability of U.S. workers. The Attorney General would make the admission decision.

Rationale. The purpose is to restore the role of the Labor Department to that of giving advice to the AG on labor availability, and return the true gatekeeper role to the AG. Presently the certification letter is, de facto, the admission decision.

3. DOL provides employer with a domestic recruitment report not later than 20 days before the date of need stating either that sufficient domestic workers are not available,

or giving the names and Social Security Numbers of the able, willing and qualified workers who have been referred to the employer and who have agreed to be available at the time and place needed. DOL also provides a means for the employer to contact the referred worker to confirm availability close to the date of need. DOL would be empowered to issue a report that sufficient domestic workers are not available without waiting until 20 days before the date of need for workers if there are already unfilled orders for workers in the same or similar occupations in the same area of intended employment.

Rationale: DOL now denies certification not only on the basis of workers actually referred to the employer, but also on the basis of reports or suppositions that unspecified numbers of workers may become available. These suppositions almost never prove correct, forcing the employer into costly and time wasting redeterminations on or close to the date of need and delaying the arrival of workers. The proposed change would assure that only workers actually identified as available would be the basis for denying foreign workers. DOL also interprets the existing statutory language as precluding it from issuing each labor certification until 20 days before the date of need, even in situations where ongoing recruitment shows that sufficient workers are not available.

4. INS to provide expedited processing of employer's petitions, and, if approved, notify the visa issuing consulate or port of entry within 15 calendar days.

Rationale: To assure timely admission decisions.

5. INS to provide an expedited procedures for amending petitions to increase the number of workers admitted (or transferred) on or after 5 days before the date of need, to replace referred workers whose continued availability can not be confirmed, who fail to report on the date of need, or who abandon employment or are terminated for cause, without first obtaining a redetermination of need from DOL.

Rationale: To reduce the paperwork and increase the timeliness of obtaining needed workers very close to or after the work has started.

6. DOL would continue to recruit domestic workers and make referrals to employers until 5 days before the date of need. Employers would be required to give preference to able, willing and qualified workers who agree to be available at the time and place needed who are referred to the employer until 5 days before the date workers are needed. After that time, employers would be required to give preference to U.S. workers who are immediately available in filling job opportunities that become available, but would not be required to bump alien workers already employed.

Rationale: A method is needed to allow the employer at a date-certain close to the date of need to complete his hiring, and to operate without having the operation disrupted by having to displace existing workers with new workers.

7. Create a "bounded definition" of adverse effect by enumerating the specific obligations of employers in occupations in which H-2A aliens are employed. The proposed definition would define jobs that meet the following criteria as not adversely affecting U.S. workers:

7a. Offer at least the median rate of pay for the occupation in the area of intended employment.

7b. Provide approved housing or, if sufficient housing is available in the approximate area of employment, a reasonable housing allowance, to workers whose permanent place of residence is beyond normal commuting distance.

NOTE: Provision should also be made to allow temporary housing that does not meet the full set of Federal standards for a transitional period in areas where sufficient housing that meets standards is not presently available, and for such temporary housing on a permanent basis in occupations in which the term of employment is very short (e.g. cherry harvesting, which lasts about 15-20 days) if sufficient housing that meets the full standards is not available. Federal law should pre-empt state and local laws and codes with respect to the provision of such temporary housing.

7c. Current transportation reimbursement requirements (i.e. employer reimburses transportation of workers who complete 50 percent of the work contract and provides or pays for return transportation for workers who complete the entire work contract).

7d. A guarantee of employment for at least three-quarters of the anticipated hours of work during the actual period of employment.

7e. Employer-provided Workers' Compensation or equivalent.

7f. Employer must comply with all applicable federal, state and local labor laws with respect to both U.S. and alien workers.

Rationale: The objective is to eliminate the discretion of DOL to specify terms and conditions of employment on a case-by-case basis and reduce the scope for litigation of applications. Employers (and the courts) would know with particularity, up front, what the required terms and conditions of employment are. The definition also reduces the cost premium for participating in the program by relating the Adverse Effect Wage Rate to the minimum wage and limiting the applicability of the three-quarters guarantee to the actual period of employment.

8. Provide that workers must exhaust administrative remedies before engaging their employers in litigation.

Rationale: To reduce litigation costs.

9. Provide that if an employer complies with the terms of an approved job order, and DOL or a court later orders a provision to be changed, the employer would be required to comply with the new provision only prospectively.

Rationale: To reduce the exposure of employers to litigation seeking to overturn DOL's approval of job orders, and to retroactive liability if an approved order is changed.

By Mr. DEWINE:

S. 170 A bill to provide for a process to authorize the use of clone pagers, and for other purposes; to the Committee on the Judiciary.

THE CLONE PAGER AUTHORIZATION ACT OF 1996

Mr. DEWINE. Mr. President, I believe that, to stop crime, we have to do more. That doesn't mean another rhetorical assault on crime—or even a flashy ten-point program. Rather, we have to do more of the little things that—when you put them all together—make a big difference.

The most important of these is giving law enforcement officials the tools they need to do their jobs. Today, I am introducing legislation that will help us do that.

The bill I am introducing today would simply rectify an imbalance in current Federal law which makes it more difficult for law enforcement officials to fight drug trafficking. Today, drug traffickers have taken advantage of technological advances to advance their own criminal interests.

Drug traffickers—on a regular basis—use digital display paging devices, better known as beepers—in transacting their business. They do this because it gives them the freedom to run their criminal enterprise out of any available phone booth, and to avoid police surveillance. If law enforcement officials knew from whom they were receiving the calls to their beepers it would certainly aid efforts in tracking down drug traffickers.

The technology now exists to allow law enforcement to receive the digital display message, without intercepting the content of any conversation or message. It is called a "clone pager." This clone pager is programmed identically to the suspect's pager and allows law enforcement to receive the digital displays at the same time as the suspect.

This device functions identically to a pen register. Mr. President, as you may know, a pen register is a device which law enforcement attaches to a phone line to decode the numbers which have called a specific telephone. Like a clone pager, the pen register only intercepts phone numbers, not the content of any conversation or message.

Since both devices serve the same purpose, a reasonable person would conclude that both the system for receiving authorization to use these devices, and the procedures mandated by the courts once the authorization was granted would be the same. However, in both cases it is not.

Under current law, the requirements for obtaining authorization to use a clone pager are much more stringent than they are for using a pen register. I would like to briefly outline the differences.

In order to obtain authorization to use a pen register, a Federal prosecutor must certify to a district court judge the phone number to which the pen register will be attached, the phone company that delivers service to that number, and that the pen register serves a legitimate law enforcement purpose. In other words, the prosecutor must show only that the use of the pen register is based on an ongoing investigation. The district court judge may then grant the authorization on a mere finding that the prosecutor has made the required certification. The pen register can then be used for a period of 60 days—with no requirement that law enforcement report pen register activity to the court.

In contrast, the U.S. Attorney for a particular district must sign off on a request for clone pager authorization. Once this occurs, a prosecutor may then go before a district court judge

where he must show that there is probable cause to suspect an individual has committed a crime—a much higher standard than what is required for a pen register authorization. He must also detail what other investigative techniques have been used, why they have not been successful, and why they will continue to be unsuccessful. Moreover, the prosecutor must disclose other available investigative techniques and why they are unlikely to be successful. Only after all of this is done can authorization to use a clone pager be granted.

But these are not the only differences in treatment. After the authorization is granted, it can only be used for 30 days. During that 30 days, the prosecutor must report activity from the clone pager to the issuing judge at least once every 2 weeks.

I do not believe that the authorization disparity in authorization for these two devices is warranted.

The legislation that I am introducing today would simply amend the Federal code to end this disparity. This bill would give law enforcement agents ready access, with warranted limitations, to the tools they need to do their jobs. This bill will bring Federal law enforcement into the 21st century. The drug traffickers are already there. It's time for law and order to catch up with them.

By Mr. DEWINE:

S. 171. A bill to amend title 18, United States Code, to insert a general provision for criminal attempt; to the Committee on the Judiciary.

THE ATTEMPT ACT OF 1997

Mr. DEWINE. Mr. President, I am introducing a bill today that will give law enforcement officers a tool they need to their jobs—protecting American families. It would establish, for the first time in the Federal Criminal Code, a general attempt provision. Thankfully, criminals to not succeed every time they set out to commit a crime. We need to take advantage of these failed crimes to get criminals off the streets.

Mr. President, under current Federal law, there is no general attempt provision applicable to all Federal offenses. This has forced Congress to enact separate legislation to cover specific circumstances. This approach to the law has led to a patchwork of attempt statutes—leaving gaps in coverage, and failing to adequately define exactly what constitutes an attempt in all circumstances.

Some statutes include attempt language within the substantive offense, but don't bother to define exactly what an attempt is. Others define, as a separate crime, conduct which is only a step toward commission of a more serious offense. Moreover, there is no offense of attempt for still other serious crimes, such as disclosing classified information to an unauthorized person.

This ad hoc approach to attempt statutes is causing problems for law enforcement officials. At what point is it OK for law enforcement officials to step in to prevent the completion of a crime? If someone is seriously dedicated to committing a crime, law enforcement must be able to intervene and prevent it—without having to worry whether doing so would cause a criminal to walk. In the absence of a statutory definition of an attempt, the courts have been called upon to decide whether specific actions fit within existing statutory language.

When a criminal is attempting to commit a crime where attempt is not an offense, then law enforcement must wait until the crime is completed, or find some other charge to fit the criminal's actions. Law enforcement should never be placed in either of these positions.

The bill that I am introducing today will solve these problems in the current law. As I mentioned earlier, this legislation will add a general attempt provision to the U.S. Criminal Code. It provides congressional direction in defining what constitutes an attempt in all circumstances. And, it will serve to fill in the irrational gaps in attempt coverage.

In my view, it's time for the American people—acting through the Congress—to clarify their intention when it comes to this area of the law.

Millions of Americans work hard every day to make ends meet and raise their families and provide a better life for their children.

But, there are some people who choose a different approach to life—a life of crime. We as Americans need to leave no doubt where we stand on that choice. If you even try to commit a crime, we're going to prosecute you and convict you. This bill will make it easier for our law enforcement officers to protect our families and our communities.

By Mr. DEWINE:

S. 172. A bill to amend title 18, United States Code, to set forth the civil jurisdiction of the United States for crimes committed by persons accompanying the Armed Forces outside of the United States, and for other purposes; to the Committee on the Judiciary.

THE MILITARY AND CIVILIAN JUSTICE ACT

Mr. DEWINE. Mr. President, there are shortcomings in the Code of Military Law that have terrible repercussions in the streets of civilian America. These failures of the military judicial system too often result in military criminals being pushed out of the service and into our civilian streets—where these criminals continue to behave as lawless predators. This bill closes two such gaps in the Military Code and ensures that the enlisted criminal is not pushed out to prey on decent citizens. This bill protects civilians from military personnel who have committed crimes, just as the Military protects itself from those same people.

My bill addresses an important gap in the law. Under current law, many illegal acts committed abroad by U.S. soldiers or accompanying civilians go unpunished by the military courts. The prosecution of these crimes is left to the discretion of a military court, which either chooses to do no more than hand down a dishonorable discharge or lacks jurisdiction over the civilian defendant. This should not be the case.

This bill guarantees that a soldier or accompanying civilian abroad, committing an illegal act punishable under the United States Code by more than a year's imprisonment, will be handed over to civilian authorities for prosecution under the United States Code.

There is another aspect of this bill intended to protect civilian Americans from the actions of those who commit crimes while in the military. This bill also mandates that when an enlisted criminal is discharged from the service, the military Secretary will turn over to the FBI all the criminal records of that soldier for inclusion in the FBI criminal records system. Again, Mr. President, this is another way to protect the tax-paying, law-abiding American from dishonorably discharged criminals. Under current law, the criminal histories of these military personnel do not become part of the National Crime Information Center database. This bill will ensure that they do.

By Mr. DEWINE:

S. 173. A bill to expedite State reviews of criminal records of applicants for private security officer employment, and for other purposes; to the Committee on the Judiciary.

THE PRIVATE SECURITY OFFICERS QUALITY ASSURANCE ACT

Mr. DEWINE. Mr. President, I rise today to introduce the Private Security Officer Assurance Act of 1997. This bill establishes an expedited procedure for State regulators or private security officers to obtain criminal records background checks through the FBI prior to issuing state permits to security officers. Currently, it frequently takes between 6 to 18 months to complete such checks.

My bill would authorize the Attorney General to designate an association of employers of security officers to collect signature cards from applicants and forward them to the FBI for a comparison against the Federal criminal history records on file. The records would then be forwarded to the appropriate State regulators who would decide the qualification of the applicants for permits based on State laws. Under this bill, the applicant would pay fees

to compensate for the cost of the background checks. No criminal history information would go to the employer.

I would note that Congress has established similar procedures for banks, the parimutuel industry and the financial securities industry. The process that I described takes about 3 weeks for these industries.

Mr. President, I believe this bill will help improve public safety by ensuring the integrity of those hired as security officers.

By Mr. DEWINE:

S. 174. A bill to establish the Fallen Timbers Battlefield, Fort Meigs, and Fort Miamis National Historical Site in the State of Ohio; to the Committee on Energy and Natural Resources.

THE FALLEN TIMBERS ACT

Mr. DEWINE. Mr. President, I rise today to introduce legislation that will designate the Fallen Timbers Battlefield, Fort Meigs, and Fort Miamis as National Historic Sites.

Mr. President, the people of northwest Ohio are committed to preserving the historic heritage of the United States and the State of Ohio, as well as that of their own community.

The truly national significance of the Battle of Fallen Timbers and Fort Meigs have been acknowledged already. In 1960, Fallen Timbers was designated as a National Historic Landmark. In 1969, Fort Meigs received this designation.

The Battle of Fallen Timbers is acknowledged by the National Park Service as a culminating event in the history of the struggle for dominance in the old Northwest Territory.

Fort Meigs is recognized by the National Park Service as "the zenith of the British advance in the west as well as the maximum effort by Native forces under the Shawnee, Tecumseh, during the War of 1812."

Fort Miamis, which was attacked twice without success by British troops, led by General Henry Proctor, in the spring of 1813, is listed on the National Register of Historic Places.

Recently, the National Park Service completed a special resource study examining the proposed National Historic Site designation and the suitability of these sites for inclusion in the National Park System.

The Park Service concluded that these sites were suitable for inclusion in the National Park System—with non-Federal management and National Park Service assistance. The bill I am introducing today would act on that recommendation.

My legislation will accomplish the following:

Recognize and preserve the 185-acre Fallen Timbers Battlefield site;

Formalize the linkage between the Fallen Timbers Battlefield and Monument to Fort Meigs and Fort Miamis;

Preserve and interpret U.S. military history and Native American culture during the period from 1794 through 1813; and,

Provide technical assistance to the State of Ohio as well as interested community and historical groups in the development and implementation of programming and interpretation of the three sites.

However, my legislation will not require the Federal Government to provide direct funding to these three sites. That responsibility remains with—and is welcomed by—the many individuals, community groups, elected officials, and others who deserve recognition for their many hours of hard work dedicated to this issue.

Mr. President, we have entered an era where the responsibility and the drive behind the management, programming, and—in many cases—the funding for historic preservation is the responsibility of local community groups, local elected officials, and local business communities.

This legislation to designate the Fallen Timbers Battlefield, Fort Meigs, and Fort Miamis as National Historic Sites represents just such an effort. In my opinion, it is long overdue.

Mr. President, it is time to grant these truly historic areas the measure of respect and recognition they deserve. I agree with the National Park Service—and the people of Ohio—on this issue. That is why I am proposing this important legislation today.

By Mr. INOUYE:

S. 175. A bill to amend chapter 81 of title 5, United States Code, to authorize the use of clinical social workers to conduct evaluations to determine work-related emotional and mental illnesses; to the Committee on Governmental Affairs.

THE CLINICAL SOCIAL WORKERS' RECOGNITION ACT OF 1997

Mr. INOUYE. Mr. President, I rise today to introduce the Clinical Social Workers' Recognition Act of 1997 to correct an outstanding problem in the Federal Employees Compensation Act. This bill will also provide clinical social workers the recognition they deserve as independent providers of quality mental health care services.

Clinical social workers are authorized to independently diagnose and treat mental illnesses through public and private health insurance plans across the Nation. However, title V, United States Code, does not permit the use of mental health evaluations conducted by clinical social workers for use as evidence in determining workers' compensation claims brought about by Federal employees. The bill I am introducing corrects this problem.

All 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands legally regulate social workers through licensure or certification. Thirty-one States and the District of Columbia have enacted laws that mandate reimbursement for clinical social workers by insurance plans that offer mental health care coverage. All Federal insurance programs that authorize the provision of mental health care services, including Medicare, the Federal Employee Health Benefits Program [FEHBP], and the Civilian Health and Medical Program of the Uniformed Services [CHAMPUS] recognize the ability of clinical social workers to provide mental health services.

It is a sad irony that Federal employees may select a clinical social worker through their health plans to provide mental health services but may not go to this professional for a workers' compensation evaluation. Studies show that as much as 65 percent of all mental health services are provided by clinical social workers and clinical social workers are often the only providers of mental health service in rural areas of the country. The failure to recognize the validity of evaluations provided by clinical social workers unnecessarily limits the choice of Federal employees in selecting a provider to conduct the mental health evaluation and may well impose an undue burden for Federal employees in certain areas where clinical social workers are the only available providers for mental health care. This legislation will correct such an inequity.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 175

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 "Clinical Social Workers' Recognition Act of 1997".

SEC. 2. EXAMINATIONS BY CLINICAL SOCIAL WORKERS FOR FEDERAL WORKER COMPENSATION CLAIMS.

Section 8101 of title 5, United States Code, is amended—

(1) in paragraph (2) by striking "and osteopathic practitioners" and inserting "osteopathic practitioners, and clinical social workers"; and

(2) in paragraph (3) by striking "and osteopathic practitioners" and inserting "osteopathic practitioners, and clinical social workers".

By Mr. INOUYE:

S. 176. A bill for the relief of Susan Rebola Cardenas; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

Mr. INOUYE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 176

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Susan Rebola Cardenas shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fee.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Susan Rebola Cardenas as provided in this Act, the Secretary of State shall instruct the proper officer to reduce by one number during the current fiscal year the total number of immigrant visas available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

By Mr. INOUYE:

S. 177. A bill to provide for a special application of section 1034 of the Internal Revenue Code of 1986; to the Committee on Finance.

SPECIAL APPLICATION LEGISLATION

Mr. INOUYE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 177

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the case of Rita Bennington—

(1) who purchased her new principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986) in January 1992, and

(2) who was unable to meet the requirements of such section with respect to the sale of an old principal residence until May 1994, because of unexpected delays caused by Hurricane Iniki, the Secretary of the Treasury, in the administration of section 1034 of the Internal Revenue Code of 1986, shall apply subsection (a) of such section by substituting "2.5 years" for "2 years" each place it appears.

By Mr. DEWINE:

S. 178. A bill to amend the Social Security Act to clarify that the reasonable efforts requirement includes consideration of the health and safety of the child; to the Committee on Finance.

FOSTER CARE LEGISLATION

Mr. DEWINE. Mr. President, in 1980, Congress passed the Adoption Assistance and Child Welfare Act, known as CWA. The 1980 Act has done a great deal of good. It increased the resources available to struggling families. It increased the supervision of children in the foster care system. And it gave financial support to people to encourage them to adopt children with special needs.

But while the law has done a great deal of good, many experts are coming to believe that this law has actually had some bad unintended consequences.

Under the 1980 Act, for a state to be eligible for Federal matching funds for foster care expenditures, the state must have a plan for the provision of child welfare services approved by the Secretary of HHS and this State plan must provide, and I quote:

that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home.

In other words, Mr. President, no matter what the particular circumstances of a household may be the state must make reasonable efforts to keep it together, and to put it back together if it falls apart.

What constitutes reasonable efforts? How far does the State have to go?

This has not been defined by Congress. Nor has it been defined by HHS.

This failure to define what constitutes "reasonable efforts" has had a very important—and very damaging—practical result. There is strong evidence to suggest that in the absence of a definition, reasonable efforts have become in some cases extraordinary efforts. Efforts to keep families together at all costs.

Mr. President, during the past year, I have traveled throughout the state of Ohio, talking to social work professionals. In these discussions I have found that there is great disparity in how the law is being interpreted by judges and social workers.

Let me give you an example. I posed this hypothetical to representatives of children's services in both rural and urban counties.

Mary is a 28-year-old crack-addicted mother who has seven children. Steve, the 29-year-old father of the children, is an abusive alcoholic, and all seven of the children have been taken away—permanently—by the county.

Now, Mary gives birth to an eighth child, little Peggy. The newborn Peggy tests positive for crack. Therefore, it is obvious that her mother is still addicted to crack. Steve, the father, is still an alcoholic.

Pretend for a moment that you work for the county children's services department. Does the law allow you to get the new baby out of the household? And if you do, should you file for permanent custody so that the baby can be adopted?

The answer will surprise you. In fact, I was surprised at the response I got when I asked a number of Ohio social work professionals that very same question. The answer varied from county to county, but I heard too much "no" in the answers I got. Some officials said they could apply for emergency custody of the baby and take her away on a temporary basis, but they would have to make a continued effort to send the baby back to her mother.

Other social workers said that if they went to court to get custody of the baby, they probably wouldn't be able to get even temporary custody of her. In one county, I was told it would be 2 years before the baby could be made available for adoption. Another county said it would be 5 years.

One social worker—just one, out of all the ones I asked—told me that her department would move immediately for permanent custody of the baby. But she said that their success would still depend on the judge assigned to the case.

Should our Federal law really push the envelope, so that extraordinary efforts are made to keep that family together—efforts that any of us would not consider reasonable?

It is clear after 17 years of experience with this law that there is a great deal of confusion as to how the act applies.

My legislation would clarify, once and for all, the intent of Congress in the 1980 Act. My legislation would amend that language in the following way: "In determining reasonable efforts, the best interests of the child, including the child's health and safety, shall be of primary concern."

The 1980 Act was a good bill. There are some families that need a little help if they are going to stay together, and it's right for us to help them. That's what the Child Welfare Act did.

But by now it should be equally clear that the framers of the 1980 Act did not intend for extraordinary efforts to be made to reunite children with their abusers. As Peter Digre, the director of the Los Angeles County Department of Children and Family Services, testified at a hearing last year before the House Ways and Means Subcommittee on Human Resources: "We cannot ignore the fact that at least 22 percent of the time infants who are reunited with their families are subjected to new episodes of abuse, neglect, or endangerment."

That was not the intention of Congress in the 1980 law. But too often, that law is being misinterpreted in a way that is trapping these children in abusive households.

I believe we should leave no doubt about the will of the American people on this issue affecting the lives of America's children. The legislation I am proposing today would put the children first.

By Mr. HATCH (for himself, Mr. LOTT, Mr. THURMOND, Mr. CRAIG, Mr. NICKLES, Mr. DOMENICI, Mr. STEVENS, Mr. ROTH, Mr. BRYAN, Mr. KOHL, Mr. GRASSLEY, Mr. GRAHAM, Mr. SPECTER, Mr. BAUCUS, Mr. THOMPSON, Mr. BREAUX, Mr. KYL, Ms. MOSELEY-BRAUN, Mr. DEWINE, Mr. ROBB, Mr. ABRAHAM, Mr. ASHCROFT, Mr. SESSIONS, Mr. D'AMATO, Mr. HELMS, Mr. LUGAR, Mr. CHAFEE, Mr. MCCAIN, Mr. JEFFORDS, Mr. WARNER, Mr. COVERDELL, Mr.

COCHRAN, Mrs. HUTCHISON, Mr. MACK, Mr. GRAMM, Ms. SNOWE, Mr. ALLARD, Mr. BROWNBACK, Ms. COLLINS, Mr. ENZI, Mr. HAGEL, Mr. HUTCHINSON, Mr. ROBERTS, Mr. SMITH of Oregon, Mr. BENNETT, Mr. BOND, Mr. BURNS, Mr. CAMPBELL, Mr. COATS, Mr. FAIRCLOTH, Mr. FRIST, Mr. GORTON, Mr. GRAMS, Mr. GREGG, Mr. INHOFE, Mr. KEMPTHORNE, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH of New Hampshire, and Mr. THOMAS):

S.J. Res. 1. A joint resolution proposing an amendment to the Constitution of the United States to require a balanced budget; to the Committee on the Judiciary.

THE CONSTITUTIONAL BALANCED BUDGET ACT

Mr. HATCH. Mr. President, let me just say I compliment my colleagues for the excellent job they have done in coming up with the first 10 bills of this session. I think they are bills that the American people have to be very interested in. There is no question that each and every one is essential for the future of our country. I am very appreciative that so many colleagues are willing to cosponsor and to push these particular bills.

Having said that, the No. 1 issue on our agenda is, as it has always been for Republicans and I think some very courageous Democrats as well, S.J. Res. 1, the balanced budget constitutional amendment.

Mr. President, this is an amendment that literally could change the future of our country for the better. We are now approaching a $6 trillion deficit. It has been largely accumulated over the last 15 or 20 years. We have had a period of almost 60 years of unbalanced budgets, except on very rare occasions.

The Senate and the House seem to be institutionally incapable of reaching balanced budget appropriations and budget acts. And I might add, the President is incapable, as well. If you look at the last budgets that the President has submitted, even the one that he called the balanced budget, it was heavily loaded in the rear end of the budget, in the last 2 years, knowing that there is no way in the world that when we ultimately reach 2001 and 2002 that we can actually balance the budget.

It has been a phony game. It is time to end that game. It is time to literally strike out for the people of this country and for our children and grandchildren of future generations by getting our fiscal house in order. The only way that many of the now 62 cosponsors, and another 6 who have said to their constituents that they will vote for this amendment, it is the only way we can bring about a fiscal sanity that will reduce taxes, reduce the interest rates of our society, keep the stock market going, protect Social Security, Medicaid, Medicare, veterans pensions and other matters, by having a strong fiscal economy through the balanced budget amendment.

We are very concerned. This is a major, major battle this year. We have 62 cosponsors—all 55 Republicans and 7 courageous Democrats so far. We have another six Democrats who have promised their people at home that they would vote for the balanced budget amendment. Everybody knows this game. Everybody knows there will be some killer amendments trying to defeat this amendment. In the end, everybody knows what the amendment is. It is precisely the same as that found in the House and that which will be brought up in the House. If we are ever going to get this fiscal house in order, this is the way to do it. It is only the first step.

Even if both Houses of Congress do pass the balanced budget amendment by the requisite two-thirds vote, the amendment still has to be submitted to the States, and three-quarters of them, or 38 States, have to ratify the amendment. It is a very, very difficult process at best.

I just believe this is the year to do it. I hope that everybody will live up to the commitments they have made to their constituents at home. If they do, we will have set this country on a fiscal order path that will be very beneficial for all of our children and grandchildren and future generations.

Mr. President. I rise to speak on the Balanced Budget Amendment, which I have just introduced. Last Congress, when the Amendment fell a mere one vote short of passage here in the Senate, I vowed that we would be back to try to pass this amendment and put America back on the course of fiscal responsibility. We are back again and I have brought 61 other Senators with me. Every one of the 55 Republicans in the Senate are original co-sponsors, and we are joined by seven strong Democrats. The Balanced Budget Amendment has 62 original cosponsors. If only five other Senators join us we will have the votes America needs to see the Senate pass the Balanced Budget Amendment. If everyone votes as they said they would before the November election and keeps their promise to their constituents, the Senate will pass the balanced budget amendment.

The Balanced Budget Amendment will again be S.J. Res. 1. It is right that it should be, because it is the single most important piece of legislation that will be voted on this Congress. It is that important because if enacted it will change forever the way business is done in Washington.

The idea of a Balanced Budget Amendment is not new. Unfortunately, neither is the problem it is designed to solve. About 30 years ago, we got off track and ran a deficit. It was not the first deficit we had ever run, and it was only a small one, nothing to get too worried about. But we never got back on track: we ran another deficit the next year, and again the next year after that, and never got back into balance. In fact, we have run a deficit every year since 1969. And that budget in 1969 was the only balanced budget since 1960.

Today, the national debt is estimated to be $5.311 trillion. Last Friday, when we began hearings on S.J. Res 1, the debt was at less than $5.310 trillion. In other words, the debt has already increased by more than $1 billion since the Senate began consideration of the measure last week. Portioned out equally, every man, woman, and child in America owes about $20,000. If the debt were piled into a single stack of pennies, that pile could reach past the Moon, past Mars, and all the way to Jupiter! It is enough money to buy every single automobile ever sold in the United States and every plane ticket ever sold for travel in the United States.

And, Mr. President, the debt continues to grow. If you spent a dollar a second, it would take you over 150,000 years to spend as much as the national debt. But we have managed to accumulate our national debt much faster. This year, we will increase the debt by about $4,500 every second. At this rate it won't be long before we're all going to have to learn what comes after trillion. The reality is that the bridge we are building to the 21st century is awash in debt.

I read recently that this year the European Union will be deciding which nations qualify to join the new single currency in the first tier. In order to join, nations must satisfy several criteria. One of those criteria is that the nation's total debt must be no greater than 60 percent of that nation's GDP. Well, Mr. President, our debt is about 70 percent of our GDP. Which means if we tried to join the European Union's new currency now, the United States would not qualify. By international standards, we are too far in debt to be trusted financially. This nation faces a future with higher taxes, lower wages, and dramatically reduced world influence if we do not get our spending habits under control. As well, failure to get our national debt under control could prove catastrophic to current and future older Americans.

Over the next few weeks, opponents of the balanced budget amendment are going to try to change the subject to a discussion of Social Security and Medicare. For example, Treasury Secretary Rubin testified before the Judiciary Committee on Friday in opposition to the balanced budget amendment and suggested—no less than eight times during a six page statement—that passage of the Balanced Budget Amendment would result in Social Security

or Medicare checks being stopped. Opponents of the balanced budget amendment want the public to believe that passing the balanced budget amendment and balancing our Federal budget threatens the retirement security of older Americans. What they ignore is that Congress simply never will allow Social Security or Medicare checks to stop. It simply will not happen. Furthermore, they fail to appreciate—or fail to mention—the positive effect the Balanced Budget Amendment would have on the long term stability of Social Security as well as the retirement investments for most every American.

To listen to opponents of the balanced budget amendment, one would think that Americans are counting exclusively on Social Security for their economic security during retirement when in fact, more and more Americans are relying on Wall Street. A recent PBS Frontline documentary, "Betting on the Market," explains how Americans are increasingly entrusting their long-term retirement savings in Wall Street. There are 34 million households that have invested in the stock market in some form. As financial expert and the best-selling author of "Smart Money," Jim Cramer, points out, if you have a pension, it's likely that it's invested in stocks. If you have a 401K plan, it's probably invested in stocks. Worth magazine's Ken Kurson points out that in 1996, 34 percent of households headed by someone under 25 had some sort of mutual fund. Stock mutual funds represent the biggest chunk of young investor's money. At the same time Americans carry record credit card debt. As financial historian Peter Bernstein points out, the money that people used to put in the stock market was money that they hoped to get rich on. Today, we are investing our blood money—our savings; our nest eggs. America's affection for the markets is demonstrated by Paine Webber's recent announcement that it achieved a 50-percent increase in earnings last quarter. This is all well and good while the Dow Jones Industrial keeps setting new highs—it closed yesterday at 6,843. NASDAQ also reached record levels benefiting from a boost in technology stocks.

With more and more Americans relying on mutual funds and stocks—whether they know it or not—for their retirement, what happens to our retirement security if we experience an economic downturn precipitated by our failure to address our nation's growing debt? What happens if Congress once again demonstrates an unwillingness to pass the balanced budget amendment and take this necessary step towards balancing the budget? With the fortunes of Wall Street affecting the quality of life for more and more future retirees, Congress needs to concern itself with how our growing debt and our willingness to make tough choices will affect Wall Street. Nothing the Congress can do would have a more positive effect on Wall Street and, in turn, the stability of our retirement savings than passing the balanced budget amendment and balancing the budget. More than 250 economists share this view. If my colleagues are concerned with the financial security of current and future older Americans, they will refrain from the wedge politics of Medicare and Social Security cuts and, instead, support the balanced budget.

The fact is that every political incentive in this town is to spend now and let the next guy worry about paying the bill. Fiscal accountability is the enemy of big government. There is only one way to break Washington's addiction to spending other people's money and borrowing from our children to do so: the pressure of a constitutional amendment for a balanced budget.

I look forward to the debate on this important measure, and I look forward to more fully explaining why I think that only a structural change in our basic charter can restore the fiscal responsibility we seem to have lost over the three or so decades.

Mr. President, I ask unanimous consent that the text of the Joint Resolution be printed in the RECORD.

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

S.J. RES. 1

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission to the States for ratification:

"ARTICLE —

"SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

"SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

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

"SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

"SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

"SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

"SECTION 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

"SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.".

Mr. HATCH. I am delighted to yield to my colleague and friend from Idaho who I think has played not only a singularly important role in the Senate, but long has played a very important role when he was in the House of Representatives, as well, and has been a great partner in fighting this battle. I yield to the distinguished Senator from Idaho.

Mr. CRAIG. Mr. President, let me thank the senior Senator from Utah for yielding but for a moment, to add to the comments that he has made as we have introduced S.J. Res. 1, or Senate Joint Resolution 1, the balanced budget constitutional amendment. The Senator from Utah has outlined, as chairman of the Judiciary Committee, what we bring to the floor and the very critical nature of this debate. For a moment, let me humanize it, if I can, as to what it means to you, to me, to our children, and to the future of this country.

Without a fiscally responsible Government that begins to rein in the growth of the Federal debt, already at $5.3 trillion, and the ongoing year-after-year multibillion-dollar deficit that we have seen now for decades, the financial future of our country and its citizens is in doubt. There is no question today that the Congress and our President mouth the words of a balanced budget. We even work toward that by the very actions undertaken in writing the annual budgets.

To guarantee it, to assure that when it gets to the time of making the tough votes to truly create a balanced budget, can we do it? Will we have the will of the people behind us and the support to accomplish that? I think that, absent a balanced budget amendment, the strength will not be there. I say that having watched this institution for many decades, I recognize that in the end when it really comes to the business of sorting out Government, the decisions become very tough.

If we pass a balanced budget amendment to our Constitution this year, and if the States ratify it within the next 2 years, we will offer to the young people born today a unique opportunity. What is that opportunity? That they will pay in their lifetime $180,000 less in taxes, compared to what they would pay

under the trends of the status quo, because of the rate at which our Government currently grows.

We will offer to the average American family an opportunity unprecedented, and that is a better standard of living and actually more take-home pay and more dollars to spend, on an annualized basis, of more than $1,500 a year, in addition to their current income. We will offer our senior citizens the economic security we have promised them, by protecting Social Security and Medicare from the ravages of a massive debt and interest payments that crowd out all our other priorities. Let us remember, the debt is the threat to Social Security and to our seniors.

When the Senator from Utah and the Senator from Idaho began to work to convince the Congress and the American people that a constitutional amendment to require a balanced budget was necessary in the early 1980's, if it had passed at that time, if it had become part of the Constitution, the Concord Coalition and others have estimated that the average income per American family today would be $15,000 more than it currently is. I think, from that kind of fact, you begin to recognize the power and the importance of what we offer up today. You begin to recognize the very critical nature of what a $5.3 trillion debt really is, and how it is growing by $800 million a day and more than $9,000 a second. If this Senate is to stand in the shadow of today's work a decade from now and say that we did for our country what we thought was necessary to assure the American dream to our children, to be able to say to Americans that you will have the same unique opportunity that your forebears had, then we must make sure that we have produced, and locked in the requirement of, a Government that is fiscally responsible.

What we offer today and what we will be debating in the coming weeks is a Balanced Budget Amendment to our Constitution which assures that this body and the other, as well as the President and his budget office, must operate in a fiscally sound and responsible way. It is what the American people say is their No. 1 issue. It must be our No. 1 issue.

I am pleased today to join as a cosponsor in this critical amendment and look forward to the debate in the coming weeks as we say to the American people, "We have heard your message and we will fight to be fiscally responsible in the building and the maintaining of a federally balanced budget."

I yield back to the Senator from Utah.

Mr. HATCH. I thank my colleague from Idaho for his excellent remarks and for his ardent fight for this amendment through the years.

Mr. President, there are 13 Democrats who have promised to vote for this amendment. If we add all 55 Republicans and the 13 heroic Democrats who have agreed to vote for this amendment, that will give us 68 votes, 1 more than we need. We know the President is going to put on a full-court press. We also know that the minority leader and others will do the same. It is important that these people live up to the commitments they made to the constituents at home, and we are counting on them to do it. I believe they will.

Thus far, only seven have cosponsored, but I believe the others will be on board when the debate comes to the floor. I hope, with all my heart, they realize how important this is. I hope they also realize how very deeply I feel about their courageous stand on this issue.

Mr. ABRAHAM. Mr. President, 2 years ago, the Senate failed by one vote to support a constitutional amendment requiring a balanced budget. At the time, opponents told the Senate that balancing the budget didn't require amending the Constitution. All we needed, they told us, was to make the tough choices and cast the hard votes. Two budgets, hundreds of tough votes, and one Government shutdown later, the budget is still in deficit, and the case for a constitutional balanced budget amendment is stronger than ever.

That's not to say we haven't made progress in the past 2 years. We have. Since the 1994 elections, Congress has worked hard to hold the line on discretionary spending while just last fall we passed historic reforms to the 60-year-old welfare state. Perhaps just as importantly, we have witnessed a dramatic shift in the debate itself. Two years ago, President Clinton submitted a budget that never reached balance. Today all sides have agreed—at least in principle—to the goal of balancing the budget by the year 2002.

That's the good news.

The bad news is that while we have all seemingly agreed on the goal of balancing the budget, we are miles apart on the details. It's one thing to say you support a balanced budget—it's quite another to make the tough decisions necessary to make it happen.

Mr. President, that's where Senator HATCH's amendment to the Constitution comes in. As an original cosponsor of this amendment, I believe it will force the hand of an unwilling Congress to set its fiscal house in order. Where Congress has failed, I am confident the Constitution will succeed. How would it work?

Section 1 of the amendment requires that total outlays of the Government not exceed receipts unless three-fifths of the whole number of both Houses waives the requirement. Once this amendment is passed, a three-fifths vote of both the House and the Senate will be necessary in order to increase the deficit.

Section 2 prohibits Congress from raising the debt ceiling unless three-fifths of the whole number of both Houses of Congress waives the requirement.

And, finally, section 4 requires that there be no revenue increases unless approved by a majority of the whole number of each House in Congress. If this proposal becomes the 28th amendment to the Constitution, then in order to increase taxes, you would need first, a recorded vote and, second, the support of at least 51 U.S. Senators and 218 Members of the House.

Quite simply, Mr. President, the Balanced Budget Amendment raises the procedural bar necessary for Congress to incur debt and raise taxes. Given Congress' historic predilection toward doing both, I believe this amendment is possibly the most important measure we will consider in the 105th Congress.

Having focused on what the balanced budget amendment does, it is just as important to focus on what it doesn't do. The first thing it doesn't do is endanger the Social Security System. Social Security currently operates with a surplus, and some Members have argued that sound fiscal policy demands that we should exclude that surplus from the amendment and our deficit calculations.

I am of the opinion that this argument is more of a diversion than anything else. It has been raised to confuse the issue and provide some Members with a smokescreen to cover their opposition to a measure that is supported by an overwhelming majority of Americans. Balancing the budget will strengthen, not weaken, the Social Security System.

The second thing this amendment doesn't do is endanger the health of the national economy. Some—including the President—argue the Balanced Budget Amendment will prevent Congress from responding to shifting economic recessions and booms.

Mr. President, the amendment being discussed today does not prohibit running a deficit or borrowing money. It requires a three-fifths vote in order to do those things. Under the circumstances generally described in support of an economic exception, I think it is incumbent upon the exceptions advocates to explain why they could not get the necessary votes. Furthermore, I am interested to hear why the higher standards established by the balanced budget amendment would be more restrictive than the prospect of continued annual deficits, higher debt and debt payments, and less real discretionary spending under Congress' control.

Finally, this amendment does not transfer undue power to the judiciary. One concern raised about the balanced budget amendment is the role the courts will play in enforcing its provisions. In the past, some have argued

that the courts will involve themselves in the Federal budget process in order to enforce the balanced budget amendment. As someone with deep concerns about judicial activism, I have inspected this issue closely, and I am confident that adoption of this amendment will not authorize courts to insert themselves into the budget process.

As I mentioned previously, the balanced budget amendment establishes new procedures that encourage Congress to move toward and adopt a balanced budget. It does not, however, create a "right" to a balanced budget. It does not disturb the powers of Congress under Article I of the Constitution, it does not confer those powers on the courts, and it does not give to the courts authority to interfere in those powers.

Mr. President, in conclusion, let me say the greatest danger facing our economy, our senior citizens, and future generations is not an amendment to the Constitution restricting Congress' ability to borrow money or raise taxes, but rather the endless stream of deficits and huge mountains of debt that a previous, unrestricted Congresses have imposed upon this and future generations. It is unfair, irresponsible, and immoral to pass this burden on to our children, and I applaud you and the Republican leadership for making passage of Senate Joint Resolution 1 the No. 1 priority of the 105th Congress.

Mr. CAMPBELL. Mr. President, for many years I have spoken out in favor of a Balanced Budget Amendment to the Constitution, and have supported and voted for this measure each time I have had the opportunity to do so. Now, once again, I join many of my colleagues as an original cosponsor of the Balanced Budget Amendment which is being introduced today, and I applaud Senator ORRIN HATCH, Majority Leader TRENT LOTT, and the leadership for making this particular item a top priority for the 105th Congress.

It would be so easy to give up on the idea of passing the Balanced Budget Amendment. For a number of years, despite the hard work of many individuals, this measure has failed to pass through Congress and move on to the states for ratification where it belongs. However, I believe passage of this Amendment is in the best interest of the future of this country. It will force us to make the tough choices that need to be made to balance the budget and eventually eliminate the staggering debt.

There are those that believe there is no need for the Balanced Budget Amendment, that Congress can continually balance the budget without being mandated by the Constitution to do so. However, I have been a member of this institution for ten years now, and I have yet to see Congress and the administration bite the bullet, balance the budget, and tackle our enormous debt. If we do not address this important issue, the amount of the federal budget devoted toward paying off the interest on the debt and the entitlement programs will increase to the point that there will be barely any money left for those programs which deserve and require federal funding such as education, law enforcement, national security, or even our national parks and monuments. I think we owe more to the American people and to future generations.

For those of us who remain committed to this effort, this piece of legislation is a vital tool for tackling the difficult task of balancing the budget. I would like to see an increase not only in our standard of living and national savings rate but also in the amount of money the Federal Government devotes to worthwhile and beneficial programs—programs which could suffer due to our financial troubles.

Congress came within one vote last session of passing the Balanced Budget Amendment. I am optimistic that this year we can pass this legislation and send the measure on to the states for their deliberation. It is time to allow the American people and the State legislatures the opportunity to debate the merits of the Balanced Budget Amendment, and I hope that the Congress will see fit to entrust this measure to those who must ratify or reject it.

By Mr. HOLLINGS (for himself, Mr. SPECTER, Mr. DASCHLE, Mr. DORGAN, Mr. SHELBY, Mr. REID, Mr. FORD, and Mr. REED):

S.J. Res. 2. A joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections; to the Committee on the Judiciary.

THE CAMPAIGN FINANCE REFORM CONSTITUTIONAL AMENDMENT

Mr. HOLLINGS. Mr. President, I rise today, along with my collegue and cosponsor Senator SPECTER, to introduce for the sixth time a constitutional amendment to limit campaign spending. Although I commend the efforts of the Minority Leader and others seeking to statutorily reform our campaign finance laws, I am convinced the only way to solve the chronic problems surrounding campaign financing is to reverse the Supreme Court's flawed decision in Buckley versus Valeo by adopting a constitutional amendment granting Congress the right to limit campaign spending.

We all know the score—we're hamstrung by that decision and the ever increasing cost of a competitive campaign. With the total cost for congressional elections, just general elections, skyrocketing from $403 million in 1990 to over $626 million in 1996, the need for limits on campaign expenditures is more urgent than ever. For nearly a quarter of a century, Congress has tried to tackle runaway campaign spending with bills aimed at getting around the disjointed Buckley decision. Again and again, Congress has failed.

Let us resolve not to repeat the mistakes of past campaign finance reform efforts, which have become bogged down in partisanship as Democrats and Republicans each tried to gore the other's sacred cows. During the 103d Congress there was a sign that we could move beyond this partisan bickering, when the Senate in a bipartisan fashion expressed its support for a constitutional amendment to limit campaign expenditures. In May 1993, a nonbinding sense of the Senate resolution was agreed to which advocated the adoption of a constitutional amendment empowering Congress and States to limit campaign expenditures.

Now it is time to take the next step. We must strike the decisive blow against the anything-goes fundraising and spending tolerated by both political parties. Looking beyond the current headlines regarding the source of these funds, the massive amount of money spent is astonishing and serves only to cement the commonly held belief that our elections are nothing more than auctions and that our politicians are up for sale. It is time to put a limit on the amount of money sloshing around campaign war chests. It is time to adopt a constitutional amendment to limit campaign spending—a simple, straightforward, nonpartisan solution.

As Prof. Gerald G. Ashdown has written in the New England Law Review, amending the Constitution to allow Congress to regulate campaign expenditures is "the most theoretically attractive of the approaches-to-reform since, from a broad free speech perspective, the decision in Buckley is misguided and has worsened the campaign finance atmosphere." Adds Professor Ashdown: "If Congress could constitutionally limit the campaign expenditures of individuals, candidates, and committees, along with contributions, most of the troubles * * * would be eliminated."

Right to the point, back in 1974, Congress responded to the public's outrage over the Watergate scandals by passing, on a bipartisan basis, a comprehensive campaign finance law. The centerpiece of this reform was a limitation on campaign expenditures. Congress recognized that spending limits were the only rational alternative to a system that essentially awarded office to the highest bidder or wealthiest candidate.

Unfortunately, the Supreme Court overturned these spending limits in its infamous Buckley versus Valeo decision of 1976. The Court mistakenly equated a candidate's right to spend

unlimited sums of money with his right to free speech. In the face of spirited dissents, the Court came to the conclusion that limits on campaign contributions but not spending furthered "* * * the governmental interest in preventing corruption and the appearance of corruption" and that this interest "outweighs considerations of free speech."

I have never been able to fathom why that same test—the governmental interest in preventing corruption and the appearance of corruption—does not overwhelmingly justify limits on campaign spending. The Court made a huge mistake. The fact is, spending limits in Federal campaigns would act to restore the free speech that has been eroded by the Buckley decision.

After all, as a practical reality, what Buckley says is: Yes, if you have a fundraising advantage or personal wealth, then you have access to television, radio, and other media and you have freedom of speech. But if you do not have a fundraising advantage or personal wealth, then you are denied access. Instead of freedom of speech, you have only the freedom to say nothing.

So let us be done with this phony charge that spending limits are somehow an attack on freedom of speech. As Justice Byron White points out, clear as a bell, in his dissent, both contribution limits and spending limits are neutral as to the content of speech and are not motivated by fear of the consequences of the political speech in general.

Mr. President, every Senator realizes that television advertising is the name of the game in modern American politics. In warfare, if you control the air, you control the battlefield. In politics, if you control the airwaves, you control the tenor and focus of a campaign.

Probably 80 percent of campaign communications take place through the medium of television. And most of that TV airtime comes at a dear price. In South Carolina, you're talking between $1,000 and $2,000 for 30 seconds of primetime advertising. In New York City, it's anywhere from $30,000 to $40,000 for the same 30 seconds.

The hard fact of life for a candidate is that if you're not on TV, you're not truly in the race. Wealthy challengers as well as incumbents flushed with money go directly to the TV studio. Those without a fundraising advantage or personal wealth are sidetracked to the time-consuming pursuit of cash.

The Buckley decision created a double bind. It upheld restrictions on campaign contributions, but struck down restrictions on how much candidates with deep pockets can spend. The Court ignored the practical reality that if my opponent has only $50,000 to spend in a race and I have $1 million, then I can effectively deprive him of his speech. By failing to respond to my advertising, my cash-poor opponent will appear unwilling to speak up in his own defense.

Justice Thurgood Marshall zeroed in on this disparity in his dissent to Buckley. By striking down the limit on what a candidate can spend, Justice Marshall said, "It would appear to follow that the candidate with a substantial personal fortune at his disposal is off to a significant head start."

Indeed, Justice Marshall went further: He argued that by upholding the limitations on contributions but striking down limits on overall spending, the Court put an additional premium on a candidate's personal wealth.

Justice Marshall was dead right and Ross Perot and Steve Forbes have proved it. Massive spending of their personal fortunes immediately made them contenders. Our urgent task is to right the injustice of Buckley versus Valeo by empowering Congress to place caps on Federal campaign spending. We are all painfully aware of the uncontrolled escalation of campaign spending. The average cost of a winning Senate race was $1.2 million in 1980, rising to $2.9 million in 1984, and skyrocketing to $3.1 million in 1986, $3.7 million in 1988, and up to $4.3 in 1996. To raise that kind of money, the average Senator must raise over $13,800 a week, every week of his or her 6-year term. Overall spending in congressional races increased from $446 million in 1990 to more than $724 million in 1994—almost a 70 percent increase in 4 short years. I predict that when the final FEC reports are compiled for 1996, that figure will go even higher.

This obsession with money distracts us from the people's business. It corrupts and degrades the entire political process. Fundraisers used to be arranged so they didn't conflict with the Senate schedule; nowadays, the Senate schedule is regularly shifted to accommodate fundraisers.

I have run for statewide office 16 times in South Carolina. You establish a certain campaign routine, say, shaking hands at a mill shift in Greer, visiting a big country store outside of Belton, and so on. Over the years, they look for you and expect you to come around. But in recent years, those mill visits and dropping by the country store have become a casualty of the system. There is very little time for them. We're out chasing dollars.

During my 1992 reelection campaign, I found myself raising money to get on TV to raise money to get on TV to raise money to get on TV. It's a vicious cycle.

I remember Senator Richard Russell saying: "They give you a 6-year term in this U.S. Senate: 2 years to be a statesman, the next 2 years to be a politician, and the last 2 years to be a demagogue." Regrettably, we are no longer afforded even 2 years as statesmen. We proceed straight to politics and demagoguery right after the election because of the imperatives of raising money.

My proposed constitutional amendment would change all this. It would empower Congress to impose reasonable spending limits on Federal campaigns. For instance, we could impose a limit of, say, $800,000 per Senate candidate in a small State like South Carolina—a far cry from the millions spent by my opponent and me in 1992. And bear in mind that direct expenditures account for only a portion of total spending. For instance, my 1992 opponent's direct expenditures were supplemented by hundreds of thousands of dollars in expenditures by independent organizations and by the State and local Republican Party. When you total up spending from all sources, my challenger and I spent roughly the same amount in 1992.

And incidentally, Mr. President, let's be done with the canard that spending limits would be a boon to incumbents, who supposedly already have name recognition and standing with the public and therefore begin with a built-in advantage over challengers. Nonsense. I hardly need to remind my Senate colleagues of the high rate of mortality in upper chamber elections. And as to the alleged invulnerability of incumbents in the House, I would simply note that well over 50 percent of the House membership has been replaced since the 1990 elections and just 3 weeks ago we swore in 15 new Senators.

I can tell you from experience that any advantages of incumbency are more than counterbalanced by the obvious disadvantages of incumbency, specifically the disadvantage of defending hundreds of controversial votes in Congress.

Moreover, Mr. President, I submit that once we have overall spending limits, it will matter little whether a candidate gets money from industry groups, or from PAC's, or from individuals. It is still a reasonable amount any way you cut it. Spending will be under control, and we will be able to account for every dollar going out.

On the issue of PAC's, Mr. President, let me say that I have never believed that PAC's per se are an evil in the current system. On the contrary, PAC's are a very healthy instrumentality of politics. PAC's have brought people into the political process: nurses, educators, small business people, senior citizens, unionists, you name it. They permit people of modest means and limited individual influence to band together with others of mutual interest so their message is heard and known.

For years we have encouraged these people to get involved, to participate. Yet now that they are participating, we turn around and say, "Oh, no; your influence is corrupting, your money is tainted". This is wrong. The evil to be corrected is not the abundance of participation but the superabundance of

money. The culprit is runaway campaign spending.

To a distressing degree, elections are determined not in the political marketplace but in the financial marketplace. Our elections are supposed to be contests of ideas, but too often they degenerate into megadollar derbies, paper chases through the board rooms of corporations and special interests.

Mr. President, I repeat, campaign spending must be brought under control. The constitutional amendment Senator SPECTER and I have proposed would permit Congress to impose fair, responsible, workable limits on Federal campaign expenditures and allow States to do the same with regard to State and local elections.

Such a reform would have four important impacts. First, it would end the mindless pursuits of ever-fatter campaign war chests. Second, it would free candidates from their current obsession with fundraising and allow them to focus more on issues and ideas; once elected to office, we wouldn't have to spend 20 percent of our time raising money to keep our seats. Third, it would curb the influence of special interests. And fourth, it would create a more level playing field for our Federal campaigns—a competitive environment where personal wealth does not give candidates an insurmountable advantage.

Finally, Mr. President, a word about the advantages of the amend-the-Constitution approach that I propose. Recent history amply demonstrates the practicality and viability of this constitutional route. Certainly, it is not coincidence that five of the last seven amendments to the Constitution have dealt with Federal election issues. In elections, the process drives and shapes the end result. Election laws can skew election results, whether you're talking about a poll tax depriving minorities of their right to vote, or the absence of campaign spending limits giving an unfair advantage to wealthy candidates. These are profound issues which go to the heart of our democracy, and it is entirely appropriate that they be addressed through a constitutional amendment.

And let's not be distracted by the argument that the amend-the-Constitution approach will take too long. Take too long? We have been dithering on this campaign finance issue since the early 1970's, and we haven't advanced the ball a single yard. All-the-while the Supreme Court continues to strike down campaign limit after campaign limit. It has been a quarter of a century, and no legislative solution has done the job.

Except for the 27th amendment, the last five constitutional amendments took an average of 17 months to be adopted. There is no reason why we cannot pass this joint resolution, submit it to the States for a vote, and ratify the amendment in time for it to govern the 1998 election. Once passed by the Congress, the Joint Resolution goes directly to the States for ratification. Once ratified, it becomes the law of the land, and it is a Supreme Court challenge.

And, by the way, I reject the argument that if we were to pass and ratify this amendment, Democrats and Republicans would be unable to hammer out a mutually acceptable formula of campaign expenditure limits. A Democratic Congress and Republican President did exactly that in 1974, and we can certainly do it again.

Mr. President, this amendment will address the campaign finance mess directly, decisively, and with finality. The Supreme Court has chosen to ignore the overwhelming importance of media advertising in today's campaigns. In the Buckley decision, it prescribed a bogus if-you-have-the-money-you-can-talk version of free speech. In its place, I urge the Congress to move beyond these acrobatic attempts at legislating around the Buckley decision. As we have all seen, no matter how sincere, these plans are doomed to fail. The solution rests in fixing the Buckley decision. It is my hope that as the campaign financing debate unfolds, the Majority Leader will provide us with an opportunity to vote on this resolution—it is the only solution.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S.J. RES. 2

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within 7 years after the date of final passage of this joint resolution:

"ARTICLE—

"SECTION 1. Congress shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, Federal office.

"SECTION 2. A State shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, State or local office.

"SECTION 3. Congress shall have power to implement and enforce this article by appropriate legislation.".

Mr. SPECTER. Mr. President, I have sought recognition today to join with Senator HOLLINGS in introducing a joint resolution providing for an amendment to the United States Constitution which would provide authority to the Congress to regulate Federal election spending and to the States to regulate spending in State and local elections.

This joint resolution is very similar to S.J. Res. 48, which I introduced in the 104th Congress on January 26, 1996, 3 days before the 20th anniversary of the Supreme Court's decision in Buckley versus Valeo. It is also very similar to constitutional amendments which Senator HOLLINGS and I have proposed since 1989.

Now, more than ever, the time has come for meaningful election law reform—reform which necessitates overturning the Buckley decision.

The unprecedented spending levels during 1996 Presidential and Congressional campaigns should serve as the impetus for approving this consitutional amendment. Presidential candidates spent a total of $237 million in the 1996 primary campaigns, of which $56 million represented publicly funded matching payments. Public financing of the general election added $153 million to the total. One primary candidate decided not to take Federal matching funds and used $37 million of his own resources to fund a campaign in which he was not restricted from the same state-by-state and overall limits as other candidates.

The 1996 Congressional campaign cycle was similarly grim for all but television station advertising managers and political consultants. There were record levels of spending including $220.8 million by Senate candidates and $405.6 million by House candidates. This spending, much of which went to negative television commercials, did little to restore the public's confidence in the electoral process, much less our institution.

The Supreme Court has made this proposed amendment even more urgent through its June, 1996 decision in Colorado Republicans Federal Campaign Committee versus Federal Election Commission. In that case, the Court cut an enormous hole in the remaining Federal campaign spending limits by striking down a restriction on party spending when the parties are acting independently of the candidates they support. Justice Breyer's plurality opinion stated that the "independent expression of a political party's views is core 1st Amendment activity" entitled to full protection. Until the Colorado decision, Federal election law limited how much the parties themselves could spend on House and Senate races. Now, it's a multi-million dollar free-for-all, with a prospect of subsequent litigation over the "independence" of such expenditures and a rash of complaints filed against candidates in future election cycles.

If nothing else, the vast sums of money spent in this recent election, coupled with the June Supreme Court decision, have raised the profile of the

Buckley decision even further. I am pleased to note that the view that Buckley should be overturned is shared by a group of prominent constitutional scholars who recently began a campaign to overturn the Buckley decision. According to a November 10, 1996 New York Times article, 26 scholars have signed a statement urging the Supreme Court to reconsider and reverse its 1976 decision, which has essentially allowed an unlimited amount of money to flow into campaign war chests. Among the scholars signing the statement are Bruce Ackerman (Yale Law School), Ronald Dworkin (New York University Law School), Peter Arenella (University of California at Los Angeles Law School), and Robert Aronson (University of Washington Law School). Such a concerted effort by legal scholars, when coupled with Congressional efforts and the public's revulsion at the amount of money in politics, should lead to a new day for campaign finance in which rational, reasonable limits bring sanity back into the political process.

Overturning the Buckley decision has long been a priority of mine. In fact, the Buckley decision had a very significant impact on this Senator, because at that time in 1976, I was running for the U.S. Senate. I had announced my candidacy on November 17, 1975, for the seat being vacated by a very distinguished Senator, Hugh Scott. Under the 1974 federal election law, there was a limited amount a candidate for the Senate could spend of his or her own money, based on population. For a State the size of Pennsylvania, it was $35,000. That was about the limit of the means which I had at that time, having been extensively involved in public service as district attorney of Philadelphia and for a relatively short period of time in the private practice of law.

However, I had decided to run for the office of U.S. Senate against a very distinguished American who later became a U.S. Senator, John Heinz, who had more financial resources than I did. I should note that after my eventual election in 1980, he and I formed a very close working partnership and very close friendship.

In the middle of that campaign, on January 29, 1976, the U.S. Supreme Court decided Buckley v. Valeo and said a candidate can spend any amount of his own money. John Heinz was in a position to do so and did just that. That made an indelible impression upon me, so much so that when the decision came down on January 29, I petitioned for leave to intervene as amicus and filed a set of legal appeals, all of which were denied. John Heinz subsequently won the primary and general elections and served with great distinction until his tragic death.

As I noted at the outset, this is not a new issue for me to bring before my colleagues. I have sponsored and cosponsored legislation for 7 years and, during the 101st Congress, testified in support of such a constitutional amendment before the Senate Subcommittee on the Constitution on February 28, 1990.

I gained significant new insight, however, on the subject of campaign spending from my experiences as a candidate for the Republican nomination for the Presidency during 1994 and 1995. During my travels to 30 States as a Presidential candidate, I was once again impressed with how important fundraising is and how disproportionate it is to the undertaking of a political candidacy.

My concept of running for elective office, Mr. President, is a matter of issues, a matter of tenacity, a matter of integrity, and how you conduct a campaign. However, money has become the dominant issue in the Presidential campaign. And the media focus on it to the virtual exclusion of the many issues of substantive matters which are really involved in a campaign for the Presidency.

It has seemed to me since my experiences in 1976, as I have watched enormous expenditures in campaign financing by individuals, that the Buckley decision was based on unsound constitutional interpretation and certainly created unsound public policy. There is nothing in the Constitution, in my legal judgment, which guarantees freedom of speech on any reasonable, realistic, logical constitutional interpretation which says you ought to be able to spend as much money as you have to win an elective office. I think it is high time for the Congress of the United States and the 50 States to reexamine that in a constitutional amendment, which is the purpose of the joint resolution we are introducing today.

Simply put, Congress should have the authority to establish a spending limit in Federal elections without regard to the first amendment limitation which was applied by the Supreme Court in Buckley. In approaching this matter, Mr. President, I am very concerned about amending the first amendment to the U.S. Constitution, which covers the freedoms of speech, religion, press, and assembly. But, the constitutional amendment we are proposing really does not go to any of these core first amendment values. This is not a matter affecting religion. It is not a matter really affecting speech.

I think it was a very far stretch when a divided U.S. Supreme Court said that a campaign contribution from an individual was not a matter of freedom of speech, but spending one's own money in a campaign is protected speech. At that time, the Supreme Court did not affect the limitation on spending where an individual could contribute only $1,000 in the primary and $1,000 in the general, except for contributions by political action committees, which could receive $5,000.

I would note that in 1976, my brother had considerably more financial means than I did and would have been very much interested in helping his younger brother, but the limitation on my brother in that primary was $1,000. It seemed to me then and it seems to me now that if a candidate has the right to spend as much of his or her money as he or she chooses, then why should not any other citizen have the same right under the first amendment to express himself or herself by political contributions. That distinction by the Buckley court still seems unfounded 20 years later.

There have been many, many examples of multimillion-dollar expenditures in this body, the U.S. Senate, the U.S. House of Representatives, and in State government, and in 1992 and 1996 we have witnessed such expenditures by two men running for President of the United States. The fact of life is, if you advertise enough on television, if you sell candidacies like you sell soap, the sky is the limit. Even the White House of the United States of America, the Office of the President, may be, in fact, up for sale if someone is willing to start off by announcing a willingness to spend $25 million. If you have $400 million, $25 million is not an enormous sum; you still have $375 million left after your campaign. As I have said before, most people can get by on $375 million. Given some of the personal fortunes out there, it is conceivable that someone could spend $50 million or even $75 million to promote a candidacy, both to articulate a positive view and then, perhaps even more effectively, to fund negative television advertisements aimed at opponents.

A constitutional amendment is also a direct way to deal with campaign finance reform without having a further burden on the Treasury of the United States. We have debated campaign finance reform repeatedly in a variety of contexts. Most proposals come down to a proposition to have Federal subsidies for candidates and then to call upon the candidates to relinquish their rights under Buckley versus Valeo in order to qualify for Federal funding. I have opposed such Federal funding because I think it is unwise to further burden the Treasury by having campaigns paid for by the U.S. Treasury.

During the 103d Congress, the Senate went on record on this very issue, adopting an amendment to S.3, the campaign finance reform bill, that stated that it was the sense of the Senate that Congress should adopt a joint resolution proposing a constitutional amendment empowering Congress and the States to set reasonable limits on campaign expenditures. The amendment was approved by a 52–43 vote on May 27, 1993. However, in the 104th Congress, the Senate went backwards in

my view. It had the opportunity to adopt this proposal as an amendment to the Balanced Budget Amendment, but it was defeated on a procedural motion by 52–45.

I am hopeful that the vote in 1995 was an aberration and that a majority of my colleagues will, at long last, agree with me and Senator HOLLINGS, among others, that it is high time we amend the Constitution to overturn the Buckley decision.

I ask unanimous consent that the text of the New York Times article of November 10, 1996, be included in the RECORD.

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

[From the New York Times National, Nov. 10, 1996]

AFTER THE ELECTION: READJUSTING AND RECONSIDERING—CAMPAIGN FINANCE—SCHOLARS ASK COURT TO BACKTRACK, SHUTTING FLOODGATES ON POLITICAL SPENDING

(By Leslie Wayne)

WASHINGTON, Nov. 6—A group of prominent constitutional scholars has begun a campaign to get the Supreme Court to overturn a 20-year-old landmark decision that has allowed unlimited amounts of money to flow into political races.

The group is seeking to overturn Buckley v. Valeo, a 1976 decision that struck down some of the Watergate-era campaign finance changes that Congress had enacted in 1974. In doing so, the Court removed any limits on campaign spending.

In Buckley, the Court said that any infringement on campaign spending was an infringement on free speech and, by that action, legal scholars say, opened the floodgates to the high-cost campaigns of today.

"This was a bad decision," said Prof. Ronald Dworkin of the New York University Law School, who is involved in the scholars' campaign. "Public opinion is now becoming revolted at the amount of money in politics. And that may provoke the Court into reconsidering this decision. The Buckley decision appears to try to represent an ideal of democracy, but it is an incomplete ideal."

Professor Dworkin and 25 other scholars have signed a statement calling on the Court to reconsider and reverse the decision. The effort is being coordinated by the Brennan Center for Justice at New York University, a nonprofit organization named for former Supreme Court Justice William J. Brennan Jr.

The Brennan Center plans to hold a conference on the subject and is also planning to have Federal judges hold mock Supreme Court arguments on this case.

The legal scholars are also speaking out. In an article in a recent issue of The New York Review of Books, Professor Dworkin said: "The case for overruling Buckley is a strong one, and we should feel no compunction in declaring the decision a mistake. The decision misunderstood not only what free speech really is, but what it really means for free people to govern themselves."

Among the scholars signing the statement are Bruce Ackerman, a professor at Yale Law School; Peter Arenella, a professor at the law school of the University of California at Los Angeles; John Rawls, a professor emeritus of law at Harvard University; Milton S. Gwirtzman, a member of the senior advisory board at the John F. Kennedy School of Government at Harvard, and Robert Aronson, a professor of the University of Washington law school.

Prof. Erwin Chemerinsky of the University of Southern California law school, who is among the signers, said: "My hope is that if I and other scholars speak long enough and are persuasive enough, it might swing the Court. Having experts in constitutional law speak out might make a difference. I believe the Court was wrong with Buckley."

Yet, even these scholars believe their efforts may be a long shot, given a recent Court decision and many lower-court decisions that have been moving in the opposite direction of overturning Buckley and have, instead, allowed money to be spent even more freely on behalf of candidates for Federal office.

Congress passed legislation in 1974 to curb the excesses of the Watergate scandal, limiting both the amount of money that could be raised and the amount that could be spent in a political campaign.

The Buckley decision had, as its central element, the elimination of restrictions that Congress had imposed on campaign spending but, in what critics say was odd, it left in place restrictions on contributions.

This, over time, had the effect of allowing candidates to spend as much money as they want—something the Court said was protected by the First Amendment guarantee of free speech. But it forced candidates to come up with creative fund-raising strategies to skirt restrictions that capped campaign donations at $1,000 from individuals and $5,000 from political action committees.

"The Court struck down one-half of the 1974 law and left the other half in effect, and we ended up with a law that was the worst of all," said Burton Neuborne, a New York University law professor and head of the Brennan Center. "This created a schizophrenic market where the supply of money was limited, but the demand for it was not."

"The worst part of all," Professor Neuborne added, "is that as a result of Buckley, the campaign finance laws are shot with loopholes because candidates have to drive through all of them in order to get money."

Since the Buckley decision, candidates and the political parties have become masters at exploiting all loopholes to meet the demand for campaign money. This year's biggest development is the growth in the use of "soft money"—funds that can be raised by political parties in unlimited amounts and spent by them in behalf of candidates for Federal office. Donations to the parties avoid the tight $1,000-per-candidate cap.

Moreover, in a subsequent ruling handed down last June, the Court upheld a decision in a Colorado case that allows political parties to spend unlimited amounts on "independent ads"—advertisements that are on behalf of candidates but are not designed in coordination with them. That decision was seen by many campaign finance critics as eliminating the last barrier against any restrictions on spending by political parties and promoting the back-door financing of Federal campaigns.

"It's not only Buckley v. Valeo, but how it is being interpreted by the Court," said Norman J. Ornstein, a resident scholar at the American Enterprise Institute who opposes the Buckley decision but did not sign the statement. "The Colorado decision had the bizarre conclusion that political parties can act independent of their own candidates. And that's what really helped open the floodgates even more this year."

In addition, the Buckley decision has been continually cited by lower courts in fending off efforts to regulate "issue advocacy" advertisements. This type of advertising is paid for by activist groups like the Christian Coalition or environmental groups; they may not say "vote for" or "vote against" specific candidates, but they still clearly support one candidate or another.

In nearly a dozen lower-court decisions, these advertisements have been ruled to be protected by the First Amendment guarantee of free speech, as outlined in the Buckley decision, and cannot be regulated by the Government. That means such spending cannot be restricted.

Kenneth Gross, an election law specialist in Washington, said it was highly doubtful that the scholars' group would be successful.

"Overturning Buckley is wishful thinking," he said. "Every time the Supreme Court gets hold of a case that involves the ideas in Buckley, they reaffirm them. The Court hasn't shown any inclination in turning away from Buckley."

Still, the group hopes that its perseverance will pay off. "They are many examples in past history of the Supreme Court reconsidering landmark cases after sustained public outcry and scholarly criticism," said E. Joshua Rosenkrantz, executive director of the Brennan Center. "That is what we are trying to generate. Buckley has got to be one of the most unpopular opinions existing today, and it is viewed by reformers of campaign finance as the big oak tree that occupies the field, forcing everyone to play around it."

By Mr. THURMOND:

S.J. Res. 3. A joint resolution proposing an amendment to the Constitution of the United States relating to voluntary school prayer; to the Committee on the Judiciary.

VOLUNTARY SCHOOL PRAYER CONSTITUTIONAL AMENDMENT

Mr. THURMOND. Mr. President, today, I am introducing the voluntary school prayer constitutional amendment. This bill is identical to Senate Joint Resolution 73 which I introduced in the 98th Congress at the request of then President Reagan and reintroduced every Congress since.

This proposal has received strong support from our colleagues on both sides of the aisle and is of vital importance to our Nation. It would restore the right to pray voluntarily in public schools—a right which was freely exercised under our Constitution until the 1960's, when the Supreme Court ruled to the contrary.

Also, in 1985, the Supreme Court ruled an Alabama statute unconstitutional which authorized teachers in public schools to provide "a period of silence * * * for meditation or voluntary prayer" at the beginning of each school day. As I stated when that opinion was issued and repeat again—the Supreme Court has too broadly interpreted the establishment clause of the first amendment and, in doing so, has incorrectly infringed on the rights of those children—and their parents—who wish to observe a moment of silence for religious or other purposes.

Until the Supreme Court ruled in the Engel and Abington School District decisions, the establishment clause of the

first amendment was generally understood to prohibit the Federal Government from officially approving, or holding in special favor, any particular religious faith or denomination. In crafting that clause, our Founding Fathers sought to prevent what has originally caused many colonial Americans to emigrate to this country—an official, State religion. At the same time, they sought, through the free exercise clause, to guarantee to all Americans the freedom to worship God without government interference or restraint. In their wisdom, they recognized that true religious liberty precludes the government from both forcing and preventing worship.

As Supreme Court Justice William Douglas once stated: "We are a religious people whose institutions presuppose a Supreme Being." Nearly every President since George Washington has proclaimed a day of public prayer. Moreover, we, as a nation, continue to recognize the Deity in our Pledge of Allegiance by affirming that we are a Nation "under God." Our currency is inscribed with the motto, "In God We Trust". In this body, we open the Senate and begin our workday with the comfort and stimulus of voluntary group prayers—such a practice has been recently upheld as constitutional by the Supreme Court. It is unreasonable that the opportunity for the same beneficial experience is denied to the boys and girls who attend public schools. This situation simply does not comport with the intentions of the Framers of the Constitution and is, in fact, antithetical to the rights of our youngest citizens to freely exercise their respective religions. It should be changed, without further delay.

The Congress should swiftly pass this resolution and send it to the States for ratification. This amendment to the Constitution would clarify that it does not prohibit vocal, voluntary prayer in the public school and other public institutions. It emphatically states that no person may be required to participate in any prayer. The government would be precluded from drafting school prayers. This well-crafted amendment enjoys the support of an overwhelming number of Americans.

I strongly urge my colleagues to support prompt consideration and approval of this bill during this Congress.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S.J. Res. 5. A joint resolution waiving certain provisions of the Trade Act of 1974 relating to the appointment of the United States Trade Representative; to the Committee on Finance.

U.S. TRADE REPRESENTATIVE LEGISLATION

Mr. ROTH. Mr. President, today I, along with my colleague Senator MOYNIHAN, introduce a joint resolution that will waive certain provisions of the Trade Act of 1974 relating to the administration's nomination of Ambassador Charlene Barshefsky to the position of U.S. Trade Representative [USTR].

Specifically, the resolution will provide a waiver for Ambassador Barshefsky from the application of section 141(b)(3) of the Trade Act of 1974, as amended by section 21 of the Lobbying Disclosure Act. This provision prohibits the appointment of any person to serve as USTR or Deputy USTR, who has directly represented, aided, or advised or foreign government or foreign political party in a trade dispute or trade negotiation with the United States.

The administration has sought the waiver because of questions surrounding Barshefsky's work for the Government of Canada while practicing law in the private sector. Ambassador Barshefsky was already serving as Deputy USTR when the law went into effect.

When the Finance Committee acts on her nomination. I will ask it to mark up the joint resolution waiving, in her case, the application of the prohibition to eliminate any questions about her eligibility to serve. Ambassador Barshefsky now enjoys an exemption from this prohibition as Deputy USTR, and I believe that the extension of this exemption by waiver is appropriate. Because this waiver will have the force of law, it must be passed by both the Senate and the House and then presented to the President for signature.

In past statements, I have expressed my strong support for Charlene Barshefsky's nomination as USTR. She is a very capable public servant, and I fully expect she will distinguish herself as USTR much as she did in her service as Deputy USTR.

By Mr. KYL (for himself and Mrs. FEINSTEIN):

S.J. Res. 6. A joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims; to the Committee on the Judiciary.

THE VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT

Mr. KYL. Mr. President, to ensure that crime victims are treated with fairness, dignity, and respect, I rise to introduce, along with Senator FEINSTEIN, a resolution proposing a constitutional amendment to establish and protect the rights of crime victims.

This resolution is the product of extended discussions with Chairman HENRY HYDE, Senators HATCH and BIDEN, the Department of Justice, the White House, law enforcement officials, major victims' rights groups, and such diverse scholars as Professors Larry Tribe and Paul Cassell. As a result of these discussions, the core values in the original amendment remain unchanged, but the language has been refined to better protect the interest of all parties.

Each year, about 40 million Americans are victimized, first by criminals and a second time by a government that affords them no constitutional rights. The Victims' Rights Amendment is a constitutional amendment that will bring balance to the system by giving crime victims the rights to be informed, present, and heard at critical stages throughout their ordeal—the least the system owes to those it failed to protect.

NEED TO PROTECT CRIME VICTIMS' RIGHTS—SCALES OF JUSTICE IMBALANCED

Last Congress, the amendment was cosponsored by 29 Senators. Both the Republican and Democratic Party platforms called for a victims' rights amendment, as did Senator Dole and President Clinton in a Rose Garden ceremony in June 1996 and in his acceptance speech at the Democratic convention.

This strong bipartisan support makes clear that the Victims' Rights Amendment is not a partisan issue, or some election-year gimmick. The idea stems from a 1982 President's Task Force on Victims of Crime, which concluded that "the criminal justice system has lost its essential balance," and that constitutional protection of victims' rights was the only way to guarantee fair treatment of crime victims. Since then, grass-roots citizens' organizations around the country have pushed for amendments to their State constitutions. A majority of States have responded to the unjust treatment crime victims face, and have enacted constitutional amendments. But this patchwork of State constitutional amendments is inadequate. A Federal amendment would establish a basic floor of crime victims's rights—a floor below which States could not go.

Victims of serious crimes need a constitutional amendment to protect their rights and restore balance to our justice system. Those accused of crime have many constitutionally protected rights: They have the right to due process; right to confront witnesses; right against self-incrimination; right to a jury trial; right to a speedy trial; right to a public trial; right to counsel; right to be free from unreasonable searches and seizures.

Yet, despite rights for the accused, the U.S. Constitution, our highest law, has no protection for crime victims. The recognized symbol of justice is a figure holding a balanced set of scales, but in reality the scales are heavily weighted on the side of the accused. Our proposal will not deny or infringe any constitutional right of any person accused or convicted of a crime. But it will add to the body of rights we all enjoy as Americans.

Crime victims have no constitutional rights. They are often treated as mere inconveniences, forced to view the process from the sidelines. Defendants can be present through their entire

trial because they have a constitutional right to be there. But in many trials, crime victims are ordered to leave the courtroom. Victims often are not informed of critical proceedings, such as hearings to consider releasing a defendant on bail or allowing him to plea bargain to a reduced charge. Even when crime victims find out about these proceedings, they frequently have no opportunity to speak.

RIGHTS IN THE AMENDMENT

The amendment gives crime victims the rights:

To be notified of the proceedings;

To be heard at certain crucial stages in the process;

To be notified of the offender's release or escape;

To proceedings free from unreasonable delay;

To an order of restitution;

To have the safety of the victim considered in determining a release from custody; and

To be notified of these rights.

STATISTICS

As I noted earlier, each year about 40 million Americans are victims of serious crime. During 1995 there were 9.9 million crimes of violence, 6.4 million simple assaults, 2.0 million aggravated assaults, 1.3 million robberies, and 355,000 rapes or other types of sexual assault, according to the most recent statistics from the Department of Justice.

The breakdown of social order and the crisis of crime which accompany it have swelled the ranks of criminals, and those who suffer at their hands, to proportions that astonish us, that break our hearts, and that demand collective action. And the process of detecting, prosecuting, and punishing criminals continues, in too many places in America, to ignore the rights of crime victims to fundamental justice.

STRONG PUBLIC SUPPORT—TWENTY-NINE STATES HAVE CONSTITUTIONAL AMENDMENTS

Since 1982 when the need for a constitutional amendment was first recognized by a President's Task Force on Victims of Crime, 29 states have passed similar measures—by an average popular vote of almost 80 percent.

In 1996, eight states approved constitutional amendments—all by landslides. Connecticut: 78 percent. Indiana: 89 percent. Nevada: 74 percent. North Carolina: 78 percent. Oklahoma: 91 percent. Oregon: 57 percent. South Carolina: 89 percent. Virginia: 84 percent.

AMENDING THE CONSTITUTION IS A BIG STEP, BUT A NECESSARY ONE

Amending the constitution is, of course, a big step—one which I do not take lightly—but, on this issue, it is a necessary one. As Thomas Jefferson once said: "I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and options change, with the change of circumstances, institutions must advance also to keep pace with the times."

Who would be comfortable now if the right to free speech, or a free press, or to peaceably assemble, or any of our other rights were subject to the whims of changing legislative or court majorities: When the rights to vote were extended to all regardless of race, and to women, were they simply put into a statute? Who would dare stand before a crowd of people anywhere in our country and say that a defendant's rights to a lawyer, a speedy public trial, due process, to be informed of the charges, to confront witnesses, to remain silent, or any of the other constitutional protections are important, but don't need to be in the Constitution?

Such a position would not stand. Yet that is precisely what critics of the Victims' Bill of Rights would tell crime victims. Victims of crime will never be treated fairly by a system that permits the defendant's constitutional rights always to trump the protections given to victims. Such a system forever would make victims second-class citizens. It is precisely because the Constitution is hard to change that basic rights for victims need to be protected in it.

SUPPORT

The amendment is supported by major national victims' rights groups: Parents of Murdered Children, Mothers Against Drunk Driving [MADD], the National Organization for Victim Assistance, the National Victim Center, and the National Victims' Constitutional Amendment Network, the Victim Assistance Legal Organization, the Doris Tate Crime Victims Bureau, Citizens for Law and Order, the National Coalition Against Sexual Assault, and the Law Enforcement Alliance of America.

CONCLUSION

In closing, I would like to thank Senator DIANNE FEINSTEIN for her hard work on this amendment and for her tireless efforts on behalf of crime victims.

Mr. President, for far too long, the criminal justice system has ignored crime victims who deserve to be treated with fairness, dignity, and respect. Our criminal justice system will never be truly just as long as criminals have rights and victims have none. We need a new definition of justice—one that includes the victim.

Mr. President, I ask unanimous consent that the text of the resolution be printed in the RECORD at the end of my statement.

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

(See exhibit 1)

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

S.J. RES. 6

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

ARTICLE—

SECTION 1. Each victim of a crime of violence, and other crimes that Congress may define by law, shall have the rights to notice of, and not to be excluded from, all public proceedings relating to the crime—

to be heard, if present, and to submit a written statement at a public pretrial or trial proceeding to determine a release from custody, an acceptance of a negotiated plea, or a sentence;

to the rights described in the preceding portions of this section at a public parole proceeding, or at a non-public parole proceeding to the extent they are afforded to the convicted offender;

to notice of a release pursuant to a public or parole proceeding or an escape;

to a final disposition of the proceedings relating to the crime free from unreasonable delay;

to an order of restitution from the convicted offender;

to consideration for the safety of the victim in determining any release from custody; and

to notice of the rights established by this article; however, the rights to notice under this section are not violated if the proper authorities make a reasonable effort, but are unable to provide the notice, or if the failure of the victim to make a reasonable effort to make those authorities aware of the victim's whereabouts prevents that notice.

SECTION 2. The victim shall have standing to assert the rights established by this article. However, nothing this article shall provide grounds for the victim to challenge a charging decision or a conviction; to obtain a stay of trail; or to compel a new trial. Nothing in this article shall give rise to a claim for damages against the United States, a State, a political subdivision, or a public official, nor provide grounds for the accused or convicted offender to obtain any form of relief.

SECTION 3. The Congress and the States shall have the power to enforce this article within their respective jurisdictions by appropriate legislation, including the power to enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.

SECTION 4. The rights established by this article shall apply to all proceedings that begin on or after the 180th day after the ratification of this article.

SECTION 5. The rights established by this article shall apply in all Federal and State proceedings, including military proceedings to the extent that Congress may provide by law, juvenile justice proceedings, and collateral proceedings such as habeas corpus, and including proceedings in any district or territory of the United States not within a State.

By Mr. KYL:

S.J. Res. 8. A joint resolution proposing an amendment to the Constitution of the United Stats to provide that expenditures for a fiscal year shall exceed neither revenues for such fiscal year nor 19 per centum of the Nation's gross domestic product for the last calendar year ending before the beginning of such fiscal year; to the Committee on the Judiciary.

THE BALANCED BUDGET/SPENDING LIMITATION CONSTITUTIONAL AMENDMENT

Mr. KYL. Mr. President, I rise today to introduce the Balanced Budget/Spending Limitation Amendment, a resolution to amend the Constitution of the United States to require a balanced federal budget and to limit spending to 19 percent of Gross Domestic Product (GDP).

Mr. President, few people realize it, but for the last 40 years, revenues to the U.S. Treasury have remained relatively steady as a share of national income. No matter whether economic times were good or bad, whether the nation was at peace or engaged in military conflict, or whether income tax rates were as high as 90 percent or as low as 28 percent, the total amount of revenue flowing to the U.S. Treasury has always amounted to about 19 percent of the nation's income.

That is really quite remarkable. With history as a guide, it means that higher tax rates will not produce more revenue for the government proportionate to the size of the economy. Such rate increases merely slow down the rate of economic growth, and that is why tax increases never produce as much revenue as anticipated.

At the family level, it means some people will work fewer hours to avoid being pushed into a higher tax bracket. Others will invest less, or invest in less productive ventures, in order to minimize their tax burdens. Still others, when hit by higher taxes, cut back on the goods or services they buy, and that means less work—and less taxable income—for someone else.

In other words, changes in the tax code affect people's behavior. Lower tax rates stimulate the economy, resulting in more taxable income and transactions, and, in turn, more revenue to the Treasury. Higher taxes discourage work, production, savings, and investment, so revenues are always less than initially projected. Although tax cuts and tax rate increases may create temporary declines and surges in revenue, history proves that revenues always adjust at roughly the same percentage of GDP as people adjust their behavior to the new tax code.

It is important for us to understand this phenomenon because it means that Congress cannot balance the Federal budget by raising tax rates. If the goal is to balance the budget—and that is what a balanced budget amendment will require—the only way to succeed is to limit federal spending to the level of revenue that the economy is willing to bear. That happens to be 19 percent of GDP. That is what the Balanced Budget/Spending Limitation Act seeks to do in a very explicit way.

Other versions of the Balanced Budget Amendment would achieve the same objective, including the version of the amendment that is most likely to pass in the next few weeks. The problem is, without explicitly limiting spending and precluding tax rate increases, Congress might try to balance the budget by raising taxes. And as I have illustrated in prior remarks, that would not only be ineffective, it would be harmful to the economy.

Higher taxes would mean that fewer jobs would be created; some people would lose their jobs. Wages would not grow as fast. Output would fall, or would grow only slowly. And in the end, spending would probably still outpace revenue, requiring another round of deficit reduction to meet the requirements of the balanced budget amendment. If balance were actually achieved, it could probably not be sustained for very long because high tax rates would slow the economy, resulting in lower revenues in future years.

The advantage of the Balanced Budget/Spending Limitation Amendment is that it keeps our eye on the ball. It tells Congress to limit spending. And by linking spending to economic growth, it gives Congress a positive incentive to enact pro-growth economic policies. Only a healthy and growing economy—measured by GDP—would increase the dollar amount that Congress is allowed to spend, although always proportionate to the size of the economy.

In other words, 19 percent of a larger GDP represents more revenue to the Treasury than 19 percent of a smaller GDP.

I urge my colleagues to consider the advantages of the Balanced Budget/Spending Limitation Amendment and to join me as cosponsors of the initiative. In the event that a different version of the balanced budget amendment passes, I suggest we will have to consider a free-standing spending limitation amendment in the future if we are interested in promoting both fiscal responsibility and economic growth and opportunity for all Americans.

Mr. President, I ask that the text of the amendment be reprinted in the RECORD.

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

S.J. RES. 8

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE—

"SECTION 1. Except as provided in this article, outlays of the United States Government for any fiscal year may not exceed its receipts for that fiscal year.

"SEC. 2. Except as provided in this article, the outlays of the United States Government for a fiscal year may not exceed 19 per centum of the Nation's gross domestic product for the last calendar year ending before the beginning of such fiscal year.

"SEC. 3. The Congress may, by law, provide for suspension of the effect of sections 1 or 2 of this article for any fiscal year for which three-fifths of the whole number of each House shall provide, by a roll call vote, for a specific excess of outlays over receipts or over 19 per centum of the Nation's gross domestic product for the last calendar year ending before the beginning of such fiscal year.

"SEC. 4. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except those for the repayment of debt principal.

"SEC. 5. This article shall apply to the second fiscal year beginning after its ratification and to subsequent fiscal years, but not to fiscal years beginning before October 1, 2001.".

By Mr. KYL (for himself, Mr. ABRAHAM, Mr. BROWNBACK, Mr. COVERDELL, Mr. CRAIG, Mr. FAIRCLOTH, Mr. GRAMS, Mr. HAGEL, Mr. HELMS, Mrs. HUTCHISON, Mr. HUTCHINSON, Mr. INHOFE, Mr. MCCAIN, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, and Mr. THOMPSON):

S.J. Res. 9. A joint resolution proposing an amendment to the Constitution of the United States to require two-thirds majorities for increasing taxes; to the Committee on the Judiciary.

THE TAX LIMITATION CONSTITUTIONAL AMENDMENT

Mr. KYL. Mr. President, I rise today on behalf of myself and 17 of my Senate colleagues to introduce the Tax Limitation Amendment, a proposed amendment to the Constitution to require a two-thirds vote of the House and Senate to increase taxes.

Mr. President, on Election Day last year, by overwhelming majorities, voters from Florida to California approved initiatives aimed at limiting government's ability to raise taxes. Florida's Question One, which would require a two-thirds vote of the people to enact or raise any state taxes or fees, passed with 69.2 percent of the vote.

Seventy percent of Nevada voters approved the Gibbons amendment, requiring a two-thirds majority vote of the state legislature to pass new taxes or tax hikes. South Dakotans easily approved an amendment requiring either a vote of the people or a two-thirds vote of the legislature for any state tax increase.

And California voters tightened the restrictions in the most famous tax limitation of all, Proposition 13, so that now all taxes at the local level must be approved by a vote of the people. Of course, voters in my home state of Arizona overwhelmingly approved a state tax limit of their own in 1992.

The Tax Limitation Amendment I am introducing would impose similar constraints on federal tax-raising authority. It would require a two-thirds majority vote of each house of Congress to pass any bill levying a new tax or increasing the rate or base of any existing tax. In short, any measure taking more out of the taxpayers' pockets would require a supermajority vote to pass.

Congress could vote to waive the requirement in times of war, or when the United States is engaged in military conflict which causes an imminent and serious threat to national security. But any new taxes imposed under such a waiver could only remain in effect for a maximum of two years.

Most Americans believe the federal government is already taxing them far too much. In 1950, the average family paid one dollar in taxes to the federal government out of every 50 dollars earned. Today, it pays almost one dollar out of every three dollars earned. Add state and local taxes to the mix, and the tax bite is closer to one out of every two-and-a-half dollars earned.

I would note that the Tax Limitation Amendment would not affect Congress' ability to cut taxes. That could still be achieved by simple majority vote. It would, however, make it much harder to raise taxes, particularly if there is no broad-based, bipartisan support for the proposition in Congress or around the country. It would, for example, have prevented enactment of the tax hike of 1993, one of the largest in history, and one which even a majority of Senators did not support. Vice President GORE broke a 50 to 50 vote tie to secure its passage. The TLA would have prevented enactment of the Bush tax increase of 1990.

Raising sufficient revenue to pay for government's essential operations is obviously a necessary part of governing, but raising tax rates is not necessarily the best way to raise revenue. And in any event, voters around the country seem to believe that raising taxes should only be done when there is broad support for the proposition. The TLA will ensure that no tax can be raised in the future without such consensus.

I invite my colleagues to cosponsor the initiative, and I ask unanimous consent that the text of the amendment be reprinted in the RECORD.

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

S.J. RES. 9

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein) That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE—

"SECTION 1. Any bill to levy a new tax or increase the rate or base of any tax may pass only by a two-thirds majority of the whole number of each House of Congress.

"SEC. 2. The Congress may waive section 1 when a declaration of war is in effect. The Congress may also waive section 1 when the United States is engaged in military conflict which causes an imminent and serious threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law. Any provision of law which would, standing alone, be subject to section 1 but for this section and which becomes law pursuant to such a waiver shall be effective for not longer than 2 years.

"SEC. 3. All votes taken by the House of Representatives or the Senate under this article shall be determined by yeas and nays and the names of persons voting for and against shall be entered on the Journal of each House respectively.".

SENATE RESOLUTION 15—RELATIVE TO BIOMEDICAL RESEARCH

Mr. MACK (for himself, Mr. FRIST, Mr. D'AMATO, Mr. SPECTER, and Mr. GRAMM) submitted the following resolution; which was referred to the Committee on Appropriations:

S. RES. 15

Whereas heart disease was the leading cause of death for both men and women in every year from 1970 to 1993;

Whereas mortality rates for individuals suffering from prostate cancer, skin cancer, and kidney cancer continue to rise;

Whereas the mortality rate for African American women suffering from diabetes is 134 percent higher than the mortality rate for Caucasian women suffering from diabetes;

Whereas asthma rates for children increased 58 percent from 1982 to 1992;

Whereas nearly half of all American women between the ages of 65 and 75 reported having arthritis;

Whereas AIDS is the leading cause of death for Americans between the ages of 24 and 44;

Whereas the Institute of Medicine has described United States clinical research to be "in a state of crisis" and the National Academy of Sciences concluded in 1994 that "the present cohort of clinical investigators is not adequate;

Whereas biomedical research has been shown to be effective in saving lives and reducing health care expenditures;

Whereas research sponsored by the National Institutes of Health has contributed significantly to the first overall reduction in cancer death rates since recordkeeping was instituted;

Whereas research sponsored by the National Institutes of Health has resulted in the identification of genetic mutations for osteoporosis; Lou Gehrig's Disease, cystic fibrosis, and Huntington's Disease, breast, skin and prostate cancer; and a variety of other illnesses;

Whereas research sponsored by the National Institutes of Health has been key to the development of Magnetic Resonance Imaging (MRI) and Positron Emission Tomography (PET) scanning technologies;

Whereas research sponsored by the National Institutes of Health has developed effective treatments for Acute Lymphoblastic Leukemia (ALL). Today, 80 percent of children diagnosed with Acute Lymphoblastic Leukemia are alive and free of the disease after 5 years; and

Whereas research sponsored by the National Institutes of Health contribute to the development of a new, cost-saving cure for peptic ulcers: Now, therefore, be it

Resolved,

SECTION 1. SHORT TITLE.

This resolution may be cited as the "Biomedical Research Commitment Resolution of 1997".

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that appropriations for the National Institutes of Health should be increased by 100 percent over the next 5 fiscal years.

Mr. MACK. Mr. President, I will take just a couple of minutes to explain this resolution and also the motivation, if you will.

The Senate resolution calls for doubling the investment in medical research at the National Institutes of Health over the next 5 years. There are many, many motivations for doing this. As most of my colleagues know, both my wife and I are survivors of cancer, Priscilla with breast cancer; I am a melanoma survivor.

In my quest to gain more knowledge about the various weapons that might be at our disposal to fight this disease and to hope that someday we can find a series of cures. I have also had the opportunity to listen to research scientist in many different areas, many different diseases, whether that be Parkinson's disease, whether that be diabetes, whether that be in spinal cord injuries, in the area of cancer, prostate, breast cancer, melanoma, and so forth.

There was a hearing held at the end of the last Congress by now retired Senator Mark Hatfield and Senator Bill Cohen. There were a number of individuals who testified at that hearing and made, I thought, a remarkable case about why it was no longer acceptable for the Congress of the United States, for the Federal Government to continue a kind of business-as-usual attitude with respect to medical research, biomedical research. One of the individuals who spoke to us, Joan Samuelson, speaking about Parkinson's disease, said:

The current Federal policy on Parkinson's wastes billions in public and private dollars coping with its effects, when millions could simply cure it.

I remember vividly the testimony of Travis Roy, a young man who today is a quadriplegic, the result of an injury during an ice hockey game. Part of his

testimony was that he dreams in essence for the day when he can hug his mother again.

Now, if that statement had been made before a hearing of the Congress 20, 25, 30 years ago, the response pretty much would have been that we all certainly could understand the hurt that this individual and this family has experienced. Most of us probably would have concluded, well, but there is nothing that we can do. To put more money into research of a problem we all know; we can remember those stories about spinal cord injuries years ago—there is no way to find a cure.

The reality is in America today, this Nation happens to believe that in all areas, or in so many different areas of diseases we are on the verge of discovering many cures, that we can no longer take this attitude of business as usual, and that if we make the investment in research we can in fact find ways to solve these problems, and to find cures, and, most importantly, to offer hope to our loved ones.

So I have introduced S. 15. I know there will be people, for example, who will say, "Well, Senator, you are taking about spending more money." Yes, I am talking about spending more money, but it is an area in which I believe the Federal Government should be more active, and I believe it is an area where we will get a major return for it. In response to a question just recently about budget matters, my reaction was stop and calculate what we have saved as a Nation as a result of finding the cure for polio. In my view, there is no reason why we cannot today operate from the perspective that there are cures out there if we could just provide the resources to our research scientists around this Nation. I am confident we can succeed, and I must say, Mr. President, I stand here today filled with joy, with the recognition that so many of my colleagues feel the same as I. I am confident again, if we make this investment, we can offer great hope to so many millions of Americans.

I thank the Chair.

SENATE RESOLUTION 16—RELATIVE TO ABOLISHING THE INCOME TAX

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 16

Whereas the savings level in the United States has steadily declined over the past twenty-five years, and lagged behind our industrialized trading partners;

Whereas our economy cannot achieve strong, sustained growth without adequate levels of savings to fuel productive activity;

Whereas the income tax, the accompanying capital gains tax, and the estate and gift tax discourage savings and investment;

Whereas the methods necessary to enforce the income tax infringe on the privacy of our citizens and divert an estimated $157 billion of taxpayer resources to comply with its rules and regulations;

Whereas the Internal Revenue System estimates that each year it fails to collect 17 percent, or $127 billion, of the income tax owed to the federal government;

Whereas the income tax system employs a withholding mechanism that limits the transparency of federal taxes;

Whereas the most effective tax system is one that promotes savings, fairness, simplicity, privacy, border adjustability, and transparency;

Whereas it is estimated that the replacement of the income tax system with a national sales tax would cause our savings rate to substantially increase;

Whereas the national sales tax would achieve fairness by employing a single tax rate, taxing the underground economy, and closing loopholes and deductions;

Whereas the national sales tax would achieve simplicity by eliminating record keeping for most taxpayers and greatly reducing the number of collection points;

Whereas the national sales tax would be the least intrusive tax system because most taxpayers would not be required to file returns or face audits from the Internal Revenue Service;

Whereas the national sales tax is border adjustable and would place United States exporting on a level playing field with our foreign competitors;

Whereas a national sales tax is a transparent tax system that would raise Americans' awareness of the cost of the federal government;

Whereas a national sales tax would best achieve the goals of an effective tax system: Now, therefore, be it

Resolved, That it is the sense of the Senate that:

(1) the income tax system, both personal and corporate, the estate and gift tax, and the accompanying capital gains tax be replaced with a broad-based, single-rate national sales tax on goods and services;

(2) the national sales tax rate be set at a level that raises an equivalent level of revenue as the income taxes replaced;

(3) the federal government work with the states to develop a state-based system to administer the national sales tax and that states be adequately compensated for their efforts; and

(4) the Congress and states work together in an effort to repeal the sixteenth amendment.

Mr. LUGAR. Mr. President, I am pleased to submit a Senate Resolution expressing the sense of the Senate that the income tax system be abolished and replaced with a broad-based consumption tax on goods and services.

Despite a booming stock market and several years of economic growth, I have found that many citizens—particularly young Americans—are anxious about their future and have diminishing hope for better economic opportunities.

Long-term economic trends justify these apprehensions. From 1950 through 1973, hourly compensation—including both wages and benefits—increased an average of 3.0 percent per year. Since 1973, the average wage increase has been less than one-half of 1 percent. During the past two decades, economic growth has been cut in half, averaging only 2.5 percent annually. If this isn't discouraging enough, limiting growth to 2.5 percent appears to be the economic course of the Federal Reserve Board.

Much of this economic underachievement can be attributed to our national savings rate, which has fallen to alarmingly low levels. After averaging 13.3 percent in the 1960's, our Nation's savings rate has sunk to 5.5 percent in the 1990's. Because of this low rate of savings, capital to fuel our economy has become increasingly scarce. As a result, productivity gains have averaged just 1.1 percent from 1974 to 1994. The Concord Coalition estimates that had our productivity held its pre-1974 annual growth rate of 2.9 percent, the median family income would now be $50,000 annually, instead of the current level of $35,000.

Although several other factors have contributed to this slowing of savings and prosperity, including continuing Federal budget deficits and the ensuing debt, our income tax system remains a significant drag on our long-term economic expansion. I propose that Congress should work toward the elimination of the income tax, the accompanying capital gains tax, and the estate and gift tax and replace them with a broad-based, single-rate national sales tax on goods and services.

The Federal income tax system is inherently flawed. By taxing savings and investment at least twice, it has become the biggest impediment to economic growth in the country. Each year it costs Americans more than 5 billion hours of time to comply with it. That is equal to the total worker output of my State of Indiana. It is unfair and riddled with loopholes. It has been changed 31 times in the past 41 years. And finally, it doesn't work. By its own admission, the Internal Revenue Service fails to collect from nearly 10 million taxpayers, with an estimated $127 billion in uncollected taxes annually. Anything this broken should be ended decisively.

One can evaluate a tax system using several criteria. It must be: (1) simple, (2) the least intrusive, (3) fair, (4) transparent, (5) border adjustable, and (6) friendly to savings and investment. I have studied recent tax reform proposals with these six factors in mind. Many are better than the current income tax. But if we are going to overhaul our tax system, we should choose the one that meets these criteria. I have concluded that a national sales tax is the best alternative.

The first factor in choosing an effective tax system is its simplicity. Under a national sales tax, the burden of complying with the income tax code would be lifted. There would be no records to keep or audits to fear. The money a person made would be his or her own. You may decide if you want to save it, invest it, or give it to your children. It

is only when you buy something that you pay a tax.

The national sales tax is the least intrusive of the tax proposals. The IRS would be substantially dismantled. The IRS would no longer look over the shoulders of every taxpayer. Americans would not waste time and effort worrying about record keeping, deductions, or exemptions that are part of the current tax code.

The national sales tax is the fairest. Everyone pays the tax including criminals, illegal aliens, and others who currently avoid taxation. Wealthy Americans with lavish spending habits would pay substantial amounts of taxes under the national sales tax. Individuals who save and invest their money will pay less. Gone are the loopholes and deductions that provide advantages to those with the resources to shelter their income.

The national sales tax would also tax the underground economy. When criminals consume the proceeds of their activities, they will pay a tax. Foreign tourists and illegal aliens will pay the tax. Tax systems that rely on income reporting will never collect any of this potential revenue.

Of course, the fairness test must likewise consider those with limited means to pay taxes. Like the income tax system, a national sales tax can and should be constructed to lessen the tax burden on those individuals with the least ability to pay. One strategy for addressing this problem would exempt a threshold level of goods and services consumed by each American from the Federal sales tax. Another strategy is to exempt items such as housing, food or medicine. I am committed to designing a tax system that does not fall disproportionately on the less fortunate.

The national sales tax is the most transparent. A Federal tax that is evident to everyone would bolster efforts in Congress to achieve prudence in Federal spending. There should be no hidden corporate taxes that are passed on to consumers or withholding mechanisms that mask the amount we pay in taxes. Every year the public and Congress should openly debate the tax rate necessary for the Federal Government to meet its obligations. If average Americans are paying that rate every day, they will make certain that Congress spends public funds wisely.

American exports would also benefit from the enactment of a national sales tax. We must adopt a tax system that encourages exports. Most of our trading partners have tax systems that are border adjustable. They are able to strip out their tax when exporting their goods. In comparison, the income tax is not border adjustable. American goods that are sent overseas are taxed twice—once by the income tax and once when they reach their destination. In comparison, the national sales tax would not be levied on exports. It would place our exports on a level playing field with those of our trading partners.

But the last and most imperative reason for replacing the income tax with a national sales tax is that it would energize our economy by encouraging savings. For the first time in the modern era, the next generation of Americans may be economically worse off than the previous one. Despite robust economic growth over the past several years, the average income of families has declined. They feel trapped in a box with diminishing hope of escaping.

The bottom line is that as a nation, we do not save enough. Savings are vital because they are the source of all investment and productivity gains—savings supply the capital for buying a new machine, developing a new product or service, or employing an extra worker.

The Japanese save at a rate nine times greater than Americans and the Germans save five times as much as we do. Today, many believe that Americans inherently consume beyond their means and cannot save enough for the future. Few realize that before World War II, before the income tax system developed into its present form, Americans saved a larger portion of their earnings than the Japanese.

A national sales tax would reverse this trend by directly taxing consumption and leaving savings and investment untaxed. Economists agree that a broad-based consumption tax would increase our savings rate substantially. Economist Laurence Kotlikoff of Boston University estimates that our savings rate would more than triple in the first year. Economist Dale Jorgenson of Harvard University has concluded that the United States would have experienced $1 trillion in additional economic growth if it had adopted a consumption tax like the national sales tax in 1986 instead of the current system.

As I have outlined here today, I believe the national sales tax is the best tax system to replace the income tax. If we enact a tax system that encourages investment and savings, billions of dollars of investment will flow into our country. This makes sense—America has the most stable political system, the best infrastructure, a highly educated workforce and the largest consumer market in the world. Our economic growth and prosperity would be unsurpassed. I am committed to bringing this message of hope to all Americans, and I look forward to working with my colleagues on advancing this important endeavor.

SENATE RESOLUTION 17—RELATIVE TO THE CHEMICAL WEAPONS CONVENTION

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 17

Resolved, That (a) the Senate hereby expresses its intention to give its advice and consent to the ratification of the Chemical Weapons Convention at the appropriate time after the Senate has proceeded to the consideration of the Convention, subject to the conditions of subsection (b) and the declarations of subsection (c):

(b) CONDITIONS.—It is the sense of the Senate that the advice and consent of the Senate to the ratification of the Convention should be subject to the following conditions, which would be binding upon the President:

(1) AMENDMENT CONFERENCES.—The United States will be present and participate fully in all Amendment Conferences and will cast its vote, either affirmatively or negatively, on all proposed amendments made at such conferences, to ensure that—

(A) the United States has an opportunity to consider any and all amendments in accordance with its Constitutional processes; and

(B) no amendment to the Convention enters into force without the approval of the United States.

(2) PRESIDENTIAL CERTIFICATION ON DATA DECLARATIONS.—(A) Not later than 10 days after the Convention enters into force, or not later than 10 days after the deposit of the Russian instrument of ratification of the Convention, whichever is later, the President shall either—

(i) certify to the Senate that Russia has complied satisfactorily with the data declaration requirements of the Wyoming Memorandum of Understanding; or

(ii) submit to the Senate a report on apparent discrepancies in Russia's data under the Wyoming Memorandum of Understanding and the results of any bilateral discussions regarding those discrepancies.

(B) For purposes of this paragraph, the term "Wyoming Memorandum of Understanding" means the Memorandum of Understanding Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding a Bilateral Verification Experiment and Data Exchange Related to Prohibition on Chemical Weapons, signed at Jackson Hole, Wyoming, on September 23, 1989.

(3) PRESIDENTIAL CERTIFICATION ON THE BILATERAL DESTRUCTION AGREEMENT.—Before the deposit of the United States instrument of ratification of the Convention, the President shall certify in writing to the Senate that—

(A) a United States-Russian agreement on implementation of the Bilateral Destruction Agreement has been or will shortly be concluded, and that the verification procedures under that agreement will meet or exceed those mandated by the Convention, or

(B) the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons will be prepared, when the Convention enters into force, to submit a plan for meeting the Organization's full monitoring responsibilities that will include United States and Russian facilities as well as those of other parties to the Convention.

(4) NONCOMPLIANCE.—If the President determines that a party to the Convention is in

violation of the Convention and that the actions of such party threaten the national security interests of the United States, the President shall—

(A) consult with, and promptly submit a report to, the Senate detailing the effect of such actions on the Convention;

(B) seek on an urgent basis a meeting at the highest diplomatic level with the Organization for the Prohibition of Chemical Weapons (in this resolution referred to as the "Organization") and the noncompliant party with the objective of bringing the noncompliant party into compliance;

(C) in the event that a party to the Convention is determined not to be in compliance with the Convention, request consultations with the Organization on whether to—

(i) restrict or suspend the noncompliant party's rights and privileges under the Convention until the party complies with its obligations;

(ii) recommend collective measures in conformity with international law; or

(iii) bring the issue to the attention of the United Nations General Assembly and Security Council; and

(D) in the event that noncompliance continues, determine whether or not continued adherence to the Convention is in the national security interests of the United States and so inform the Senate.

(5) FINANCING IMPLEMENTATION.—The United States understands that in order to ensure the commitment of Russia to destroy its chemical stockpiles, in the event that Russia ratifies the Convention, Russia must maintain a substantial stake in financing the implementation of the Convention. The costs of implementing the Convention should be borne by all parties to the Convention. The deposit of the United States instrument of ratification of the Convention shall not be contingent upon the United States providing financial guarantees to pay for implementation of commitments by Russia or any other party to the Convention.

(6) IMPLEMENTATION ARRANGEMENTS.—If the Convention does not enter into force or if the Convention comes into force with the United States having ratified the Convention but with Russia having taken no action to ratify or accede to the Convention, then the President shall, if he plans to implement reductions of United States chemical forces as a matter of national policy or in a manner consistent with the Convention—

(A) consult with the Senate regarding the effect of such reductions on the national security of the United States; and

(B) take no action to reduce the United States chemical stockpile at a pace faster than that currently planned and consistent with the Convention until the President submits to the Senate his determination that such reductions are in the national security interests of the United States.

(7) PRESIDENTIAL CERTIFICATION AND REPORT ON NATIONAL TECHNICAL MEANS.—Not later than 90 days after the deposit of the United States instrument of ratification of the Convention, the President shall certify that the United States National Technical Means and the provisions of the Convention on verification of compliance, when viewed together, are sufficient to ensure effective verification of compliance with the provisions of the Convention. This certification shall be accompanied by a report, which may be supplemented by a classified annex, indicating how the United States National Technical Means, including collection, processing and analytic resources, will be marshalled, together with the Convention's verification provisions, to ensure effective verification of compliance. Such certification and report shall be submitted to the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate.

(c) DECLARATIONS.—It is the sense of the Senate that the advice and consent of the Senate to ratification of the Convention should be subject to the following declarations, which would express the intent of the Senate:

(1) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the Resolution of Ratification with respect to the INF Treaty, approved by the Senate on May 27, 1988. For purposes of this declaration, the term "INF Treaty" refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols, approved by the Senate on May 27, 1988.

(2) FURTHER ARMS REDUCTION OBLIGATIONS.—The Senate declares its intention to consider for approval international agreements that would obligate the United States to reduce or limit the Armed Forces or armaments of the United States in a militarily significant manner only pursuant to the treaty power set forth in Article II, Section 2, Clause 2 of the Constitution.

(3) RETALIATORY POLICY.—The Senate declares that the United States should strongly reiterate its retaliatory policy that the use of chemical weapons against United States military forces or civilians would result in an overwhelming and devastating response, which may include the whole range of available weaponry.

(4) CHEMICAL DEFENSE PROGRAM.—The Senate declares that ratification of the Convention will not obviate the need for a robust, adequately funded chemical defense program, together with improved national intelligence capabilities in the nonproliferation area, maintenance of an effective deterrent through capable conventional forces, trade-enabling export controls, and other capabilities. In giving its advice and consent to ratification of the Convention, the Senate does so with full appreciation that the entry into force of the Convention enhances the responsibility of the Senate to ensure that the United States continues an effective and adequately funded chemical defense program. The Senate further declares that the United States should continue to develop theater missile defense to intercept ballistic missiles that might carry chemical weapons and should enhance defenses of the United States Armed Forces against the use of chemical weapons in the field.

(5) ENFORCEMENT POLICY.—The Senate urges the President to pursue compliance questions under the Convention vigorously and to seek international sanctions if a party to the Convention does not comply with the Convention, including the "obligation to make every reasonable effort to demonstrate its compliance with this Convention", pursuant to paragraph 11 of Article IX. It should not be necessary to prove the noncompliance of a party to the Convention before the United States raises issues bilaterally or in appropriate international fora and takes appropriate actions.

(6) APPROVAL OF INSPECTORS.—The Senate expects that the United States will exercise its right to reject a proposed inspector or inspection assistant when the facts indicate that this person is likely to seek information to which the inspection team is not entitled or to mishandle information that the team obtains.

(7) ASSISTANCE TO RUSSIA.—The Senate declares that, if the United States provides limited financial assistance for the destruction of Russian chemical weapons, the United States should, in exchange for such assistance, require Russia to destroy its chemical weapons stocks at a proportional rate to the destruction of United States chemical weapons stocks, and to take the action before the Convention deadline. In addition, the Senate urges the President to request Russia to allow inspections of former military facilities that have been converted to commercial production, given the possibility that these plants could one day be reconverted to military use, and that any United States assistance for the destruction of the Russian chemical stockpile be apportioned according to Russia's openness to these broad based inspections.

(8) EXPANDING CHEMICAL ARSENALS IN COUNTRIES NOT PARTY TO THE CHEMICAL WEAPONS CONVENTION.—It is the sense of the Senate that, if during the time the Convention remains in force the President determines that there has been an expansion of the chemical weapons arsenals of any country not a party to the Convention so as to jeopardize the supreme national interests of the United States, then the President should consult on an urgent basis with the Senate to determine whether adherence to the Convention remains in the national interest of the United States.

(9) COMPLIANCE.—Concerned by the clear pattern of Soviet noncompliance with arms control agreements and continued cases of noncompliance by Russia, the Senate declares the following:

(A) The Convention is in the interest of the United States only if the both the United States and Russia, among others, are in strict compliance with the terms of the Convention as submitted to the Senate for its advice and consent to ratification, such compliance being measured by performance and not by efforts, intentions, or commitments to comply.

(B)(i) Given its concern about compliance issues, the Senate expects the President to offer regular briefings, but not less than several times a year, to the Committees on Foreign Relations and Armed Services and the Select Committee on Intelligence of the Senate on compliance issues related to the Convention. Such briefings shall include a description of all United States efforts in diplomatic channels and bilateral as well as the multilateral Organization fora to resolve the compliance issues and shall include, but would not necessarily be limited to a description of—

(I) any compliance issues, other than those requiring challenge inspections, that the United States plans to raise with the Organization; and

(II) any compliance issues raised at the Organization, within 30 days.

(ii) Any Presidential determination that Russia is in noncompliance with the Convention shall be transmitted to the committees specified in clause (i) within 30 days of such a determination, together with a written report, including an unclassified summary, explaining why it is in the national security interests of the United States to continue as a party to the Convention.

(10) SUBMISSION OF FUTURE AGREEMENTS AS TREATIES.—The Senate declares that after

the Senate gives its advice and consent to ratification of the Convention, any agreement or understanding which in any material way modifies, amends, or reinterprets United States and Russian obligations, or those of any other country, under the Convention, including the time frame for implementation of the Convention, should be submitted to the Senate for its advice and consent to ratification.

(11) RIOT CONTROL AGENTS.—(A) The Senate, recognizing that the Convention's prohibition on the use of riot control agents as a "method of warfare" precludes the use of such agents against combatants, including use for humanitarian purposes where combatants and noncombatants intermingled, urges the President—

(i) to give high priority to continuing efforts to develop effective nonchemical, nonlethal alternatives to riot control agents for use in situations where combatants and noncombatants are intermingled; and

(ii) to ensure that the United States actively participates with other parties to the Convention in any reassessment of the appropriateness of the prohibition as it might apply to such situations as the rescue of drowned air crews and passengers and escaping prisoners or in situations in which civilians are being used to mask or screen attacks.

(B) For purposes of this paragraph, the term "riot control agents" is used within the meaning of Article II(4) of the Convention.

(d) DEFINITION.—For purposes of this resolution, the term "Chemical Weapons Convention" and the term "Convention" refer to the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, opened for signature and signed by the United States at Paris on January 13, 1993, including the following annexes and associated documents, all such documents being integral parts of and collectively referred to in this resolution as the "Convention" (contained in Treaty Document 103-21):

(1) The Annex on Chemicals.

(2) The Annex on Implementation and Verification (also known as the "Verification Annex").

(3) The Annex on the Protection of Confidential Information (also known as the "Confidentiality Annex").

(4) The Resolution Establishing the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons.

(5) The Text on the Establishment of a Preparatory Commission.

Mr. LUGAR. Mr. President, On April 29, 1997 the multilateral Chemical Weapons Convention [CWC] that bans the development, production, acquisition, stockpiling, use, and direct or indirect transfer of chemical weapons to anyone will enter into force whether or not the Senate acts and the President ratifies the Convention.

Thus over the next three months it will be necessary for the Senate to consider the Convention and to fashion a corresponding resolution of ratification if the United States is to benefit from the provisions of the agreement and the U.S. chemical industry is not to suffer from the disadvantages imposed on chemical firms of non-Parties.

The Senate was on the verge of taking up the CWC on the floor through consideration of a resolution of ratification that I co-authored and which was reported out of the Senate Committee on Foreign Relations by a vote of 13-5 on April 30, 1996.

Given the arrival of new Members to the Senate and the need for all Members to inform themselves in the near term on the benefits and costs to the United States of full participation in the Convention, I am submitting in the form of a sense-of-the-Senate resolution the resolution of ratification that was to have served as the vehicle for debate in the Senate during the 104th Congress.

It is my hope that this will be helpful to all Senators and can serve as an important benchmark for a more constructive exchange during the 105th Congress on the subject of ratification of the Chemical Weapons Convention.

SENATE RESOLUTION 18—RELATIVE TO THE NATIONAL DEBT

Mr. FAIRCLOTH submitted the following resolution; which was referred to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977 with instructions that if one committee reports, the other committee has 30 days to report or be discharged:

S. RES. 18

Whereas the United States national debt is approximately $4.9 trillion;

Whereas the Congress has authorized the national debt by law to reach $5.5 trillion;

Whereas it is likely that the 105th Congress and the President will both present plans to balance the budget by the year 2002, by which time our national debt will be approximately $6.5 trillion.

Whereas this accumulated debt represents a significant financial burden that will require excessive taxation and lost economic opportunity for future generations of the United States;

Resolved, That it is the sense of the Senate that any comprehensive legislation that balances the budget by a certain date and that is agreed to by the Congress and the President shall also contain a strategy for reducing the national debt of the United States.

SENATE RESOLUTION 19—RELATIVE TO GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

Mr. MOYNIHAN (for himself, Mr. HELMS, Mr. LEAHY, Mr. JEFFORDS, Mr. DODD, Mr. FEINGOLD, and Mr. WELLSTONE) submitted the following resolution: which was referred to the Committee on Foreign Relations:

S. RES. 19

Whereas the Chinese Government sentenced Ngawang Choephel to an 18-year prison term plus 4 years subsequent deprivation of his political rights on December 26, 1996, following a secret trail;

Whereas Mr. Choephel is a Tibetan national whose family fled Chinese oppression to live in exile in India in 1968;

Whereas Mr. Choephel, studied ethnomusicology at Middlebury College in Vermont as a Fulbright Scholar, and at the Tibetan Institute of Performing Arts in Dharamsala, India;

Whereas Mr. Choephel returned to Tibet in July, 1995 to prepare a documentary film about traditional Tibetan performing arts;

Whereas Mr. Choephel was detained in August, 1995 by the Chinese authorities and held incommunicado for over a year before the Government of the People's Republic of China admitted to holding him, and finally charged him with espionage in October, 1996;

Whereas there is no evidence that Mr. Choephel's activities in Tibet involved anything other than purely academic research;

Whereas the Government of the People's Republic of China denies Tibetans their fundamental human rights, as reported in the State Department's *Country Reports on Human Rights Practices*, and by human rights organizations including Amnesty International and Human Rights Watch, Asia;

Whereas the Government of the People's Republic of China is responsible for the destruction of much of Tibetan civilization since its invasion of Tibet in 1949;

Whereas the arrest of Tibetan scholar, such as Mr. Choephel who worked to preserve Tibetan culture, reflects the systematic attempt by the Government of the People's Republic of China to repress cultural expression in Tibet;

Whereas the Government of the People's Republic of China, through direct and indirect incentives, has established discriminatory development programs which have resulted in an overwhelming flow of Chinese immigrants into Tibet, including those areas incorporated into the Chines provinces of Sichuan, Yunnan, Gansu, and Quinghai, and have excluded Tibetans from participation in important policy decisions, which further threatens traditional Tibetan life;

Whereas the Government of the People's Republic of China withholds meaningful participation in the governance of Tibet from Tibetans and has failed to abide by its own constitutional guarantee of autonomy of Tibetans;

Whereas the Dalai Lama of Tibet has stated his willingness to enter into negotiations with the Chinese and has repeatedly accepted the framework Deng Xiaoping proposed for such negotiations in 1979;

Whereas the United States Government has not developed an effective plan to win support in international fora, such as the United Nations Commission on Human Rights, to bring international pressure to bear on the Government of the People's Republic of China to improve human rights and to negotiate with the Dalai Lama;

Whereas the Chinese have displayed provocative disregard for American concerns by arresting and sentencing prominent dissidents around the time that senior United States Government officials have visited China;

Whereas United States Government policy seeks to foster negotiations between the Government of the People's Republic of China and the Dalai Lama, and presses China to respect Tibet's unique religious, linguistic and cultural traditions. Now, therefore, be it hereby

Resolved by the Senate that, It is the sense of the Senate that—

(1) Ngawang Choephel and other prisoners of conscience in Tibet, as well as in China, should be released immediately and unconditionally;

(2) to underscore the gravity of this matter, in all official meetings with representatives of the Government of the People's Republic of China, U.S. officials should request

Mr. Choephel's immediate and unconditional release;

(3) the United States Government should take prompt action to sponsor and promote a resolution at the United Nations Commission on Human Rights regarding China and Tibet which specifically addresses political prisoners and negotiations with the Dalai Lama;

(4) an exchange program should be established in honor on Ngawang Choephel, involving students of the Tibetan Institute of Performing Arts and appropriate educational institutions in the United States; and,

(5) the United States Government should seek access for internationally recognized human rights groups to monitor human rights in Tibet.

Mr. MOYNIHAN. Mr. President, I rise to submit a resolution in response to the egregious prison sentence which was recently imposed by the Chinese Government on Ngawang Choephel.

Mr. Choephel is a Tibetan whose family fled Chinese oppression to live in exile in India in 1968. He studied ethnomusicology at Middlebury College in Vermont as a Fulbright Scholar in 1992 and 1993, after having studied at the Tibetan Institute of Performing Arts in Dharamsala, India. The Tibetan Institute of Performing Arts was formed by the Dalai Lama to preserve the Tibetan performing arts while in exile.

Mr. Choephel returned to Tibet in July, 1995 to prepare a documentary film about traditional Tibetan performing arts. He was detained in August, 1995 by the Chinese authorities and held incommunicado for over a year before the Government of the People's Republic of China admitted to holding him, and finally charged him with espionage in October, 1996.

On December 26, 1996, the Chinese Government sentenced Ngawang Choephel to an 18-year prison term plus 4 years subsequent deprivation of his political rights following a secret trial. This is the most severe sentence of a Tibetan by the Chinese Government in 7 years.

There is no evidence that Mr. Choephel's activities in Tibet involved anything other than purely academic research. His arrest and the long sentence subsequently imposed appear to stem from his collecting information to preserve Tibetan performing arts. Such censure is indicative of the extreme measures the Chinese Government continues to take to repress all forms of Tibetan cultural expression. My daughter, Maura Moynihan, has traveled to Tibet several times. After her most recent trip last year, she wrote in the Washington Post of the Chinese assault on Tibetan religion and culture:

Beijing's leaders have renewed their assault on Tibetan culture, especially Buddhism, with an alarming vehemence. The rhetoric and the methods of the Cultural Revolution of the 1960s have been resurrected—reincarnated, what you will—to shape an aggressive campaign to vilify the Dalai Lama.

The New York Times echoed just such sentiments in its January 2 editorial on Ngawang Choephel's arrest:

The basis of Ngawang Choepel's conviction is unclear, but even taping Tibetan culture for export could qualify as espionage under Chinese law. Since its invasion of Tibet in 1950, Beijin has gradually increased its efforts to erase Tibet's identity. China has arrested those who protested the takeover and tried to eradicate the people's affection for the leader of Tibetan Buddhism, the Dalai Lama.

Ngawang Choephel is a symbol of the Chinese Government's continued pursuit of Maoist policies when dealing with what it sees at the "Tibet problem." Tibetan religion and culture are seen by the Chinese as an impediment to successfully unifying Tibet with the "motherland."

This resolution will record the United States Senate's response to these Chinese policies, which we reject. In the words of the International Commission of Jurists in 1960, "Tibet demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law." We will continue to stand with the Tibetan people. As the Senate recorded in 1991 in S. Res. 107:

* * * the government of the People's Republic of China should know that as the Tibetan people and His Holiness the Dalai Lama of Tibet go forward on their journey toward freedom the Congress and the people of the United States stand with them.

I thank all my colleagues who have cosponsored this resolution. In particular I would like to recognize the long commitment that the Chairman of the Foreign Relations Committee has shown in support of Tibetans and thank him for joining me in this effort today.

I would especially note the work of the senior Senator from Vermont, Mr. LEAHY. Since Mr. Choephel was reported missing, Senator LEAHY has sought to win his release. In November, Senator LEAHY, while traveling on a delegation to China with the Senate Democratic Leader and other Senators, raised his concerns directly to Chinese President Jiang Zemin. I thank Senator LEAHY for his commitment to this issue and for agreeing to cosponsor this measure.

I ask unanimous consent to have the New York Times editorial on this subject placed in the RECORD.

[From the New York Times, Jan. 2, 1997]

A PRISON TERM IN TIBET

Last week, the Chinese Government gave a 30-year-old scholar of Tibetan music an 18-year prison sentence for espionage. Even by Chinese standards, the sentence is astonishingly long. It is also a warning to Tibetans that their already scarce liberties are now further endangered.

Ngawang Choepel fled Tibet with his family when he was 2 to the Tibetan exile community in Dharmsala, India. He came to the United States in 1993 to study and teach at Middlebury College. In 1995 he went to Tibet to capture on video traditional songs and dances that he feared were being lost.

The basis of Ngawang Choepel's conviction is unclear, but even taping Tibetan culture for export could qualify as espionage under Chinese law. Since its invasion of Tibet in 1950, Beijing has gradually increased its efforts to erase Tibet's identity. China has arrested those who protested the takeover and tried to eradicate the people's affection for the leader of Tibetan Buddhism, the Dalai Lama.

In the 1960's and 1970's, the Chinese killed thousands of monks and nuns and destroyed virtually all Tibet's monasteries. China later tried a slightly softer line, but riots in 1987 brought another crackdown. Monks have been asked to redpudiate the Dalai Lama or face expulsion, and at least 700 Tibetans are now in prison for political offenses.

China's repressive policy is wrong both morally and politically. By smothering Tibetans' ability to speak, worship freely, or express their culture, China risks driving them to violence. Last week, a powerful, sophisticated bomb blew up outside a Government building in Lhasa. Although the Dalai Lama has never wavered in his commitment to nonviolence and denies any link to the bomb, he Government quickly blamed the bomb on "the Dalai clique" and has vowed to retaliate.

The Chinese Government went out of its way to link Ngawang Choepel to the United States, charging that Americans underwrote his trip and that he was gathering information for a foreign agency. Indeed, Chinese officials seem to delight in taunting the United States over human rights issues. During a visit by Secretary of State Warren Christopher in 1994, Beijing arrested China's leading democracy campaigner, Wei Jingsheng. In May of that year, Washington ended the linkage between China's behavior on human rights and its preferential trading status. Only two months later, hard-liners at a Communist Party meeting pushed through a policy that increased Chinese control of Tibet.

To be sure, American officials have scolded Beijing about human rights abuses in Tibet, Hong Kong, and China itself. But the Chinese know they can safely ignore such talk. The Clinton Administration, unwilling to damage its relations with Beijing, has failed to impose any real cost on Chinese repression. Whether or not Beijing intended Ngawang Choepel's sentence as a specific message to Washington, Washington should read it as an indication of China's continuing contempt for its weak defense of Tibetan rights.

Mr. LEAHY. Mr. President, I want to thank Senator MOYNIHAN for submitting this resolution on the first legislative day of the 105th Congress in support of Ngawang Choephel and other prisoners of conscience in Tibet.

I first learned about the detention of Tibetan music and dance scholar and former Middlebury College student Ngawang Choephel about a year ago. Students and faculty at Middlebury were leading a letter-writing campaign to urge Chinese authorities to release information about their friend and colleague, who had traveled in 1995 to Tibet to make a documentary film of traditional Tibetan dance and music after spending several months as a Fulbright scholar at Middlebury. No one had seen or herd from Mr. Choephel, until an exiled Tibetan reported seeing him in a Tibetan prison.

I wrote to the head of the Chinese Communist Party to find out what I could about Mr. Choephel's whereabouts, his health, the evidence against him, and whether he had access to a lawyer. I received no reply. I inquired further. Finally, in October, more than a year after his detention, Chinese authorities reported that Mr. Choephel was charged with violating the State Security Law. He was accused of espionage, and it was insinuated that he was a spy financed by the United States Government. No evidence to support such a claim has ever been produced. The State Department issued a statement calling for Mr. Choephel's release.

There is no evidence that Mr. Choephel was engaged in any improper activity or even any political activity whatsoever during his trip to Tibet. The 16 hours of film Mr. Choephel sent to India during the first weeks of his project contain the traditional music and dance that he intended to document. Like the State Department, I believe that the Chinese have made a terrible mistake in this case.

In November, I accompanied Senator DASCHLE on a trip to China. In meetings with President Jiang Zemin and other officials, I raised Ngawang Choephel's case and urged the President to look into it personally. I have received no response to those inquiries. Only weeks after returning from Beijing, I learned that Mr. Choephel had been sentenced to 18 years in prison, and I immediately wrote again to President Jiang Zemin, urging that Mr. Choephel be released.

Mr. Choephel's reported confession, secret trial, and unusually long prison sentence underscore the longstanding disregard for the rule of law and the lack of respect for political and cultural rights in Tibet and China. Mr. Choephel is one of thousands who have been persecuted for attempting to preserve what remains of Tibetan culture.

The resolution introduced by Senator MOYNIHAN calls on the Chinese Government to release Mr. Choephel unconditionally. It also calls on United States officials to raise his case in all meetings with Chinese authorities, to support a resolution on human rights in Tibet and China in the United Nations Commission on Human Rights, to urge the Chinese to allow international human rights groups to monitor human rights in Tibet, and to support an exchange program for Tibetan students.

These are measures that will emphasize the importance the United States Senate places on improving respect for human rights in China and Tibet. It is particularly important that the administration takes a stronger position in support of the resolution on China and Tibet in the U.N. Human Rights Commission this year.

Mr. President, I want to thank Senator MOYNIHAN again for his concern and his leadership on Tibet over the years. I urge all Senators to support this resolution.

AMENDMENTS SUBMITTED

THE SUPERFUND CLEANUP ACCELERATION ACT OF 1997

SMITH (AND OTHERS) AMENDMENT NO. 1

(Ordered referred to the Committee on Environment and Public Works)

Mr. SMITH of New Hampshire (for himself, Mr. CHAFEE, and Mr. LOTT) submitted an amendment intended to be proposed by them to the bill (S. 8) to reauthorize and amend the Comprehensive Environmental Response, Liability, and Compensation Act of 1980, and for other purposes; as follows:

At the end of title IX, add the following:

Subtitle B—Amendments to the Internal Revenue Code of 1986

SEC. 911. EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND.

(a) EXTENSION OF TAXES.—

(1) EXCISE TAXES.—Section 4611(e)(1) of the Internal Revenue Code of 1986 is amended by inserting ", on and after the 10th day after the date of the enactment of the Superfund Cleanup Acceleration Act of 1997, and before January 1, 2003" after "January 1, 1996".

(2) INCOME TAX.—Section 59A(e)(1) of such Code is amended by inserting ", and to taxable years beginning after December 31, 1996, and before January 1, 2003" after "January 1, 1996".

(3) CONFORMING AMENDMENTS.—Paragraph (2) of section 4611(e) of such Code is amended—

(A) by striking "1993" and inserting "2000";

(B) by striking "1994" each place it appears and inserting "2001"; and

(C) by striking "1995" each place it appears and inserting "2002".

(b) INCREASE IN AGGREGATE TAX WHICH MAY BE COLLECTED.—Paragraph (3) of section 4611(e) of such Code is amended—

(1) by striking "$11,970,000,000" each place it appears and inserting "$22,000,000,000",

(2) by striking "December 31, 1995" in subparagraph (A) and inserting "December 31, 2000", and

(3) by striking "January 1, 1996" inserting "January 1, 2003".

(c) EXTENSION OF SUPERFUND BORROWING.—Subparagraph (B) of section 9507(d)(3) of such Code is amended by striking "December 31, 1995" and inserting "December 31, 2002".

(d) EXTENSION OF TRUST FUND PURPOSES.—Subparagraph (A) of section 9507(c)(1) of such Code is amended—

(1) by striking clause (i) and inserting the following:

"(i) paragraphs (1), (2), (5), (6), (7), and (8) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Cleanup Acceleration Act of 1997,"; and

(2) by striking clause (iii) and inserting the following:

"(iii) subsections (m), (n), (q), (r), (s), (t), and (u) of section 111 of CERCLA (as so in effect), or".

(e) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS TO TRUST FUND.—Subsection (b) of section 517 of the Superfund Revenue Act of 1986 (26 U.S.C. 9507 note) is amended by striking "and" at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting a comma, and by adding at the end the following new paragraphs:

"(10) 1998, $250,000,000,

"(11) 1999, $250,000,000,

"(12) 2000, $250,000,000,

"(13) 2001, $250,000,000, and

"(14) 2002, $250,000,000."

(f) COORDINATION WITH OTHER PROVISIONS.—Paragraph (2) of section 9507(e) of the Internal Revenue Code of 1986 is amended by striking "CERCLA" and all that follows through "Acts)" and inserting "CERCLA, the Superfund Amendments and Reauthorization Act of 1986, and the Superfund Cleanup Acceleration Act of 1997 (or in any amendment made by any of such Acts)".

NOTICE OF HEARING

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture Nutrition, and Forestry will hold a business meeting on Wednesday, January 22, 1997 at 9:30 a.m. in SR–328A. The purpose of the meeting will be to approve subcommittee assignments, committee rules, and committee budget.

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

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 Tuesday, January 28, 1997, at 9:30 a.m. to hold a hearing on the nomination of Alan M. Hantman, of New Jersey, to be Architect of the Capitol.

At 10:15 a.m., the committee will hold an organizational meeting and markup to consider pending legislative and executive business.

Individuals and organizations who wish to submit a statement on the nomination of Alan Hantman to be Architect of the Capitol are requested to contact Ed Edens of the Rules Committee staff on 224–6678. For further information regarding the confirmation hearing and organizational meeting markup, please contact Ed Edens of the committee staff on 224–6678.

ADDITIONAL STATEMENTS

MARTIN LUTHER KING, JR. DAY

• Mr. ABRAHAM. Mr. President, I rise today in recognition of a great man who did much to change our Nation for the better. Before he was struck down by an assassin's bullet, the Reverence Dr. Martin Luther King, Jr. awakened the conscience of a nation. His campaign of nonviolent protest brought to light the injustices of a racially segregated society and played a major role in fostering the legislation necessary to do away with many forms of official discrimination.

Our Nation remains far from perfect, particularly in regard to relations between the races. But America is more

just and honest because of the efforts of this man of God. And, in confronting the problems now before us, we still can look to Dr. King for guidance.

Clearly we have more work ahead of us in order to achieve justice in our racial relations. But our greatest challenge in my view is that of restoring hope and opportunity to those of us living in our impoverished inner cities. Reverend King knew of this tragedy. And the spoke out forcefully against it. I myself have seen the poverty and isolation of many of our inner-city neighborhoods. These areas are cut off from the rest of the city, and suffer from a lack of economic hope and the breakdown of the institutions of community on which people everywhere must rely. America must address these pockets of hopelessness, to bring to them the economic growth and spiritual fulfillment necessary for a functioning community life.

Through his speeches and grassroots activism, Dr. King addressed the problem of poverty and the loss of community. He also gave us advice on how to face our problems. The key word, I submit, is "action." As Reverend King put it:

> We must come to see that human progress never rolls in on wheels of inevitability. It comes through the tireless efforts and persistent work of men willing to be coworkers with God, and without this hard work time itself becomes an ally of the forces of social stagnation. We must use time creatively, and forever realize that the time is always ripe to do right.

Mr. President, I am proud to say that many people in my State of Michigan are carrying on Dr. King's work even as we speak. They know that the time is ripe for doing right. In Detroit's Martin Luther King, Jr. High School, for example, students are participating in the DECA Program. These students have dedicated themselves to helping their community. They have adopted a local senior center to see to it that the resident senior citizens have the comfort and community provided by regular visitors. They have participated in walks for the homeless, put together a silent auction with proceeds going to the homeless, and given up a recent Sunday to assist with the Special Gift Holiday Party for Homeless Children held just before Christmas.

Mr. President, I commend participants in the DECA Program at Martin Luther King, Jr. High School in Detroit. I strongly believe that the kinds of positive local community action in which they are engaged do credit to the memory and legacy of Reverend King, and that their efforts can be part of a larger effort to rebuild our inner cities. Now that we have celebrated the life of Dr. King in our homes, let us celebrate his life by building on his legacy in our communities.●

CONSTITUTIONAL CHALLENGE TO THE LINE-ITEM VETO ACT

● Mr. MOYNIHAN. Mr. President, on Thursday, January 2, in the first civil action of 1997 in the U.S. District Court for the District of Columbia, a lawsuit was filed challenging the constitutionality of the Line-Item Veto Act of 1996. On this the first day of legislative business in the first session of the 105th Congress, I rise as one of the plaintiffs in the suit to inform the Senate that this action has commenced—as specifically provided for in the Line-Item Veto Act. Section 3(a) of the act provides that:

> Any Member of Congress or any individual adversely affected . . . may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any provision of this part violates the Constitution.

Six Members of Congress, led by our distinguished colleague from West Virginia, Senator ROBERT C. BYRD, have joined together to bring this suit, which is captioned *Byrd et al.* v. *Raines et al.*, Civil Action No. 97–001. The other plaintiffs are the Senator from New York, the Senator from Michigan, Mr. LEVIN; the former Senator from Oregon, Mr. Hatfield; Representative WAXMAN of California and Representative SKAGGS of Colorado.

I will simply restate for the RECORD what I said during our debates on this legislation during the last Congress. The Line-Item Veto Act effectuated an unprecedented and unconstitutional allocation of power from the legislative branch to the executive.

The law—Public Law 104–130—which took effect on January 1 of this year, gives the President the authority to cancel any specific appropriation, any item of new direct spending, or any limited tax benefit contained in a bill that the President has just signed into law.

Senators BYRD, Hatfield, LEVIN, and Congressmen WAXMAN and SKAGGS and I have filed this suit because we believe the act violates article I of the Constitution, which requires that a bill be passed by a majority vote in both houses of Congress and either approved or vetoed in its entirety by the President. The line-item veto gives the President the power to unilaterally repeal, without congressional approval, portions of laws which he has already signed.

In 1983, the Supreme Court declared in *INS* v. *Chadha* [462 U.S. 919, 954] that, and I quote:

> It emerges clearly that the prescription for legislative action in Article I, Section 7, represents the Framers' decision that the legislative power of the Federal government be exercised in accord with a single finely wrought and exhaustively considered procedure.

The Line-Item Veto Act departs dramatically from that "single, finely wrought and exhaustively considered procedure" for making or changing Federal law. The Constitution could not be more clear on this point. The presentment clause of article I, section 7 states:

> Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it. . . .

The Line-Item Veto Act unconstitutionally expands the President's power by authorizing him to approve a bill and sign it into law and, from an instant up to 5 days later, disapprove and return parts of the bill, so that the parts of the bill disapproved by the President do not have the force and effect of law. The act also violates the requirements of bicameral passage and presentment by granting to the President, acting alone, the authority to cancel and thus repeal provisions of law.

Even if, as some have argued, the President will exercise this power sparingly, his ability to do so will forever shift the balance of power. A balance the Framers deemed fragile, and necessary for the proper functioning of the American Government. The Framers gave the power of the purse to Congress and Congress alone; Madison made the reason abundantly clear in Federalist No. 58:

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

Whether the Line-Item Veto Act is viewed as granting the President a unilateral power of line-item revision of bills that have been presented for his signature, or as granting him a unilateral power to repeal portions of duly enacted laws, the act grants powers to the President that contravene the constitutional process for making Federal law. I might understand if the President were trying to seize this power. But why have we given it to him? The lawsuit filed earlier this month will allow the judiciary to review this issue under an expedited schedule. We hope to have a decision in the case by the Supreme Court in the next October term, and I will provide periodic updates on the progress of the case for the RECORD.●

CONGRESS-BUNDESTAG EXCHANGE

● Mr. LIEBERMAN. Mr. President, since 1983, the United States Congress and the German Parliament, the Bundestag, have conducted an annual exchange program for staff members from both countries. The program gives professional staff the opportunity to observe and learn about each other's

political institutions and convey Members' views on issues of mutual concern.

A staff delegation from the United States Congress will be chosen to visit Germany April 12 to April 26 of this year. During the 2-week exchange, the delegation will attend meetings with Bundestag members, Bundestag party staff members, and representatives of numerous political, business, academia, and media agencies. Cultural activities and a weekend visit in a Bundestag member's district will complete the schedule.

A comparable delegation of German staff members will visit the United States for 3 weeks this summer. They will attend similar meetings here in Washington and visit the districts of congressional Members.

The Congress-Bundestag exchange is highly regarded in Germany, and is one of several exchange programs sponsored by public and private institutions in the United States and Germany to foster better understanding of the politics and policies of both countries.

The U.S. delegation should consist of experienced and accomplished Hill staff members who can contribute to the success of the exchange on both sides of the Atlantic. The Bundestag sends senior staff professionals to the United States. The United States endeavors to reciprocate.

Applicants should have a demonstrable interest in events in Europe. Applicants need not be working in the field of foreign affairs, although such a background can be helpful. The composite United States delegation should exhibit a range of expertise in issues of mutual concern in Germany and the United States such as, but not limited to, trade, security, the environment, immigration, economic development, health care, and other social policy issues.

In addition, U.S. participants are expected to help plan and implement the program for the Bundestag staff members when they visit the United States. Participants are expected to assist in planning topical meetings in Washington, and are encouraged to host one or two Bundestag staffers in their Member's district over the Fourth of July break, or to arrange for such a visit to another Member's district.

Participants will be selected by a committee composed of U.S. Information Agency personnel and past participants of the exchange.

Senators and Representatives who would like a member of their staff to apply for participation in this year's program should direct them to submit a résumé and cover letter in which they state why they believe they are qualified, and some assurances of their ability to participate during the time stated. Applications may be sent to Kathie Scarrah, in my office at 316 Hart Senate Building, by Friday, February 14.•

RETIREMENT OF PROCTOR JONES

• Mr. HOLLINGS. Mr. President, on the Appropriations Committee we have always prided ourselves for having the best and most professional staff in the Senate. We maintain a team of staff who are experts on budget and finance and a group of professionals who know these agency programs inside and out. In a few days we will be losing one of our very best staff members to have ever served this body. Proctor Jones, the minority staff director for the Energy and Water Development Subcommittee will be retiring from the Senate to take a position in the private sector.

Proctor Jones hails from Twin City, GA. He came to the Senate way back in 1960 as a special assistant to one of the greatest legislators to ever serve this institution, Senator Richard B. Russell. At that time Senator Russell was chairman of the Armed Services Committee and Proctor served as a special assistant working on military issues. From 1966 to 1968, Proctor took a leave of absence and served on active duty with the U.S. Marine Corps. In 1968, Proctor returned to the Senate and was assigned by Chairman Russell to work on the Appropriations Committee. In 1971, he was assigned to what was then known as the Subcommittee on Labor—Health, Education and Welfare. So, Proctor Jones and I have something in common. We both were close to Senator Richard B. Russell and considered him to be our mentor, and, like Proctor, Senator Russell also advised me that the only committee to be on is the Appropriations Committee.

In 1973, Proctor took over as staff director for the Subcommittee on Public Works for Water and Power Development, and Atomic Energy Commission and Related Agencies. In 1978, this subcommittee was given its current name, Energy and Water Development. Since that time Proctor has served as staff director or minority staff director of that subcommittee. Simply put, Proctor Jones has been the Senate's go-to man on issues regarding Army Corps of Engineers' civil works, defense nuclear weapons development and environmental cleanup, scientific research, power marketing administrations, and other energy issues. Whether it was the Appalachian Regional Commission or biomedical research, the Members of the Senate could trust Proctor Jones to understand the impact that the energy and water development bill had in their States. Proctor understood that these programs affected real people, communities, and institutions.

Of course, it is difficult to speak about Proctor Joines without also referring to Senator J. Bennett Johnston. In 1978, Senator Johnston took over as chairman of the Energy and Water Development Subcommittee. I am a member of that subcommittee. I can tell you that Senator Johnston and Proctor Jones have made an unbeatable team. They really mastered that bill and have run it in a straightforward and fair manner.

Mr. President, we do not acknowledge often enough the staff people who make this institution run day in and day out. In Proctor Jones we have had a superb individual who has dedicated over three decades to this Senate. I, for one, would like to express my appreciation for his hard work and his outstanding record. I wish him well and thank him for a job well done.•

SECOND ANNUAL PLAN TO BALANCE THE BUDGET

Mr. MOYNIHAN. Mr. President, last January, I outlined a brief two-step plan to balance the budget by the year 2002. I proposed that we correct for overindexation of Government programs resulting from using the Consumer Price Index [CPI], and that we postpone tax cuts. Starting with the President's budget proposals, and using CBO scoring, these two steps would have produced a balanced budget by 2002.

I now present my second, and if we act quickly my last, annual plan to balance the budget. As under the first plan, balancing the budget is relatively easy if we correct for overindexation and forgo tax cuts.

The Congressional Budget Office is expected to estimate the baseline deficit in 2002 at about $200 billion. If Congress acts now to balance the budget by 2002, interest rates will fall, economic growth will increase, and CBO will declare a fiscal dividend in 2002 of about $50 billion. So Congress need only find $150 billion in 2002.

Here is how to get that $150 billion:

[In billions of dollars]

Correct Indexation of Government Programs and Tax Laws by 1.1 Percentage Points (The Boskin Commission Estimate)	55
Reduce Growth in Medicare and Medicaid by at least amount in President's FY 1997 budget	45
Slow Annual Growth in Discretionary (both defense and non defense) by about 1.0 to 1.5 percentage points	50
Total Savings in 2002	150

These steps can be modified; for example, revenues from reinstating expired excise taxes can be used to finance high priority investments or avoid reductions in important domestic discretionary programs. But the point remains. With the correction for overindexation a balanced budget is within sight. Without the correction, we will have a protracted fiscal crisis.

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM MAR. 31 TO APR. 9, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mark O. Hatfield:									
Costa Rica	Dollar		280.00						280.00
Brazil	Dollar		770.00						770.00
Chile	Dollar		628.00						628.00
Dr. Thomas Lovejoy:									
Costa Rica	Dollar		368.00						368.00
Brazil	Dollar		949.00						949.00
Chile	Dollar		267.00						267.00
Bruce Evans:									
Costa Rica	Dollar		220.00						220.00
Brazil	Dollar		530.00						530.00
Chile	Dollar		426.00						426.00
Virginia James:									
Costa Rica	Dollar		368.00						368.00
Brazil	Dollar		949.00						949.00
Chile	Dollar		801.00						801.00
Sue Masica:									
Costa Rica	Dollar		368.00						368.00
Brazil	Dollar		949.00						949.00
Chile	Dollar		801.00						801.00
Delegation expenses: [1]									
Costa Rica	Dollar						4,003.93		4,003.93
Brazil	Dollar						11,861.00		11,861.00
Chile	Dollar						14,071.92		14,071.92
Total			8,674.00				29,936.85		38,610.85

[1] The following individuals traveled under the authorization of the Republican and Democratic Leaders: Senator Claiborne Pell, Senator Alan Simpson, Senator Howell Heflin, Senator Frank Murkowski, and Ms. Julia Hart. Their reports appear under the authorizing source. Delegation expenses include direct payments and reimbursements to the Department of State and the Department of Defense under authority of Section 502(b) of the Mutual Security Act of 1954, as amended by Section 22 of Public Law 95–384, and Senate Resolution 179, agreed to May 25, 1977.

MARK O. HATFIELD,
Chairman, Committee on Appropriations, Sept. 10, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator William S. Cohen:									
Malaysia	Ringgit	2,021.73	808.00					2,021.73	808.00
James M. Bodner									
Malaysia	Ringgit	1,984.60	796.71					1,984.60	796.71
Total			1,604.71						1,604.71

STROM THURMOND,
Chairman, Committee on Armed Services, Oct. 1, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Michael E. Korens:									
United States	Dollar				742.55				742.55
United Kingdom	Pound	251.11	389.09					251.11	389.09
Total			389.09		742.55				1,131.64

LARRY PRESSLER,
Chairman, Committee on Commerce, Science, and Transportation, Nov. 5, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM JULY 1, TO SEPT. 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Maureen Koetz:									
Switzerland	Franc	1,691.77	1,300.00					1,691.77	1,300.00
United States	Dollar				3,358.85				3,358.85

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM JULY 1, TO SEPT. 30, 1996—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Total			1,300.00		3,358.85				4,658.85

FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, Sept. 30, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Hank Brown:									
India	Rupee	35,151	923.68					35,151	923.68
Pakistan	Dollar		1,466.000						1,466.00
Indonesia	Rupia	1,846,100	784.12					1,846,100	784.12
Australia	Dollar		622.80						622.80
United States	Dollar				8,240.20				8,240.20
Senator Charles Robb:									
Mongolia	Dollar		168.75						168.75
China	Yuan	2,085.81	251.00					2,085.81	251.00
United States	Dollar				4,867.95				4,867.95
Ellen Bork:									
Indonesia	Rupia	520,250	225.00					520,250	225.00
Vietnam	Dollar		592.00						592.00
Hong Kong	Dollar	5,500	712.00					5,500	712.00
Peter Cleveland:									
Mongolia	Dollar		168.75						168.75
China	Yuan	2,085.81	251.00					2,085.81	251.00
United States	Dollar				4,867.95				4,867.95
Bonnie Coe:									
Hong Kong	Dollar	7,152.14	925.00					7,152.14	925.00
Taiwan	Dollar		915.00						915.00
United States	Dollar				2,905.95				2,905.95
Taiwan	Dollar	11,670.35	427.00					11,670.35	427.00
Vietnam	Dollar		196.00						196.00
Indonesia	Rupia	1,258,835	539.58					1,258,835	539.58
Australia	Dollar	309.71	246.00					309.71	246.00
United States	Dollar				4,853.65				4,853.65
Margaret Huang:									
Kenya	Dollar		705.00						705.00
Zaire	Dollar		630.00						630.00
Rwanda	Dollar		250.00						250.00
Tanzania	Shilling	92,535	155.00					92,535	155.00
United States	Dollar				6,454.95				6,454.95
Linda Rotblatt:									
Kenya	Dollar		705.00						705.00
Zaire	Dollar		630.00						630.00
Rwanda	Dollar		250.00						250.00
Tanzania	Shilling	92,535	155.00					92,535	155.00
United States	Dollar				6,454.95				6,454.95
Nancy Stetson:									
Vietnam	Dollar		2,090.00						2,090.00
	Dong			1,000,000	91.00			1,000,000	91.00
United States	Dollar				5,144.95				5,144.95
Puneet Talwar:									
Israel	Dollar		1,172.00						1,172.00
Jordan	Dollar		315.00						315.00
Syria	Dollar		1,026.00						1,026.00
United States	Dollar				2,303.00				2,303.00
Christopher Walker:									
Kenya	Dollar		956.00						956.00
Ethiopia	Dollar		500.00						500.00
Uganda	Dollar		375.00						375.00
Germany	Mark	866	580.00					866	580.00
United States	Dollar				6,676.00				6,676.00
Carter Pilcher:									
India	Rupee	9,431.00	262.00					9,431.00	262.00
Afghanistan	Dollar		1,032.00						1,032.00
Pakistan	Rupee	15,350	434.00					15,350	434.00
United States	Dollar				5,650.95				5,650.95
Michael Haltzel:									
Austria	Schilling	6,354.31	1,509.00					6,354.31	1,509.00
Bosnia	Schilling	3,088.46	1,196.00					3,088.46	1,196.00
United States	Dollar				3,569.15				3,569.15
Total			24,340.68		62,080.65				86,421.33

JESSE HELMS,
Chairman, Committee on Foreign Relations, Nov. 5, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator J. Robert Kerrey			296.00		4,157.45				4,453.45
Christopher Straub			611.00		4,065.45				4,676.45
Senator Arlen Specter			1,486.54		635.36				2,121.90
Charles Robbins			1,804.44						1,804.44

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1996—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Mark Heilbrun			2,644.60						2,644.60
Don Mitchell			2,402.40		4,436.55				6,838.95
Alfred Cumming			2,140.00		4,436.55				6,576.55
Melvin Dubee			2,244.00		4,436.55				6,680.55
Kenneth Myers			6,172.65						6,172.65
Senator Richard Lugar			1,183.00						1,183.00
Arthur Grant			551.00		5,310.65				5,861.65
Craig Snyder			1,320.85		2,642.20				3,963.05
Senator Richard Lugar			803.00		3,298.25				4,101.25
Kenneth Myers			835.00		3,298.25				4,133.25
Senator Richard Shelby			1,566.00		6,186.25				7,752.25
Tom Young			1,574.00		6,186.25				7,760.25
Peter Dorn			2,430.25		5,958.25				8,388.50
Total			30,064.73		55,048.01				85,112.74

ARLEN SPECTER,
Chairman, Select Committee on Intelligence, Oct. 7, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Patricia Ruggles:									
United States	Dollar		2,000.00		1,069.75				3,069.75
Total			2,000.00		1,069.75				3,069.75

CONNIE MACK,
Chairman, Joint Economic Committee, Oct. 9, 1996.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY LEADER FROM JUNE 29 TO JULY 8, 1996

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Thad Cochran:									
Indonesia	Rupiah	520,250	225.00					520,250	225.00
Vietnam	Dollar		592.00						592.00
Hong Kong	Dollar	5,500	712.00					5,500	712.00
Mitchel Kugler:									
Indonesia	Rupiah	520,250	225.00					520,250	225.00
Vietnam	Dollar		592.00						592.00
Hong Kong	Dollar		712.00						712.00
Gregory McGinity:									
Indonesia	Rupiah	520,250	225.00					520,250	225.00
Vietnam	Dollar		592.00						592.00
Hong Kong	Dollar		712.00						712.00
Jan Paulk:									
Indonesia	Rupiah	520,250	225.00					520,250	225.00
Vietnam	Dollar		592.00						592.00
Hong Kong	Dollar		712.00						712.00
Delegation expenses: [1]									
Indonesia							429.00		429.00
Vietnam							554.15		554.15
Hong Kong							1,291.58		1,291.58
Total			6,116.00				2,274.73		8,390.73

[1] Delegation expenses include direct payments and reimbursements to the Department of State under authority of Section 502(b) of the Mutual Security Act of 1954, as amended by Section 22 of Public Law 95–384.

TRENT LOTT,
Majority Leader, Oct. 23, 1996.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Madam President, as in executive session, I ask unanimous consent that at 12 noon on Wednesday, January 22, the Senate proceed into executive session to consider the nomination of Madeleine Albright to be Secretary of State; further, that there be 2 hours of debate equally divided in the usual form on the nomination with an additional 10 minutes under the control of Senator SPECTER; that immediately following the expiration or yielding back of time, the Senate proceed to a vote on the confirmation of the nomination; and, finally, that following the conclusion of the vote, the President be notified of the Senate's action and the Senate then return to legislative session.

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

ORDER TO PRINT CERTAIN MEASURES

Mr. LOTT. Madam President, I ask unanimous consent that the following bills or resolutions that were introduced today be printed in the CONGRESSIONAL RECORD: Senate Joint Resolution 1, S. 1 through S. 20, Senate Resolution 15, S. 26, and S. 71.

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

APPOINTMENTS BY THE MINORITY LEADER

The PRESIDING OFFICER. The Chair, on behalf of the minority leader, pursuant to Senate Resolution 105, adopted April 13, 1989, as amended by Senate Resolution 280, adopted October 8, 1994, announces the appointment of the following Senators as members of the Senate Arms Control Observer Group:

The Senator from Delaware [Mr. BIDEN];

The Senator from West Virginia [Mr. BYRD], designated to serve as minority administrative cochairman;

The Senator from Arkansas [Mr. BUMPERS];

The Senator from South Dakota [Mr. DASCHLE];

The Senator from Ohio [Mr. GLENN];

The Senator from Massachusetts [Mr. KENNEDY];

The Senator from Nebraska [Mr. KERREY];

The Senator from Michigan [Mr. LEVIN], designated to serve as cochairman for the minority;

The Senator from New York [Mr. MOYNIHAN]; and

The Senator from Maryland [Mr. SARBANES].

Mr. LOTT. Madam President, I yield the floor at this time.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Michigan.

(The remarks of Mr. LEVIN pertaining to the introduction of S. 11 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

MAKING TECHNICAL CORRECTIONS TO THE OMNIBUS CONSOLIDATED APPROPRIATIONS ACT, 1997

Mr. GRAMS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of House Joint Resolution 25, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk readas follows:

A joint resolution (H.J. Res. 25) making technical corrections to the Omnibus Consolidated Appropriations Act, 1997, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. GRAMS. Mr. President, I ask unanimous consent the joint resolution be deemed read a third time and passed, the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 25) was deemed read the third time and passed.

ORDERS FOR WEDNESDAY, JANUARY 22, 1997

Mr. GRAMS. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10 a.m. on Wednesday, January 22; further, immediately following the prayer, the Journal of proceedings be deemed approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business until the hour of 12 noon, with Senators to speak for up to 5 minutes each, except for the following: Senator GRASSLEY, 60 minutes; Senator FEINSTEIN, 30 minutes; Senator DASCHLE, for 30 minutes.

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

PROGRAM

Mr. GRAMS. Tomorrow morning there will be a period of morning business to accommodate several Senators who have requested time. Under a previous order, at 12 noon, the Senate will enter executive session in order to consider the nomination of Madeleine Albright to be Secretary of State. A rollcall vote is expected on that nomination at the conclusion or yielding back of the debate time, with that vote expected at approximately 2 p.m. tomorrow, if most of that time is used.

ORDER FOR ADJOURNMENT

Mr. GRAMS. Mr. President, if there is no further business to come before the Senate, I now ask the Senate stand in adjournment under the previous order, following the remarks of Senator MURRAY of Washington.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE EDUCATION FOR THE 21ST CENTURY ACT

Mrs. MURRAY. Mr. President, I rise today to thank Senator DASCHLE and all of my colleagues for the opportunity to discuss a topic frequently in the thoughts of most Americans, and that is education. There have been other opportunities in the past, and they will come again I know, but on this day, at the beginning of the 105th Congress of the United States, I want the Members of the Senate to recognize that education is one of those topics that is a day-to-day concern of most Americans.

We spend a lot of our time here talking about many things that are far less important to the American people than education. When Americans vote, education is important to them. When they answer polls, education is always a top concern. When they face obstacles in their lives, they see education as a way around those obstacles. And when they search for ways to make life for their children better than they have had it themselves, education is often the single best answer they will find.

Before us today a bill was introduced, the Education for the 21st Century Act. For much of my career in education and policymaking, I have seen bills and acts and programs with "21st century" in the title. Well, President Clinton was inaugurated this week, and 4 years from now there will be another inaugural ceremony and a new President will be sworn in, and he or she will become the first President who has a term in the 21st century. I trust that he or she will be gazing into a new millennium of American progress.

The bill that was introduced today makes several concrete investments in the new American century beginning some 4 years from now. The first investment is in helping people pay for their education, and the bill does it in three ways. The Hope scholarship allows people a $1,500-per-year refundable tax credit for the first 2 years of college, and allows half-time students a $750-per-year tax credit.

Students can instead choose to take advantage of the tax deduction for school expenses, which allows them to deduct up to $10,000 a year for higher education expenses. No matter which option students choose, they can also take advantage of the restored deduction for interest paid on their student loans.

These three opportunities aim to help good students of modest means attend that first day of class in their local community college. Based on everything we know about our economy, and with a look at where employment trends are heading, investing and getting people started in school is a prudent move on the part of our Nation. These incentives will help Americans take advantage of the connection between level of education and their employability in the next century.

The second part of the investment found in this bill is designed to jumpstart efforts to repair some of our Nation's worst crumbling schools. For an investment of $5 billion in school construction incentive funds, we expect to drive about $20 billion in renovation and construction across this Nation.

This is important because of the actual bricks and roofing and wiring that it will provide, but it is also an important symbol. It says to all of us that

American children deserve to go to school in buildings that are safe, healthy, well-lighted places where learning happens and community spirit abounds.

I especially thank Senator CAROL MOSELEY-BRAUN for her tireless efforts on this issue. People talk all the time about the role of Federal Government in local school policy. By championing this issue, Senator MOSELEY-BRAUN has pointed out that the Federal Government does have a role in K–12 education in this country. That role is not passing down curriculum or trying to tell teachers how to teach. The role is guaranteeing certain minimum standards for health and safety and equality, and that is what this proposal is all about.

I also want to remind all of my colleagues that it is important to retain flexibility in this proposal so it helps both urban and rural schools. There are schools in places like the small town of Raymond, WA, which the General Accounting Office has previously identified as needing help with school construction funding due to local economic factors. We should not rule out rural schools as we fine-tune this proposal.

The third investment in this bill is the reading ability of young children. America Reads will fund 30,000 reading specialists and volunteer coordinators, with the goal of getting children reading on their own by the third grade. It will establish a parents as first teachers challenge grant fund and will work with existing programs like AmeriCorps to maximize efforts.

Efforts to build literacy, whether aimed at helping young children read or helping adults read to their children or find a job, acts like yeast in bread dough. They allow people's aspirations to rise, and they will pull this country up to meet the challenges we face. It does not matter what adversity our children face or what they are presented with in life. If they can read, they have a chance to overcome it. The ability to read, write, communicate, and function in the work world—these things are a precious gift all children and all adults should have.

But literacy problems are complicated, so we must make sure our solutions are designed to reflect the most effective techniques we can find. As we move ahead with America Reads, we must allow local flexibility. We must honor the knowledge of those Americans who have been teaching literacy in our communities—in colleges, in schools, in social agencies and in local community-based organizations. We have to recognize that the best indicator of success in reading for a child is the education level of the child's primary caregiver. We must allow the tutor programs under America Reads to work with families to get the best results for children.

The act of reading is complicated, and I can tell you that as a former teacher. Reading is a multistep process. A reader has to recognize and decode parts of words, whole words and sentences of words, both through sight and sound, and figure out how the assembled parts relate to meaning.

Dynamic research is underway right now by Dr. Reid Lyon at the National Institute of Child Health and Human Development and by other researchers around the country in places like the University of Washington in Seattle. This research is unveiling just how complicated learning disabilities are. It is showing how the brain processes certain kinds of information in the reading process, and it is pointing to effective techniques for mitigating disabilities.

America Reads has to capitalize on the current research and build as many connections as possible between reading tutors, a student's primary reading teacher and the work of literacy researchers.

America Reads must also be seen as an unprecedented lens through which we can see literacy and education in general as seamless. Your age, your geographic location, your socio-economic status cannot be barriers to your ability to learn.

We have to get K–12 education, higher education, community education, employment training, local family literacy projects and other organizations all working together. We have to look at education, and at literacy specifically, as the tools Americans need to help themselves and to help this country achieve progress.

The fourth investment in this bill is technological literacy. This investment is ongoing, and it has already achieved some success. The bill will continue our efforts to improve learning across the country by increasing funds for the technology literacy challenge grants.

Over the next 5 years, this bill puts $1.8 billion into these grants to our local school districts so that they can help train teachers to integrate technology into their methods and curriculum to create new resources and to work with leaders in their communities to get students access to computers, the Internet and other high technology resources.

I want to especially thank Senator BINGAMAN for his vision on education technology and thank all who have supported this important issue.

One key component of the technology section of this bill picks up on the work that I started last Congress, taking advantage of surplus technology where it is appropriate in schools' technology plans.

In the last Congress, if you will remember, we passed the Murray amendment to the fiscal year 1997 Treasury Postal appropriations bill, which said that all Government agencies have to inventory their excess computer equipment and peripherals and then make them available to educational institutions through the GSA.

We also passed the Murray amendment to the fiscal year 1997 legislative branch appropriations bill which set up the same process for the Congress itself.

I want you to know that progress so far is very good. The letters I sent to heads of Federal agencies have brought in some very good responses, and Government computers are now going to schools.

The bill before us does, in a systemic fashion, what I have been setting up at the grassroots level in my State—education technology clearinghouses—a place where people can donate equipment and software, a place where schools can get this technology, and a place where a third party can reject technology that does not meet minimum requirements so it does not enter into our schools or libraries.

Several issues have come up in recent months regarding surplus technology. Many are addressed in this bill. If we are using surplus equipment side by side with new equipment, we have to assure that the surplus equipment meets the needs of the school or library that is receiving it. To send them our castoffs with no value sends the wrong message, and we should not be doing it.

Schools in my State are using surplus computers as file servers for networks of new computers, and they are using them for word processing and data processing. They have students doing the upgrades in some of our schools, and when the technology is still current generation, these uses are appropriate. When the technology is too old to be useful, we must recycle the components in other ways and not burden our schools and libraries with a gift that is going to cost much more than it is worth. Equity is another concern, and this bill addresses it. It requires clearinghouses to ensure equitable distribution of surplus technology.

Technology, a concentrated effort to build reading skills, school construction funding, and tuition assistance—our investments are prudent. The goals are very clear. People from both parties will support these kinds of efforts. With this sort of plan in place, Americans can feel proud of their Government's efforts to help them improve education across the Nation.

Let's look out ahead. In just 4 short years, people will be finishing up in the community college programs that they just picked up a brochure for today. They will be finishing the 4-year degree programs they started this fall. They will be graduating from high schools they are just entering this fall or next, depending on their grade, and they will be third graders in the elementary

schools that they started on the first day of kindergarten this September.

How will their lives be better off thanks to this bill? What will their parents say, hope or dream? What will they think to tell us, if they still remember our names 4 years from now? Will they hail this bill as a success, like the Pell grant or GI bill? Will they thank us for working together across party lines to show support for teaching and learning in this country? We simply have to do the work ahead of us, and we will deserve any praise for our efforts, and we will all be thankful that we took steps today to assure a brighter future for our country.

UNIVERSAL CHILDREN'S HEALTH COVERAGE ACT

Mrs. MURRAY. Mr. President, I also would like to address a bill introduced today called the Universal Children's Health Coverage Act, and I commend the Democratic leader for his commitment to this critical issue. I also thank Senators KENNEDY, KERRY, and DODD for their work on behalf of millions of children who lack access to basic health care coverage.

As one of the newest members of the Labor and Human Resources Committee, I have been proud to work with them on the Children's Health Coverage Act, and I look forward to working with all of my colleagues, both Democrat and Republican, in the upcoming months on this very important legislation.

Since first being elected to the U.S. Senate in 1992, I have heard time and time again the phrase, "children are our most valuable resource." Sometimes, however, the actions of this body are not always as loud as the words we hear on the floor. If we all truly believe as strongly as I do that children are our most precious and valuable resource, why have we allowed so many children to go without basic health care coverage and why have we not worked harder to help families provide necessary health coverage for their children? We now have the opportunity to go beyond our rhetoric and work toward solutions.

The United States has one of the highest rates of uninsured children in the industrial world. Currently, one out of seven children lack health insurance in this country. And if that trend continues, only half of our children will have health insurance by the year 2000. Today, 10 million children lack health insurance coverage, which means that 10 million children have little or no access to affordable quality health care coverage. One child loses private coverage approximately every minute. Children are the fastest-growing segment of society with no health insurance.

It is easy to look at this problem solely in terms of numbers. But we also have to look at the faces of those children and their parents. We need to think of what it must be like to know that your child is suffering from an ear infection or strep throat and what it is like not to be able to afford to take them to a doctor or pay for the necessary antibiotic to treat the infection. There is no greater fear for a parent than not being able to take care of their sick child.

These are parents who work 40 or more hours a week, sometimes working two and three jobs to meet the basic needs of their family, like food and shelter and utility costs. They are not asking for a handout. They are asking for relief. They work hard and they pay their taxes, but they simply have little or no discretionary income.

Many do not have access to employer-sponsored health plans or cannot afford the premium costs for a family, which can be as high as $200 or $300 a month.

As I travel around my home State of Washington, I have talked to many of these parents who feel vulnerable, and they are deeply concerned about the lack of health insurance for their children. They know that they are only one major illness away from financial disaster. They also know that their child is not receiving the kind of preventive health care so important to their development.

We can all talk about the cost of the Children's Health Insurance Coverage Act or the financial mechanism, but we have to go beyond the simple calculations and look at the cost of not acting on this issue. Who pays for emergency room visits when a child is brought in with rheumatic fever? What is the cost of treating rheumatic fever as opposed to strep throat? What is the cost to the public health threat posed by a child that has not been vaccinated? What is the impact in the classroom of a child who is severely ill? What impact does this have on my child, the teacher, and the community? What is the cost to society for raising 10 million unhealthy children?

We all agree that nutritional assistance programs like WIC save $4 for every $1 spent. It is no different when examining health care costs. It is far less expensive to provide a child with a measles vaccine than treat a communitywide outbreak of measles.

Ten million children without health insurance is a problem that impacts every single one of us, and we can pay for it now or we can pay for it later. It is just that simple. I believe that it is much easier and much more cost-effective to act now.

According to the General Accounting Office, children without health insurance are less likely to receive timely preventive care and less likely to grow up to be healthy, productive adults. According to the Children's Defense Fund, uninsured children are more likely to need emergency room care at later stages of their illness and are more likely to require hospital admission. It does not take a health care expert to know that emergency room visits are, on average, twice as expensive as a doctor's office visit.

On average, hospital costs for low-birthweight babies are 10 times the cost of prenatal care. Again, according to the Children's Defense Fund, every $1 invested in basic immunization of preschoolers saves $7.40 in direct medical costs.

When we created the school lunch program, we recognized the fact that hungry children cannot learn and are disruptive to other children. The same holds true for sick children. A child with a fever of 102 and a sore throat cannot learn. If we hope to improve education in this country and work to ensure that American students can compete in tomorrow's global economy, we must first begin by guaranteeing that these children are healthy.

The Children's Health Coverage Act represents a major step in the right direction. The legislation will provide eligible families a tax credit on a timely basis to cover health insurance premiums. It ensures that the tax credit covers a significant portion of insurance premiums for low-income working families.

It guarantees them a market for private children's only health insurance by requiring insurers who participate in the Federal Employees Health Benefit Plan to offer these policies. It provides direct assistance to uninsured lower income pregnant women so that their child gets a healthy start in life. It ensures a comprehensive benefits package with a focus on preventative services, and provides coverage up to 18 years of age. It utilizes the private health insurance market, and it does not create a new Federal bureaucracy or entitlement, but builds on the success of several current State plans.

I recognize that this legislation is only one possible solution. Within the next few weeks, I will be joining Senators KENNEDY, KERRY, and DODD in introducing a voucher-based proposal which will meet the same goals and objectives as the bill being introduced today, but it provides for a different approach for assisting families in purchasing coverage.

The voucher-based legislation mirrors the plans currently utilized by 14 States in their efforts to help uninsured children. One of these States is my home State of Washington, which has implemented a plan to help uninsured children receive vital health care services. Because of this commitment in the State of Washington, the number of uninsured children has declined. But the States cannot do it alone. And the Federal Government must ensure that every family, regardless of where they live, have access to affordable

health insurance and that the benefits are comprehensive and include an aggressive preventative strategy.

In the last Congress, we made a commitment to working Americans that they would not lose their health insurance coverage if they changed jobs or had a preexisting condition. The Kennedy-Kassebaum legislation will help hundreds of working families. Now we have the opportunity to build on this bipartisan legislation and work to help working families purchase health insurance coverage for their children.

I know that my Republican colleagues recognize the urgent need to give our children a healthy start. And I ask that we use the bipartisan approach utilized in passing the Kennedy-Kassebaum bill to help all of our children. Both the Democratic and Republican leadership are pledged to improving the quality of life for families and putting families first. I can think of no better and important issue for American families than the health security of all of our children.

In 1965, Congress made a commitment to our Nation's senior citizens that they would not have to go without health coverage. In 1965, we gave senior citizens access to affordable health insurance coverage to protect them from financial ruin and ensure a longer, healthy life. Let 1997 be the year that we make the same commitment to our children.

Again, I want to thank the Democratic leader for his efforts. And I am anxious to begin work on this important initiative and many others that are before us.

Mr. President, I ask unanimous consent that following the remarks of Senator FRIST, the Senate stand in recess under the previous order.

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

Mrs. MURRAY. I suggest the absence of a quorum. I withhold that.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

(The remarks of Mr. FRIST pertaining to the introduction of S. 146 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned.

Thereupon, the Senate, at 7:19 p.m. adjourned until Wednesday, January 22, 1997, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate January 21, 1997:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

AYSE MANYAS KENMORE, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2000. (REAPPOINTMENT)

LEGAL SERVICES CORPORATION

JOHN T. BRODERICK, JR., OF NEW HAMPSHIRE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 1999. (REAPPOINTMENT)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SUSAN E. TREES, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 2002, VICE PETER SHAW, TERM EXPIRED.

INTER-AMERICAN FOUNDATION

JEFFREY DAVIDOW, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION, FOR A TERM EXPIRING SEPTEMBER 20, 2002, VICE ALEXANDER FLETCHER WATSON.

FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS ONE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

PAUL ALBERT BISEK, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS TWO, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

SUSUMO KEN YAMASHITA, OF MARYLAND

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

SUSAN KUCHINSKI BREMS, OF THE DISTRICT OF COLUMBIA
CHRISTINE M. BRYNE, OF VIRGINIA
JAMES ERIC SCHAEFFER, OF FLORIDA

DEPARTMENT OF COMMERCE

KARLA B. KING, OF FLORIDA
TERRY J. SORGI, OF WISCONSIN

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

U.S. INFORMATION AGENCY

TANIA BOHACHEVSKY CHOMIAK, OF FLORIDA
LINDA JOY HARTLEY, OF CALIFORNIA
SHARON HUDSON-DEAN, OF PENNSYLVANIA
CONSTANCE COLDING JONES, OF INDIANA
STEVEN LOUIS PIKE, OF NEW YORK
DAVID MICHAEL REINERT, OF NEW MEXICO

DEPARTMENT OF STATE

SARAH J. METZGER, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA EFFECTIVE JUNE 28, 1996:

DEPARTMENT OF STATE

MARC C. JOHNSON, OF THE DISTRICT OF COLUMBIA

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF STATE, TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA

ROBERT L. ADAMS, OF VIRGINIA
VEOMAYOURY BACCAM, OF IOWA
DOUGLASS R. BENNING, OF THE DISTRICT OF COLUMBIA
STEVEN A. BOWERS, OF VIRGINIA
MICHAEL A. BRENNAN, OF CONNECTICUT
KERRY L. BROUGHAM, OF CALIFORNIA
ANDREA BROUILLETTE-RODRIGUEZ, OF MINNESOTA
PAAL CAMMERMEYER, OF MARYLAND
PRISCILLA CARROLL CASKEY, OF MARYLAND
JULIANNE MARIE CHESKY, OF VIRGINIA
CARMELA A. CONROY, OF WASHINGTON
JULIE CHUNG, OF CALIFORNIA
EDWARD R. DEGGES, JR., OF VIRGINIA
THOMAS L. ELMORE, OF FLORIDA
WAYNE J. FAHNESTOCK, OF MARYLAND
DENIS BARRETT FINOTTI, OF MARYLAND
KENNETH FRASER, OF MARYLAND
GARY R. GIUFFRIDA, OF MARYLAND
PATRICIA M. GONZALEZ, OF TEXAS
DAVID J. GREENE, OF NEW YORK
RAYMOND FRANKLIN GREENE III, OF MARYLAND
RONALD ALLEN GREGORY, OF TENNESSEE
DEBORAH GUIDO-O'GRADY, OF VIRGINIA
AUDREY LOUISE HAGEDORM, OF VIRGINIA
PATTI HAGOPIAN, OF VIRGINIA
CHARLES P. HARRINGTON, OF VIRGINIA
RONALD S. HIETT, OF VIRGINIA
RUTH-ERCILE HODGES, OF NEW YORK
KRISTINA M. HOTCHKISS, OF VIRGINIA
ANDREAS O. JAWORSKI, OF VIRGINIA
RALPH M. JONASSEN, OF NEW YORK
MARNI KALUPA, OF TEXAS
JANE J. KANG, OF CALIFORNIA
SARAH E. KEMP, OF NEW YORK
FREDERICK J. KOWALESKI, OF VIRGINIA
STEVEN W. KRAPCHO, OF VIRGINIA
GREGORY R. LATTANZE, OF VIRGINIA
CHARLES W. LEVESQUE, OF ILLINOIS
JANICE O. MACDONALD, OF VIRGINIA
C. WAKEFIELD MARTIN, OF TEXAS
BRIAN I. MCCLEARY, OF VIRGINIA
ALAN D. MELTZER, OF NEW YORK
DAVID J. MICO, OF INDIANA
CHRISTOPHER S. MISCIAGNO, OF FLORIDA
JOSEPH P. MULLIN, JR., OF VIRGINIA
BURKE O'CONNOR, OF CALIFORNIA
EDWARD J. ORTIZ, OF VIRGINIA
MARIA ELENA PALLICK, OF INDIANA
DAVID D. POTTER, OF SOUTH DAKOTA
ERIC N. RICHARDSON, OF MICHIGAN
HEATHER C. ROACH, OF IOWA
TAYLOR VINSON RUGGLES, OF VIRGINIA
THOMAS L. SCHMIDT, OF SOUTH DAKOTA
JONATHAN L.A. SHRIER, OF FLORIDA
JAMES E. SMELTZER III, OF MARYLAND
CHRISTINE L. SMITH, OF VIRGINIA
KEENAN JABBAR SMITH, OF PENNSYLVANIA
BRIAN K. STEWART, OF VIRGINIA
CHRISTINE D. STUEBNER, OF NEW YORK
STEPHANIE FAYE SYPTAK, OF TEXAS
ERMINIDO TELLES, OF VIRGINIA
MARK TESONE, OF VIRGINIA
MICHAEL ANTHONY VEASY, OF TENNESSEE
GLENN STEWART WARREN, OF CALIFORNIA
MARK E. WILSON, OF TEXAS
ANTHONY L. WONG, OF VIRGINIA
GREGORY M. WONG, OF MISSOURI
KIM WOODWARD, OF VIRGINIA
MARTHA-JEAN HUGHES WYNNYCZOK, OF VIRGINIA
TERESA L. YOUNG, OF VIRGINIA

SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

JOHN WEEKS, OF VIRGINIA

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS ONE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

LARRY CORBETT, OF NEVADA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS TWO, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

HANS J. AMRHEIN, OF VIRGINIA

DEPARTMENT OF STATE

PHYLLIS MARIE POWERS, OF TEXAS
MICHAEL S. TULLEY, OF CALIFORNIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

KIMBERLY J. DELANEY, OF VIRGINIA
EDITH FAYSSOUX JONES HUMPHREYS, OF NORTH CAROLINA

DEPARTMENT OF STATE

JEMILE L. BERTOT, OF CONNECTICUT

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

ALFRED B. ANZALDUA, OF CALIFORNIA
DAVID A. BEAM, OF PENNSYLVANIA
DONALD ARMIN BLOME, OF ILLINOIS
P.P. DECLAN BRYNE, OF WASHINGTON
LAUREN W. CATIPON, OF NEW JERSEY
JAMES PATRICK DEHART, OF MICHIGAN
JOSEPH DEMARIA, OF NEW JERSEY
MICHAEL RALPH DETAR, OF NEW YORK
RODGER JAN DEUERLEIN, OF CALIFORNIA
STEPHEN A. DRUZAK, OF WASHINGTON
MARY EILEEN EARL, OF VIRGINIA

LINDA LAURENTS EICHBLATT, OF TEXAS
JESSICA ELLIS, OF WASHINGTON
STEPHANIE JANE FOSSAN, OF VIRGINIA
CHRISTOPHER SCOTT HEGADORN, OF THE DISTRICT OF COLUMBIA
HARRY R. KAMIAN, OF CALIFORNIA
MARC E. KNAPPER, OF CALIFORNIA
BLAIR L. LABARGE, OF UTAH
WILLIAM SCOTT LAIDLAW, OF WASHINGTON
KAYE-ANN LEE, OF WASHINGTON
BRIAN LIEKE, OF TEXAS
BERNARD EDWARD LINK, OF DELAWARE
LEE MACTAGGART, OF WASHINGTON
RICHARD T. REITER, OF CALIFORNIA
KAI RYSSDAL, OF VIRGINIA
NORMAN THATCHER SCHARPF, OF THE DISTRICT OF COLUMBIA
JENNIFER LEIGH SCHOOLS, OF TEXAS
JUSTIN H. SIBERELL, OF CALIFORNIA
ANTHONY SYRETT, OF WASHINGTON
HERBERT S. TRAUB III, OF FLORIDA
ARNOLDO VELA, OF TEXAS
J. RICHARD WALSH, OF ALABAMA
DAVID K. YOUNG, OF FLORIDA
DARCY FYOCK ZOTTER, OF VERMONT

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF STATE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEREK A. BOWER, OF VIRGINIA
STEVEN P. CHISHOLM, OF VIRGINIA
HENRY J. HEIN, JR., OF VIRGINIA
HOLLY ANN HERMAN, OF VIRGINIA
E. KEITH KIRKHAM, OF MAINE
MARY PAT MOYNIHAN, OF VIRGINIA
JOHN W. RATKIEWICZ, OF NEW JERSEY

SECRETARY OF THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

WILLIAM B. CLATANOFF, JR., OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED, EFFECTIVE OCTOBER 18, 1992:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

ELIZABETH B. BOLLMANN, OF MISSOURI
MARSHA D. VON DUEREKHEIM, OF CALIFORNIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 18, 1992 NOW TO BE EFFECTIVE APRIL 7, 1991:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

JOAN ELLEN CORBETT, OF VIRGINIA
JUDITH RODES JOHNSON, OF TEXAS
MARY ELIZABETH SWOPE, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 18, 1992, NOW TO BE EFFECTIVE OCTOBER 6, 1991:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

SYLVIA G. STANFIELD, OF TEXAS

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON NOVEMBER 6, 1988, NOW EFFECTIVE OCTOBER 12, 1986:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

JOAN ELLEN CORBETT, OF VIRGINIA
JUDITH RODES JOHNSON, OF TEXAS
MARY ELIZABETH SWOPE, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON NOVEMBER 6, 1988, NOW EFFECTIVE JANUARY 3, 1988:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

SYLVIA STANFIELD, OF TEXAS

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON APRIL 7, 1991, NOW EFFECTIVE NOVEMBER 19, 1989:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

VIRGINIA CARSON YOUNG, OF THE DISTRICT OF COLUMBIA

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 6, 1991, NOW EFFECTIVE APRIL 7, 1991:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

JUDITH M. HEINMANN, OF CONNECTICUT

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 18, 1992, NOW EFFECTIVE APRIL 7, 1991:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

JUDY LANDSTEIN MANDEL, OF THE DISTRICT OF COLUMBIA
MARY C. PENDLETON, OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE, PREVIOUSLY PROMOTED INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED ON OCTOBER 18, 1992, NOW EFFECTIVE OCTOBER 6, 1991:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

JEANANNE LOUIS, OF VIRGINIA
SHARON MERCURIO, OF CALIFORNIA
RUTH H. VAN HEUVEN, OF CONNECTICUT
ROBIN LANE WHITE, OF MASSACHUSETTS

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASSES INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER MINISTER:

TERRENCE J. BROWN, OF VIRGINIA
KELLY C. KAMMERER, OF THE DISTRICT OF COLUMBIA
LINDA E. MORSE, OF VIRGINIA

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

ROSE MARIE DEPP, OF MARYLAND
GREGORY F. HUGER, OF THE DISTRICT OF COLUMBIA
GEORGE JONES, OF COLORADO
LINDA N. LION, OF VIRGINIA
CARLOS E. PASCUAL, OF THE DISTRICT OF COLUMBIA
ERIC R. ZALLMAN, OF FLORIDA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE.

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

HARRY F. BIRNHOLZ, OF NEW YORK
PAUL A. BISEK, OF ILLINOIS
DOUGLAS A. CHIRIBOGA, OF VIRGINIA
PAUL R. DEUSTER, OF VIRGINIA
WILLIAM J. GARVELINK, OF VIRGINIA
VIVIANN GARY, OF WASHINGTON
GENE V. GEORGE, OF NEW YORK
RICHARD H. GOLDMAN, OF FLORIDA
RICHARD J. GOUGHNOUR, OF FLORIDA
FREDERICK J. GUYMONT, OF FLORIDA
JOHN VAN D. LEWIS, OF THE DISTRICT OF COLUMBIA
JOHN R. MARTIN, OF ILLINOIS
LOUIS MUNDY III, OF FLORIDA
EVERETT B. ORR, OF FLORIDA
KAREN M. POE, OF VIRGINIA
THOMAS LEE RISHOI, OF FLORIDA
TERRENCE P. TIFFANY, OF OREGON

THE FOLLOWING-NAMED CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES INFORMATION AGENCY FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER MINISTER:

MARILYN MC AFFE, OF FLORIDA

EXTENSIONS OF REMARKS

ADOPTING THE RULES OF THE HOUSE FOR THE 105TH CONGRESS

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. SOLOMON. Mr. Speaker, during the debate on House Resolution 5, adopting House Rules for the 105th Congress, my good friend from Michigan [Mr. DINGELL] inserted a statement in the RECORD complaining about the provision in the rules packages that reduces from 3 days to 2 days after a measure or matter is approved by a committee, the time for filing additional, supplemental or minority views. To quote from his statement:

I find it ironic indeed that during the 40 years of control by the Democratic Party, we never considered limiting this fundamental right of the minority to file views on legislation. Yet after just 2 years in control of the House, the Republicans have found the granting of 3 whole days to the minority to file its views as somehow being too onerous.

Mr. Speaker, I am responding to that inserted speech by inserting my own rebuttal under the general leave granted to Members to revise and extend their remarks on House Resolution 5.

I only regret that the gentleman from Michigan [Mr. DINGELL] was apparently not on the floor to hear my opening statement on the rules package in which I explained that the proposal for 2 rather than 3 days to file views was originally made by Rules Committee Chairman JOE MOAKLEY before the Joint Committee on the Organization of the Congress in the 103d Congress. Moreover, when the joint committee did not include that proposal in its recommended bill (H.R. 3801, Representative HAMILTON, Feb. 4, 1994), the chairman inserted it in his chairman's mark or substitute for the joint committee's bill.

We did not object to the proposal when Mr. MOAKLEY testified in support of it before the joint committee on May 20, 1993. Nor did we object to it when he included it in his chairman's mark of August 1, 1994. Nor did we present an amendment to the Rules Committee to delete it during the committee markup of H.R. 3801 on August 4, 1994—even though we did file with the committee a rather lengthy package of other amendments we intended to offer.

Although the markup was suspended on August 4 by Chairman MOAKLEY over the prospect of a repeal of proxy voting, after only one majority amendment had been disposed of, it should be made quite clear that the suspension of the markup was not caused by any Rules Committee Republican opposition raised or noticed on the 2-day rule for filing views.

Indeed, if that had been even a minor factor in the chairman's reasons for suspending markup, I doubt very much that he would have included the very same 2-day rule in his subsequent chairman's mark of September 19, 1994.

As I indicated to the House in my opening remarks on this rule package for the 105th Congress, we were offering the Moakley 2-day rule for filing views in the spirit of bipartisanship, giving him full recognition for being the author of the proposal, and full support for the Moakley rule. So the gentleman from Michigan is just factually, dead wrong in asserting that such a rule was never proposed by the Democrats in all of its 40 years of control of the House. In fact it was, and came very close to being adopted just prior to the 1994 elections when we gained control of the House.

As Mr. MOAKLEY made clear in his testimony before the joint committee in 1993, it was his hope that by shortening the period for filing views, it would be less necessary in the future for the Rules Committee to waive the 3-day requirement for reports to be available to Members before they can be considered by the House. We share that same hope.

Mr. Speaker, with that I insert at this point in the RECORD the testimony of Mr. MOAKLEY before that joint committee in 1993, as well as the relevant text of his rule from his August 1 and September 19, 1994, chairman's marks for H.R. 3801, which also included the automatic filing authority for committees on the second day.

The materials follow:

STATEMENT OF THE HONORABLE JOHN JOSEPH MOAKLEY, CHAIRMAN, COMMITTEE ON RULES, U.S. HOUSE OF REPRESENTATIVES BEFORE THE JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS, MAY 20, 1993

Mr. Chairman, I would like to thank the Joint Committee for the opportunity to appear before you today to talk about committee and floor procedures in the U.S. House of Representatives. As Chairman of the House Rules Committee, I realize I am an obvious spokesperson for the procedures by which bills are considered in the House. I do not come before you today to blindly defend our current practices. Rather, I view this as a valuable and essential opportunity to take an objective, critical look at our rules and procedures and to comment on what areas might possibly be improved.

Before getting to specifics, I would like to briefly express my gratitude to the Joint Committee for the work it has done to date. I commend the Committee for both its diligence and the seriousness with which it has undertaken its work. Yours is not an easy task, I know. Change is always difficult, particularly when it is uncertain whether the proposed changes will actually improve the status quo. I can appreciate the enormity of your assignment and hope that my comments today assist you with your comprehensive evaluation of the Institution.

Reflecting upon the atmosphere in Congress of late, I must confess that I am almost relieved that we have reached this juncture—it is time for us to confront our problems, either real or perceived, and resolve them one way or another. In my twenty-one years in Congress, I have never experienced partisan tensions as aggravated and sustained as they have been over the past couple of years. While a certain amount of sparring between the parties is unavoidable, healthy even, I believe we have far surpassed the level of disagreement that characterizes a healthy democracy.

I am most concerned with the element of distrust that seems to pervade our daily interactions. We cannot do our jobs well when we distrust those with whom we work. We were sent here to make sound, well-reasoned policy decisions on behalf of our constituents, our country and the world. I am deeply concerned that the public good is being compromised in the conflicts of our rival parties.

It is out of these concerns that I admit certain changes are needed. On the procedural front, I think I can recommend several improvements which will not only enhance the quality of deliberation in the House of Representatives, but will also lessen some of the partisan jealousies which arguably consume too much of our time and energy. As I have not yet talked with the Speaker about these ideas, I in no way wish to imply that my remarks today reflect the sentiments of the Leadership.

First, I would like to note the Democratic Leadership's recent efforts to allow for more open, inclusive debate. By inclusive I mean providing for greater participation by both the majority and the minority. The views of the minority are a vital component of the legislative process, and within reason, should be accommodated. I say within reason because underlying the legislative procedures of the House is the general principle that a determined majority of members should be able to work its will on the floor without undue delay by the minority. While House rules and procedures generally recognize the importance of permitting any minority, partisan or bi-partisan, to present its views and prepare alternatives, the rules do not enable that minority to filibuster or use other devices to prevent the majority from accomplishing its objectives in a timely manner.

I think everyone would agree that it is the prerogative of the majority party leadership to both set the legislative agenda and to provide for the orderly consideration of legislation in the House. And while the role of the Rules Committee is to try to facilitate the Leadership's legislative agenda, its power is not without limitation. The Rules Committee can only recommend special rules to the House—it cannot impose its recommendations on the membership. It is for the House to decide, by majority vote, whether it is prepared to accept the ground rules, including any restrictions on amendments that the Committee proposes.

The Rules Committee structures its rules based not only on the views of its members, but also on its perception of what a majority—218 members—of the House is prepared to support. Ultimately, the House agenda is subject to control by a voting majority. This majority is not static, nor is it strictly partisan. Rather it is continually shifting and must be constructed and reconstructed from one issue to the next.

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

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Unfortunately, bare statistics do not always reflect the considerations behind the types of rules reported by my Committee. The first ten rules reported by the Rules Committee in the 103rd Congress were indeed by definition "restrictive", that is, providing certain limitations on the number or types of amendments that could be offered. But while my friends on the other side of the aisle suggest that there amendments were arbitrarily rejected by the Rules Committee, this simply isn't true.

Before condemning the Democratic Leadership as callous or insensitive to the ideas of the minority, one must examine the nature of the bills and the types of amendments offered. Interestingly, of the ten examples cited by the Republican Leadership Task Force on Deliberative Democracy as egregious examples of the Rules Committee unreasonably denying amendments for floor consideration, the first five amendments were not even germane to the measures being considered. It is common knowledge that House rules and precedents require all amendments to be germane to the text they would amend. Therefore, I see nothing unreasonable about the Rules Committee's decision not to make these amendments in order. Moreover, another two amendments cited by the Task Force would have been subject to other points of order. In sum, seven of the ten amendments cited by the Task Force would not even have been made in order under an open rule.

As for the restrictive rules that the Rules Committee has reported to date, let me say this: the baseball season is only one month old—just because the Tigers are now in the lead doesn't mean they're going to win the pennant. In other words, be patient. There is no rigid program governing the types of rules to be reported by the Rules Committee. Rather, each rule will be determined on a case by case basis.

As you know, the Rules Committee recently reported open rules on three bills—nobody should be surprised when such contentious issues such as reconciliation and campaign finance are considered under structured rules—but as the House moves further into its legislative season I anticipate more open rules being reported by my committee.

Another change I would recommend relates to the motion to recommit. The change would arguably strengthen the minority's ability to act as a constructive partner in the development of legislation. I endorse a modification of the plan proposed by Tom Mann and Norm Ornstein in one of their earlier reports to the Joint Committee.

I propose amending House Rule XVI, clause 4, so as to guarantee the minority a motion to recommit with instructions whenever a special order reported by the Rules Committee precludes the minority from offering amendments in the Committee of the Whole. This right would be subject to a couple of conditions. First, the motion would be guaranteed only if offered at the specific direction of the Minority Leader or his designee. Second, upon receipt of the motion, the Speaker would have the power to postpone debate and votes on the motion and final passage for up to two hours.

I consider these conditions to be reasonable as they would allow the minority a vote on its position on major issues and at the same time allow the majority a reasonable amount of time within which to prepare its response to the minority's alternative. Theoretically, limiting control of the motion to recommit to the Minority Leader or his designee would ensure that the motion would be used in a serious, constructive manner. Members with fringe views would be unable to make frivolous motions.

A third change I would recommend involves clause 2(l) (5) and (6) of House Rule XI which respectively provide for a three day period within which members may file supplemental, additional or minority views to be included in a committee's report, and an additional three day period for members to review the committee report before the measure is considered by the House. In his recent statement before the Joint Committee, Mr. Solomon expressed concern that the opportunity for members to review committee reports was too often being waived due to scheduling considerations. Let me say I empathize with Mr. Solomon and hope that my plan alleviates some of his concerns.

My proposal tries to balance the legitimate need for flexibility in scheduling legislation for floor action with the important right of members to express their alternative views and to review committee reports prior to debating a measure on the House floor. I don't believe the rule as it is presently written allows us to use our time efficiently. Presently, the three day period for filing views begins to toll the day immediately following the day on which a committee orders a measure reported and expires at midnight of the third day. Since presently there is no automatic authority for a committee to file immediately upon the expiration of this third day, it may be another day before the committee files its report, and yet another day before the report becomes available in the document room. Only then will the three day layover period for members' review of the report begin. Thus, more than two weeks may go by before a bill becomes available for floor consideration.

In the interest of both preserving this important right and using our time well I would recommend the following: tighten the way in which the three day period for filing views is calculated by starting the clock tolling immediately upon a committee's ordering of a bill reported. Often many valuable hours remain in a day on which a bill is ordered reported. Additionally, I would recommend giving committees automatic authority to file until midnight of the third day.

These changes arguably would achieve the dual goal of allowing for more efficient scheduling of legislation and insuring an adequate period for members to file and review views. While the Committee on Rules would still reserve its right to waive the three day layover requirement, I believe that if these changes were to be made the need for such waivers would be significantly reduced. In fact, I think it is safe to assert that had this proposal been in place earlier this Congress, none of the waivers of the three day layover period granted by my Committee would have been necessary.

My final recommendation is that the House, in some manner, implement the Oxford-Union style debate program proposed by Norm Ornstein and Tom Mann. Such a program strikes me as a useful vehicle for conducting thoughtful, substantive, and balanced debate on important national issues. Unlike one-minutes or special orders which tend to be one-sided monologues free of contest or rebuttal, such a program would allow for a meaningful exchange of ideas between members and would serve as a valuable supplement to our regular debate time on major legislation.

In closing, I would like to add that I agree with the prevailing sentiment that procedural or mechanical changes alone will not cure the ailments of this Institution. Attitudinal change is as important an ingredient. I am encouraged by the progress that is already being made in this area and hope that we can sustain this spirit of cooperation throughout the 103rd Congress.

I again thank the members of the Joint Committee for this opportunity to testify before you today. I would be happy to answer any questions.

FROM MOAKLEY SUBSTITUTE FOR H.R. 3804, AUG. 1, 1994

SEC. 112. AVAILABILITY OF LEGISLATIVE INFORMATION.

(a) VIEWS.—Clause 2(l)(5) of rule XI of the Rules of the House of Representatives is amended—

(1) in its first sentence, by inserting "and including the day the measure or matter is approved" after "holiday"; and

(2) after its second sentence, by inserting the following new sentence: "Upon receipt of all such views, the committee may (without permission of the House) file the report until midnight of the third such calendar day.".

AMENDMENT TO H.R. 3801 OFFERED BY MR. MOAKLEY, SEPTEMBER 19, 1994

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Legislative Reorganization Act of 1994".

RESPONSES TO QUESTIONS AND COMMENTS ON HOUSE RESOLUTION 5, ADOPTING HOUSE RULES

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. SOLOMON. Mr. Speaker, since the House adopted House Resolution 5 on January 7, 1997, establishing the standing rules of the House for the 105th Congress, several questions and comments have been raised as to the application or interpretation of the new rules.

Let me first direct my colleagues to the debate on House Resolution 5 in the CONGRESSIONAL RECORD of January 7, 1997, during which additional materials were inserted in the RECORD for the benefit and guidance of Members and committees. The text of the resolution itself begins at page H8 of the RECORD . My introductory remarks explaining the rules package begins at page H10. Immediately after my remarks are a "Highlights and Section-by-Section Summary" (pp. H11–12), followed by a more detailed "Section-by-Section Analysis" (pp. H12–15), and a letter from Ways and Means Committee Chairman BILL ARCHER further explaining the more specific definition of income tax rate increases contained in House Resolution 5 with respect to the three-fifths-vote rule and the prohibition on retroactive income tax rate increases (p. H15). I have also included in the RECORD a press release and table on comparative legislative data for the 103d and 104th Congresses (pp. H15–16); and a brief history of how the process for adopting House rules at the beginning of a Congress has evolved over the last century (pp. H16–17).

Mr. Speaker, since the adoption of the rules on January 7, I have: First, responded to two letters from colleagues regarding the "truth-in-testimony rule;" second, responded to a letter from the minority leader forwarded to my Rules Committee office by the Speaker; and third, written to the Parliamentarian to further clarify the intent and application of the rules that allows for exceptions to the 5-minute limit in questioning hearing witnesses, copies of which have been sent to all committee chairmen and ranking minority members. In addition, I have inserted remarks elsewhere in this RECORD in response to Mr. DINGELL's inserted statement on the new rule on time allowed for filing views on committee reports.

Mr. Speaker, at this point in the RECORD, I include my exchange of correspondence with Representatives FROST and SKAGGS on the "truth-in-testimony rule"; the minority leader's letter to the Speaker on several provisions in the rules package and my response; and my letter to the Parliamentarian on the rule allowing for extended questioning of witnesses.

The materials follow:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 24, 1996.

Hon. GERALD B. SOLOMON,
Chairman, Committee on Rules, The Capitol, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to express my opposition to the so-called "Truth in Testimony" amendment to the Rules of the House of Representatives. It is my understanding that while this amendment was not included in the package of amendments to the Rules of the House for the 105th Congress approved by the Republican Conference in November, it is currently under consideration for inclusion in that package. While I have not yet been provided with language of this or any other proposed amendment, I must register my strong opposition to including such a potentially far reaching amendment in the Rules of the House without providing those affected the opportunity to comment.

Having served as Chairman of the Democratic Caucus Committee on Organization, Study and Review for 10 years, I am fully aware that rules changes for a Congress are matters that are vetted through the party process. But it was my experience that serious and substantive changes to the operations of the House of Representatives were given ample opportunity to be discussed and analyzed within the Democratic Caucus. Had an amendment of this magnitude been proposed during my tenure as Chairman of that Committee, I can assure you that I would have referred it to the Committee on Rules for consideration in the regular committee process. I urge you to do that in this instance.

I cannot argue that substance of this proposal since I have not yet seen any language. But I do want to make a procedural case against including this amendment in the Republican rules package on January 7. This is a substantive matter and one that deserves full analysis and examination. I urge you, as Chairman of the Committee on Rules, to oppose including the amendment in the Republican rules package.

I appreciate your attention to this matter, and with every best wish for a happy New Year. I remain

Sincerely,

MARTIN FROST.

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 9, 1997.

Hon. MARTIN FROST,
Rayburn House Office Building, Washington, DC.

DEAR MARTIN: Thank you for your letter of December 24 expressing your opposition to the new "Truth-in-Testimony" rule, and for raising the issue for discussion at our Committee's organizational meeting yesterday.

You are correct that the proposed rule change was not included in the package presented to our Conference on November 22nd. It was initially felt that the Leadership would simply urge committees to adopt it as a committee rule, since nothing in House Rules would preclude that. However, during the discussion of the draft rules package at the November Conference, several Members spoke-out in strong support for including a uniform disclosure requirement in House Rules. The Leadership subsequently agreed with that recommendation and the provision was included in the package that was finally adopted by the Conference on the morning of January 7th.

Your point about the need to refer for Rules Committee consideration rules changes "of this magnitude," and how Democrats did this, is both curious and well taken. I do not recall the proposal for delegate voting in the Committee of the Whole ever being referred to the Rule Committee and yet it was included in your last Democratic House Rules package at the beginning of the 103rd Congress. On the other hand, the Doolittle "Truth-in-Testimony" rule was referred to the Rules Committee and was presented to us by Rep. Doolittle on July 17, 1996—the first in a series of four hearings we conducted entitled, "Building on Change: Preparing for the 105th Congress." (See pages 29–33 of printed hearings) So, contrary to your assertion that there has been no opportunity for comment, there has been plenty of opportunity dating back to the July 17th hearing. I'm only sorry you were not able to attend that hearing and therefore missed the testimony and the opportunity to question Rep. Doolittle on his proposal

As a result of some subsequent concerns expressed about the penalty in the Doolittle resolution of expunging a non-complying witness' testimony from the hearing record, we dropped that provision before it was presented to the Conference and the House.

I appreciate your calling my attention to the David Skaggs letter (which was delivered to us in the middle of our organizational meeting yesterday) calling for a Rules Committee hearing to discuss the effect and purpose of the "truth-in-testimony" rule.

The simple purpose of the rule is public disclosure of public funds received by an individual or organization so that Members and the public alike will have a better perspective on a witnesses' interests as they relate to the subject matter of a hearing. The simple effect of the rule will be better-informed committee members as they prepare for and participate in their committees' hearings. Too often, such information is requested at a hearing, and witnesses do not have it readily available. Consequently, it is only supplied at a later date for the hearing record when it is too late to ask relevant questions bearing on that information.

Madison, in Federalist 58 referred to the House's "power over the purse," as "the most complete and effectual weapon with which any constitution can arm the immediate representatives." Certainly, in this regard, it is a legitimate function, indeed an obligation, of our committees to have a better understanding of how public funds are being expended—by whom and for what purposes—especially as we continue to downsize the government and move towards a balanced budget. Our hearing and oversight process is one of the best methods we have for obtaining such information so that our committees, and ultimately the Congress, can effectively deliberate and make the best possible and most informed and prudent decisions.

What would be the effect of non- or partial-compliance? As we explained in our section-by-section analysis of the rules package that was inserted after my floor statement on H. Res. 5 yesterday (Congressional Record, Jan. 7, 1997, pp. 11–17), non-compliance would neither prevent a witness from testifying, nor result in the testimony being stricken from the hearing record. However, I think it could result in an objection to a unanimous consent request that the written statement be included in the hearing record, leaving only the oral summary of testimony actually presented as part of the official hearing record.

You can be assured that, just as we did during the 104th Congress with respect to the rules adopted on opening day of that Congress, the Rules Committee will be conducting ongoing oversight of the operation of this and other new rules as we prepare for the 106th Congress.

Sincerely,

GERALD B. SOLOMON,
Chairman.

HOUSE OF REPRESENTATIVES
January 8, 1997.

Hon. GERALD B.H. SOLOMON,
Chairman, Committee on Rules, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to request that the Committee on Rules hold a hearing to take testimony and discuss the effect and purpose of section 10 of the H. Res. 5, adopting the Rules of the House of Representatives for the One Hundred Fifth Congress.

As you know, section 10, the so-called "Truth in Testimony" provision, requires any person appearing in a nongovernmental capacity as a witness before committees of the House to include as part of her written statement a list of the amount and source of all federal grants, subgrants, contracts, or subcontracts received during the previous three fiscal years by the witness or entities she represents.

As I stated yesterday on the Floor of the House, I have strong concerns about the effect and purpose of section 10 and regret that it was adopted without the full and thoughtful consideration made possible by committee hearings.

I believe this provision will only create another barrier to citizens exercising their right to petition the government, in this case the House of Representatives. In many cases, this provision will also force organizations to divert resources from productive work to the paperwork and administrative activities made necessary by the provision's requirements.

Again I urge the Committee on Rules to schedule a hearing to consider the effects of section 10 of H. Res. 5.

Sincerely yours,

DAVID E. SKAGGS.

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 9, 1997.

Hon. DAVID E. SKAGGS,
Longworth House Office Building,
Washington, DC.

DEAR DAVID: Thank you for your letter of January 8 urging that the Rules Committee hold a hearing to discuss the effect and purpose of the new "truth-in-testimony" rule.

The fact is that we did hold a hearing on July 17, 1996, at which the proposal was presented by its sponsor, Rep. Doolittle, and discussed. The testimony was offered as part of our series of four hearings (at which you testified) entitled, "Building on Change: Preparing for the 105th Congress," from which many of the rules changes adopted by the House were initially proposed.

The simple purpose of the rule is public disclosure of public funds received by an individual or organization so that Members and the public alike will have a better perspective on a witnesses' interests as they relate to the subject matter of a hearing. The simple effect of the rule will be better-informed committee members as they prepare for and participate in their committees' hearings. Too often, such information is requested at a hearing, and witnesses do not have it readily available. Consequently, it is only supplied at a later date for the hearing record when it is too late to ask relevant questions bearing on that information.

Madison, in Federalist 58 referred to the House's "power over the purse," as "the most complete and effectual weapon with which any constitution can arm the immediate representatives." Certainly, in this regard, it is a legitimate function, indeed an obligation, of our committees to have a better understanding of how public funds are being expended—by whom and for what purposes—especially as we continue to downsize the government and move towards a balanced budget. Our hearing and oversight process is one of the best methods we have for obtaining such information so that our committees, and ultimately the Congress, can effectively deliberate and make the best possible and most informed and prudent decisions.

What would be the effect on non- or partial-compliance? As we explained in our section-by-section analysis of the rules package that was inserted after my floor statement on H. Res. 5 yesterday (Congressional Record, Jan. 7, 1997, pp. 11–17), non-compliance would neither prevent a witness from testifying, nor result in the testimony being stricken from the hearing record. However, I think it could result in an objection to a unanimous consent request that the written statement be included in the hearing record, leaving only the oral summary of testimony actually presented as part of the official hearing record.

I do not think the requirement will, as you assert, "force organizations to divert resources from productive work to the paperwork and administrative activities made necessary by the provision's requirements." Any business or organization that does not have ready access to basic information on the source and amounts of its Federal grants and contracts over the last three years is probably guilty of questionable or sloppy bookkeeping practices, which in turn raises the question of whether they should be entrusted with expending taxpayer funds in the first place.

You can be assured that, just as we did during the 104th Congress with respect to the rules adopted on opening day of that Congress, the Rules Committee will be conducting ongoing oversight of the operation of this and other new rules as we prepare for the 106th Congress.

Sincerely,

GERALD B. SOLOMON,
Chairman.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 9, 1997.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Since floor procedures yesterday limited our ability to have a full debate on all of the Republican Conference's recommended rules changes in H.Res. 5, I am writing to notify you of additional objections to certain provisions that our Leadership and minority members have put forth. Please note recommendations on the following seven points:

In section 8(a)(2), strike the proposed new subparagraph (2), providing that investigative and oversight reports will be "considered as read" in committee under certain circumstances, and redesignate accordingly;

Strike section 10, placing information burdens on non-governmental public witnesses by requiring them to disclose federal grants and contracts they have received;

Strike section 12, creating exceptions to the five-minute rule in hearings;

Strike section 14, reducing the time allotted for Members to file supplemental, minority, or additional views;

Strike section 15, creating a slush fund for committees;

Strike section 17, permitting "dynamic scoring" estimates to be included in reports on major tax bills;

In the last sentence of section 25, strike ", or at the expiration of January 21, 1997, whichever is earlier".

I would hope that you might consider revisiting these matters in light of minority objections. I am certain that such efforts would enhance the spirit of bipartisanship and comity in the 105th Congress.

Sincerely,

RICHARD A. GEPHARDT.

THE SPEAKER'S ROOMS,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 13, 1997.

Hon. RICHARD A. GEPHARDT,
Minority Leader, The Capitol,
Washington, DC.

DEAR MR. LEADER: This to acknowledge your letter regarding the rules changes contained in H. Res. 5. I have asked Rep. Gerald Solomon, chairman of the Committee on Rules, to review your comments to see if some accommodations can be made.

Regardless of the outcome of Chairman Solomon's review and his recommendations, I sincerely hope that you and other members of the Democrat leadership will do your utmost to see that the rules of the House are followed and that decorum is maintained.

Rest assured that the Republican leadership is committed to protecting the decorum of the House and the dignity of its proceedings.

Sincerely,

NEWT GINGRICH,
Speaker.

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 16, 1997.

Hon. RICHARD A. GEPHARDT,
Minority Leader, The Capitol,
Washington, DC.

DEAR DICK: This is to acknowledge the Speaker's transmittal to me of your letter expressing concerns about several of the House Rules changes adopted on the opening day of the 105th Congress.

You have asked the Speaker that we might revisit these in light of minority objections, and in the spirit of bipartisanship and comity in the 105th Congress.

As I have already indicated in letter to both Martin Frost and David Skaggs with respect to the "truth-in-testimony rule" (one of those on your list), it is my full intention that our Committee will carefully monitor the operation of all the new rules adopted in H. Res. 5 as part of our ongoing oversight responsibilities over House rules and procedures.

As you will recall, during the course of the last Congress the Rules Committee reported modified versions of suggestions that were in your minority opening day rules amendments relating to the gift rule and book advances and royalties. Moreover, towards the end of the second session we held four hearings on "Building on Change: Preparing for the 105th Congress," at which we heard from Members of both parties who had suggestions for further rules changes. Many of those proposals were incorporated in this year's opening day package.

In summary, I fully intend to proceed on a bipartisan basis as we monitor the effectiveness of the rules changes and consider possible adjustments, additions or deletions. I welcome your continuing advice and suggestions as we proceed with this effort.

Sincerely,

GERALD B.H. SOLOMON,
Chairman.

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 16, 1997.

Mr. CHARLES W. JOHNSON III,
Parliamentarian of the House, Office of the Parliamentarian, The Capitol, Washington, DC.

DEAR CHARLEY: It is my understanding that some questions have been raised regarding the application of section 12 ("Exceptions to the Five-Minute Rule in Hearings") of H.Res. 5, adopting House Rules for the 105th Congress. The purpose of this letter is to clarify the intent of that rule.

Section 12 amends clause 2(j)(2) of House Rule XI which previously provided that: "Each committee shall apply the five-minute rule in the interrogation of witnesses in any hearing until such time as each member of the committee who so desires has had an opportunity to question each witness."

The amendment adopted to that rule by section 12 of H. Res. 5 provides that, "Each committee may adopt a rule or motion permitting an equal number of its majority and minority party members each to question witnesses for a specified period not longer than 30 minutes," and that, "A Committee may adopt may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified period of time."

In the section-by-section analysis of the rules changes that I inserted following my introductory remarks on H.Res. 5 (Congressional Record, January 7, 1997, pp. H12–15) it is noted that, "That rule or motion could permit designated majority or minority

party member or staff to question witnesses for a period longer than their usual 5-minute entitlement (p. H14, emphasis added)." The underscored words were intended to clarify that the exception to the five-minute rule for extended questioning applies to only those members designated. It in no way is meant to supplant the right of other committee members to question witnesses for five-minutes, though the extended questioning period could occur before other members are recognized.

It is not the intent of the rule to permit a motion that provides for further extended questioning of the same witness after 60-minutes of extended questioning has already been allowed. The 60-minutes should be the maximum limit on extended questioning of the same witness, whether by designated majority and minority party members or staff, in order to protect the rights of other members of a committee to exercise their rights to question a witness under the five-minute rule.

The analysis goes on to indicate that: "A motion under this House rule would not be privileged for any member of a committee to offer. Instead, it would be at the discretion of the chair to recognize a member to offer such a motion." However, it is not the intent of this rule that either a committee rule or motion allowing for such extended questioning should be used solely for the purpose of permitting such extended questioning only of witnesses of the chairman's or committee majority's choosing. Just as the rule imposes an equal time requirement for the parties' in the extended period for questioning witnesses, it is expected that the committee chair and/or committee majority would treat the minority fairly in allowing for extended questioning of a witness or witnesses of their choosing, and therefore that such arrangements could be worked out between the chair and ranking minority member in advance of a hearing.

For example, if the majority wishes to apply the extended questioning rule to witnesses A and B, the minority should be allowed to apply the extended questioning to witnesses C and D, i.e., an equal number of witnesses of their choosing. That is not to say that the minority should have a veto over extended questioning of witnesses A and B of the majority's choosing simply because the minority may not want to use their half of the time.

In summary, the rule was designed to provide fairness to both parties, both in terms of the time allowed for the extended questioning of witnesses, and in the determination of which witnesses may be subjected to such extended questioning.

I hope this will help to further clarify the rule's intent for any questions directed to your office, and for the purposes of any committee rules or motions developed to implement this rule.

Sincerely,

GERALD B.H. SOLOMON,
Chairman.

PAYING TRIBUTE TO SARA AND SIMHA LAINER

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to Sara and Simha Lainer, close friends of mine for more than 40 years and people passionately dedicated to the welfare of the Jewish community of Los Angeles. This year the couple are receiving the Lifetime Humanitarian Achievement Award from the West Coast Friends of Bar-Ilan University in Israel. I cannot think of two more deserving recipients.

Sara Lainer, a distinguished author of scholarly articles, has been an active volunteer on behalf of Hadassah, Pioneer Women, General Israel Orphans Home, the Yiddish Culture Club, and many other organizations. She continues to lecture in Hebrew and Yiddish to groups in Los Angeles, and she holds an honorary doctorate from the Hebrew Theological College, Jewish University of America. Her commitment to the intellectual and spiritual components of Judaism is extraordinary.

Simha Lainer, who ran a successful real estate business in the San Fernando Valley, is a strong supporter of, and a dedicated volunteer with, the University of Judaism, the Jewish Community Foundation, the ADL, and West Coast Friends of the Hebrew University. Anyone who cares about the Jewish community of Los Angeles owes a huge thanks to him.

In 1989, the Lainers established the Simha and Sara Lainer Fund for Jewish Education, which has thus far awarded $290,000 in scholarships to 400 children around the city. I can think of nothing more important than ensuring Judaism remains vibrant and alive in Los Angeles.

Simha and Sara raised three sons, Mark, Nahum, and Luis, who have followed in the tradition of their parents in working hard on behalf of their community. I am indeed lucky to be good friends with all three, as well as their wives, Ellie, Alice, and Lee.

Mr. Speaker, I ask my colleagues to join me in saluting Sara and Simha Lainer, whose tireless efforts to make this a better world inspire us all.

HONORING THE ROTARY GREATER MIAMI URBAN PEACE CONFERENCE

HON. CARRIE P. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mrs. MEEK of Florida. Mr. Speaker, on February 8, 1997, the Rotary Clubs of Dade County will sponsor the Greater Miami Urban Peace Conference at the Wolfson Campus of Miami-Dade Community College.

Inspired by Rotary International President Luis Giay, the conference will focus on solutions to the problems of youth and violence. Rotary seeks to identify effective programs which demonstrate results, but which could benefit from additional assistance to reach their full potential. Rotary's purpose is to go beyond merely examining problems. They want to connect hundreds of Dade County Rotary volunteers with projects to stem youth violence.

I commend the work of Rotary to constructively address a matter of growing local and national concern. It is easy to rush toward punitive measures before providing positive role models to those most in need. Rotary is assembling forces who have the ability to provide real solutions to a very real challenge. I am sure that my colleagues will join me recognizing the Dade County Rotary Clubs for their endeavors.

TRIBUTE TO MRS. ISABEL MÉNDEZ

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. SERRANO. Mr. Speaker, I rise today to pay tribute to an outstanding Puerto Rican woman, Mrs. Isabel Méndez, who has dedicated her life to taking care of others, especially Hispanics in New York City.

Mrs. Méndez was honored by the House of Puerto Rican Cultural Heritage, known as "La Casa de la Herencia Cultural Puertorriqueña," on January 11 in New York City for her longtime commitment to the advancement of the Hispanic community.

She was born in Yabucoa, Puerto Rico. In 1926, at the age of 17, she came to New York City. Since her arrival, she has fought every day to improve the living conditions of Hispanics and has helped them overcome the difficulties that are a part of the experience of immigrating to a new land.

In 1932, Mrs. Méndez was instrumental in founding the first Hispanic Catholic Church, "La Milagrosa Church," in El Barrio, east Harlem. Together with her husband, Tony Mendez, who was the first Puerto Rican male district leader of the Democratic Party, she fought tirelessly for the welfare of Hispanics in the city.

In 1950, she founded the Puerto Rican Association of Women Voters, which is still in existence. Through this organization she assisted in furthering the advancement of Puerto Rican women. Mrs. Méndez also served as an interpreter for 24 years, first as a volunteer and later on as an employee, at the New York City civil court.

Through her community activism, she has helped to ease the road for those who have come after and who have embraced New York City as their new home. She is the widow of Tony Méndez and the mother-in-law of State Senator Olga A. Méndez.

Mr. Speaker, I ask my colleagues to join me in recognizing Mrs. Isabel Méndez for her devotion to our community and for making all of us Puerto Ricans and fellow Americans proud.

THE FUTURE OF EDUCATION IN AMERICA

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. SOLOMON. Mr. Speaker, let me commend to you the following article from an editorial in the Post Star newspaper in Glen Falls, NY. This article succinctly expresses my reasons for calling for the abolishment of the U.S.

Education Department. While this Department was created with a noble eye toward protecting and advancing public education in this country, in reality it has only created dubious Federal mandates while siphoning scarce Federal dollars away from the students that truly need it. By creating an Office of Education to continue to represent public school interests and allowing more parental involvement, students will ultimately be much better served.

[From the Post Star, Glen Falls, NY]

EDUCATION DEPARTMENT NEEDS TO BE DISMANTLED

If you wonder what big idea Bill Clinton intends to ride into history, consider this one: Education.

Everybody agrees education is a wonderful thing, but increasingly, Americans fret about the quality of public schooling. The issue of instructional quality has split the educational establishment. On one side stand votaries of the National Education Association, which has worked long and hard to define mediocrity down. On the other are devotees of educational choice and home schooling, programs designed to spare kids the travail of politically correct education.

Enter President Clinton, promising to bridge the chasm. In a recent speech to the Democratic Leadership Council, he echoed Americans' apprehensions about the state of education: "We must dramatically reform our public schools, demanding high standards and accountability from every teacher and every student, promoting reforms like public choice, school choice and charter schools in every state.

At the same time, he staked out new ground for Uncle Sam: "I am not for federal government national standards. But I am for national standards of excellence and a means of measuring it so we know what our children are learning."

Here is Bill Clinton doing what he does best: bending a conservative issue to liberal ends. He has made it clear in subsequent talks that he wants to defend teachers unions, while creating a larger federal role in determining what students should and shouldn't learn.

That's not an encouraging sign, given recent trends in government-sponsored instruction. As Lynne Cheney has noted to devastating effect, school textbooks today subject students to politically correct nonsense. Some standard history books, for instance, mention Harriet Tubman more often than George Washington, Thomas Jefferson and Robert E. Lee combined!

Meanwhile, self-esteem programs assure students that accuracy isn't everything in mathematics: If you come close, that's good enough. (Tell that to the Internal Revenue Service.)

The President's case for standards rests on the beguiling but dubious notion that experts know enough to set "proper" standards. There are no data to support that claim, and considerable evidence that schools tend to thrive in direct proportion to parental involvement in school. In other words, mother and father know best.

Clinton's talk to the Democratic Leadership Council framed the upcoming reform debate. If you want a larger federal role, you're "for" education; if you want decentralized control, you're "against" standards that could guarantee excellence.

Republicans ought to hop into the fray immediately. The best way to protect the sovereignty of local systems is not to hand more power to the Department of Education. Just the opposite: The goals of excellence and local sovereignty would best be served by dismantling the department, and spinning off the Office of Educational Research and Improvement, which provides important and useful educational research.

Today, the federal government makes educators do everything from diagnosing sexual abuse and distributing condoms to serving as guardians for messed-up kids. At the same time it has heaped new duties on educators, it has clamped down on innovations Washington bureaucrats don't like. This happened to Detroit when local authorities tried to set up all-boys schools to deal with their very real problems.

By shutting down the education department while saving its research office, Congress could give Americans just what Bill Clinton is promising—a revitalized sense of local control, aided by a federal clearinghouse that could offer useful data about what does and doesn't work in the classroom.

TRIBUTE TO JON A. KASTRUP

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to recognize the personal achievement of one of our community's most talented and dedicated young men, Mr. Jon A. Kastrup. Jon's own success is sweeter than most, as he not only had to overcome the regular stresses of daily living but, also had to accomplish this while being profoundly deaf.

Many people like Jon would surrender to their condition, but Jon, never questioning his resolve, earned dual degrees in the fields of mechanical engineering and law and now holds the distinction of being one of only four functionally deaf attorneys in the United States. After his graduation from the Brigham Young University's J. Reuben Clark School of Law, Jon served as a legal intern for the U.S. Court of Federal Claims in Washington, DC. Previously, Jon lent his valuable services to the California Center for the Law and Deaf in Oakland, CA where he served as a legal assistant and law clerk, and in the State of Utah as a court appointed special advocate for the Guardian Ad Litem Program.

Jon has also served in several notable capacities for private and public sector institutions, including the Department of Human Development at the Rochester Institute of Technology, where he served as a student development assistant. He was also an engineering aide for the U.S. Navy and previously served as an engineer drafter for the Unidynamic Corp. of St. Louis, MO. Jon has excelled in everything he has set out to accomplish. Despite his physical limitations, he never once relented in his ambition to succeed. Jon has proven that through steadfast dedication and a deep belief in oneself, "if you can dream it, you can do it."

TRIBUTE TO BETTE JANE RODRIGUEZ

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. KLECZKA. Mr. Speaker, I rise today to pay tribute to my friend, Bette Jane Rodriguez, who is being recognized by the city of Cudahy on February 13, 1997, as she retired after serving the Treasurer's Office for 33½ years.

Throughout her long and dedicated term, Bette Jane has served as deputy treasurer to several city treasurers. Her leadership while assisting the government of the city of Cudahy to run more effectively and efficiently should be commended.

Ms. Rodriguez has served on the Cudahy Area Business and Professional Women's Club since 1973. She has also served on the Cudahy Democratic Unit by providing assistance on several local and Presidential elections, as well as on the Cudahy Municipal Credit Union and on the Cudahy Historical Society for the last 10 years.

Bette Jane Rodriguez will truly be missed in City Hall, but knowing her as I do, she will only become more active in the community following her retirement. Therefore, it is with great pleasure I join Bette Jane's coworkers, the city of Cudahy, and many friends in honoring her many years of service and contributions to the city of Cudahy.

Best wishes, Bette Jane, and on behalf of the residents of the city of Cudahy, I offer a heartfelt "thank you" for your unselfish work over the years and for a job well done.

CONGRESSMAN BILL RICHARDSON: ON TO DIPLOMACY FOR HIS COUNTRY

HON. GEORGE P. RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. RADANOVICH. Mr. Speaker, a recent event affecting this House leaves us with mixed emotions. We are losing one of our Members, but the service to which he is going is greatly important to our Nation.

Congressman BILL RICHARDSON has been nominated to be America's next Ambassador to the United Nations. In that role, he will serve in the President's Cabinet and be a principal in the guidance and implementation of our country's foreign policy.

I salute President Clinton for his wise choice of BILL RICHARDSON. We need someone with his firmness and no-nonsense approach to represent our interests at the United Nations.

All of us are familiar with BILL RICHARDSON'S record as a hostage negotiator in troubled world areas. He showed on several occasions that he can identify critical issues and find the means of resolution.

My familiarity with BILL RICHARDSON comes not alone from being aware of his creative diplomatic strategies in North Korea, Iraq, and Sudan. I had the good fortune to serve with him on the Resources Committee and on its

National Parks, Forests and Lands Subcommittee, where he was the ranking Democrat.

BILL RICHARDSON, as the President said, in announcing his intention to nominate him, also is one of our Nation's most prominent and proud Hispanic leaders. His example is one that reflects pride to that community and his heritage.

In saluting our colleague as he embarks on a new set of challenges, I take pleasure in sharing with the House the following transition of an article that was published recently in the German newspaper, Handelsblatt. Written by diplomatic and political correspondent Viola Herms-Drath, this report makes plain the high hopes America's allies have for the role BILL RICHARDSON will play.

[From the Handelsblatt, Dec. 17, 1996]

CLINTON'S NEW U.N. AMBASSADOR SEEN AS UNORTHODOX DIPLOMAT

With the appointment of the long-time Congressman from New Mexico, Bill Richardson, as Washington's new U.N. Ambassador, U.S. President Bill Clinton has achieved two successful political moves. First, he has placed a politically correct Hispanic on his team and, second, he has appointed a creative diplomat with style and a great deal of tact. Clinton has no doubts that Richardson will be able to represent U.S. interests and ideals at the U.N. and in the world.

Richardson first came to public notice through his exploits in the political arena, especially because of his spontaneous actions for the release of American citizens being held by totalitarian countries, from North Korea to Bangladesh, Cuba and Iraq. Just a week ago this son of a Mexican mother and an American father was in the Sudan, negotiating an arrangement for the release of two Red Cross pilots and an Australian nurse. Richardson's extraordinary diplomatic mission began by chance when he was participating in Pjonjang in the discussion on nuclear disarmament. At the same time, a U.S. helicopter was shot down over Korea. Richardson took it upon himself to see to the release of the pilots.

In 1993 this cosmopolitan liberal Democrat helped Clinton with negotiations on the North American Free Trade Agreement (NAFTA) and in efforts to achieve as balanced a budget as possible. In opposition to the Senate Foreign Relations Committee, he opposed the embargo on Havana after the Cubans shot down two unarmed American planes and Clinton approved the step for tactical reasons and extended it to other countries, to the great irritation of his European trading partners.

This Democrat who is also popular with the Republicans now has the task of explaining the U.N. operations to the Senate committee which must confirm his appointment. Although the U.S., as a founding member of the U.N., has always recognized the principles of U.N., now Richardson must continually preserve U.S. prerogatives. The Clinton Administration has always, on the one hand, advocated strengthening the U.N. through reform measures, but on the other hand, has certainly made it clear that for its own economic and security interests, it intends to rely on its own strengths and alliances.

In contrast to the rather aggressive behavior of his predecessor, Madeleine Albright, who has now been elevated to the position of Secretary of State, Richardson has shown himself to be a flexible negotiator, a clever diplomat and a reliable go-between.

PAYING TRIBUTE TO MR. WADE BRUNSMANN

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. COSTELLO. Mr. Speaker, I want to ask my colleagues to join me in paying tribute to Mr. Wade Brunsmann, who was selected by the East-West Gateway Coordinating Council in the St. Louis Metropolitan Region to receive their Achievement Award in 1996.

I have known Wade for many years, through our joint service on the St. Clair County Board. Wade is a dedicated public servant; he is a Navy veteran of World War II, and has served on the county board since 1954, except for an 8-year gap. He is also an outstanding family man, married and the father of four grown children and five grandchildren. He is the retired owner/operator of Brunsmann's Heating and Refrigeration Service.

Wade Brunsmann has been a leader in the St. Clair County region. He currently serves as chairman of the County Board's environmental committee, and has served as such for the past 7 years. He has been an aggressive leader on zoning, land use, and landfill issues for all citizens. He also serves as a volunteer with Belleville Area College's Programs and Services for Older Persons, is a member of St. Theresa's Catholic Church and is an active and outstanding member of the Democratic Party.

Of course, for all of these contributions and his overall dedication to serving the public, East-West Gateway awarded him with their Achievement Award. I fully agree, and ask my colleagues to join me in congratulating him on this fine recognition.

HONORING PIKESVILLE VOLUNTEER FIRE COMPANY

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. CARDIN. Mr. Speaker, I rise today to honor the Pikesville Volunteer Fire Company on its 100th anniversary.

It all began on February 4, 1897 when a group of local citizens met for the first time to discuss the need for organized fire protection, they met at the Odd Fellow's Hall. During this meeting, the group nominated several names for the fire company, The Pikesville Volunteer Fire Company won the election by an overwhelming margin of 23 to 6. The following year, a fire hall was built and a community wide dedication celebrated its opening.

Known as the company of first, the Pikesville Volunteer Fire Company is a leader in volunteer fire protection. Its members are made up of both civilian and military personnel. In fact, each year, a memorial service honors members of the Fire Company who served their country as well as their community.

Today, their membership roll is over 150 (a third of whom are active service) which provides enough manpower to keep the Pikesville Volunteer Fire Company responsive to the thousands of calls each year from the community.

I hope my colleagues will join me in extending congratulations to the Pikesville Volunteer Fire Company in celebrating its 100-year history in Baltimore County, and in thanking these volunteers for contributing to the growth and safety of the Pikesville community.

FLORIDA DEPARTMENT OF HEALTH INAUGURATED

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to take this opportunity to express my best wishes to Secretary James Howell, M.D. MPH, and Executive Administrator Annie R. Neasman, R.N., M.S., as they assume the leadership of the State of Florida's new Department of Health.

The Florida Legislature voted in 1996 to create the Florida Department of Health as a separate entity. The legislature charged the Secretary and staff with promoting and protecting the health and safety of all Florida residents and visitors in partnership with county governments.

On February 3, Secretary Howell and the Florida Department of Health staff in Dade County will gather at Miami Dade Community College Wolfson Center with their local partners to inaugurate the department.

I congratulate them on this day as they embark on their mission to make Florida healthier. I know that under the leadership of Secretary Howell and Administrator Neasman, their dedicated staff and their community partners will rise to the many challenges ahead.

PAYING TRIBUTE TO IRWIN ROSENBERG

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to Irwin Rosenberg, who for the past 8 years has played Santa Claus at the Pacoima Community Youth Culture Center's Christmas party. I have not met many Santas named Rosenberg; then again, I have not met many people like Irwin. A successful businessman, Irwin somehow finds the time to remain active in many organizations and on behalf of numerous causes. Like few others, he is there for his community.

Irwin is irrepressible. Not only does he immerse himself in outside activities, more often than not he ends up in a leadership role. For example, he is the past president of the Granada Hills Little League; past president and past chairman of the Government Relations Committee, San Fernando Chamber of Commerce; commissioner of the Los Angeles County Private Industry Council; and senior

vice-chairman of the board of directors of New Directions for Youth. There is hardly a sector of the San Fernando Valley that has not been the recipient of Irwin's time and efforts.

In honor of his many charitable and civic contributions, Irwin has been the recipient of numerous awards. In 1989, he was given the California Association of Physically Handicapped's Humanitarian of the Year Award; in 1990, he was named Kiwanian of the Year (San Fernando); 2 years later he received the J. Leo Flynn Citizen of the Year Award from the San Fernando Chamber of Commerce.

Of all his civic and professional duties, I know that nothing gives Irwin more pleasure than being Santa to many underprivileged kids every year at the PCYCC Christmas party. He is every bit as happy to see the kids as they are to see him.

I ask my colleagues to join me in saluting Irwin Rosenberg, whose tireless work in the community is a shining example to us all. I am proud to be his friend.

THANK YOU DR. MALEEHA LODHI

HON. MATTHEW G. MARTINEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. MARTINEZ. Mr. Speaker, I rise on behalf of my colleagues and myself to place in the RECORD a bipartisan statement of appreciation for the outgoing Ambassador of Pakistan, Dr. Maleeha Lodhi, who is returning home shortly after completion of her tenure as Ambassador to the United States of America.

Ambassador Lodhi worked with dedication and resolve to strengthen the traditional friendship between the United States and Pakistan, paving the way for greater cooperation between our two nations. Through her untiring efforts, significant progress has been made towards redefining United States-Pakistan relations in the post-cold-war period.

In our interaction with Ambassador Lodhi, we always found her to be a highly persuasive advocate of her country in a forthright and objective spirit. We admire her commitment to democracy, freedom, and human rights, qualities that created a common bond with us.

Both the United States and Pakistan have been served with distinction by Ambassador Lodhi and we wish her the very best for the future.

Tim Johnson, U.S. Senate; David E. Bonior, Member of Congress; Tom Lantos, Member of Congress; Eni F.H. Faleomavaega, Member of Congress; Cynthia McKinney, Member of Congress; Peter A Defazio, Member of Congress; Thomas M. Davis, Member of Congress; Gerald B.H. Solomon, Member of Congress; Dan Burton, Member of Congress; Peter King, Member of Congress; James P. Moran, Member of Congress; Edolphus Towns, Member of Congress.

TRIBUTE TO TWO IMPORTANT AMERICAN PATHOLOGY ORGANIZATIONS

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. KLECZKA. Mr. Speaker, I rise today to pay tribute to two outstanding organizations, the College of American Pathologists [CAP] and the American Society of Clinical Pathology [ASCP]. This year, CAP will be celebrating its 50th Anniversary, and ASCP will be celebrating its 75th Anniversary.

Dr. Rob Mckenna, who is the President of ASCP, and Dr. Ray Zastrow, the current CAP President and a good friend, have led these organizations with the help of their many members through a long history of protecting patients by providing high quality laboratory and patient care. ASCP is the largest organization of pathologists and medical technologists in the world, and CAP is the largest organization of board-certified members in the world.

These organizations and the members who practice pathology and laboratory medicine provide a substantial contribution to medical science and patient care through accurate medical test results that enable physicians to make accurate diagnoses and recommend appropriate treatments.

CAP started as an outgrowth of ASCP and they have worked closely ever since. Their common bond has been a symbol to both patients and fellow professionals of their dedication to professional excellence.

Congratulations, CAP and ASCP, on your many years of committed service to the field of medicine.

"IMMIGRANTS ARE NEW YORK CITY'S GREATEST ASSET"

HON. PETER T. KING

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. KING. Mr. Speaker, throughout his years as U.S. Congressman, mayor of the city of New York and as mayor for life of the city of New York, Ed Koch has secured for himself the title "The Voice of Reason." Mayor Koch has a unique capacity to find common sense solutions for the problems that plague our society. Even more importantly, he is not afraid to be controversial. He is a true New Yorker who knows how to get to the heart of the problem. This quality was most recently typified in his recent column entitled "Immigrants are New York City's Greatest Asset" which appeared in the New York Post on January 17. I commend this column to my colleagues because it touches so meaningfully on the issue of immigration which is being exploited and demagogued by too many politicians today.

IMMIGRANTS ARE NEW YORK CITY'S GREATEST ASSET

(By Ed Koch)

Ellis Island is holy ground: My parents landed there separately in the early 1890s. Before 1924, there were no limits on the number of people permitted to enter this country. If you survived the voyage in steerage and did not suffer from a contagious disease, you gained entry.

My parents and millions of others came here looking for a better life. They sought economic opportunity and freedom from anti-Semitism. They did not believe the streets were paved with gold. But, like millions of others, they did believe America would be free of the daily cursing they endured from their non-Jewish neighbors in Poland. And they believed America would offer them and their children a future denied them elsewhere.

Several years before my father's death, my sister and her son Jared sat down with him and taped some of his early memories. She asked, "Daddy, what did you do for fun in the winter?" He replied, "Mostly we went inside to get warm."

My mother's home in Poland was part of the Austro-Hungarian Empire. I recall asking her, when I was quite young, "Mama, why do you always refer to Kaiser Franz Joseph as the 'good Kaiser Franz Joseph?'" She replied "Sonny, because he didn't kill the Jews."

For years, I always wondered if she was right. After her death, I read that Kaiser Franz Joseph issued a decree that there was to be no Jew-bashing in his domain. Mama was always right.

I've visited Ellis Island a number of times, both before and after its renovation and designation as a federal museum. Like many others whose parents or grandparents came through the Great Hall, I was elated when given an opportunity by the new museum to mark my parents' passage with metal markers.

Now, when I go to the island, I visit those markers. I touch my lips with my finger-tips in a symbolic kiss and then touch my parents' names inscribed on the metal plates.

My parents, who were marvelous people with very few worldly goods and a very limited education, nevertheless made it, raising three children—my brother, Harold, the eldest; my sister, Pat, the youngest; and me—and becoming part of America's middle class.

My mother died at age 62, my father at age 87. Mother lingered in excruciating pain before her death, an experience that has made me believe in physician-assisted suicide. I will never forget her screams of unending pain as she pleaded with me, "Eddie, please let me die." And I, in tears, replied "Mother, you're getting well," when I knew that she was not.

My father, a gentle and beloved man with an enormous number of friends, died easily, quickly and painlessly. We thanked God for allowing him to pass over to the next world in such peace. We were not so appreciative of the painful passage of our mother.

I've always been bewildered by the Catholic acceptance of pain in the onset of death. If I understand the concept correctly, the pain of one dying individual is in some mystical way a great benefit for humanity and provides enormous good for others.

Two princes of the Catholic Church—Joseph Cardinal Bernardin, whom I met briefly and admired, and Terence Cardinal Cooke, with whom I had a warm friendship—both embraced death and pain.

My mother told me early on, "Ed, don't mix in someone else's religion." So I won't. While I do not fear death, having had a full life, I do ask God to allow me to pass over without pain when the time to go arrives.

Why am I dwelling on the lives of my parents? Because recently there has been a

spate of stories on immigrants, particularly those who came to New York in the last 10 years.

The City Planning Commission issued a report entitled "Annual Immigrant Tape Files, 1990-94, U.S. Immigration and Naturalization Service Population Division." I won't list its many conclusions—all favorable—concerning the impact of legal immigrants on the City of New York. But these conclusions reinforce the need to fight the mean-spirited efforts by Congress to punish immigrants.

It isn't wrong to require sponsors of immigrants to fulfill their legal obligations to support those they brought here who otherwise would become public charges, as the new law mandates.

But it is wrong to deny legal immigrants who arrived before this law went into effect the SSI coverage and welfare benefits they'd been receiving. The new laws stripping legal immigrants of welfare inclusion should have been prospective and not retroactive.

Recently I read the comments of Massachusetts Gov. William Weld, a Boston Brahmin, on the value to our country of the immigrant: "I have long said that in the 1920's and 1930's the best Americans were Europeans, and principally European Jews who had reason to know what made this country special. In the 80's, the best Americans were Asians, for the same reason." I silently cheered.

According to the City Planning Commission report, legal immigrants are coming to the U.S. in even larger numbers, and increasing percentages of the total number of these immigrants hail from parts of the world that did not participate in large-scale immigration when my parents came here, including Africa, Asia and Latin America.

These immigrants, like their predecessors—my parents among them—add to the richness of this country. They give us the benefit of their intelligence, their labor and their children. In the words of Martha Stewart, "It's a good thing."

My father never learned to write anything besides his name in English, although he could read. He worked hard all of his life, generally holding two jobs to support his family. He retired from his small fur coat manufacturing business at 75, but, bored, he went to work for Bloomingdales' fur coat storage six months later.

When elegant ladies asked him to store their coats, he would ask them to write their name and address on a ticket. He would invariably look at the ticket and say, "I see by your address that my son is your congressman."

It made no difference if these women lived in Brooklyn or Jersey City. My father saw me as representing the entire United States.

We should acknowledge the enormous contributions of immigrants, embrace them and warmly welcome them. Immigrants are New York City's greatest asset, today and for the future.

Updating the philosophy of the good Kaiser Franz Joseph, "Let there be no immigrant-bashing in the U.S."

HONORING ROSALIE KUNTZ OF PASADENA, TX

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. BENTSEN. Mr. Speaker, I rise to honor one of my constituents, Rosalie Kuntz of Pasadena, who is a civic leader in her community and a pioneer for women in the insurance industry. Mrs. Kuntz is active in a wide range of community activities and served as the first female president of the Texas Association of Life Underwriters. The following article from the January 8, 1997, Houston Chronicle describes her many accomplishments and honors:

HER JOY IS IN THE JOURNEY—ROSALIE KUNTZ REVERED BY PASADENA COMMUNITY

(By Pat Swanson)

Willingness and commitment have not only earned Rosalie Kuntz success, but respect in her profession and in the Pasadena community she calls home.

Kuntz is celebrating 41 years in the insurance business. And, at age 72, she continues to be heavily involved in civic activities for the Pasadena-area community.

Kuntz and her husband Gerald (Jerry), a retired surveyor for Shell Oil Co., have lived in Pasadena 48 years. The couple are owners of the Kuntz Insurance Agency. Their children, Rita, Linda and Kyle have given them eight grandchildren. The Kuntz' are longtime members of St. Pius V Catholic Church.

Scott Loomis, an insurance man who has known Rosalie Kuntz for 30 years, said, "Rosalie is one person who could handle herself in a man's world before it was fashionable. While some men were intimidated by Rosalie, others wanted her on a project because they knew she would do a good job."

Parker Williams, president of San Jacinto College South, said, "Rosalie is known by her actions. She is the type of person that doesn't demand respect, but people respect her. She is one smart cookie. She has a bright mind and a deep faith.

"Rosalie is the type of person who believes you can do anything you want to do if you want to do it badly enough. You know she is always there if you need her. She gives back to the community what she takes out."

Kuntz was the first female president in the 59 year history of the Texas Association of Life Underwriters that has a membership of 8,300.

She served in that capacity for the 1984–1985 term. During that term, Kuntz received national honors at the National Life Underwriters Conventions for Public Service and Membership achievements for the State of Texas and Pasadena Association of Life Underwriters.

Prior to her presidency in the organization, Kuntz served as T.A.L.U. Vice-Chairman of Public Service and Public Service Chairman.

She is a life member of the Texas Leaders Round Table and a charter member of its Lone Star Leaders. Kuntz has served in all offices of the Pasadena Association of Life Underwriters, including president.

One of Kuntz's most memorable experiences was in 1983. As past president of Women Life Underwriters Conference, Kuntz was one of 50 women invited to be a luncheon guest of President Reagan in the White House.

Kuntz was born in Houston. After she and Jerry moved to Pasadena in 1948, Rosalie assumed the position of assistant manager at the Pasadena Bowling Center working for Charles (Monty) Manoshagen.

"Monty left the bowling center to go into the insurance business, and was also responsible for getting me into it. He and his wife came over to the house one night in 1956 with a bunch of books. He threw the books on the coffee table and said, 'Rosalie, you're going into the insurance business.' I told him I didn't know a thing about insurance. He said, 'I'll teach you.' And, he did. I will finish my 41st year in the business today, Jan. 8, 1997," Kuntz said.

"When I went into the business, there weren't many women in the insurance business. It was very difficult at first because women were not accepted in the insurance field, just like the real estate business.

"Now, women are building up in the real estate business and also in the insurance business," Kuntz said.

"I had some good friends and good teachers to teach me the business, and I went on from there. One doesn't do anything by themselves. They always have someone that will help them.

"I was very fortunate in having Mr. Manoshagen to be around to help me along. He kept up with me as long as he lived. (He died about four or five years ago.) He would always call me each year and say, 'What is your goal for next year?' And every goal I told him I had set, I made throughout the years.

"It is a great profession for women. And, it is the greatest career anyone could ever get into, any type of insurance business really, but specifically life and health," Kuntz said.

Jerry and Rosalie's secretary, Jannie Pugh, get much of the credit from Kuntz.

"Jerry helps me an awful lot. So does my secretary, Jannie, who has been with me almost 20 years. She is just like a member of the family. They are behind the scenes, but they sure do help a lot," said Kuntz.

"We have worked together so long, we are more like friends," said Pugh.

For her services to the community, Kuntz was chosen Pasadena Citizen of the Year in 1968. She was elected to the Pasadena Hall of Fame in 1988 for the same reason.

According to Stella Walters, owner of Bruco, Inc., "Rosalie and I have been involved with a lot of the same organizations for 30 years. We also are good personal friends. We have worked together on everything, including the Pasadena Chamber of Commerce, Optimists, Red Cross, YMCA, American Heart Association, to name a few.

"She has more energy in her, for her age, than anyone else I know. She and Jerry have been married 48 years. She is a good mother. I doubt there is anyone in business in Pasadena who does not know her. She is just amazing."

As a member of the San Jacinto Day Foundation, Kuntz chaired the first Strawberry Festival in Pasadena in 1974. She served as an advisory board member in 1986.

She was presented the 1992 Lone Star Award for volunteer service in the community. She was a director of the South Houston Chamber of Commerce from 1978 until 1980.

Kuntz has been Director and Membership Chairman of the Deer Park Chamber of Commerce since 1991 and is the immediate past president of the organization.

Kuntz was the first woman to be elected president of the Pasadena Chamber of Commerce, and currently serves as a member of the organization's Cultural Affairs, Voice of the Chamber and Governmental Affairs Committees.

She also was chairman of the Pasadena Chamber's New Member Orientation Committee during the 1990–1991 and 1992–1993 years.

From 1968 to 1996, Kuntz has been a director of the American Heart Association, Pasadena Unit. She served as chairman of the Heart Business Drive for 12 years, and was

chosen Volunteer of the Year in 1987, with a grant named in her honor.

She was appointed to serve on the Advisory Board of the Battleship Texas from 1983 to 1989, by Texas Governor Mark White.

Kuntz is past president of the Soroptimist International of Pasadena, and has served on the advisory board of The Rose, a Texas-based, non-profit organization dedicated to breast cancer screening since 1987. She also has served as a member of the Rehabilitation Foundation since 1984.

Additionally, Kuntz has been a director of the former Barbour's Cut Seaman's Center since 1991. The facility is now the Lou Lawler Seaman's Center.

She is past director of the Texas Society of the Prevention of Blindness; the recipient of the 1975 Distinguished Service Award from the Pasadena Jaycees; 1969 chairman of the Pasadena Drug Abuse Committee; vice-chairman of the Committee for the National Olympic Girls Volleyball Team and past vice-chairman and member of the Pasadena City Beautification Commission.

As a longtime member of St. Pius V Catholic Church, Kuntz is a past secretary of the Diocese of Galveston-Houston Board of Education; the St. Pius Finance Committee and past member of the St. Pius V Church Parish Council.

For 25 years, Kuntz also served as a volunteer coach for the St. Pius V Catholic girls softball and volleyball teams.

According to Bud Osborne, former owner of Osborne-Apple Ford, "Rosalie is a vibrant get-up-and-go person. She always bought cars from us and insures our whole family. We like to kid her and tell her we sent all her kids to college. She comes by at least once a month to talk to us. She is just a wonderful person. We think a lot of Jerry, too."

"Rosalie is my dear friend," Nina Osborne said. "When she was inducted as president of the Deer Park Chamber of Commerce, she arranged to have us seated with her family. She is just like family to us, too."

Billie Fife, former Civil Defense Director for the City of Pasadena and administrative assistant to past Pasadena Mayor Clyde Doyle, said of her friend, "Her interest in you continues long after you take out a policy. There is no monetary reward.

"She is just there for her clients. She is there for your needs no matter when she last saw you—a couple of days ago or 15 years ago. She is just like that little rabbit with the battery. I believe her joy is in the journey. She will never retire."

CELEBRATING THE 100TH ANNIVERSARY OF THE BELLEVIEW

HON. C.W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. YOUNG of Florida. Mr. Speaker, one of the great privileges of serving from the 10th Congressional District of Florida is to represent one of our Nation's landmark hotels, the Belleview of Belleair, FL, which celebrates its 100th anniversary later this month. Not only is it world renowned as a tourist destination, but it is listed on our National Registry of Historic Places.

Henry B. Plant, the railroad magnate who became known as one of Florida's greatest developers, opened the doors to his elegant hotel named the Belleview on January 15, 1897. Built on a bluff that overlooks Clearwater Harbor, the original 145-room hotel quickly became recognized as a favored winter retreat.

Later, as golf courses and swimming pools were added, the hotel became uniquely modern for its time. In addition to serving its guests, the hotel was also the location for the Belleair post office and fire station. While the hotel ownership changed and the railroad cars left the siding, the importance of the Belleview to the area did not wane. In fact, during World War II, the hotel was leased to the U.S. Army Air Corps to serve as the auxiliary barracks for MacDill and Drew Fields in Tampa.

Several years later, the hotel, now with more than 500 rooms, reopened as a resort and began a new chapter that led to its being qualified for a listing in the National Register of Historic Places on March 7, 1980. I was privileged to have been a part of that program, and it is a special honor for me to be able to salute the Belleview Hotel—now the Belleview Mido—on this its 100th anniversary.

The Belleview has always been known for its hospitality and its graciousness. It has hosted countless numbers of dignitaries, conventioneers, and others who wish to enjoy its golf course, its pools and sunshine, its cuisine, and its spa and fitness center. Today its guests are no less important than those who were greeted by Henry B. Plant, and as we look to the new year and the 21st century, I congratulate the Belleview Mido on its 100th anniversary and I thank the management and staff for their work in preserving this magnificent structure, its history, and contributions to the Town of Belleair and to Pinellas County.

A TRIBUTE TO THE SAGINAW NEWS

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. CAMP. Mr. Speaker, I rise today to call my colleagues' attention to an editorial in the Saginaw News. To open the New Year, the editors published a set of principles. These principles remind us that our local communities are the wellspring of America's greatness, and an endless source of inspiration for our national leaders.

Put forth in these principles are many of the driving forces behind the work we do in Congress and the vision we share for our country: lower taxes, a smaller government, and economic opportunity for all Americans. I believe these principles serve as goalposts for the 105th Congress as well. I urge my colleagues to read the News' basic principles as we begin work in the new Congress.

Mr. Speaker, at this time I would like to submit the editorial from the January 1, 1997 edition of the Saginaw News:

ISSUES AND OPINIONS: OUR BASIC PRINCIPLES

The principles a newspaper holds may often be obscured by the rush of day-to-day events. But we think it's important for readers to know that our views of those issues are guided by a set of fundamental beliefs.

That's why The Saginaw News each year publishes a statement of the principles on which it intends to base editorial-page comments over the days and months to come.

Each matter on which we express our opinion is reviewed and judged on its own merits. As circumstances change, they may prompt a fresh look at our own ideas.

But the constant process of review and judgment that leads to editorial opinion rests on a firm foundation. Some issues are transitory; others, more fundamental to our lives and our society, bear repeated attention.

While the thoughts here are general expressions of ideas and ideals, they help determine our approach to the people, events and proposals that shape our life.

Our basic goal is to speak in which we perceive to be the best interests of our readers.

Editorials, while based on reporting and analysis of news events and developments, express a viewpoint. So we expect disagreement. If we stimulate independent thought and discussion, we believe we have achieved one of our major purposes whether or not our words have been persuasive.

But we believe we have an obligation to seek to persuade. A newspaper has a responsibility to its community to be, as best it can, not only its voice to the world, but its interpreter of that world; to be its advocate and defender, and sometimes its critic and counselor, always toward the benefit of its citizens.

We acknowledge that is a very large responsibility indeed. We welcome any and all suggestions from our readers on how we can better fulfill it. We don't seek to act in place of public opinion, but to give the public an opportunity to expand on its own beliefs.

That cannot happen, though, without mutual understanding.

We hope this statement of the principles of The Saginaw News will further that understanding.

LOCAL ISSUES

On Saginaw-area issues. The News supports:

Efficiently providing the best public service at the lowest possible cost to the taxpayers.

High-quality representation for all segments of each community.

Progressive, professional management at county, city and township levels.

Planning for development of human and physical resources in awareness of the constant challenge for fresh approaches.

A strong central urban area serving the entire community.

Maximum cooperation among all governments, with consolidation of municipal services to the greatest possible extent.

Recognition that racial and ethnic diversity is a strength on which to build toward the common goals that unite us.

Strong human-relations efforts to assure dignity and equal opportunity for all.

Care for our streets and homes, because a community can be no better than its neighborhoods.

School systems that provide a comprehensive education.

Strong academic and behavioral standards for students; quality instruction and administration; and equitable public financial support adequate to achieve those goals.

The free-enterprise profit system as that which most fully ensures economic liberty and a high standard of economic life to business, industry and employees.

Expansion of job opportunities, and diversification of the economic base, in recognition of the serious challenges of constantly changing times.

Workplace policies respecting the rights of employees, management—and the public.

STATE ISSUES

On state issues, The News supports:

A fair system of taxation to maintain efficient, quality state services at the lowest possible cost.

Achievement of an economic climate conducive to retaining existing industry and diversifying Michigan's economic base.

Preservation of Michigan's natural beauty and resources while balancing the legitimate needs of the state's agriculture, other economic institutions and population.

Recognition that the auto industry remains the region's and state's economic mainstay.

Swift and fair administration of justice. Respect for the law by citizens—and of citizens by the law and those sworn to enforce it.

Political leadership, at the state level and in our representation at the national level, that responds to the needs of the state and its people.

NATIONAL ISSUES

On national issues, The News supports:

A limited government under which political power rests in the wisdom of the governed, and the rights of the people to control their own destinies, through their representatives.

Strong defense of the Bill of Rights as the unique section of a unique Constitution on which rests preservation of our most fundamental individual liberties.

A decent respect for the financial resources of our citizens, expressed through restraint in taxation and spending.

Policies encouraging the opportunity to seek and find employment for all who desire it.

A strong, efficient defense, essential amid a changing world's twists and turns.

Safeguarding the national environment consistent with economic stability and growth.

Maintaining the strength of political parties as American institutions best able to build citizen interest and involvement in government, and to develop responsible leadership.

INTERNATIONAL ISSUES

On international issues, The News supports:

A foreign policy that stresses the desire of the United States to live in harmony with all nations; that recognizes the right of all peoples to peaceful self-determination; that encourages the continued expansion of freedom in all nations; that advocates nonviolent resolution of disputes; that recognizes that remaining threats to our freedom, and others', require strong alliances to deter aggression even as we welcome the reduction of the danger of war.

Free and fair trade as the interdependent economies of the world evolve in new directions.

The right of all people to achieve and maintain a decent standard of living, to develop and prosper.

PERSONAL LIFE

Finally, The Saginaw News believes there is more to the quality of life than our personal relationships, jobs and leisure activities. The News believes in encouraging people to look beyond themselves. We believe that life becomes more satisfying and meaningful when we care about all our neighbors and the community of which we all are a part.

IN HONOR OF THE CONCORD HIGH SCHOOL CRIMSON TIDE MARCHING BAND

HON. CHARLES F. BASS

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. BASS. Mr. Speaker, I rise today to pay tribute to the Crimson Tide Marching Band of Concord High School in Concord, NH. The talents of this 120-piece band, under the direction of Bill Metevier, were recognized by the Presidential Inaugural Committee, leading to an invitation to perform in the Inaugural Parade in our Nation's capital on January 20, 1997.

Concord High School has one of the best marching bands in all of New England. These young musicians earned the wonderful opportunity to perform in front of the President and the First Lady, as well as the entire Nation watching on television.

The city of Concord embraced the Crimson Tide Marching Band, as individuals and local companies raised over $20,000 to help pay for the band's trip to Washington, DC. The Concord Schools Friends of Music deserve much credit for leading the fundraising effort to allow these students to enjoy an opportunity that will be remembered for a lifetime.

I know that the parents and families, the teachers, students and staff of the Concord School District, and the entire state of New Hampshire are exceedingly proud of the accomplishments of the Crimson Tide Marching Band.

Mr. Speaker, I ask all of my colleagues to join me in congratulating the musicians of the Concord High School Crimson Tide Marching Band for participating in a memorable and historic occasion, the 1997 Presidential Inaugural Parade.

RECOGNIZING THE GENEROSITY OF ALLEN LEEPA

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. BILIRAKIS. Mr. Speaker, I rise today to recognize the extraordinary generosity of two wonderful people who live in my Ninth Congressional District in Florida. Allen Leepa and his wife Isabelle have donated a $2.15 million endowment and a multimillion dollar art collection to be housed in a new museum at the Tarpon Springs campus of the St. Petersburg Junior College in Tarpon Springs, FL.

Mr. Leepa has said that "art is a vehicle to promote education," and his gift will certainly benefit not only the students and faculty of the college, but the residents of Florida's suncoast as well.

The college will be building the Leepa/Rattner Museum of Fine Arts, which is to honor Mr. Leepa and his late stepfather, Abraham Rattner. The museum will house 150 works by Mr. Leepa, an abstract artist, and 20th century modernists including Georges Rouault, Hans Hoffman and Henry Moore. Two works by Pablo Picasso will also be included.

A resident of my birthplace in Tarpon Springs for 14 years, Dr. Leepa studied art in Chicago, New York, and Paris at the Sarbonne. He has taught at several fine universities around the country, and he has published three books about modern art.

Mr. Speaker, art means different things to different people. However, it does serve as an outlet for the creative side of all of us. Throughout history, the expressions of talented artists have contributed to a greater understanding of our society and of ourselves.

As a result of Dr. Leepa's generosity and kindheartedness, Floridians will be able to enjoy the finest in art right in the heart of Florida's suncoast. I ask my colleagues to join me in thanking Dr. Leepa and wishing the Leepa/Rattner Museum all of the best in the future.

CONGRATULATIONS TO SAN FERNANDO HIGH SCHOOL

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to San Fernando High School, which this year is celebrating its 100th anniversary. I know of few high schools in southern California with such a long and rich history.

One way to judge a school is by its alumni. Using that criterion, San Fernando High School receives high marks. For example, Hawley Bowlus, the man who supervised the construction of the Spirit of St. Louis, Charles Lindbergh's plane, was a graduate of San Fernando High. Another alumnus, Denny Crum, is today one of the top college basketball coaches in the country. A third, Jimmy Velarde, is a four-time Emmy winner and producer of shows such as "Culture Clash."

The school has also had its share of sports glory. Two of the greatest running backs in USC history, Anthony Davis and Charles White, attended San Fernando High. Fifty years earlier, in 1925, San Fernando produced its first championship football team. Other sports fared well; the school has produced champions in baseball, track, and basketball.

San Fernando High School today has many reasons to be proud. The school commonly graduates 675 seniors out of a class of 700, and is virtually free of the crime, drugs, and gangs that unfortunately plague many urban high schools. I have attended several events at the school, and have always admired the spirit of its students and the commitment of its faculty and staff.

I ask my colleagues to join me in saluting San Fernando High School, an excellent institution with a proud history. Congratulations to all on this special anniversary.

TRIBUTE TO REV. JOSEPH M. ROLLINS, JR.

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. SERRANO. Mr. Speaker, I rise to pay tribute to Rev. Joseph M. Rollins, Jr., who was honored on January 18 for his long and fruitful career as a community activist and pastor of Saint Augustine Presbyterian Church, at 838 East 165th Street in my congressional district, the South Bronx.

Reverend Rollins, a third generation Presbyterian minister, will be retiring as pastor of the church at the end of this year after 24 years of service. The tribute in his honor, entitled "This Is Your Life", highlighted his tireless work in the fight for civil rights and his dedication to the service of his fellowship and community.

Reverend Rollins was born in Newport News, VA, in 1926. He is the great grandson of a former slave, Mrs. Clements, who gained her freedom at the age of 11. Reverend Rollins holds a degree from Johnson C. Smith University, in Charlotte, NC, an institution which was formerly associated to the Presbyterian Church. In 1954, Reverend Rollins organized the Trinity Presbyterian Church in Tallahassee, FL.

A man of tremendous faith, he was among the first who believed in peaceful dissent as a catalyst of equal rights for all people regardless of color. In 1955, he was involved in the organization of the first bus boycott in Tallahassee, right after the arrest of three students from Florida A & M University. Reverend Rollins was among those who marched with Martin Luther King, Jr., during the civil rights movement.

In 1963, he came to New York City and served as associate executive for the Commission on Religion and Race for the Presbyterian Church. In 1968, he became the executive of the National Committee of Black Churchman, an ecumenical movement.

He was also a member of the National Presbyterian Black Caucus, and served in many community organizations, including Community Board #3, the South Bronx Leadership Forum, and 163 Improvement Council, all three in the Bronx.

Reverend Rollins has received two honorary degrees from University of Dubuque, IA and Inter-Denominational Theological Center in Atlanta, GA. He is the widower of Julia Rollins, with whom he had two children, Cecilia and Metz Rollins, and is the grandfather of three.

Mr. Speaker, I ask my colleagues to join me in recognizing Rev. Joseph M. Rollins, Jr. for his lifelong commitment to his ministry and for his community activism, which has so well served all of us countrymen.

HONORING THE "LOVE YOUR NEIGHBOR" CAMPAIGN

HON. CARRIE P. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mrs. MEEK of Florida. Mr. Speaker, I rise today to offer my congratulations and support for the "Love Your Neighbor" campaign that is sweeping south Florida.

The "Love Your Neighbor" campaign is dedicated to promoting the use and spirit of the phrase "Love Your Neighbor" in oral and written communications to make Miami and the world a better place; work toward reducing stress and improving our mental health; reduce suffering, violence, and crime by becoming considerate, respectful, and caring toward one another; and identify south Florida as a community that cares for all people regardless of race, ethnicity, religion, or social status.

Three years ago, Metropolitan Dade County embraced the "Love Your Neighbor" campaign. Since that time, over 750,000 "Love Your Neighbor" bumperstickers have been distributed, including 16,000 purchased by the Metro-Dade police department and 250,000 distributed by Dade County Public Schools. The Miami-Dade Public Libraries distribute "Love Your Neighbor" bookmarks, the phrase appears on the side of many Metro-Dade Transit buses, and a billboard flashes the sign at Miami International Airport.

The newly-elected mayor of Metropolitan Dade County, Alex Penelas, has endorsed a week of activities for February 9–15, 1997, and Governor Chiles has already proclaimed that week as "Love Your Neighbor" week in south Florida. Even Kenny Rogers Roasters has become involved in the campaign, carrying the message in all of their franchises. Other corporations have donated space on 600 billboards, and are involved in producing a music video and a public service announcement to be aired on local television.

"Love Your Neighbor" was started by Jim Ward, Dade County's Human Resources director. Mr. Ward is an ex-police officer, having protected and served the people of Jacksonville, FL for 17 years. He moved to south Florida 17 years ago, to Miami's great benefit. For the last 3 years he has worked tirelessly to promote the "Love Your Neighbor" campaign, watching it grow from one man's idealistic dream to the massive campaign it has become, spreading throughout south Florida and even as far as Macon, GA.

Mr. Speaker, Dade County and the city of Miami owe a great debt of gratitude to Jim Ward for the "Love Your Neighbor" campaign. I wish him every success in spreading his message throughout our community and our country.

CONGRATULATING THE CITY OF ELGIN, IL

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. HASTERT. Mr. Speaker, I rise today for two reasons. First, to congratulate Money Magazine on its 25th anniversary, but also to commend the magazine for adopting the city of Elgin, IL and beginning a year-long project to enhance the personal-finance knowledge of the city's residents.

Mr. Speaker, the city of Elgin, in my 14th District of Illinois, was chosen for this project because it is truly a microcosm of our Nation. A city with an industrial heritage that has seen a surge in suburban growth in recent years, Elgin is also home to several of the Nation's largest firms which have experienced strong export sales growth.

In the coming year, Money Magazine, in conjunction with Elgin Community College, will provide free financial seminars for Elgin residents. In addition, a dozen Elgin families will be highlighted in a series of articles dealing with family financial concerns and innovative ways of addressing those concerns. The project kicks off on January 29, 1997 with a ceremony at Elgin High School, to be attended by former President and Mrs. George Bush.

It is significant to note that while Money Magazine could have celebrated its 25th anniversary quietly, and without fanfare, the publisher and editors of the magazine have instead decided to mark this occasion by assisting this community and its residents with their financial planning. This action deserves our commendation and our thanks.

Mr. Speaker, I also congratulate the city of Elgin, its citizens, and civic and business leaders, on its selection for this worthy project. Elgin is an outstanding community, and one I am proud to represent in this House.

LOOKING TO THE WESTERN HEMISPHERE

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. GALLEGLY. Mr. Speaker, today, I officially became the chairman of the Subcommittee on Western Hemisphere of the International Relations Committee. I am looking forward to working with my colleagues, both Republican and Democrat, on the subcommittee as we begin a very exciting and challenging period in which we will review our relations with our partners in the hemisphere.

The end of the cold war and the movement toward democracy and economic reform in Russia and central Europe held great promise that the world would enter a period free of superpower rivalry, a lowering of the nuclear threat, and an all-around feeling that peace and political stability would prevail throughout the world.

Despite the expectations that evolutionary changes in Europe would serve as a model for a greater global commitment to open societies, the promotion of democracy, and the development of strong economies and markets, the international environment remains as complex and as dangerous as ever.

United States foreign policy continues to face complex and ever changing challenges from Bosnia to China, from terrorism to the stability of the global economy, from Palestine to Northern Ireland.

But while U.S. policymakers within the administration and the Congress struggle to resolve the most difficult and dangerous of these issues, we are ignoring one of the most dramatic success stories of the post-cold war period. And the irony of it all, is that this transition is taking place right in our own backyard of the Western Hemisphere.

The evolution of the nations of Latin America to democratic governments, market economies, and open societies has been perhaps the most overlooked event since the fall of the Berlin Wall.

Despite the direct impact events in Latin America have on the United States in terms of trade, narcotics trafficking, and immigration, U.S. policymakers, including the Congress, have often, although not entirely, turned an uninterested eye south of our borders and have failed to take advantage of the enormous potential for peace, political stability, and economic opportunity these changes are bringing about.

The resolution of the crisis in Haiti, the recent peaceful elections in Nicaragua, and the signing of the peace accords in Guatemala, ending 35 years of confrontation, clearly argues that the transition to peace, cooperation, and the democratization of the entire hemisphere, although sometimes rocky, is in its final stages. The economic miracles taking place in Argentina, Brazil, and Chile are a credit to the genuine commitment of those governments and peoples to take their place as regional role models.

Unfortunately, these stories are going largely unnoticed and unappreciated in the United States.

Latin America is a success story which the United States should be celebrating by pursuing a more engaged foreign policy designed to support the peace process, promote continued political stability, renew old friendships, cultivate new ones, and lend strong support to regional economic development and free market economies.

Like many, though, I fear that the momentum achieved thus far by the nations of Latin America could be stalled unless the United States reenergizes its efforts to provide strong leadership throughout the region. Confronting no major conflict or problem in the region, U.S. policy seems to lack clarity or coherence which could lead to a further decline in our ability to influence events in the region.

There can be no doubt that economic growth in the region is the key to strengthening democracy, ensuring long-term political stability, and reducing poverty. The 1994 Summit of the Americas held great promise for the critical areas of trade and economic development. The momentum created there must be renewed and sustained.

But leadership requires a better knowledge and understanding of the nations of the hemisphere and the great strides made thus far. U.S. policy must look forward and should be based, not on what has happened in the past, but what can happen in the future if we work with the nations of the hemisphere in a cooperative partnership to strengthen democracy, implement economic development policies, encourage free trade, and to make a renewed commitment to civilian authority, human rights, and social justice.

This is not to say that all is well in the hemisphere. Lingering problems associated with drugs, illegal immigration, political corruption, arms competition, and the strength of the peso, temper the euphoria of the success story. Beyond those endemic problems, which must be addressed primarily by the nations of Latin America themselves, nagging questions arise regarding the future of the new democracies, NAFTA, fast track, and Cuba. Also, to a lesser, but nevertheless important degree to many in the United States are issues regarding intellectual property, patent, and copyright violations, the environment and labor standards which must be addressed.

The foreign policy agenda for the Western Hemisphere is large and laden with both promise and problems. And while these issues may not seem as important as issues facing this Nation elsewhere, I believe we would be making a tremendous mistake if we did not take advantage of the positive signs and events emerging from the hemisphere by actively engaging our neighbors to the south in a renewed partnership for peace, stability, and economic development.

This will be the thrust of the subcommittee's work and I look forward to getting on with the job.

TRIBUTE TO KENT SWANSON, JR.

HON. ROBERT L. EHRLICH, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. EHRLICH. Mr. Speaker, today I rise to pay tribute to a heroic young man whose life ended tragically and prematurely, Kent Swanson, Jr.

Kent Swanson was raised in Phoenix, MD, where his parents still live, and graduated in 1989 from Dulaney High School in Cockeysville. He attended Lewis and Clark College in Portland, OR, receiving a degree in biology in 1995.

Kent had a lifelong love of the outdoors. Upon graduating from high school, Kent travelled to the Andes, where he climbed his first 20,000 foot mountain. His experiences in the majestic Pacific Northwest, however, defined the course of his life.

While in college, Kent joined the Portland Mountain Rescue Squad. This enabled him to use his love of the mountains to help others. He used his skills, his good judgement, and his intimate knowledge of the often treacherous mountain terrain to rescue skiers and climbers lost or stranded in the mountains.

On one occasion, Kent and his team braved freezing rain to reach three stranded colleagues. Such acts of heroism became routine in Kent's life. While a member of the ski patrol of Mammoth Mountain, a popular resort near Los Angeles that handles 15,000 skiers a day, he personally treated or rescued an estimated 3,000 injured skiers during one season.

Kent was known for his expertise as a mountain climber as well as for his bravery. He spent his summers working at the American Alpine Institute in California, where he developed a guide and instruction manual for the 14,494-foot Mount Whitney. "He had all the qualities that go into making a great teacher and guide," one of his supervisors said. "His clients liked him because of his teaching skills and his wonderful companionship."

On January 11, Kent Swanson, Jr. died in a helicopter crash in British Columbia. Typically, Kent was en route to an avalanche rescue class. This young man died as he lived—a hero.

He leaves behind his parents, Kent Sr. and Tricia Swanson; his maternal grandfather, Robert A. Bishton; and host of aunts, uncles, and cousins. He also leaves behind a lot of people who might not be alive today without his heroic efforts. My sympathy goes out to the Swanson family during this sad time. As they mourn his death, I hope they will take pride in his life.

TRIBUTE TO ARTHUR H. BILGER

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. WAXMAN. Mr. Speaker, I ask my colleagues to join me in recognizing Arthur H. Bilger for his great contributions to the nonprofit House of Justice of Bet Tzedek Legal Services of Los Angeles.

Bet Tzedek Legal Services is one of the leading poverty law centers in the country. Thousands of indigent, elderly, and disabled individuals benefit each year from the free legal services provided at Bet Tzedek's headquarters in the Fairfax District of Los Angeles, the Valley Rights project in North Hollywood, and the 32 senior centers throughout the Los Angeles area. Bet Tzedek is open to all who pass through its doors and even makes house calls to the ill and frail. Its services are vital and they are not otherwise readily available to those who need them.

Arthur H. Bilger has been a constant believer in Bet Tzedek's mission to be a place of refuge and assistance to Los Angeles' most needy residents. As one of the most dedicated and successful fundraisers for Bet Tzedek, his efforts have allowed this generous organization to continue to operate at full capacity while maintaining its promise of services at no cost to its clientele. We owe Arthur H. Bilger a debt of gratitude for his vision, his devotion, and his support of this most worthy cause.

I am delighted to bring Mr. Bilger's tireless and selfless work on behalf of Bet Tzedek Legal Services to the attention of my colleagues and ask you to join me saluting him for his many important contributions.

VISCLOSKY HONORS RESIDENTS OF NORTHWEST INDIANA ON MARTIN LUTHER KING DAY

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. VISCLOSKY. Mr. Speaker, as we celebrate the birth of Dr. Martin Luther King, Jr. today, and we reflect on his life and work, we

are reminded of the challenges that democracy poses to us and the delicacy of liberty. Dr. King's life, and unfortunately his vicious murder, remind us that we must continually work and, if necessary, fight, to secure and protect our freedoms. Dr. King, in his courage to act, his willingness to meet challenges, and his ability to achieve, embodied all that is good and true in that battle for liberty.

The spirit of Dr. King lives on in many of the citizens in communities throughout our Nation. It lives on in the people whose actions reflect the spirt of resolve and achievement that will help move our county into the future. In particular, I would like to recognize several distinguished individuals from Indiana's First Congressional District, who, in the past year and in their own ways have, have acted with courage, met challenges, and used their abilities to reach goals and enhance their communities.

Mr. Jack Parton, director of the United Steelworkers of America, District 7, Mr. Eric Mason and Mr. Michael Krueger, both graduates of Portage High School, led a prodiversity rally in Portage, IN, last May to peacefully, but forcefully, counter a march by the Ku Klux Klan. Their efforts sent a strong and clear message to members of the KKK, as well as members of our communities and citizens throughout the country, that ethnic, racial, and religious hatred will not be tolerated. The counter-rally that they developed and carried out was an overwhelming success. It generated enormous support from religious, labor, business, and civic groups throughout the region. The courage of these men should be held up as an example to all that, through thoughtful, united action, the values of human rights that we all cherish can—and must—be maintained, even in the face of ignorance and hatred.

I would also like to recognize Janee Bryant, Brandon Crayton, Brandie Frifth, LaKisha Girder, Damara Hamlin, Markika Harris, Rasheedah Jackson, Leah Johnson, Jacleen Joiner, Ayashia Muhammad, Clinton Pearson, Kala Simmons, Sheria Smith, David Suggs, DeKeyur Summer, Jennifer Thompson, Stephanie Thompson, Courtney Williams, and Joey Willis.

These outstanding individuals are the members of the Tolleston Junior High School team, which won the Indiana State Bowl Championship in spelling. This wonderful accomplishment is a reflection of their hard work and dedication to study. Their scholastic effort and rigorous approach to learning have made them the best in the State. They have brought pride to themselves, their families, their school, and their communities. Their success is also a credit to the outstanding ability and leadership of their teacher-coaches, Mrs. Margaret Hymes, Mrs. Paula Thompson, Mrs. Sandra V. Alfred, Ms. Dionne Moore, Mrs. Janice L. Williams, and Mrs. Juanita Vincent. The Tolleston students, who won the State Bowl Championship in spelling, as well as their gifted teachers, deserve recognition as true role models in our State.

Though very different in nature, the achievement of all of these individuals reflects many of the same attributes that Dr. King possessed and the values he espoused. Like Dr. King, these individuals saw challenges and rose to the occasion. They had goals and worked to achieve them. Mr. Speaker, I urge you and my other colleagues to join me in commending their initiative, resolve, and dedication.

TRIBUTE TO THE VOLUNTEERS OF TABERNACLE TOWNSHIP

HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. SAXTON. Mr. Speaker, I rise today to pay tribute to the residents of Tabernacle Township, NJ at the time of their second annual Tabernacle Volunteer Appreciation Dinner. It would be difficult to name, in the context of this extension of remarks, all those worthwhile organizations whose members are being honored. That one community supports such a myriad of organizations, which run the gamut from religious, civic, athletic, public safety, educational, community support, and political groups, is testament to its citizens.

On February 2, 1997, special recognition will be given to the Tabernacle Township PTA, Inc. at the time of its 75th anniversary. This association of parents and educators has been active in local schools since 1921. Through its provision of books, school equipment, scholarships, family activities, after-school child care, and summer recreation programs, this organization has proven its worth for three-quarters of a century—quite an achievement.

I extend my congratulations to the PTA's members, past and present, as well as to the many selfless volunteers who will be honored for their commitment to their community.

They deserve our praise and thanks.

HOMELESS IN THE HEART

HON. WALTER H. CAPPS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. CAPPS. Mr. Speaker, I want to bring to my colleagues' attention an essay written by a constituent of mine that illustrates the best of the human spirit. Torin Rea, his mother, and his younger brother found themselves homeless and living in a shelter in my hometown of Santa Barbara when he was in his teens. But instead of giving up, he and his family worked hard to make a better life for themselves.

Torin's eloquent and moving essay details his struggle of dealing with the horrible toll homelessness can take on a family. But more importantly, he describes how, faced with adversity, a family can pull together and overcome even the toughest times, becoming even closer in the process.

When the word homeless is mentioned, one quickly pictures a poor soul huddled in a box, eating the few scraps of food they can find. Or a person too mentally imbalanced to lead a productive life in society, wandering down the street babbling in words only he or she can understand. In Jo Goodwin Parker's short story, "What is Poverty?", Parker tells her graphic and incisive experience with homelessness. She accounts the times when she had nothing to eat for herself, only her children. The hard nights on the street with the cold biting at her side, with no ability to warm herself, she curls up with her children in a cardboard box. The painful feeling of not being able to feed her children runs deep into the heart. This mother had no means of supporting herself or her children, but she valiantly continues to mother them in the best way she can. This woman felt so much humility and shame throughout her life, it is amazing she has any courage or strength left at all. Although her account was sad and full of despair, not all stories of homelessness are as shocking. Many families live in the same predicament with shelter. I have been a homeless child who lived in a community shelter. I too have shared the same fear and sadness, the shame of society, and the gained strength of independence from surviving the loss of my home.

My social status throughout my life has never been one of wealth, but far from poverty. My family lived in a beautiful country cottage for twelve years, while raising two boys and launching a prosperous business. We lived the American lifestyle. There was always dinner on the table, and presents under the tree at Christmas. Our needs and wants were always met.

When I was twelve my parents began suffering serious marital distress. Unable to resolve the issues that can sometimes never be resolved, my mother told my father to leave. With no other suitable and stable means of income my mother, brother, and I began to have financial problems. Unable to pay the rent, our landlord promptly served us with an eviction notice. Within thirty days we had nowhere to go, and nobody to turn to; reluctantly my abridged family moved into a nearby motel for a week. I recall that week as one of the most disorienting times in my life. When I came home to our motel room I had no bed to call my own, no kitchen to make myself a snack as we were living out of an ice box, and nothing to call my own anymore, just the bag that I came with. I constantly questioned my mother where we were going to move and she always replied, "I don't know son." Two days before our stay at the motel was up my mother told my brother and I that we were going to move into a family shelter in Santa Barbara. My heart sank into my shoes. Shelters were for people who lived in alleys. Shelters were for the people who had no family. Shelters were for people who had no place to go, and we had nowhere to go. Within two days we had moved our remaining valuable possessions into an eight by ten room. The shelter we moved into had five bedrooms crammed with bunk beds, clothes, and children. Each room housed a mother and her children, and a large restaurant style kitchen which served as our collective eatery. The floors were dirty, the kitchen smelled of rotting vegetables, but I was with my family and we were safe. The first night we were there I tried with all my might to decorate my room as if it were my home, but the walls felt as if they were cardboard, liable to disappear at any moment. I laid in bed that night, struggling with my emotions, and wondering if I would ever have a home again.

The next day while commuting to school, I tried to decide what I would tell my friends. How could I gracefully tell them, most of whom were all wealthy, that I had moved into a homeless shelter? I had never felt so much shame, and I had never felt so small. While my friends were going out to dinner every Friday night, I was at my dirty shelter cooking macaroni and cheese watching my

brother and helping him with his homework. I could never leave him alone, or family services would come and take us both away from our mother. While my friends' parents were having dinner parties, my mother was out working extra hours to save for rent, and to put food on the table. Many nights I had to come home from school to baby-sit my brother while my mom was out. This made a social life completely unattainable. We were not allowed any visitors inside the shelter, so when friends came over, I shamefully told them to wait outside while I grabbed my things. They all asked where I lived and I told them I lived in an apartment complex, ashamed to tell them the truth. I had no extra money to spend on fun, as most of it was used on gas and maintenance on my car to get to school. My whole existence as a carefree teenager became the duty of a father to my brother, a confidant to my mother, and a starving student living in shame of his existence.

As time slowly passed by we became accustomed to the makeshift home we lived in. My mother continued saving money every day to move out, since we were only allowed six months to stay. I continued with school into my senior year, and was doing remarkably well. My brother, who used to be a shut in, began making friends at his new school in Santa Barbara. We trudged through day after day living in the shelter with screaming babies, and beaten wives, finding strength in places we never knew about. I began to cook more often, and enjoyed the simple satisfaction of serving my mother and brother dinner.

My mother became so strong and driven I couldn't help but to admire her courage and her grace in such a time of despair. My own strength grew as well and I began to see that everyone can have happiness if they choose to. I began to love the small family that lived in the shelter; the mothers, the babies, and the bond that we all shared by having nothing but one another. Coming towards the end of the sixth month, my mother found a home. She had finally saved enough money to move and our time in the shelter had come to an end. Six months of struggle, six months of humility, and six months of strength would now send us out into the world. Our dreams still intact, and our happiness soaring, we moved into our first house we could call our own.

Three years later I still look back upon that time in my life and smile. It was then when I truly found my strength and happiness. I had never been so close to my family until everything we had was taken from us. Becoming homeless can be the most horrible and humbling experience in a person's life, but it can also be the most empowering. Homelessness is not always bums on the sidewalk, it can be good decent families that have stumbled into hard times, unable to fight the power of money. My experience of being without a home was the most painful time in my life, but in a way it was the brightest. It was then I found myself and my strength. It was then when I found my family. It was when I had nothing, that I found everything. I will never forget our shelter on De La Vina street, and the person I found there.

Torin Rea is now 21 years old sharing a home in San Diego, CA, and working at one of the highest selling Nordstroms in the country. Last year he was the first 21-year-old ever to achieve the honor of top seller in the region. He is a legend in his own time.

A TRIBUTE TO COACH DISNEY

HON. RANDY "DUKE" CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. CUNNINGHAM. Mr. Speaker, I rise today to pay tribute to Mr. Richard "Dick" Disney. Coach Disney was a long time teacher, coach, and friend to thousands of Escondido's children. His life exemplifies the hard work, dedication, and concern for our children that we expect from our Nation's teachers.

I submit for the RECORD the following article which chronicles Mr. Disney's life and achievements.

[From the North County Times, Jan. 15, 1997]

"COACH" DISNEY, 62, DIES AFTER COLLAPSING

(By L. Erik Bratt)

ESCONDIDO.—Richard "Dick" Disney's goals in life, his friends say, were to inspire students through athletics, build their self-esteem and make them realize that teamwork is the key to success.

He was about to bestow an award reflecting those ideals to a student-athlete at Orange Glen High School Monday night, but he never got the chance to do so.

Mr. Disney, 62, collapsed and died just before presenting the award—named after himself—to senior Matt Embrey, the grandson of legendary Escondido High coach Chick Embrey, now retired.

Mr. Disney, a trustee of the Escondido Union High School District and a former longtime coach and teacher at Orange Glen, was taken to Palomar Medical Center after collapsing at 8 p.m. from what his wife, Sharon, said was a major heart attack.

"He was the most wonderful husband in the world," Mrs. Disney said. "He died doing what he loved most, working with kids and trying to help them be the best they can be."

Mr. Disney, known to most Escondido residents simply as "coach," was a Point Loma High graduate. He taught at both San Marcos High and Escondido High before becoming a founding faculty member at Orange Glen when it opened in 1962. He was a physical education teacher, as well as the head football coach and athletic director for several years.

In 1967, he guided the Patriots to an undefeated record and the county championship, said Paul Moyneur, quarterback of that team and now a San Pasqual High teacher.

"I think the thing that stands out about him is that he genuinely enjoyed being around kids," Moyneur said. "He was very fair. He was very good at getting the most out of people."

Mr. Disney retired as head coach in 1972 but continued to serve as an assistant, as well as coach of the freshman team. At one point, he served as an assistant to Moyneur, who was head coach from 1976 to 1984.

Mr. Disney's first wife, Sandra, died of cancer in 1980, and he later remarried. He retired as a teacher in 1992. Two years later, he won a seat on the high school board in a landslide. He was an active member, helping solicit campaign donations to get the district's $43 million general obligation bond passed last June.

"I even called him 'coach' because the way he treated any kind of problem or concern was in a coaching way, never in a confrontational how to play ball with their youngsters so the children would not be ridiculed later in school," Gawronski said.

"He was, and always will be, a coach," said Charlie Snowder, school board president. "That is how he lived his life. He always promoted teamwork and individual excellence in everything he ever did in life."

Besides his wife, Mr. Disney is survived by his father, Richard V. Disney; his stepmother, Gladys Disney; two sons, Doug Disney and Richard Disney; two daughters, Darlene Coughlin and Dee Ann Disney-Jones; a stepdaughter, Wendy Leggett; and a stepson, Matt Wilson.