SENATE—*Friday, March 6, 1998*

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

PRAYER

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

Gracious God, in this time of quiet we rest in You; we lean on Your stability; and we draw on Your strength. We feel our tensions and anxieties melt away as we simply abide in Your presence. Your love dispels our fears, and the vision of what You are able to do in and through us today maximizes our hopes. When we abide in You, we are able to abound in the unsearchable riches of Your limitless power. Go before us to show the way and help us anticipate the amazing gifts of love, wisdom, discernment, and vision You have prepared for us. You know exactly what we will face today and will equip us to live at our full potential, multiplied by Your energizing power. You do all things well. Thank You for guiding us with Your perfectly prepared answers to the problems and potentials of this day. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, the distinguished Senator from Rhode Island, is recognized.

SCHEDULE

Mr. CHAFEE. Mr. President, on behalf of the majority leader, I announce that today the Senate will resume consideration of S. 1173, the so-called ISTEA legislation. Under a previous agreement, the Senate will conclude 90 minutes of debate on the pending McConnell amendment regarding contract preferences, with debate equally divided between the proponents and opponents, with 40 minutes of that time equally divided between Senators CHAFEE and BAUCUS.

Also, as under the consent, at 11 a.m. the Senate will proceed to a vote on or in relation to the McConnell amendment. Following that vote, the Senate will continue to consider amendments to the ISTEA legislation.

In addition, the Senate may also consider any legislative or executive business cleared for floor action. Therefore, additional votes are possible during today's session. An effort will be made to announce additional votes as soon as it can be determined when and if additional votes will take place.

As a reminder to all Members, the first rollcall vote today will occur at 11 a.m.

ORDER OF PROCEDURE

Mr. CHAFEE. Mr. President, I ask unanimous consent that in any quorum calls the time be charged equally between the proponents and opponents.

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The PRESIDING OFFICER. The Chair lays before the Senate S. 1173, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1173) to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

The Senate resumed consideration of the bill with a modified committee amendment in the nature of a substitute (Amendment No. 1676.)

Pending:

McConnell amendment No. 1708 (to amendment No. 1676), to require that Federal surface transportation funds be used to encourage development and outreach to emerging business enterprises, including those owned by minorities and women, and to prohibit discrimination and preferential treatment based on race, color, national origin, or sex, with respect to use of those funds, in compliance with the equal protection provisions of the fifth and 14th amendments to the Constitution.

AMENDMENT NO. 1708

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, I yield the Senator from Massachusetts 10 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, the Disadvantaged Business Enterprise program in ISTEA has given numerous women and minority-owned businesses the opportunity they deserve to compete for federal highway construction contracts. Since it began in 1982 and was expanded to include women in 1987, the face of the construction industry has changed dramatically—we still have far to go, but because of this program, we have come a long way.

Today, however, we are faced with a choice. Do we continue to move forward or do we turn back, and return to the virtually all-male, all-white construction industry that we had in the 1970s? Members of the Senate must consider this question carefully, because we know what will happen if the program is eliminated.

In 1978—before implementation of the program—women and minorities received less than 2 percent of all federal contracting dollars. In 1979, the figure was 2.22 percent—and no federal dollars went to women-owned firms—zero. Clearly, America had to do better, and the need to give women and minorities a fair opportunity to bid for contracts led to the implementation and expansion of the program in 1982 and 1987, respectively.

Because of these state and federal initiatives, women and minority-owned firms made great strides in the construction industry. It wasn't until the Supreme Court's decision in Richmond versus Croson in 1989, that this progress began to slow. The Croson decision required application of the strict scrutiny test to state affirmative action programs, and, as a result, several states eliminated these measures.

But, contrary to what some have said, the Croson decision was not the death-knell for these state and local programs. Many of these easily met the strict scrutiny test—in Denver and King County, Washington, for example—and other programs were revised to meet the constitutional requirement.

One of the most important lessons in the wake of the Croson case is the evidence of what happens when these programs are eliminated. There has been a shocking disparity in participation levels by minorities and women in states setting goals under ISTEA for federal dollars, but not setting goals for state contracting dollars.

In Nebraska, 10.5 percent of federal dollars went to disadvantaged business enterprises because of ISTEA goals—but only 3.6 percent of state dollars went to these firms.

In Louisiana, 12.4 percent of federal dollars went to such firms because of ISTEA goals, but only 0.4 percent of state dollars went to the same firms.

In Missouri, 15.1 percent of federal dollars went to such firms, but only 1.7 percent of state dollars did. The trend is the same in every other state that does not have such a program.

This is not what we want for federal transportation contracts. It makes no

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

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sense to destroy women and minority-owned businesses and wipe out the 100,000 jobs that they create. That cannot possibly be the goal of this Republican Senate.

The disadvantaged business enterprise program is essential for the survival of these firms. Not because they aren't qualified. Not because they can't compete on merit. But, because too many in the construction industry are not willing to give qualified firms a chance if they are owned by women or minorities.

Ask the women and minorities who are certified for this program. Mary Aguillar-Lancome, president of Coast and Harbor Associates in Boston told me, "If there is a goal, prime contractors will call DBEs; if not, they will not call." Other firms have made similar comments. Jack Bryant, President of Jack Bryant Associates in Massachusetts told me, "Without goals, most in the construction industry would not make a good faith effort to work with women and minority-owned businesses. The elimination of this program would be disastrous."

Of course, the program doesn't just help women and minorities. It extends a helping hand to firms owned by white males, as well. They can be certified to participation if they prove that they have been disadvantaged. Just ask Randy Pech—the owner of the Adarand Construction Firm—because he is currently seeking certification.

It is preposterous to argue that the Sultan of Brunei would be certified, but that an economically disadvantaged white man would not. That cannot happen, and the new regulations clarify the certification requirements.

Mr. President, I want to show this chart, which illustrates very clearly what happens when you have the Federal highway program with the DBE Program and no DBE Program for State-funded programs.

The red indicates the various States that do not have the DBE Program. And you can see what happens in terms of women and also minority construction firms versus those States that are part of the Federal system. The contrast is so dramatic that I think it makes a powerful case. What we are talking about is quality programs—those programs that are going to meet the price competition and also the other competitive forces.

But this illustrates what the principal problem is. I think it is incorporated in this statement by Elaine Martin, president of the MarCon Company in Nampa, ID.

> Most companies can point to one or two jobs that made it possible for those companies to succeed. My essential job would not have been awarded to me without the DBE program. I was low bidder on a job in 1987 where the owner told the estimator to give the job to a larger male-owned firm that had a higher bid than mine. The estimator told the owner that the job had DBE, and as the low bidder I should be given the opportunity to perform.

We have instance after instance.

Dorinda Pounds, President of Midwest Contractors, Inc., in Cedar Falls, IA:

> One of the major reasons that my investors and my banker was willing to take the risk with my new company was that I had the opportunity to become certified as a DBE contractor. Without the DBE program they felt the "good old boy" system would lock me out and would keep me from having a chance to become successful.

That case has been made hour after hour during the course of this debate. We know what the issue is. We are talking about simple fairness and justice for women and minorities in our country to participate in a program that is being paid for by American taxpayers. The American taxpayers, women and minorities, are contributing the tax dollars that go to this program. All we are saying is they shouldn't be excluded from being able to participate in the program.

Those who are trying to strike this program are effectively doing that. They may couch that in different kinds of language, but the record is very clear what the bottom line is going to be and what the results are going to be. The case couldn't be any clearer.

I urge my colleagues to support this program. A vote for this program is a vote for fair opportunity for women and minority-owned construction firms, as well as for many other small businesses around the country. All these business owners ask is a fair chance to compete. We cannot and we must not deny them that opportunity.

This is one of the most important civil rights votes of this Congress and one of the most important civil rights issues of the 1990s. It is time for the Senate to do the right thing, and stand up for civil rights and equal opportunities for all.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, under the time controlled by the Senator from Kentucky, I yield 5 minutes to my friend from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I rise in support of equal rights and civil rights and in support of this amendment.

This program is not an issue about giving people an opportunity. It is a clear quota. It is a quota in the law that says not less than 10 percent of the $208 billion that will be spent under this bill has to be spent through contractors who are not necessarily small or disadvantaged economically. Many of them are quite large, quite successful. But, what they have to fulfill is a quota based on race and gender. This is a violation of everything for which America stands. It is in violation of the Constitution. This specific provision was struck down in the Adarand case by the Supreme Court of the United States.

I am strongly in support of this amendment.

I want to make a point of expressing my admiration for our colleague from Kentucky. I have found that on those tough issues when our constitutional rights are threatened, there is almost always one Member of the U.S. Senate who rises in defense of our freedom, and that is MITCH MCCONNELL from Kentucky. Whether the issue is campaign finance reform, which is a cloaked effort to deny people freedom of speech, or whether it is quotas which violate the basic principle of equal opportunity, there is one man in the Senate who always stands up for our constitutional rights. I want him to know that his colleagues admire him and love him for that.

There are two issues I want to address. No. 1, this provision, which the amendment of the Senator from Kentucky would strike, has been declared unconstitutional in the Adarand decision and, in fact, the court has said that section 1003(b) of ISTEA, which is repeated in this bill, and the regulations promulgated thereunder, are unconstitutional.

I want to remind my colleagues that whether it was 6 years ago, 4 years ago or 2 years ago, we each stood right down there in the well of the Senate, put our hand on the Bible, and swore to uphold, protect, and defend the Constitution against all enemies, foreign and domestic. Sometimes we are the enemies. The issue here is, are we going to uphold the Constitution or are we not? When it comes to the Constitution, put me down on the side of the Constitution.

The second issue is fairness. We all want to help people compete. We all want Americans to have equality of opportunity, but you cannot have equality of opportunity through a program that clearly discriminates against people. There is only one fair way to decide who gets a contract and that is competition based on merit and price.

The General Accounting Office, in a 1994 study, concluded that ISTEA's racial preferences over the next 6 years will cost the Nation $1.1 billion in unnecessary construction costs. The GAO also concluded that the program in this bill is not an avenue for contractors to become competitive. Less than 1 percent of the contractors who get special privileges under this bill graduate to become competitive contractors in the marketplace.

Finally, let me note that the amendment by the Senator from Kentucky strikes down the unconstitutional provision on "disadvantaged business enterprises"—which has nothing to do with disadvantaged business enterprises—and substitutes a new provision

on emerging business enterprises, which is clearly constitutional. This provision includes outreach programs to help small businesses, no matter if the head of the business is a man or a woman, no matter what their ethnic background is. It helps people compete. It helps them find bonding. It helps them do the very complicated and expensive work of applying for a Federal contract. And, in fact, it is a better, more fair way because it is based on the American system.

I believe in merit. If there is one principle on which America is established, it is the principle of equal opportunity. It is not equality to exclude people from competing based on race, color, national origin or sex.

I yield the floor and thank the Chair.

The PRESIDING OFFICER (Mr. ENZI). The time of the Senator has expired. The Senator from Kentucky.

Mr. MCCONNELL. I thank my good friend from Texas for his overly kind observations about my work. I thank him for his support for this important amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Before the distinguished Senator from Texas leaves, I want to say I always appreciate the opportunity to hear him debate on the floor because he is very good. In his admiration for the efforts that the Senator from Kentucky is making to defend our Constitution, as he outlines, I hope we can enlist the support of the Senator from Texas against an amendment that is clearly against the Constitution and restricting efforts there, and that is the so-called "burning of the flag" amendment. We would be glad to have him sign up against that pernicious proposed addition—I hope it never passes here—in connection with the Constitution.

Mr. GRAMM. Will the Senator yield?

Mr. CHAFEE. Yes.

Mr. GRAMM. I do not think I will be attending any flag-burning parties. I think it is important to note that when you are dealing with a constitutional amendment, it is a question of whether you want to make that provision part of the Constitution, not whether or not it is constitutional now.

If Senator KENNEDY wanted to amend the Constitution to say that we have privileged Americans who are going to be treated differently than everybody else, and that we are going to discriminate against others in their favor, he would have a perfect right to do that. That provision, if it became part of the Constitution, would be the law of the land.

The point is he would be up against a much bigger opponent than he would like people to believe, and that opponent is the Constitution of the United States, Jefferson, Washington, Lincoln, and every serious thinker about economic and political freedom in the history of this country.

I yield the floor.

Mr. CHAFEE. I am delighted that he has had a roll call of heroes of the country, but before he leaves I would point out one thing. It is not often that he is inaccurate, but I am afraid that he went overboard a little bit today when he suggested that the Supreme Court in the Adarand decision had struck down as unconstitutional the provisions of the affirmative action program. What the Supreme Court said in the 5 to 4 decision—I am talking about the Supreme Court. I like to deal with the Supreme Court. What it did is remanded that case. It did not say it was unconstitutional. Any talk of unconstitutionality came by the lower court which then examined whether the provisions in the Adarand situation conformed to the restrictions that the Supreme Court was applying.

I just want to say to the distinguished Senator from Massachusetts—and by the way, I am on my time now, Mr. President—I think he is exactly right when he points out the difference between what happens when you have a State program with no admonitions in it, or requirements as far as minority contractors go, and what happens when you have the Federal program when the efforts are made. I might say these, the goals, are voluntary in the States. In Kentucky—I was pleased to see that Kentucky is considerably above the 10 percent. Kentucky itself is at 11.5 percent. In my own State, when we have the State programs with none of the Federal requirements in them—with the Federal requirements we are at 12.1 percent to minority contractors; when we do it with the State's money, we are at zero. That is my State, at zero when we deal with the State handing out its money. But when we deal with the Federal Government's requirements, then we go up to 12.1 percent. So it shows the difference that the Federal Government's requirements make. Therefore, I am very much in favor of the language that is currently in the law and am in opposition to the McConnell amendment.

Again, I would point out to everybody, if those who are against these preferences want to come out with a bill that deals with it generically—as we pointed out before, there are some 60 different programs—bring it out on the floor and let's debate it. But let's not do it one by one in individual programs such as this, and particularly this one where we have, as I pointed out yesterday, a letter from the Secretary of Transportation saying that he could not recommend the President sign this measure if the McConnell amendment should pass.

Mr. KENNEDY. Will the Senator yield for a brief question?

Mr. CHAFEE. I will.

Mr. KENNEDY. Since the Senator has referred to Rhode Island, I am wondering, as the manager of this legislation dealing with the surface transportation, whether you have complaints from the contractors about the inefficiency or the poor quality of work, or the failure of being on time? Or the fact that here in Rhode Island, when they are using the Federal funds, it is 12.1 percent?

Generally speaking, I have not, in the course of this debate, heard complaints that the work that is being done with the DBE has been not of first-rate quality, on time, and effective work. I am just wondering if the Senator from Rhode Island is receiving a lot of complaints because the DBE Program is in effect in his State?

Mr. CHAFEE. No. I want to report that we have not received complaints. Indeed, as I pointed out, my State has gone beyond the 10 percent. We are up to 12.1 percent. It is impressive how many States have gone considerably beyond. Our neighboring State, Connecticut, is at 15.7 percent. The suggestion that these are onerous restrictions that cause chaos amongst the States in dealing with these preferences just plain isn't true.

Mr. KENNEDY. I thank the Senator. I yield.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I momentarily am going to yield 10 minutes to the Senator from Ohio. We had extensive discussion yesterday about what the Adarand case did and didn't do. What it did do was lay out a standard which this provision of the bill couldn't possibly meet and sent it back to the district court in Colorado, which found that this section of ISTEA was unconstitutional.

We could argue this round and round and round, and we have argued it round and round and round. But I don't think there are serious constitutional scholars who believe that the Adarand case didn't set up a standard that this section of the bill could not possibly meet.

I yield 10 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. I thank my friend and colleague from Kentucky.

Mr. President, I would like to offer a few thoughts on the pending amendment offered by my good friend from Kentucky, Senator MCCONNELL.

I intend to vote for the Senator's amendment. A new approach from the current set-aside is clearly needed—a new approach is needed because the current system, the current law, violates the United States Constitution.

The United States Supreme Court, in *Adarand Constructors* v. *Pena*, 515 U.S. 200 (1995), ruled that racial classifications are unconstitutional unless narrowly tailored to further a compelling government interest. The federal district court in Colorado in the case of *Adarand Constructors, Inc.* v. *Pena*, 965

F. Supp. 1556 (1997)—following the guidelines set by the Supreme Court—found that the current racial set-aside for federal highway contracts is unconstitutional. The district court found that the 10% set-aside for federal highway contracts and the race-based presumptions contained in the implementing regulations were not narrowly tailored—they excluded certain unlisted minority groups who may very well have been socially and economically disadvantaged, while presuming that all minorities in the listed groups were economically disadvantaged, and in some cases, socially disadvantaged.

Other federal courts, in applying the same strict scrutiny test to other federal, state, and local race-based laws and regulations, have consistently found that these racial preferences are not constitutional. In Ohio, a case is pending before the Ohio Supreme Court (*Ritchey Produce Company* v. *Ohio Department Of Administrative Services*, Supreme Court of Ohio, 1998 Ohio LEXIS 495). A Lebanese-American did not fall within the listed minority groups who received preferential treatment under the Ohio set-aside program, so he was denied certification as a minority contractor. Even if the majority of his workforce consisted of the listed minority groups—that company would still not be eligible to receive minority certification under the current standards.

Thus, given the constitutional guidelines that have been clearly established by the Supreme Court, we in the Congress face a fundamental choice—we can stand aside and watch federal courts dismantle race-based set-aside programs one-by-one, or we can exercise leadership and meet the challenge head on—by initiating a new approach that targets our resources to economically disadvantaged individuals in depressed areas who want a shot at the American dream. To his credit, the Senator from Kentucky has shown leadership by offering such an innovative, constitutional approach. His ideas are not totally new.

In 1980, New York Mayor Ed Koch inaugurated a race-neutral affirmative action program targeted at the economically disadvantaged—providing a 10% set-aside for small firms that did at least 25% of their business in disadvantaged neighborhoods, or employed disadvantaged workers as at least 25% of their workforce. This program has served as a model for other cities nationwide.

In several respects, the Senator from Kentucky's amendment borrows from the Koch program. His amendment would target opportunity assistance programs toward businesses based not on the owner of the business exclusively, but on who's working for the business and just as important, who the business is serving. Specifically, the McConnell amendment targets assistance toward new businesses located in economically disadvantaged areas, or has a workforce half of which are employees from economically disadvantaged areas.

This direction—to reach out to the economically disadvantaged, including minorities and women—will do much to promote the interests of minorities and the country as a whole. By reaching out to businesses that employ the disadvantaged or that are located in depressed areas, we are doing more than just helping disadvantaged businesses, we're uplifting entire communities.

It's more than affirmative action—it's community empowerment.

I would also like to point out that my friend from Michigan, Senator ABRAHAM, was instrumental in the drafting of this specific provision. I commend him for working with the Senator from Kentucky—it reflects their strong interest and support for innovative approaches to community renewal.

I also commend the Senator from Kentucky for placing a time limit on assistance. Assistance under this program would be offered to firms that have been in existence for less than nine years. That just makes sense. The best business development programs are those that help new, disadvantaged businesses stand on their feet and compete.

That's exactly what the McConnell amendment would do. Specifically, the McConnell amendment provides a host of services for eligible businesses—services ranging from financial counseling, business management, and technical assistance for eligible businesses seeking contracts under federal transportation programs.

Taken together, these provisions in the McConnell amendment represent a positive approach that is consistent with the Constitution and with the wisdom and intent of those who first championed the idea of affirmative action—action to provide equality of opportunity for individuals.

Now Mr. President, let me be candid—if given the opportunity, I would have taken the McConnell amendment one step further. I would have maintained the set-aside program—one that would have been acceptable under our Constitution. I believe we can and should have race-neutral set-aside programs for new, economically disadvantaged businesses. The fundamental problem with the existing program is not the set-aside itself—but who receives it and how they are defined. The current program gives an advantage to those who may not need it—individuals who were given a chance based solely on race or racial goals. That's why the federal courts have found this and other set-aside programs to be unconstitutional. Therefore, I would support a set-aside program that provides time-limited business opportunities to businesses who employ or serve the truly disadvantaged—a program that goes beyond outreach and recruitment, and gives disadvantaged businesses a chance to do business—much like Mayor Koch did in New York a decade ago.

Unfortunately, such a program is not before us today. We do not have that option. The choice today is between an unconstitutional law or a new constitutional plan that will provide hope and opportunity for the disadvantaged. While the McConnell amendment does not go as far as I would like or as far as I would go, it is clearly constitutional and it is clearly an effective way to help the disadvantaged. It is a significant improvement over the status quo.

This amendment represents a positive, imaginative step in the right direction—one that is true to our Constitution and to our commitment to equal opportunity. I therefore urge my colleagues to vote in favor of this amendment.

Mr. MCCONNELL addressed the Chair.

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

Mr. MCCONNELL. Mr. President, I thank the distinguished Senator from Ohio for his contribution to this important and sensitive debate. I thank him very, very much for his support.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 26 minutes 15 seconds.

Mr. MCCONNELL. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. How much time do we have left, Mr. President?

The PRESIDING OFFICER. Twenty-six minutes 49 seconds.

Mr. CHAFEE. I yield 12 minutes to the Senator from Pennsylvania.

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

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Rhode Island for yielding me 12 minutes. Perhaps I shall not need it all.

I have sought recognition to speak in opposition to the pending amendment, because I think the statute, as it is presently drawn, is constitutional.

The most recent articulation of the guiding legal principles were set forth in Adarand, and Justice O'Connor for the Court said that strict scrutiny does not require the elimination of a program designed to protect those who have been discriminated against as long as there is the requisite narrow tailoring.

She noted the underlying factual basis which does persist to this day:

The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this

country is an unfortunate reality, and government is not disqualified from acting in response to it.

That is precisely what is being done in the statute at hand.

Justice O'Connor noted that as recently as 1987, every Justice on the Supreme Court of the United States agreed that the Alabama Department of Public Safety's "pervasive, systematic and obstinate discriminatory conduct" justified a remedy, and it was upheld in the case of United States v. Paradise.

Even Justice Scalia, in his concurrence in the City of Richmond v. Croson, noted that there was at least one circumstance where the State may act to "undo the effects of past discrimination."

When we deal with this area, it is an extraordinarily complicated matter and it is very fact-sensitive. I think it is important to note that the statute in question here does not involve the same underlying law which was at issue in Adarand.

In Adarand, the issue involved the Department of Transportation's use in its own direct contracts of Federal compensation to encourage Federal prime contractors. This issue involves the constitutionality of section 1003(b)(3) of ISTEA, which sets a 10-percent goal for expenditures of authorized funds for disadvantaged business enterprises.

The effort has been made in a very strenuous and, I think, successful way to accomplish the kind of narrow tailoring which was called for in Adarand and which is constitutionally mandated.

I ask unanimous consent, Mr. President, to have printed in the RECORD at the conclusion of my remarks the specification as to how the new Department of Transportation regulations are narrowly tailored.

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

(See Exhibit 1.)

Mr. SPECTER. Mr. President, the cases in this area have been very complicated, very fact-sensitive, customarily decided, or frequently decided, on a 5–4 basis. There are very, very important objectives in the pending statute. There is a general agreement that quotas are wrong for America, and I believe, beyond that, it is inappropriate to give an applicant a position where the applicant is less well-qualified than some other applicant.

I am convinced that if we take the applications for Yale or Harvard or Duke or Cornell or any other fine educational institution, that if there was to be sufficient outreach, we would find minorities who would be well-qualified to take positions in those institutions and that they would not, in fact, be displacing someone who was better qualified. It is a matter of outreach. What the legislation at hand seeks to do is to implement that concept of outreach.

There has been a glass ceiling as to women, which is very well known. The glass ceiling is at ground zero. It is very hard to break into the kind of construction trades which are at issue in this ISTEA legislation. There is no doubt about the problems that other minorities have had. This is a plan to provide that outreach and that opportunity without displacing better qualified individuals or better qualified firms.

For the argument to be made that this act is unconstitutional and that Members of the Senate are sworn to uphold the Constitution, drawing the suggested inference that we are violating our oaths of office in supporting the legislation as is currently written, I think is far, far beyond the mark, to put it in a very, very diplomatic context.

This is an important provision. I believe that it is constitutional as applied with the narrow tailoring of the Department of Transportation regulations and that it meets the obligations of strict scrutiny under the U.S. Constitution. As a matter of public policy, it moves in the right direction.

This is only one of many efforts by the Government to open the door on outreach, and I believe that is a very, very sound proposition.

In my own personal experience as district attorney of Philadelphia, when I had hiring of a great many people as my responsibility, I got the list of all the African American lawyers in the city when I took office and made a systematic effort to call them on a matter of outreach and found that I could locate very well-qualified people to take the positions, not giving them any preference, not giving them any affirmative action in the sense of having people take those jobs who are less well-qualified than others who apply for them.

The same thing followed in the detective branch where the detectives, men and women, were selected from the Philadelphia Police Department. It was a matter of outreach. It did take a little more effort to interview more people to find those in the minority who were well-qualified and that they did not displace better qualified people to accomplish that result.

As long as we have a system which does not discriminate against the better qualified, I think we have a system which is sound and is a matter of outreach, which is very important in this country today.

I intend to oppose the pending amendment, and I urge my colleagues to oppose the pending amendment.

I thank my colleague from Rhode Island. I yield back the remainder of my time.

EXHIBIT 1

THE NEW DOT REGULATIONS—HOW ARE THEY NARROWLY TAILORED?

CALCULATION OF OVERALL GOALS

Old rules: State recipients take into account the maximum amount of work they can obtain from DBEs available to them, and their past performance in meeting their overall goals.

New rules: States must ask themselves: absent discrimination, how much would DBEs participate in DOT-assisted contracts? and then look for that level of participation as the goal. DOT has asked for comment on three specific means of estimating this participation and setting the goal, based on this concept.

MEETING OF OVERALL GOALS

Old rules: States believed they should put goals on every contract.

New rules: No requirement of setting a goal for each contract. State's first effort should be race/gender neutral efforts, such as outreach and technical assistance. If that is insufficient, then states may consider race/gender conscious measures, such as contract goals. More intrusive mechanisms, such as set-asides, may only be used if the state has legal authority outside of the DOT regulations, and has made a finding that the other means had not worked. Finally, once a state finds that the effects of discrimination had been addressed effectively, the use of race/gender measures must be reassessed.

GOOD FAITH EFFORTS

Old rules: There was general guidance from DOT on the granting of good faith waivers, but enforcement was not strong.

New rules: DOT emphasizes to states that they must take seriously their obligation to award a contract to a bidder who has made a good faith effort, and that doing otherwise would be a de facto quota. In addition, states must provide a mechanism for reconsideration to bidders who are denied contracts on the basis of lack of good faith. The mechanism must allow contractors to make oral/written submissions about the denial, and must provide for a review of the decision by a neutral body before the contract is awarded.

DBE DIVERSIFICATION

Old rules: No provision.

New rules: DOT requested comment on how to diversify the types of work in which DBEs are involved, and reduce concentration of DBEs in certain areas. The intent is to promote competition in non-traditional DBE areas, as well as reduce pressure for non-DBEs in areas of typically heavily DBE involvement. After receiving comments, DOT is now looking at new ways to achieve that diversification goal, focusing on the reasons for that concentration.

ADDED FLEXIBILITY FOR RECIPIENTS

Old rules: There were some waivers granted, and some flexibility in the program.

New rules: States with goal setting programs different than the DOT program can submit their program to DOT for review; and if their program appears to be more effective than the DOT program, the state can implement it. DOT will grant broad program waivers for states who think they can do it better their way.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. I thank the distinguished Senator from Pennsylvania for those very fine comments. We certainly appreciate his support in this effort.

Mr. McCONNELL addressed the Chair.

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

Mr. McCONNELL. Mr. President, I rise today to speak on behalf of my amendment to bring the federal highway bill into compliance with the equal protection clause of the Constitution and with various federal court rulings, including two landmark Supreme Court cases.

The question for the Senate this morning is this: Is it fair, prudent and constitutional for the Federal Government to set-aside a fixed percentage of public highway contracts for a preferred group of citizens—until the year 2004, mind you—based on the immutable traits of race and gender?

Or let me phrase it another way: Should U.S. Senators, all of whom have sworn an oath to uphold the Constitution, reauthorize a law that has been reviewed by the United States Supreme Court and subsequently struck down by a Federal court in Colorado?

Mr. President, I say the answer to this question must be a firm and resounding "no."

We must stand up for the Constitution. We must guarantee the equal protection of the laws to every citizen of our country, without regard to race and gender.

We must follow the clear decisions of the Supreme Court, including Adarand and Croson, and the decisions of the court of appeals for the third circuit, the fourth circuit, the fifth circuit, the sixth circuit, the seventh circuit, the ninth circuit, the eleventh circuit and the DC circuit. All of them have struck down race-based programs in the past few years—all of them.

We must take heed of unambiguous rulings of lower courts in Georgia, Connecticut, Ohio, Louisiana, Michigan, and, most importantly, in Colorado.

Let me remind my colleagues that less than 9 months ago the Federal district court in Colorado followed the Supreme Court's lead in Adarand and Croson and ruled—and I quote:

> Section 1003(b) of ISTEA and the regulations promulgated thereunder are unconstitutional.

I do not know when this body will ever have a clearer decision than this one. The administration and the Department of Transportation have tried to obscure this clarity with three or four predictable diversionary tactics.

Diversionary tactic No. 1: Ignore the court decisions. The first diversionary tactic is simply to ignore all the cases I have just cited, claim that Adarand never happened or simply claim that Adarand was wrongly decided or that it is just one decision by one court.

Well, I have quoted Adarand directly and pointed out, with great detail, that Adarand is not an aberration—not an aberration, Mr. President. Again, I quote the Congressional Research Service. The Adarand decision—this is from CRS—"largely conforms to a pattern of federal rulings which have invalidated state and local governmental programs to promote minority contracting—in: Richmond, San Francisco, San Diego, Dade County, Fla., Atlanta, New Orleans, Columbus, Ohio, [the State of] Louisiana, and Michigan, among others—and new challenges continue to be filed [probably as we speak]."

For those who say that Adarand is just not enough for us to go on, let me cite yet another Supreme Court case, Richmond v. Croson from 1989. In that case, the Government decided that minorities were underrepresented in the public construction arena. So the Government enacted a law like ISTEA that said: not less than 30 percent of construction dollars must be allocated to officially preferred—this is officially preferred—minority groups.

And you know what the Supreme Court said about the so-called "30 percent goal"? The Supreme Court said that this "goal" was "an unyielding racial quota." It was a quota, even though the Government plan had a waiver process to supposedly let you out of the quota in certain circumstances.

Let me quote the United States Supreme Court when it applied the "strict scrutiny" test to a set-aside that is virtually identical to the DBE that we have been talking about the last 2 days, the DBE set-aside in ISTEA. The Court said:

> We, therefore, hold that the city has failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race. To accept the city's claim that past societal discrimination alone can serve as the basis for rigid racial preferences would be to open the door to competing claims for 'remedial relief' for every disadvantaged group. The dream of a Nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs. . . . We think such a result would be contrary to both the letter and spirit of a constitutional provision whose central command is equality.

Diversionary tactic No. 2: "We've changed the law," they say, "by tinkering with the regulations."

When ignoring the Court fails, then someone suggests and the administration claims that they have simply changed an unconstitutional statute by simply tinkering with the regulations. But let me point out that the DOT has no new regulations. All we have from DOT is a promise to do better. And the Senate is apparently going to turn a blind eye to the equal protection clause of the Constitution and authorize a $17 billion quota on the mere promise—the mere promise—of cleaning up the program.

Does that fact not strike any other Member of this Senate as being a bit odd? I hope it does.

These new regulations are only in the "proposal" stage. We do not know what they will end up looking like. We do not know if they will make the program better or worse, constitutional or unconstitutional. Even DOT does not know what the new regs will look like.

For example, my colleagues argued yesterday that the proposed regulations would narrowly tailor the program because they would include an economic cap on DBEs. My colleague from Montana argued yesterday that our problems are solved because the new regulations will exclude the Sultan of Brunei—the wealthiest monarch in the world—from the Disadvantaged Business Program. The sultan will not be anywhere near the DBE program, my good friends argue.

Well, last night I took a close look at the proposed regulations to see what the economic cap would be. And you know what I found? Let me read to you word for word the exact language of the so-called narrowly tailoring economic cap.

> You may require the individual whose disadvantage is being questioned to provide information about his or her personal net worth.

But the proposed rule goes on to say:

> You may require only such information as is necessary to establish whether the individual's personal worth exceeds [blank].

They have not decided yet how poor you have to be.

So what is the economic cap? We have no idea. Will there be an economic cap at all? We are told there will be, but it has not been provided yet. DOT apparently does not know. So let me say, I do not know whether the Sultan of Brunei will be excluded or not. The proposed regs do not tell where this narrowly tailored economic cutoff is.

But, Mr. President, even if the cap excludes the sultan—and this is what I hope everybody will remember—even if the cap excludes the sultan, it still will not solve the narrowly tailored problem. You know why? Because even if you solve the "economic" problem, you have still not solved the "race" problem. The Supreme Court and the district court did not focus on the "economic," but rather the "race" issue.

Changing the economic guidelines does not change the fact that the DOT will still presume that all members of certain races are "socially disadvantaged" and need preferences. In other words, the proposed regulations do nothing to solve the most serious problem, which is that ISTEA will continue to make presumptions and decisions based on race, without any particular findings of discrimination against particular individuals or even particular groups in the highway contracting area.

So even if the new regs exclude the sultan economically, everyone will be relieved to know that other persons

from Brunei will still be "presumed" to be socially disadvantaged and get preferences, even though no State DOT agency has ever engaged in a pervasive pattern of discrimination against persons from Brunei or from Tonga or Micronesia or the Maldive Islands. Never heard of such a case, but these people are all, by Government fiat, put into the class for preferential treatment.

In the words of the district court in Adarand:

It [is] difficult to envisage a race-based classification that is narrowly tailored. By its very nature, such a program is both underinclusive and overinclusive. This seemingly contradictory result suggests that the criteria are lacking in substance as well as in reason.

Or as the Supreme Court held in Croson, a program is unconstitutional where "a successful black, Hispanic, or Oriental entrepreneur from anywhere in the country enjoys an absolute preference over other citizens based solely on their race. We think it obvious that such a program is not narrowly tailored to remedy the effects of prior discrimination."

Mr. President, let me conclude this particular point by reminding every Senator that Adarand and Croson are landmark Supreme Court decisions that are now the law of the land. The administration's attempt to comply with the law of the land has been to merely do a little DOT song-and-dance by playing with transportation regulations, not changing any regulations, mind you, but simply proposing them—proposing them.

Mr. President, complying with a landmark Supreme Court case requires much more than a mere "tinkering" with the regs.

Professor George LaNoue is a constitutional law expert who has testified in numerous minority contracting cases. Professor LaNoue has explained in great detail how the DOT's proposed regulations fail to bring the DBE program into compliance with the constitution. I ask unanimous consent that a letter from Professor George LaNoue that details the substantial shortcomings of the proposed regulations be printed in the RECORD.

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

UNIVERSITY OF CALIFORNIA, BERKELEY INSTITUTE OF GOVERNMENTAL STUDIES,

Berkeley, CA, October 17, 1997.

Hon. MITCH MCCONNELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: It is being asserted that various alterations in proposed regulations for Intermodel Surface Transportation Efficiency Act (ISTEA) solve the constitutional problems created by the use of race, ethnic, and gender preferences in awarding of contracts under that program. That assertion is incorrect for two reasons.

First, the regulatory alterations go only to the issue of narrow tailoring, not to the constitutional requirement that a compelling basis of remedying identified discrimination be established before any for the use of preferences be considered.

None of the fundamental evidentiary requirements necessary to support the preferences in this legislation have been established either by the administration or by Congress.

For example,

1. There has been no determination about whether there has been any discrimination by any federal agency in the contemporary procurement process.

2. There has been no determination about whether any state DOT agency or any other state agency has discriminated in the award of federal contract dollars.

3. There has been no determination about whether there has been any underutilization of qualified, willing and able MBE contractors in federal procurement or federally assisted procurement as prime contractors or subcontractors. The federal government has completed no disparity study that could create the "proper findings" the judiciary requires of governments before they employ race conscious measures.

4. There has been no determination about whether, when MBEs bid on contracts, they are proportionately successful. No study of who bids on federal contracts has been released.

As the Eleventh Circuit said unanimously on September 2, 1997 in striking down a preferential procurement program: ". . . if a [race conscious] program is not grounded on a proper evidentiary basis, then all of the contract measures go down with the ship, irrespective of any narrow tailoring or substantial relationship analysis." (Engineering Contractors Association of South Florida v. Metropolitan Dade County, 1997 WL 535626, *7, (11th Cir. (Fla.))).

Second, even if a compelling interest has been established, the proposed regulations do not meet narrowly tailoring requirements.

1. There has been no statistical analysis of whether the particular racial and ethnic groups granted presumptive eligibility are in fact economically or socially disadvantaged because of patterns of discrimination in recent years. The current list of presumptive eligible groups is a polyglot of designations by racial group (African Americans), culture (Hispanic), country of origin (Asian Americans) and lineage (Native Americans). Some of the groups on the presumptively eligible list have been in this country since its beginning; some are very recent arrivals. Some are relatively poor; some are relatively affluent. Some have very high rates of business formation; some very low. Some have well-documented histories of discrimination; some are virtually invisible. These groups have nothing in common at all.

The district court in the remand of Adarand v. Pena found that the use of race and ethnic based presumptive eligibility was unconstitutional because:

". . . it [is] difficult to envisage a race based classification that is narrowly tailored. By it's very nature, such a program is both underinclusive and overinclusive. This seemingly contradictory results suggests that the criteria are lacking in substance as well as in reason." (at 59–60).

2. There has been no post-Adarand evaluation of the effectiveness of existing federal race neutral programs or the possibility of creating new ones. The utility of race neutral programs must be established before race conscious remedies are employed. The Eleventh Circuit citing Croson recently said:

". . . we flatly reject the County's assertion that 'given a strong basis in evidence of a race-based problem, a race-based remedy is necessary.' That is simply not the law. If a race-neutral remedy is sufficient to cure a race-based problem, then a race conscious remedy can never be narrowly tailored to the problem." See, Croson, 488 U.S. at 509). (Engineering Contractors Association of South Florida v. Metropolitan Dade County, 1997 WL 535626, *34, (11th Cir. (Fla.))).

Race conscious measures can only be used as narrowly tailored remedies for identified discrimination. Race based means cannot be used, as the DOT regulations provide, whenever an arbitrary set-aside or goal percentage is not reached in a particular state during a particular period.

3. There has been no fulfillment of the Administration's promise to create goals specific to various industries. On May 23, 1996, the Justice Department proposed "benchmark limits" for each industry intended to represent the "level of minority contracting that one would reasonably expect to find in a market absent discrimination or its effects" and to control the decision of whether race conscious means were necessary in federal procurement related to that industry. (61 Fed. Reg. 26042, 26045, 1996). These benchmark limits still have not been produced.

The Department apparently thought such benchmark limits were essential to narrow tailoring and stated:

"Application of the benchmark limits ensures that any reliance on race is closely tied to the best available analysis of the relative capacity of minority firms to perform the work in question—or what their capacity would be in the absence of discrimination." (61 Fed. Reg. 26042, 26049, 1996)

Given this premise, the failure to develop the benchmark limits strongly suggests federal goals in ISTEA are not narrowly tailored.

In short, the record does not support the conclusion that a compelling basis for the use of Race conscious remedies exists with regard to the ISTEA program. The proposed regulations are either irrelevant or incomplete to the major requirements of narrowly tailoring and they do not begin to supply a compelling basis for the use of preferences.

Sincerely,

GEORGE R. LA NOUE,
Professor of Political Science, Policy Sciences Graduate Program, University of Maryland Graduate School Baltimore, Visiting Scholar, IGS, University of California, Berkeley.

Mr. MCCONNELL. Diversionary tactic No. 3, Mr. President: It is said that "10 percent is a goal, not a quota."

When all else fails, the final diversionary tactic is to argue that the DBE program is a program with goals, not quotas. In fact, some of my colleagues have gone to great lengths to point out that the 10 percent set-aside is merely a goal with no sanctions whatsoever.

Well, let us look at the DBE manual—right out of the manual. This manual is the DBE law of the land for States that receive ISTEA money. The DBE manual explains that failure to comply with the requirements will result in sanctions. Let me quote:

If the [Federal Highway] Administrator determines that a State has violated or failed to comply with the Federal laws or the regulations . . . with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the

State, and take such other action that he deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

In other words, there are sanctions. These same threats appear in the actual ISTEA contracts and in the Federal transportation regulations.

Now that I have spelled out that the threat of DBE sanctions are serious and real, I am sure my colleagues will respond by saying, "OK, sure we list sanctions, but we never use them. So 10 percent is still just a goal. It's not a quota." The reasoning here is that the Government must punish someone before the "goal" becomes a "quota" or a "requirement."

Well, first, let me say that the threat of losing millions of Federal highway dollars is plenty of incentive for the States to enforce the quota requirement. When the Federal Government is wielding that kind of weapon from on high, it does not have to punish them. A 10 percent quota is still a quota, even if States always comply and no one is formally punished.

Second, if you think the quota is never enforced, just ask two cities in New Mexico. The Senator from New Mexico and I were having a discussion about this issue on the floor just yesterday. Both the city of Rio Rancho and the City of Albuquerque were sued in Federal court over the use of ISTEA's racial quotas. What did the Federal Department of Transportation do? Did it simply call Rio Rancho and Albuquerque and say, "Hey, don't worry about the whole 10 percent thing. It's just a goal"?

That is not what happened, Mr. President. Both Rio Rancho and Albuquerque had to sue the Department of Transportation and Secretary Slater in Federal court to stop the quota enforcement. In the complaint that the cities filed they said:

The [Department of Transportation] is placing facially unconstitutional conditions upon the receipt of discretionary federal funds to which the City would otherwise be entitled to, and has caused or is likely to cause irreparable injury for which the City has no adequate remedy at law.

So both Rio Rancho and Albuquerque sought a court judgment that would require the Department of Transportation to justify or eliminate the quotas and pay any and all damages and attorney fees to the cities.

And the Federal judge was perfectly clear in declaring that the race-based programs were unconstitutional. In the words of the judge:

It doesn't really take a first-year law student to say, City of Rio Rancho, don't do this again. I mean, you're going to get sued again.

This is from the court case.

Unfortunately, the city of Rio Rancho, like every other city that receives any ISTEA funds, has little choice in the matter. ISTEA requires racial preferences. And if you are going to get out of the quota requirement, you had better be prepared to go through hell, high water, and the Federal courts.

Surely, my colleagues would agree that a true "goal" would not require State and local governments to sue the Federal Department of Transportation in Federal court just to get the "goal" fixed.

Let's turn to Houston. If Albuquerque and Rio Rancho don't prove that 10 percent is more than just a goal, then let's go from New Mexico over to Houston, TX. Let me share with you some comments included in the ISTEA committee report on the 6-month authorization bill in the House. These comments were part of a very detailed and astute statement made by several Republican House Members.

In April 1996, a Federal court in Texas temporarily enjoined Houston's METRO transit authority from utilizing race or gender-based preferences in the selection or award of construction contracts—making it impossible for Houston to comply with the federally-approved DBE program.

So, in response to the court's ruling, Houston designed a race-neutral program to provide assistance to economically disadvantaged small businesses.

Very similar to what the McConnell amendment would provide, an opportunity for emerging business enterprises.

The US Department of Transportation refused to recognize this alternative [race-neutral] program and withheld federal funding from METRO for nearly seventeen months.

Seventeen months without Federal funds, all because Houston was complying with a court order, Mr. President—Houston was complying with a court order prohibiting preferences. I don't know about you, Mr. President, but that sounds like a sanction to me. It sounds like a lot more than mere goals. It sounds like quota enforcement to any rational person listening to what happened.

The point here, Mr. President, is simple arithmetic: Goals plus requirements equal quotas—goals plus requirements equal quotas. The goals in ISTEA are not merely aspirational. The goals have requirements and the real threat of sanctions.

Let me spell out a few human examples about how goals in theory are actually quotas in practice. The first example was mentioned by Senator GORTON yesterday here on the floor, the insightful story about a man named Frank Gurney from Spokane, WA.

We have talked a lot about victims over the course of the last 2 days. Let's talk about some of the victims of this program. Just a couple of months ago, the head of Frank Gurney, Inc. mailed me a copy of yet another letter explaining how he lost yet another job because of the 10 percent quota. The rejection letter stated:

I regret to inform you that although yours was the lowest guardrail quote that I received for the . . . project . . . I found it necessary to use the third lowest guardrail quote [the third lowest guardrail quote] in order to meet the DOT requirement of 10 percent DBE.

Sorry, you are out of luck, even though you had the lowest bid.

The rejection letter was dated October 27, 1997. So this is still going on. The letters started in 1981, about the time we first authorized the DBE Program, and are still continuing up to and including last year. We know these letters will continue being sent until at least 2004 under this bill, unless my amendment passes, which will be the next time we will have a chance to revisit this law, Mr. President.

I will say a word about Michael Cornelius. If you think the ISTEA quota is only a goal, just ask Michael Cornelius. Mr. Cornelius' firm was denied a Government contract under ISTEA even though his bid was $3 million lower than the nearest competitor. Mr. Cornelius' bid was rejected because the Government felt the bid did not use enough minority- or women-owned contractors. In fact, the Cornelius bid proposed to subcontract 26.5 percent of the work to firms owned by minorities and women. Yet 26.5 percent was not enough in the world of goals.

I listened yesterday to Senator KENNEDY's example of women and minorities who, like Frank Gurney and Michael Cornelius, have been the victims of discrimination. I was moved by Senator KENNEDY's stories, and with each of the two or three stories of discrimination that Senator KENNEDY told, my instinct and my gut response was, "That's discrimination, and it is wrong."

But, Mr. President, do you know the difference between my stories and Senator KENNEDY's stories? There is a critical difference. In Senator KENNEDY's examples, the discrimination was wrong and the discrimination is prohibited by title VII and the Civil Rights Act of 1964.

So the examples of discrimination that were being cited are against the law—now, a law not being contested by anyone, a law supported by virtually everyone I know back in the mid-1960s.

In my examples, the discrimination is wrong but the discrimination is required, Mr. President—required by Federal law, not just any Federal law, but the very Federal law that we are about to reauthorize right here in the U.S. Senate.

How can anyone hear these examples and not conclude that what we are doing in ISTEA is dead wrong? It is wrong for the Cornelius family, it is wrong for the Gurney family, it is wrong for the preferred businesses who get the contracts, and, most importantly, it is wrong for our country.

I don't care how many times you tinker with the regulations or how many times you say 10 percent is only a goal,

you can't change the fact, Mr. President, that the Federal Government is requiring States and prime contractors to pick and choose subcontractors based on the immutable traits of race and of gender. There is no lawyer in the Senate and no lawyer anywhere in the United States that will ever convince me that this racial program is fair, prudent, or—most importantly—constitutional.

In closing, let me say, regardless of the outcome of this morning's vote, I firmly believe that the principle underlying the 5th and 14th amendments will ultimately carry the day. It obviously will take a while. The principle is the simple yet powerful idea that every American should be seen as equal in the eyes of the law. I firmly believe, as Justice Scalia explained in Adarand, "Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or debtor race. . . . In the eyes of the government, we are just one race here. It is American."

The courts and the American people understand this principle. Unfortunately, the Congress may be a bit behind.

Mr. President, I'm greatly appreciative of my colleagues participating in this important debate on both sides. They are well meaning Senators who look at the same set of facts and reach a different conclusion, but the debate has come and gone, the sky has not fallen, the Capitol dome has not caved in. In fact, it is the opposite. I think this debate has been very positive and constructive.

I end this debate as I began by asking one simple question: Should we place the Senate's seal of approval on a law that the Supreme Court has declared presumptively unconstitutional and the lower court has specifically struck down, without the Senate or House holding even one hearing after Adarand to determine if the law is narrowly tailored to remedy specific and persuasive discrimination?

As a Member of this body, my duty and obligation to the Constitution, the courts, and individual citizens compels me to declare no, we should not reauthorize this law. We have had no hearings since Adarand to determine that this program or any of the 160 Federal programs of racial preference that have been identified by CRS have met the strict scrutiny standard. The tactic of the Clinton administration has been to delay, deny, divert, and obfuscate. The American people deserve better.

Mr. President, I close with the words of the Weekly Standard:

> It won't do for a democratic country to lurch its way to colorblindness courtroom by courtroom, without the clear and resounding public debate an issue of such moment and principle demands. It won't do . . . to delay the prize of colorblindness, even for a moment, by silently ignoring the battle while it's waged. And, most basically, it won't do . . . to pretend that we don't understand what the Constitution says.

Mr. President, How much time remains?

The PRESIDING OFFICER. Forty-five seconds.

Mr. McCONNELL. I reserve the remainder of my time.

Mr. CHAFEE. Mr. President, I ask unanimous consent that calculators be permitted on the floor during consideration of S. 1173.

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

Mr. CHAFEE. I yield to the Senator from Arizona.

Mr. McCAIN. I thank the Senator from Rhode Island.

Mr. President, I rise in opposition to the amendment to eliminate the Disadvantaged Business Enterprise Program and establish a new Emerging Business Enterprise Program.

Mr. President, I'm not a supporter of race-based or gender-based set-aside programs. This amendment goes too far. It eliminates a program that, while seriously flawed in its current focus, was designed to provide opportunities for historically disadvantaged businesses to compete for Federal highway construction dollars. It establishes a new program that merely shifts the focus of Government intention and funding to businesses based on size and length of time in business.

Ironically, Mr. President, if the Emerging Business Enterprise Program proposed in this amendment had existed in 1975, software industry giant Microsoft would have qualified. In its first 3 years of business, Microsoft took in only $420,000, putting it well under the $25.2 million limit of the new program. Clearly, this business did not need any Government help nor interference.

I'm a member of the Renewal Alliance, and I listened with interest to comments made by my colleagues who are also working with this important project. As I stated earlier, I have serious concerns about the racial and gender bias of the DBE Program. However, to eliminate it without a suitable Government-wide replacement program focused on equal opportunity would be counterproductive and shortsighted.

Mr. President, all Americans—regardless of who they are, where they live, or their gender or skin color—all Americans deserve the opportunity to provide for their families, to pursue their aspirations, and to share fully in the American dream. Our efforts to assist the truly needy in our Nation should be focused on providing that opportunity equally. The American dream is based upon equality. History teaches us that there is no panacea for artificial barriers to opportunity, but no matter how intractable the problem, it is the essence of the American character to constantly advance our society so that social and economic progress of each generation exceeds that of its predecessor. No American is unimportant, and as a Nation we have an obligation to help those in need to help themselves.

Our success in that endeavor is bound only by the limits of our energy and our imagination. We must recognize that poverty and economic disadvantage do not confine themselves within a certain race, gender, or ethnic group. Economically disadvantaged people reside in practically every community. We have an obligation to help these Americans even if they do not happen to live within areas of the most severe poverty.

I suggest we target the root of the problem—lack of economic opportunity, not race, gender, ethnicity, and the like. Current programs focus on providing Federal assistance in contract preferences to businesses based on race or ethnicity of a business owner. We should reorient these programs to provide preferences to economically disadvantaged Americans, regardless of their race, creed, or color.

A needy American is a needy American, no matter their race, creed, color, or gender. Certainly the Supreme Court's decision in the Adarand case emphasizes the reality that, by and large, race-based set-asides do not comport with the fundamental tenets of equality and equal protection.

Let me add a few thoughts of my own to the suggestions of other Members as to a possible focus for solving these problems. In the last Congress, I introduced a bill which included a section designed to retarget our efforts and redirect Federal spending goals to assist economically disadvantaged individuals and businesses regardless of race, ethnicity, skin color, or gender. There are a number of other areas where we can, as a Nation, assist our citizens who are less well-off, particularly providing high-quality educational opportunities and accessible and affordable health care. Together, these are the kinds of parameters and programs that I believe would help provide important economic opportunity.

The fundamental question is, shall our Government as a matter of policy prefer certain Americans because of their race or ethnicity or gender over other Americans, regardless of merit or need?

An answer in the affirmative seems to contradict our aspirations for a color-blind society dedicated to the rights of the individual. An answer in the negative appears indifferent to the gross injustices that have been inflicted on various racial and ethnic groups who make up the American tapestry.

The debate over contracting set-asides has focused too narrowly on either maintaining the status quo, with its inherent unfairness, or simply abolishing economic opportunity programs

despite their potential to justly assist needy Americans. Fortunately, our options are neither so stark nor so limited. Rather, we can find the answer in reform.

Reforming federal programs so that they are color-blind and gender-neutral and focused on assisting needy Americans rather than wealthy business owners, will help us to address the economic needs of Americans without pitting one group against another, thereby violating the dictates of fairness and equality.

Mr. President, we cannot write a bill that will solve the problem of joblessness and poverty in our nation today. But I believe we can make significant gains by employing the kinds of incentives I and others of the Renewal Alliance have described today. I look forward to a future debate on these ideas to ensure that we craft incentives that will be as appropriate and cost-effective as possible in ending the cycle of poverty and dependence.

Mr. President, let me make one suggestion to my colleagues. I believe the relevant committees should hold field hearings and engage the Americans who live in the poorest communities in the debate over how best we can help them to meet the needs of their families and their neighborhoods. Perhaps it's time we more diligently consult and work with real people and address their realities as we endeavor to address the needs of our great nation.

Mr. President, let me close by saying to my fellow Republicans that our party has much at stake in this debate. As the party of Lincoln, our heritage and destiny is to be a party of all Americans dedicated to the principles of democracy, limited but efficient government, individual freedom and opportunity.

Unfortunately, in discussing the inherent contradictions and shortcomings of affirmative action programs, the danger exists that our aspirations and intentions will be misperceived, dividing our country and harming our party. We must not allow that to happen.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, I thank the Senator for those thoughtful comments.

Mr. BAUCUS. Mr. President, I see the Senator from New Jersey on the floor. I yield 4 minutes to the Senator from New Jersey, Mr. LAUTENBERG.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Jersey for 4 minutes.

Mr. LAUTENBERG. I thank the Senator from Montana.

Mr. President, I stand here in opposition to the amendment that is being offered. I hope that the Senate will reject this amendment because, despite the best intentions of so many, we still do not have a level playing field when it comes to Government contracting. There is still discrimination. Sometimes it's overt, sometimes it's subtle; but it definitely still exists, and the facts bear this out.

Consider the following: for transportation construction contracts, minority-owned firms get only 61 cents for every dollar of work that a white male-owned business receives. Unfortunately, it's even worse for women-owned businesses—they only receive 48 cents. This amendment will only exacerbate these numbers.

I have to take 1 minute, Mr. President, to describe a personal situation. My mother was widowed early in the war. I had already joined the Army, and she went to work for an insurance company, a large insurance company, and she did a good job for 3 years. At the end of that time, they said to her, "Molly, thank you very much, but Joe is back from the Army." She said, "Well, give me another territory." They worked in territories at the time. They said, "Well, you know we don't hire women for these jobs." It was shocking. My mother was shocked, my sister was shocked, and I was shocked, because she did her job and did it perfectly. They said, "We don't hire women for these jobs." We are past that stage, thank goodness. But the fact is that women, whether it is in salaries or in business, are always operating at a different level than white men.

Mr. President, there are a few more figures I would like to give. Few are aware that white-owned construction companies receive 50 times as many loan dollars—and I know this having served for a short time on the Small Business Committee—as minority-owned construction firms with the same equity. And women-owned businesses have a lower rate of loan delinquency, yet still have far greater difficulty in obtaining loans. The majority of women business owners have to resort to personal resources, such as maxing out their credit cards, to finance their business.

Mr. President, we all know what the problems are with the traditional affirmative action programs. But we ought to work to correct them because people who don't have the same advantage, whether it's education or family exposure or a job opportunity, deserve to be able to come into the mainstream of America's economic and cultural life. And if they don't, we know what the problems are.

Mr. President, Jim Crow laws were wiped off the books over 30 years ago. However, their pernicious effects on the construction industry remain. Transportation construction has historically relied on the old boy network, which until the last decade, was almost exclusively a white, old boy network.

I do not imply that the individuals running these white-owned companies were racist, rather, I blame the discriminatory laws and practices that shut minorities out of this industry for so many years.

This is an industry that relies heavily on business friendships and relationships established decades, sometimes generations, ago—years before minority-owned firms were even permitted to compete. In 1982, President Reagan signed into law legislation attempting to put an end to the old boy network.

That legislation, creating the Disadvantaged Business Enterprise program, or DBE program, has been a success.

Mr. President, let me explain briefly what the DBE program does. The Secretary of Transportation sets a nationwide goal for participation by socially and economically disadvantaged businesses in transportation construction contracts. The program does not contain a quota or create a set-aside, but merely sets a goal for states to follow as they wish.

To their credit, the overwhelming majority of states have chosen to follow or exceed the recommended goal of ten percent. Those states that have opted out of this goal have neither been the recipient of any retaliation nor have otherwise suffered from any adverse consequence.

Furthermore, states and municipalities are given the flexibility to adjust their goals to reflect the availability of minority and women-owned businesses in their area.

Who are the participants in the DBE program? They are hungry small businesses that are just trying to get a chance at a Federal contract. These are competitive firms.

As one of my constituents who participates in the DBE program told me, if a pie is sliced ten times and nine pieces are eaten by a "big guy" and one piece is thrown to ten hungry little guys, you can be certain that those ten hungry little guys are going to scramble, shove, kick, and scuffle to get that one piece.

Congress and President Reagan were right back in 1982 and the Chairmen of both the transportation subcommittee and the full committee were right to continue this program in ISTEA.

Why do we still need an affirmative action program for federal construction contracts?

Because we know that the private sector looks to the public sector for leadership on this issue. And we also know that once affirmative action programs stop, the inclusion of qualified minorities, be it in education or in business, drops. We have seen this with law school admissions in California and Texas. We have seen it in state contracting in Michigan and Louisiana.

I fear this would occur at the federal level and that it would spill over into lower levels of government and into the private sector.

Mr. President, it would be a shame to allow this to occur. I urge my colleagues to oppose the junior Senator from Kentucky's amendment and I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MCCONNELL. Mr. President, I understand that I have 45 seconds left, and I yield that to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania, Mr. SANTORUM, is recognized.

Mr. SANTORUM. Mr. President, I support the McConnell amendment. I believe the constitutional arguments are persuasive. As a member of the Renewal Alliance, I must say that the substitute or the replacement program Senator McConnell put forward is a step in the right direction. I disagree with Senator MCCAIN, who said it is not sufficient. I believe it is. It is, in fact, a good step.

Also, if we are able to not table the McConnell amendment, I will be working with Senators ABRAHAM and COATS to see if we can do more, in fact, to put an agenda in place that really will do something for economically disadvantaged areas, and particularly urban areas in this country, so we can in fact create more hope and opportunity in those neighborhoods. That is really the ultimate goal, and I think the McConnell amendment begins to go in that direction.

Mr. BOND. Mr. President—I will reluctantly vote against the McConnell amendment. I am concerned that if this provision is included in this bill the President will veto the bill or it will cause delay in enactment of this important legislation that is imperative to saving lives in this country.

This ISTEA legislation is a matter of life and death to Missourians. Highway fatalities in the state of Missouri increased 13 percent from 1992–95; 77 percent of the fatal crashes during this time frame occurred on two-lane roads. In Missouri, 62 percent of the roads on the National Highway System, excluding the Interstate, are two lanes. I have had too many friends die on Missouri's highways. We need to make certain that this legislation is enacted at the earliest possible date!

I want to make clear that since I became chairman of the Senate Committee on Small Business I have strived to make certain that government contracting opportunities are available to ALL small businesses. I know that the engine driving the economic growth of this country is small businesses. Small businesses and the entrepreneurs of this country, regardless of race or gender, should be given every opportunity to succeed.

For example, last year this body passed the HUBZones legislation which I authored. It passed unanimously and has been signed into law. The law provides government contract set asides to small businesses that are located in HUBZones, which are economically distressed metropolitan areas and poor rural counties. To be eligible for a contract set aside, 35 percent of a small business' workforce must be residents of HUBZones. This program is designed to help small businesses grow, while creating jobs and investment in urban and rural communities that are suffering from economic neglect.

I do have some concerns that the McConnell amendment could inadvertently eliminate the HUBZone program.

It is my hope that I can work with my friend and distinguished colleague, Senator MCCONNELL, on this issue in the future. But, I will not hold up $3.6 billion for my State of Missouri.

Mr. DURBIN. Mr. President, I rise today to express my support for the Disadvantaged Business Enterprise (DBE) program and my opposition to any attempt to weaken or eliminate the program. Under the DBE program federal transportation trust funds from user fees are distributed by the Department of Transportation (DoT) through state DoTs and state and local mass transit agencies. These agencies are required to establish a 10 percent goal for the trust funds they receive, but are afforded tremendous flexibility in reaching those goals. If a state agency or prime contractor is unable to find enough qualified subcontractors to perform the work, they are allowed to apply for a waiver or lower goal. In short, the DBE program does not establish a quota nor a set-aside program.

The opponents of the DBE program argue that this sort of flexible, constitutional affirmative action flies in the face of the American people's disagreement with affirmative action. This is simply not true. A Wall Street Journal poll published in November of last year found that 48 percent of Americans favor affirmative action and only 43 percent oppose. In addition, the voters in Houston last year rejected a Proposition 209-like initiative by 55 to 45 percent, thus, demonstrating the people's commitment to affirmative action.

Moreover, since the opponents of affirmative action often offer no alternative other than the promise of a society free from all prejudice against women and minorities, they must implicitly believe that discrimination no longer exists in this country. Either that, or they are not concerned that there are still very real disparities between the races and genders. Both alternatives are troubling.

The reality of these disparities is still disturbing. In a recent Urban Institute study identical black and white college students posed as test subjects in an experiment designed to measure the extent of racial discrimination in employment. The subjects were identical in dress, had the same resumes, and had scripted presentations. The only variable was race. Whites received job offers 41 percent more often than blacks. For those who received job offers, the wages whites were offered were 17 percent higher than the wages offered to blacks.

Another recent study conducted by the Glass Ceiling Commission found that 96 percent of the senior managers of the Fortune 1000 Industrials and the Fortune 500 Companies are male; 97 percent are white; 0.6 percent (that is, less than one percent) are black; 0.4 percent are Latino; and 0.3 percent are Asian.

Sadly, I am concerned that the arguments waged against the DBE program are not truly criticisms of the program but are merely thinly veiled attacks on civil rights itself. Although I respect the DBE program opponents' right to disagree on these issues, I find it disturbing that the underlying theme of their arguments against the program boil down to this: "Minorities and women may have been discriminated against in the past—they may even still be discriminated against today—but we, the majority, are no longer going to provide remedial efforts to counteract this discrimination. Enough is enough."

This sentiment runs counter to this country's dedication to civil rights and humanitarianism. To preserve our civil rights and to earn equal rights for all we must acknowledge the disappointing reality that we have not yet achieved a color or gender blind society. By attacking the DBE program, the opponents of the program are also dismantling the steps of progress we have made toward a nation we all want—a nation where there will be no reason to debate civil rights and where color and gender are not determinative of opportunity.

Mr. DOMENICI. I wonder if I might have the attention of the distinguished chairman and banking member of the Environment and Public Works Committee, as well as the chairman of the Subcommittee on Transportation. I want to address a program that is authorized under Section 1111 of S. 1173, namely, the Disadvantaged Business Enterprise (DBE) program.

As my colleagues know, in the wake of the Supreme Court's 1995 decision in Adarand v. Pena, all federal agencies undertook a review of their affirmative action programs with an eye toward ensuring that those programs met "strict scrutiny"—the new standard of review set by the Court.

Toward that end, the Department of Transportation proposed a revamping of its regulations for the DBE program. D.O.T.'s intent was to ensure that the DBE program satisfied the two requirements of strict scrutiny—that the program met a "compelling government interest," and that it was "narrowly tailored."

It is my understanding that last May, the Department published proposed new regulations in the Federal Register for comment. That comment period closed last September. Since that time, Department officials have been poring through the 300-plus comments received. They hope to have the new regulations finalized within the next two months.

I believe the DBE program must be implemented in a manner that is constitutional. I believe that that is critical to the integrity of the program, and to the Senate's support of that program. Therefore, I would like to ask the chairman and ranking member—whose committee has oversight over the DBE program—if it is their intention to press the Department to ensure that the new regulations pass constitutional muster.

Mr. CHAFEE. Yes: it is. We have made it clear to the Secretary that while one can never predict with 100 percent certainty what language may pass constitutional muster, the Committee expects the Secretary and his legal staff to do their utmost to make sure that the new regulations closely follow the guidance set forth by the Court in Adarand.

Mr. BAUCUS. I concur. It is the committee's intention that his program be carried out in a manner that is consistent with the Constitution. We expect no less. Secretary Slater is aware of, and I am assured agrees with, our views on this matter.

Mr. WARNER. As chair of the subcommittee that sponsored this bill, I have a particular interest in this matter, and I want to assure the Senator that adherence to Adarand is our intent.

Mr. DOMENICI. I appreciate the Senators' confirmation on this point. Let me ask further: Will the committee continue to be in touch with Department officials as the regulations are readied for release? And will the Committee scrutinize the new regulations to ensure that the Department did in fact follow the Court's guidance under Adarand?

Mr. CHAFEE. Yes: we will.

Mr. BAUCUS. I can assure the Senator, and the Senate, that we will indeed.

Mr. WARNER. We certainly intend to.

Mr. DOMENICI. I am pleased to hear it, and I want to thank the Senators for taking the time to respond to my concerns.

Mr. ABRAHAM. Mr. President, I rise today to comment briefly on some remarks made earlier during debate on the McConnell amendment. In this debate, several of my colleagues noted that the percentage of state-awarded highway contract dollars realized by minority and woman-owned firms dropped dramatically in states that abolished their set-aside programs. Several speakers pointed to what happened in my own State of Michigan as an example of this phenomenon.

What the speakers did not explain is how Michigan ended its program. In 1989, the Sixth Circuit Court of Appeals struck Michigan's state DBE program as being unconstitutional, as a result of which Michigan was forced to abandon it. What this proves, though, is the opposite of what my colleagues supporting the tabling motion are claiming. We need to devise methods that will pass constitutional muster for reaching out to minority and women-owned firms, rather than reenacting a program that the courts surely will strike down, leaving us with no mechanism for aiding disadvantaged businesses.

Mr. DASCHLE. Mr. President, we all believe that America is the land of opportunity. But the road to opportunity is not always an equal access road. The highway construction industry in particular has kept newcomers, like women and minority-business owners, in the slow lane. There's no reason equal opportunity should be sacrificed when it comes to road building

That's why I support the Disadvantaged Business Enterprise, or DBE, program and oppose the McConnell amendment. The DBE program was signed into law by President Reagan and reaffirmed by President Bush; it has always enjoyed bipartisan support. Designed to enhance opportunity for all, and not limit it for any—it's a true equal opportunity program.

Contrary to arguments made by opponents of the DBE program, the Supreme Court in the Adarand case did not find the DBE program unconstitutional. The Court held only that strict scrutiny should apply to federal affirmative action programs as it does to those implemented by the states. Strict scrutiny requires that there be a compelling government interest in addressing discrimination and that the means chosen to address the discrimination be "narrowly tailored." The DBE program meets both tests.

There is clearly a compelling interest in addressing the pervasive discrimination that has characterized the highway construction industry. According to the Supreme Court, "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups is an unfortunate reality, and the government is not disqualified from acting in response to it."

The DBE program is also narrowly tailored, meeting the second prong of the Adarand test. The DBE program does not include quotas or set-asides—it is a "goals" program. The individual States set their own goals that can be above or below the national goal of 10 percent. The DBE program does not set rigid numerical targets that must be met to avoid a penalty nor does it set-aside contracts or dollars for certain businesses. Demonstrating conclusively that it is not a quota, the DBE program has no sanctions for failure to meet a goal.

Working to make the program even stronger, the Department of Transportation is issuing new regulations that ensure that it is as narrowly tailored as possible. For example, the new regulations provide that the program must give priority to race-neutral measures to reach out to women and minority-owned businesses; must ensure that good faith efforts are enough, even if the bidder has not achieved the goal; must ensure that the goal-setting is based on number of qualified DBEs in the state; and tighten up the certification process so that only qualified DBEs are in the program.

The DBE program is not only constitutional, but also is effective and necessary. The program creates jobs—the Department of Transportation estimates that the program directly or indirectly results in more than 100,000 jobs each year. It also serves as a motor for economic development in disadvantaged communities, with more than two billion dollars in construction contracts going to small businesses under the program. Women too have benefited greatly from the program. Since women were included as DBEs, their procurement dollars have grown by approximately 175 percent.

But we should not rest on our laurels. The time has not come to end the program, since women and minority-owned businesses are still greatly underrepresented in the highway construction industry. Minorities make up over twenty percent of the population, but minority businesses are only nine percent of all construction firms and those businesses get only five percent of construction receipts. Women own a third of all small businesses but receive less than three percent of federal procurement contract dollars.

In my State of South Dakota, there are seven DBEs qualified as prime contractors and 75 DBE subcontractors. Their contribution to South Dakota's economy and to their own communities goes beyond just the jobs they create and the business they generate. They are inspiring a new generation of small business owners to believe that they, too, will be able to drive on the road to opportunity.

That's why we need to keep this program—because we need to ensure that that road to opportunity is the wide open road that America is known for.

Mr. LIEBERMAN, Mr. President, I rise to express my views on the Disadvantaged Business Enterprise program, and to explain why I have decided to vote against Senator MCCONNELL's amendment, which would eliminate that program. This was not an easy decision for me to make. In attempting to analyze the constitutionality of the DBE program, we are

dealing with a complicated area of the law, where many issues remain unsettled. But just as importantly, the outcome of this vote will affect hundreds of thousands of hard working Americans, of all races and of both sexes.

I have always opposed laws that establish quotas. I am going to vote against this amendment because I am convinced that the DBE program does not create quotas. There is substantial flexibility built into the program for states to set their own goals based on local conditions. If they fail to meet their own goals, there is no federal sanction or enforcement mechanism. The Secretary of Transportation may waive the national goal of 10% for any reason, and presumably would do so if the collective efforts of the states did not add up to 10% of all ISTEA funds expended. All that convinces me that the percentage stated, while troubling is a goal not a quota.

But I am still troubled by the fact that this law establishes goals based on gender and racial classifications. Any law that confers some benefit based on gender or race can cause unfair results; those who are not members of the enumerated categories, the non-beneficiaries of the program, are being denied absolutely equal treatment. We should all hesitate before enacting such a provision. Indeed, the Supreme Court's Adarand decision now requires us to engage in a careful analysis before enacting such a provision. In Adarand the Supreme Court held that Congress may only enact racial classifications that are narrowly tailored to further a compelling interest. This standard of review, known as "strict scrutiny", is difficult to meet, but in her opinion for the Court Justice Sandra Day O'Connor emphasized that federal affirmative action programs could and would be upheld where Congress was acting in response to the practice and lingering effects of discrimination.

I am voting against the McConnell amendment in spite of my reservations because I am convinced that discrimination persists in the transportation construction industry and in related industries, and because I believe that the DBE program is narrowly tailored to attack the ongoing practice of that discrimination. The program therefore is both justifiable as sound policy and in compliance with the Supreme Court's Adarand decision.

We have before us ample evidence of historic and more importantly ongoing discrimination in the relevant industries, not just the transportation construction industry but also in the surrounding economic structure of lenders, suppliers, surety companies, and trade unions. Much of this evidence appears in the record before Congress; Congressional committees have received testimony describing this discrimination, and on many occasions committees of the House and the Senate have concluded that barriers still remain to equal participation by women and minorities.

In May of 1996, the Department of Justice published in the Federal Register an extensive survey of evidence showing how discrimination works to preclude minorities from obtaining the experience and capital needed to form and develop a business, and how discriminatory barriers deprive existing minority firms of full and fair contracting opportunities. That report found "powerful and persuasive [evidence] that the discriminatory barriers facing minority-owned businesses are not vague and amorphous manifestations of historical and social discrimination. Rather, they are real and concrete, and reflect ongoing patterns and practices of exclusion, as well as the tangible, lingering effects of prior discriminatory conduct." Discrimination by trade unions and private employers has prevented minorities from getting the requisite experience and opportunity to move on to self-employment. Dozens of studies and lawsuits cited in the report demonstrate gross disparities over the years in these sectors of the economy, often caused by proven racial discrimination. Similarly, minorities have often been shut out of lending and bonding markets: a recent study in Denver found that African-Americans were 3 times more likely to be rejected for business loans than whites, and Hispanics were 1.5 times as high. Contracting itself too often remains a "closed network"; prime contractors maintain their long-standing relationships with their subcontractors, and the new entrant minority or women-owned firms are excluded.

In my view, this evidence of discrimination is sufficient to establish the compelling interest required by the Adarand decision. But let's move beyond dry statistics for a moment and consider the people behind these numbers. Earlier I referred to the burdens that gender and racial classifications can impose on innocent parties. Our decision today is so difficult because we must compare that inequity to the harm caused to other, equally innocent people, by discriminatory business practices. The companies now benefitting from the DBE program are not inferior; we have heard no complaints about the quality of their work. Yet without the program many of them never would have received an opportunity to win contracts. I have met with these small-business owners, and they are rightfully proud of their accomplishments, and grateful for the opportunity this program gives them.

Just as I am satisfied that ISTEA's DBE program serves a compelling interest, so too am I convinced that the program is narrowly tailored to further that interest, as required by the Adarand decision. My belief that the DBE program will survive court scrutiny is bolstered by the new regulations that the Department of Transportation will be finalizing in several months. From my discussions with the Transportation Secretary and my staff's discussions with Transportation Department attorneys, it appears to me that the staff at that agency have been doing an excellent job poring over court decisions as well as comments from interested parties. The new regulations will adhere very strictly to the narrowly tailored test, and the result will be a DBE program that considers gender and racial characteristics without becoming quotas.

For example, states will be given a great deal more flexibility in determining how to calculate their goals, based on the availability of qualified DBEs in the relevant industries. These formulae are designed to focus on the extent to which discrimination in the contracting industry has actually reduced opportunities for DBEs, and to determine how much DBE participation there would be in the absence of discrimination.

Under the rules someone who is not himself financially disadvantaged will not be able to qualify for the DBE program, regardless of how small his company is. Anyone will be able to start a proceeding to prove that an individual owning a DBE is not actually socially and economically disadvantaged. On the other hand, anyone not presumed to be socially or economically disadvantaged would be able to apply for DBE status based on special circumstances. Finally, the DBE program makes extensive use of gender and race-neutral alternatives, as well as waivers.

I have listed only some of the more important regulations that have helped convince me that the DBE program will be narrowly tailored to further a compelling interest when it is implemented. Although I am satisfied that the DBE program can survive the courts' scrutiny, I still recognize that innocent people may be burdened by the program's effect on their livelihoods. Our obligation, and the obligation of the Executive Branch, is to minimize these unfair results in the design and implementation of the DBE program, and to strive for a day when we will not feel the need to incorporate even gender or racial goals into our laws at all.

Mr. KEMPTHORNE. Mr. President. I rise today to address the issue of the Disadvantaged Business Enterprise (DBE) program in the Intermodel Surface Transportation Efficiency Act (ISTEA). This DBE program is a narrowly tailored program that establishes the goal for states to have prime contractors use DBE's to do some portion of their federally assisted construction projects. While the federal goal is 10% of all projects, states are free to develop their own goal for their level of participation.

There is much confusion about what the ISTEA DBE program is and what it is not. It is not a program of federally mandated quotas that requires states to participate with the threat of financial sanctions for noncompliance. It is however, a program that allows states to set their own goals and targeted levels participation and permits annual renegotiation of these goals. Additionally, states are permitted to waive their self established goals in a particular contract or for an entire year if compliance is not possible. In fact in both 1996 and 1997 two states did not meet their goals and no sanctions were imposed.

Mr. President, the national goal for participation is 10% and while each state can vary from this my state of Idaho has adopted 10% as their target. The Idaho Department of Transportation informs me that this program is very popular, it is easy to administer and participation is high. In fact, the state of Idaho has exceeded their 10% goal every year including the last three where participation was 11%, 12.4% and 10.7%. In Idaho the majority of the recipients of these construction contracts have been women owned businesses. Interestingly enough since the inclusion of women owned business as an eligible class under the ISTEA DBE program in 1987 women owned business in my state have increased 104%. While this growth figure includes all types of businesses, I am confident that the positive impact of this program on the construction trades cannot be over emphasized.

Mr. President, put quite simply the ISTEA Disadvantaged Business Enterprise program works. Without federal threats and financial sanctions this program has encouraged states to set goals that provide increased opportunities for women and minority owned businesses to participate in the ISTEA program. This is an excellent example of an incentive-based program that benefits our nation as a whole. I am committed to retaining this important program during the reauthorization of ISTEA.

Mr. BINGAMAN. Mr. President, I want to join my Senate colleagues in opposition to Senator MCCONNELL's amendment to eliminate the Department of Transportation's Disadvantaged Businesses Enterprise program. This program, known as the DBE program, for years has been very successful in bringing equity and fairness into construction contracting, and I believe it should be maintained as it is. Most of all, I agree that this program does not violate the equal protections guaranteed by our Constitution, and I question the Senator from Kentucky's interpretation that it does.

In fact, if Senator MCCONNELL is basing his reasons for eliminating this program on our Supreme Court's decision in Adarand v. Pena, then I am confused. My reading of Adarand suggests nothing of that sort.

While it is true that the underlying issue in Adarand was whether the Department of Transportation has infringed on Adarand's constitutional right to due process and equal protection, the issue the Court actually addressed and decided in this case was by what standard is an infringement in this context determined. In other words, how do we figure out what constitutes a violation of equal protection? Indeed, the Court reversed longstanding law, and raised the standard for justifying this program. Typically, the burden to justify the necessity and the implementation of a program that affects equal protection lays with the government.

The Court, for the first time, determined that the standard of "strict scrutiny" should be applied in a case of this sort. Specifically, the standard of strict scrutiny requires that if the government determines to implement a program such as the DBE program, which ultimately effects an individual's constitutional right to equal protection, the government first must show a "compelling interest." Basically, the government must have more than a very good reason for the program. Second, even if the government can show a compelling interest, the standard requires that the government show that the program is "narrowly tailored" to serve that interest. So the issue before the Supreme Court in Adarand was which standard to apply, and the Court held that the standard must be "strict scrutiny." This is a landmark decision, because it places on the government a very tough test, a test that often is very difficult to overcome. Of critical importance here, is that the Court recognized that the standard, although very tough to meet, is not fatal in fact, it is not impossible to overcome. And I believe that is where my colleague from Kentucky has erred.

What I understand Senator MCCONNELL to be saying is that the Court, in holding that strict scrutiny is the standard to apply in this context, ultimately held that the DBE was unconstitutional. To the contrary. The Court simply expounded the standard for making this determination, nothing more, nothing less.

What does this standard mean to the DBE program? It means that the Department of Transportation must show that its governmental "interest," its important reason for having this program, is "compelling." In this context, it requires that the government must show that there is a history of discrimination in the construction contracting industry, such that minority and women-owned businesses, although qualified for a contract, continuously are not awarded contract simply because they are minority- or woman-owned.

Clearly, there long has been a history of discrimination in this country, and the effects of discrimination still linger. Department of Transportation can show that although minority-owned businesses are 9 percent of construction firms, they get only 5 percent of construction receipts. Additionally, DoT can show that women own one-third of all small businesses, but in 1994, for example, received only 3 percent of federal procurement contract dollars. Moreover, Department of Transportation can show that, in the wake of City of Richmond v. Croson, disadvantaged businesses have been squeezed out from contracting opportunities. Put simply, in those areas where there is no DBE program in place, minority-owned businesses received no contracts at all. So it's clear there is a wide gap in the availability of qualified minority- and women-owned contractors and the number of contracts they are in fact awarded. The government's compelling interest is to remedy discrimination, and I don't think anyone in this Congress can dispute the government has a compelling interest.

The real issue here, however, is how the government sets out to remedy that discrimination. The Court explained that strict scrutiny requires the government must "narrowly tailor" whatever is crafted to address this problem. In other words, the program cannot be too broad, but must be designed specifically enough to remedy the discrimination without infringing on anyone else's Constitutional rights.

That is exactly what the Department of Transportation has in the DBE program. The DBE is designed only to provide a "goal" that ten percent of contracts be awarded to disadvantaged businesses. You may ask, what is the difference between a "goal" and a "quota" or a "set-aside"? I see a clear distinction.

A quota requires that a minimum number of construction contracts be awarded to disadvantaged business, regardless of the amount or history of discrimination that has taken place. Right or wrong, it allows no flexibility. Same is true with a set-aside.

The Department's "goal" program, on the other hand, provides broad flexibility. I read the program to encourage contracting with disadvantaged businesses up to 10 percent of contracts. That is a very significant difference, particularly when you consider the strict considerations that DoT has built into the program.

For instance, the program requires that the goal correspond to the availability of qualified DBE's in a given market area; it requires the goal be "race neutral"; the program cannot be for an unlimited period of time but only for as long as it takes to address any measured inequities in contracting; the goal of 10 percent is not

required; and it also provides the flexibility to tailor a program to the circumstances of the locality.

Mr. President, I am confident that the DoT's DBE program is not unconstitutional and in full accord with Adarand. But nobody has to take my word for it. I suggest they examine Adarand for its real effect. That precisely is what many very esteemed constitutional law professors did, and they conclude that this program is within constitutional parameters. Any other conclusion we should leave to our Supreme Court.

Mr. President, I appreciate Senator MCCONNELL's concern for all the emerging small businesses in our country, and I agree there should be fairness, equality for all. I am certain he has only the most genuine interests in mind for everyone. I have to disagree, however, that fairness and equality will prevail if the DBE program is eliminated. Given our history as a nation and the lingering effects of discrimination, I believe the DBE program is necessary. Moreover, I believe it is constitutional and should remain intact. Therefore, I will oppose the amendment.

Mrs. MURRAY. Mr President, I rise in strong support of the Disadvantaged Business Enterprise program and in opposition to the McConnell amendment. This program is the right way for our nation to provide business opportunities for all Americans.

I believe in the goals of the DBE program: To improve economic opportunities for qualified, but disadvantaged, business owners, who most frequently are women and people of color. This program counters the effects of past discrimination with a flexible and goal-oriented program that has worked. We have a much more diverse federal contracting base than we have ever had before. Since 1978, where women- and minority-owned businesses won only 1.9 percent of the federal highway construction contracts, they have 14.8 percent. That demonstrates the tremendous success of this program.

The DBE program does an excellent job of providing sufficient flexibility to target true disadvantaged businesses. If an African female-owned business truly is not disadvantaged, it will qualify under this program. Likewise, if a Caucasian male owns a disadvantaged business, he has an opportunity to qualify under the DBE program. That flexibility is why so many of us believe it offers us the best path forward toward true equality for all business people. It focuses our attempts to strengthen our economy on those who need our help most; it forces us to look at economics, not race or gender.

Mr. President, in 1995, the Senate debated this issue as part of the legislative branch appropriations bill. At that time, members of this body recognized this type of proposal simply goes too far. I led the fight to defeat that amendment with bipartisan support, 61–36. As ranking member of the legislative branch appropriations bill at the time, I offered a compromise amendment in an attempt to reach middle ground and deal with this issue in a constructive manner. That amendment passed 84–13.

I pledge to continue to fight economic, gender and race discrimination throughout this country. The Disadvantaged Business Enterprise program is one proven path toward that goal. This is not about special preferences or arbitrary set asides; this is about expanding opportunities for business people. I intend to oppose the McConnell amendment and urge my colleagues to do the same.

Mr. DORGAN. Mr. President, I rise to comment on the debate over the Disadvantaged Business Enterprise (DBE) program and the McConnell amendment. First, I want to say that I have some concerns about the DBE program, at least in its previous structure. I do not doubt the presence of racial, ethnic, and gender discrimination in this country and I would be the first to say that we ought to have strong national policies that are designed to rectify discrimination and provide assistance to businesses that are disadvantaged because of discrimination. However, a strict mandate on states to establish quotas and set asides is not the appropriate means to end discrimination.

Unfortunately, much of the debate over the McConnell amendment has inaccurately characterized the question in polemic terms. The advocates of the McConnell amendment would suggest that a vote against his amendment is a vote for quotas and set asides. That is simply not true.

While I have some concerns about the DBE program, I do not intend to vote for the McConnell amendment. The Department of Transportation has made significant changes in the DBE program under the directive of the President's review of all affirmative action programs. The new regulations no longer require states to adopt a 10% goal of DBE contracts for highway projects. The old regulations had that requirement. I would not support that approach. However, under the new regulations, the DOT provides states with several specific formula options with which they can utilize to establish the appropriate goal for DBE contracts for each particular state. Section 26.41 of the regulations—which specifies how each state sets their overall DBE goals—does not contain any specific percentage requirement.

The 10% goal specified in the underlying legislation is a nation-wide goal. Under the Department's regulations, each state will utilize one of several formula options specified in the regulations to determine the appropriate goal for that state. There is no quota mandate. The only requirement is that states make a good faith effort to determine how to set an appropriate goal for DBE contracts.

I am not persuaded by the agreements that the DBE program is unconstitutional. The Adarand decision did not declare the program unconstitutional. Rather, it required that the program be narrowly tailored. It appears to me that the Department's new regulations have been developed in a manner to comply with that requirement. I am confident that when these new regulations are implemented that the Department will be flexible and work cooperatively with states to establish appropriate goals. If the Department had not taken steps to revise this program, I would be advocating changes with respect to the ISTEA legislation. However, anyone who has reviewed the proposed new regulations (49 CFR Parts 23 and 26, May 30, 1997) would conclude that significant changes have been made and I believe that it is reasonable to allow the Department to implement those changes, which provide a great deal more flexibility to the states and will not impose a specific percentage requirement for DBE contracts.

Notwithstanding the questions about the constitutionality of the DBE program and whether or not it is a quota program, I am very concerned about the McConnell amendment because of the new requirements it imposes on states. The McConnell amendment expands the definition of what constitutes a "disadvantaged business," duplicating many small business development programs which are currently administered by the Small Business Administration (SBA). In addition, the McConnell amendment imposes a significant financial burden on states to develop new outreach programs without providing any federal assistance to pay for these new requirements. Even if one were to conclude that the DBE program ought to either be changed or eliminated, the McConnell amendment is certainly not the correct response.

Therefore, Mr. President, I am opposing the McConnell amendment. However, I urge the Department to implement new regulations that give the states the flexibility to establish their own goal—as has been promised.

Mr. BAUCUS. Mr. President, I yield myself such time as I consume. Mr. President, we had a good debate yesterday. I want to emphasize a couple of points.

First, with all due respect, the argument that the Supreme Court has ruled that this program is unconstitutional and that we now have a duty to expunge the program from the statute books is a red herring. It is a bogus argument, a diversion, a smokescreen, as was so ably stated by the Senator from Pennsylvania, Mr. SPECTER.

If there was any doubt, it should have been dispelled by the letter that Senator DOMENICI received yesterday from

Attorney General Reno and Secretary Slater.

I urge my colleagues to read that letter.

In Adarand, the Supreme Court did not hold that the DBE program is unconstitutional. It held that the program is subject to strict scrutiny. And it emphasized that this is not equivalent to holding that the program is unconstitutional.

The case was remanded to the district court. Judge Kane held that the program furthers a compelling governmental interest. But he also held that the program was not narrowly tailored.

So we have one district court judge, holding that the program is unconstitutional. Not the Supreme Court. Not an appeals court. But one federal district court judge, out of the 647 federal district court judges in the country.

The Justice Department disagrees with the decision. So do many others. And the federal government has appealed the decision.

There are, moreover, strong arguments that the program passes the strict scrutiny standard.

The district court itself held that the DBE program furthers a compelling governmental interest in overcoming discrimination in the construction industry.

With respect to narrow tailoring, as the letter to Senator DOMENICI explains, the DBE program is not a mandatory set aside or rigid quota. It's flexible. It's negotiated with each state. It can be adjusted, lower or higher. It can be satisfied by good faith efforts. No penalty has ever been imposed on a state that has not met it's goal.

And the proposed rules would make the program even more flexible and narrowly tailored.

So I believe that it is very clear that this program is constitutional.

But there's another question.

What's right? What's the right thing to do here?

We all wish we lived in a world that was free from discrimination based on gender or race.

We don't. Discrimination is still with us. I think we all know that.

Women earn about 75 percent of what men earn for comparable work.

Women own one-third of all small businesses, but women-owned businesses only receive 3 percent of federal procurement dollars.

Minorities make up 20 percent of the population, but own only 9 percent of the construction businesses, and those businesses receive only 4 percent of construction receipts.

So what do we do about it?

Sometimes, Mr. President, equal opportunity means more than outreach. It means more than mailing out brochures and holding seminars.

It means giving people an opportunity to prove themselves.

It means giving them a seat at the table.

That's what the DBE program is designed to do.

And, as I said yesterday, it works.

In 1978, 1.9 percent of federal highway construction dollars were going to firms owned by women or minorities.

Today, under the DBE program, it's 14.8 percent.

That's progress.

I, for one, am proud that the percentage of women and minorities participating in the federal highway program in Montana has risen to 20 percent. That's good news. Not only for women and members of minority groups. But for all of us. For our communities.

The program has worked. And because it has worked, people are still counting on it.

About 20,000 companies have qualified as DBEs. They've grown their companies, taken out loans, hired more employees, in the expectation that the program would continue.

If we look at the experience of Michigan, Louisiana, and other states that have repealed their state DBE programs, repeal of the federal DBE program will result in a sharp drop in the percentage of contracts going to businesses owned by women and minorities. By half, or more.

If that happens, all across this country, small businesses women and minority entrepreneurs will be left high and dry.

I, for one, will not vote to let that happen.

Mr. President, the DBE program is constitutional.

It's fair.

It works.

And it builds more inclusive communities and a stronger economy.

It's good for America, and it brings us together. That is what America is all about.

Again, I urge that the McConnell amendment be defeated.

I reserve the remainder of my time.

The PRESIDING OFFICER. There are 3 minutes remaining.

Who yields time?

Mr. CHAFEE. Mr. President, I have previously made clear my thoughts on this.

I think the arguments have been very well made in connection with the opposition to this amendment. I strongly believe that the Congress should not interfere with the Disadvantaged Business Enterprise Program at this point. I don't think this is the appropriate time.

As I have also pointed out several times, we have a letter from the Secretary of Transportation indicating that if this amendment should prevail, he would not be able to recommend that the President approve this legislation. What all that means, Mr. President, is that is a gentle way of saying he would recommend a veto. I suspect there would be a veto of this legislation. We have come a long way to try to get this legislation passed. I very much hope that it will not be subject to any kind of a veto threat, which would result if this amendment should pass.

Mr. President, we are going to vote at 11 o'clock. We must be very close.

The PRESIDING OFFICER. All time has expired.

Mr. CHAFEE. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. The yeas and nays are ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Vermont (Mr. BENNETT), the Senator from Indiana (Mr. COATS), the Senator from North Carolina (Mr. HELMS), and the Senator from Texas (Mrs. HUTCHISON) are necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The PRESIDING OFFICER (Mr. SMITH of Oregon). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 37, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—58

Akaka	Durbin	Mikulski
Baucus	Feingold	Moseley-Braun
Biden	Feinstein	Moynihan
Bingaman	Ford	Murkowski
Bond	Graham	Murray
Boxer	Harkin	Reed
Breaux	Inouye	Reid
Bryan	Jeffords	Robb
Bumpers	Johnson	Rockefeller
Byrd	Kempthorne	Roth
Campbell	Kennedy	Sarbanes
Chafee	Kerrey	Snowe
Cleland	Kerry	Specter
Collins	Kohl	Stevens
Conrad	Landrieu	Torricelli
D'Amato	Lautenberg	Warner
Daschle	Leahy	Wellstone
Dodd	Levin	Wyden
Domenici	Lieberman	
Dorgan	McCain	

NAYS—37

Abraham	Gramm	McConnell
Allard	Grams	Nickles
Ashcroft	Grassley	Roberts
Brownback	Gregg	Santorum
Burns	Hagel	Sessions
Cochran	Hatch	Shelby
Coverdell	Hollings	Smith (NH)
Craig	Hutchinson	Smith (OR)
DeWine	Inhofe	Thomas
Enzi	Kyl	Thompson
Faircloth	Lott	Thurmond
Frist	Lugar	
Gorton	Mack	

NOT VOTING—5

Bennett	Glenn	Hutchison
Coats	Helms	

The motion to lay on the table the amendment (No. 1708) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, first of all, it has already been announced informally that that is the last vote of the day. I thank the managers of the very important surface transportation legislation for their efforts this week. I think some good progress has been made. Several amendments have been disposed of. This was one that required some 8 hours, I believe, of debate.

Now that we have voted on that, we want to continue to make progress to complete this legislation. I think Senators on both sides believe that good progress has been made. I really appreciate, once again, the effort of Senator CHAFEE, Senator BAUCUS, Senator BYRD, Senator DOMENICI, Senator GRAMM and others, in coming up with the formula change that I think generally is agreed to on both sides of the aisle. But we need to begin to think now about how we conclude this so we can deal with the other very important issues that are awaiting, including the NATO enlargement issue and the Coverdell A-plus education issue. We have a couple other bills we are looking at considering on Monday, including possibly a resolution with regard to Saddam Hussein being a war criminal, and an intelligence bill.

But at the request of the chairman and the ranking member of the Environment Committee, our respective hotlines have asked that all Senators come forward with their amendments.

We are developing a list and we need to know the ones that are serious. I know there are a lot of them out there still that Senators are contemplating offering, but we need to begin identifying the ones that really are serious. For instance, the list we have from the hot line is 250 amendments, with two Members on one side of the aisle having 100 amendments; just two Senators have 100 amendments. I must say, on our side of the aisle, there are 75 amendments. That is ridiculous. We need to identify the ones that we really are going to offer. We need cooperation in order to get that done.

We have been considering the bill really since the last session. Everybody has had a chance in the committee. Last year, we spent about 2 weeks talking about it. We had four cloture votes. We have had a total of 14 days on it.

There are several other issues that are important that we are going to have come up and will vote on, but I think now we need to get serious about bringing this to a conclusion. After looking at the list of amendments and consulting with the Democratic leader, I think we do need to go ahead and get a cloture vote so that we can eliminate the amendments that are not related directly to this bill and then begin to narrow the list.

CLOTURE MOTION

Mr. LOTT. Mr. President, I send a cloture motion to the desk to the committee amendment.

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

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the modified committee amendment to S. 1173, the Intermodal Surface transportation Efficiency Act:

Trent Lott, John H. Chafee, John Ashcroft, Larry E. Craig, D. Nickles, Mike DeWine, Frank Murkowski, Richard Shelby, Gordon Smith, R.F. Bennett, Craig Thomas, Pat Roberts, Mitch McConnell, Conrad Burns, Spencer Abraham, Jesse Helms.

Mr. LOTT. Mr. President, the cloture vote will occur on Monday, March 9, probably around 5:15 or 5:30. Again, we will check with the Members' schedules and with the Democratic leader, but it will be around that time. We indicated there would not be a vote before 5. It may be a little after 5, depending on when planes arrive and when we can get agreement to have this vote scheduled.

CALL OF THE ROLL

Mr. LOTT. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

Mr. DASCHLE. Mr. President, reserving the right to object, and I do so to comment on a couple matters raised by the distinguished majority leader.

First of all, he noted we have spent at least 3 weeks on this bill already, 2 last fall and 1 last week. He also noted that this has been a productive week, and I share that view; it has been productive. I will encourage my colleagues to vote in favor of cloture Monday night simply because we have to come to closure. There are a lot of good amendments to be offered yet. We will have that debate, but we can do that under the strictures which cloture provides, and I am very supportive of resolving the outstanding questions so we can move on.

I also compliment, as the majority leader did, our two managers. They have done an outstanding job, to date, in working with Members on both sides. I hope that we can continue to be responsive to the concerns, both with the schedule as well as with the legislation. I am sure that will be the case.

Finally, I thank all of those who voted in favor of tabling the previous amendment. I commend the leadership on both sides who took the active interest in enlightening us all about the importance of the Disadvantaged Business Enterprise Program. I appreciate very much the overwhelming vote we just had and, hopefully, at long last, it will put this issue to rest.

Again, Mr. President, I share the sentiment expressed by the leader. This is the time to move this legislation forward. This cloture vote will allow us to do that. I am hopeful that we can have a good debate on other amendments on Monday and have that vote Monday night so we can complete our work sometime by the middle of next week. I have no objection.

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

Mr. LOTT. I will note, Mr. President, that the chairman and the ranking member have asked me to advise Members they are going to be here for more time today, into the afternoon. They are open for business. If Senators have amendments, particularly if they think they will not be controversial and would like to get them considered, perhaps accepted or get them in line to be considered, I hope Senators will contact the chairman or the ranking member in the next hour. They will be off the floor in a meeting for the next few minutes, but they plan to stay here for several more hours to work on this bill.

I ask unanimous consent now that all first-degree amendments under rule XXII be filed up to 1 p.m. on Monday and all second-degree amendments by 5 p.m. on Monday.

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

Mr. LOTT. I understand that at 12 noon, approximately, Senator BROWNBACK will be ready to offer an amendment regarding rail banks. I hope other Senators will come and be prepared to offer amendments and have them considered one way or the other this afternoon. Would the Senator from Iowa like me to yield?

Mr. HARKIN. If the leader will yield for a question. On the highway bill, I am concerned the Banking Committee has to offer its amendment on transit. I am concerned about the cloture vote on Monday night. Does that cover the Banking Committee's provisions on transit, because some of us who are concerned about rural transit may have an amendment on rural transit depending on what the Banking Committee's amendment looks like?

Mr. LOTT. I understand that amendment is being drafted, and we hope to have that offered Monday. The Senator will have a chance to take a look at it and be involved in it.

Mr. HARKIN. If the leader will yield further, but if they offer it on Monday and the cloture vote is at, what time, 5?

Mr. LOTT. At 5:15, 5:30, and it could be even a little later, depending on what is going on.

Mr. HARKIN. That would cover the Banking Committee provision.

Mr. LOTT. I think what we are saying is we hope to have the banking

issue done before we get to cloture. But if we can't get it worked out, then we will try to work out an arrangement so the Senator's concerns will be addressed. We would not want to foreclose that, let's put it that way.

Mr. HARKIN. I appreciate that. I haven't had any amendments to the underlying bill. Some of us from rural States may have an amendment depending on what the Banking Committee comes out with. We won't have a chance to look at it until Monday. I am concerned about having the cloture vote without time to look at it and consider it with Members on both sides of the aisle. That was my only concern on that.

Mr. LOTT. I will just say, again, I think the Senator has legitimate concerns, and we will have to get an agreement to accommodate those concerns, and we intend to do that.

Mr. HARKIN. I appreciate that.

AMENDMENT NO. 1708

Mr. BYRD. Mr. President, I would like to briefly explain my vote on the motion to table the amendment offered by my distinguished colleague, Senator MCCONNELL, to S. 1173, the Intermodal Surface Transportation Efficiency Act. Despite my sympathy with the position of Mr. MCCONNELL, and despite my reservations about the Disadvantaged Business Enterprise (DBE) Program, I voted in favor of tabling the amendment.

Like many of my colleagues, I encourage small businesses—including those owned by socially and culturally disadvantaged individuals—to take an active role in bidding for federally funded highway construction contracts. But, while I understand the goals of the DBE program, as set forth in Section 1111 of ISTEA, I do not support preferential treatment for certain businesses on the basis of the race, ethnicity, or gender of their owners.

I believe that the Constitution, as amended by the 5th, 13th, and 14th Amendments, does not permit the government to discriminate or differentiate on the basis of race, ethnicity, or gender—regardless of whether the government's motive is malicious or benign. If the precepts of "equal protection" and "due process" are to mean anything, then they must ensure that no one in this country is granted favorable or unfavorable treatment on the basis of some single differentiating characteristic.

My reading of the Constitution is supported by the Supreme Court's 1995 decision in Adarand versus Pena. In that decision, the Court rules that the DBE and other race-based affirmative action programs can only be upheld if they are narrowly tailored to meet a compelling governmental interest. This test, commonly referred to as "strict scrutiny," makes it exceedingly difficult for any affirmative action program to pass constitutional muster. It should come as no surprise, then, that after the Court remanded the Adarand case, a federal district court judge found that the DBE program fails strict scrutiny, and thus is unconstitutional. Indeed, it is worth pointing out that the last time that the Supreme Court upheld a statute based on a racial- or national-origin classification under the strict scrutiny test was in 1944.

In my opinion, the correct course of action is to award highway contracts on the basis of cost, performance, and the most efficient use of taxpayer's money. This merit-based approach is both fair and constitutionally appropriate.

Despite these reservations about DBE, I also recognize that the courts have not yet definitively ruled on the constitutionality of affirmative action programs. The Adarand district court decision is currently on appeal, and I look forward to further clarification of the constitutionality of programs such as DBE.

Furthermore, while I support the McConnell amendment in principle, I believe that further debate and scrutiny is necessary. This amendment has not yet been subjected to the committee process, which is so essential to determining the true merits and flaws of a proposal. Before we replace the DBE program with an Emerging Business Enterprise Program, we need to ensure that the replacement does exactly what we want it to do. Otherwise, we risk hurting some small businesses through rash, ill-considered action. For these reasons, I voted to table the McConnell amendment.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business until 12 noon, with Members allowed to speak for up to 10 minutes each.

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

Mr. LOTT. Mr. President, I would like to be recognized for a statement now.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. I thank the Chair.

(The remarks of Mr. FRIST, Mr. LOTT, Mr. JEFFORDS, Mr. KENNEDY, Mr. HARKIN, and Mr. BINGAMAN pertaining to the introduction of S. 1722 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. TORRICELLI address the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Thank you, Mr. President.

STATUS OF PUERTO RICO

Mr. TORRICELLI. Mr. President, inscribed on the corridors of this Capitol are the words of William Henry Harrison, spoken at his Presidential inauguration in 1841. He said: "The only legitimate right to govern is an express grant of power from the governed."

Indeed, the very principle of the consent of the governed is the foundation of this democratic society. That issue was at question in the House of Representatives this week when the Congress considered the issue of the political status of Puerto Rico.

I believe it is clear that it is not in the interest of these United States to leave the 20th century, with it being claimed in any quarter of this globe, that the United States is in an involuntary political arrangement with any peoples. The unfinished business of American democracy is the political status of Puerto Rico.

The history of the 20th century for the United States have been the constant expansion of enfranchisement of the governed. Within this century, we have either guaranteed or attempted to assure the right to participate in our democracy to women and, through the struggle of civil rights, for African Americans.

In 1913, we changed the U.S. Constitution to ensure that all citizens of the United States could participate in choosing Members of this Senate. In 1971, we extended the right to vote for those who are 18 years old. And, indeed, also in this century, we ensured this enfranchisement was expanded geographically to include the citizens of Hawaii and Alaska.

But this only begs the question of the unanswered issue since 1898, at the end of the Spanish-American War, of what is to be done with the arrangement of the people of Puerto Rico and the Government of the United States. It is an issue that has come before this Congress continuously. In 1917, Congress granted citizenship to the people of Puerto Rico. In 1952, Congress revisited the issue to provide commonwealth under American jurisdiction.

And yet, the issue continues, because the full rights of citizenship granted to those of the 50 States remain withheld to the people of Puerto Rico. The people of Puerto Rico are subject to laws and regulations passed by this legislative body, yet they have no voting representation. The people of Puerto Rico are led by a President and Vice President exercising full executive authority, but they cannot vote to choose that executive leadership.

The people of Puerto Rico hold citizenship in a country whose legislature can take away or compromise their rights of citizenship at any moment. The legislation passed by the House of Representatives, legislation which I was proud to cosponsor—indeed, originally authored when I was a Member of that body—redresses this injustice.

This legislation does not mandate a political choice for the people of Puerto Rico. Whether or not Puerto Rico

ultimately becomes a State of this Union is a question for the people of Puerto Rico, and only for the people of Puerto Rico, to decide. Whether or not the people of Puerto Rico are able to exercise that choice is a responsibility of this Congress.

I do not believe that this Congress should express itself on that issue. Whether or not the choice is statehood, independence, or commonwealth is only a matter for the people of Puerto Rico. But as certainly as it is our responsibility that the people of Puerto Rico have a right to exercise that choice, it is our responsibility in the United States to ensure they exercise it honestly, with legitimate choices.

The bill authorizes Puerto Rico to hold a referendum by the end of 1998 as to whether or not to remain a commonwealth, seek independence, or choose statehood. If a majority of citizens were to decide to seek independence or statehood, then the President would submit legislation to the Congress outlining a transition plan that would culminate in 10 years.

Then, the people of Puerto Rico would take to the polls once again to approve or reject the plan. If it were passed by a majority of the people of Puerto Rico, then the President would submit legislation to the Congress recommending a date to end the transition period. Then, for a third time the people of Puerto Rico would vote again on the issue of self-governance.

This is an extensive and a complicated plan for final political status. It is important that these three votes be held over an extensive transition period, because as history has made clear, any judgment to join this Union is irreversible and it is final. A decision on statehood is made once and never made again.

Mr. President, I understand that there are some Members of the Senate who are concerned about this legislation because of its impact on our Union. I believe that a decision by the Puerto Rican people, if they make it in their own judgment, is in the interests of this Union.

The United States would be enriched culturally. Indeed, it would make clear that the bridge that the United States has enjoyed for so long culturally to Europe is equally as strong with the peoples of Latin America. Indeed, I believe all Americans would be proud and enriched by this judgment.

Mr. President, that, of course, is a decision for the people of Puerto Rico to make. But if they make it, I hope people in our country and Members of the Senate will welcome their judgment.

But on this day, Mr. President, I call upon the Energy and Natural Resources Committee to immediately commence hearings on the important Puerto Rico self-determination bill. I join with Senator GRAHAM and Senator CRAIG in offering this legislation. I hope the people of Puerto Rico can be proud that this Senate will await their judgment and will offer them this opportunity.

Mr. President, I yield the floor.

EXTENSION OF MORNING BUSINESS

Ms. COLLINS. Mr. President, I request unanimous consent that, notwithstanding the previous order, the Senator from Ohio and I be permitted to proceed in morning business for 15 additional minutes.

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

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

(The remarks of Ms. COLLINS and Mr. DEWINE pertaining to the introduction of S. 1724 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. CHAFEE. Mr. President, I will send an amendment to the desk. I will not ask for its immediate consideration. This is an amendment that would require the Secretary of Transportation to reduce the amounts made available under the ISTEA of 1998 for the fiscal year 1998 by the amounts made available under the extension that we did last fall, the so-called 6-month extension bill.

Now, last year, Mr. President, as you recall, the Senate passed a 6-month extension bill which allowed the States to use their unobligated balances to fund eligible transportation projects. The bill also allocated an additional $5.5 billion in new money to the States.

As you remember, the ISTEA I expired on September 30 so we knew we were not going to be able to enact a new ISTEA bill—indeed we have not enacted it yet—and that carried us over to May 1 of this year. In it we provided not only that States could use their unobtained balances but there was also allocated an additional $5.5 billion.

The Senate agreed to provide this new $5.5 billion on the condition that the amounts allocated under ISTEA II in fiscal year 1998 would be reduced by the amount each State received under the 6-month extension. In other words, yes, we gave them additional money to carry them through during this extension, but when we enact a final bill, as I hope we will do next week, then the amounts that the States would have received would be deducted from the amounts that we provide for them for the fiscal year 1998.

For example, the amount each State will receive in the surface transportation program, so-called STP funds, under ISTEA II will be reduced by their portion of the more than $1 billion provided in STP funds under the 6-month extension.

Now, there are several reasons why this extension reduction is necessary. First of all, ISTEA II provides money for each fiscal year 1998 through 2003. It does not provide a half-year amount for 1998. If this reduction is not required, States would be receiving one-and-a-half times as much as they should for 1998. In other words, we give them the entire 1998 money in the bill, and we have also previously given them half of that so it doesn't make sense for them to have one-and-a-half times as much money for 1998 as required. Indeed, our bill would be subject to a point of order.

Second, a reduction ensures that each State will receive money based on the new formula provided in ISTEA II instead of the old formula or amounts received in the past. We worked hard to bring this new formula up to date in order to make it fairer, and we believe we have achieved that.

So, Mr. President, this technical and noncontroversial amendment has been cleared by both sides. We want to make sure that this amendment is available for any of the States who would choose to review it. They can get in touch with me and we will give them a copy, obviously.

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

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

AMENDMENT NO. 1719

(Purpose: To include the enhancement of safety at at-grade railway-highway crossings and the achievement of national transportation safety goals in the purpose of the intelligent transportation system program)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mr. Montana [Mr. BAUCUS], for Mr. KERREY, proposes an amendment numbered 1719.

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

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

The amendment is as follows:

On page 385, strike lines 13 and 14 and insert the following: creasing the number and severity of collisions;

"(14) to encourage the use of intelligent transportation systems to promote the achievement of national transportation safety goals, including safety at at-grade Railway-highway crossings; and

"(15) to accommodate the needs of all users of".

Mr. BAUCUS. Mr. President, this amendment that I am offering on behalf of Senator KERREY from Nebraska adds another goal to the intelligent transportation system's research program in the underlying bill. It would add the achievement of national transportation safety goals, including at-grade railway-highway crossings to the ITS, intelligence transportation system program.

I think it is a good idea to enhance the ITS program. We all know the problems of rail crossings. There are a lot of accidents and deaths, regrettably, at railway-highway crossings. This added language will help in the development of the ITS to try to find ways to minimize these types of things.

I urge that we agree to this amendment.

Mr. CHAFEE. Mr. President, this amendment is acceptable to this side.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1719) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1720 TO AMENDMENT NO. 1676

(Purpose: To include the development of techniques to eliminate at-grade railway-highway crossings in the goals of the innovative bridge research and construction program)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for Mr. KERREY, proposes an amendment numbered 1720.

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

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

The amendment is as follows:

On page 371, strike lines 6 and 7 and insert the following:

"in highway bridges and structures;

"(5) the development of cost-effective and innovative techniques to separate vehicle and pedestrian traffic from railroad traffic and

"(6) the development of highway bridges and".

Mr. BAUCUS. Mr. President, this amendment would add to the types of works the Secretary should undertake with regard to innovative bridge research. The Secretary would have the flexibility to look at innovative techniques to separate vehicle and pedestrian traffic from railroad traffic. It is designed, obviously, to deal with the problems of congestion, deaths and accidents on bridges.

I urge its adoption.

Mr. CHAFEE. Mr. President, this is acceptable to this side.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1720) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1721 TO AMENDMENT NO. 1676

(Purpose: To ensure that there is adequate opportunity for public participation in the certification of transportation planning processes of metropolitan areas)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for Mr. WELLSTONE, proposes an amendment numbered 1721.

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

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

The amendment is as follows:

Beginning on page 265, strike line 15 and all that follows through page 266, line 1 and insert the following:

"(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

"(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law;

"(ii) there is a transportation improvement program for the area that has been approved by the metropolitan planning organization and the Governor;

"(iii) the public has been given adequate opportunity during the certification process to comment on—

"(I) the public participation process conducted by the metropolitan planning organization; and

"(II) the extent to which the transportation improvement program for the metropolitan area takes into account the needs of the entire metropolitan area, including the needs of low and moderate income residents, and the requirement of Title VI of the Civil Rights Act; and

"(iv) public comments are—

"(I) included in the documentation supporting the metropolitan planning organization's request for certification; and

"(II) made publicly available.

"(C) EFFECT OF FAILURE TO CERTIFY.—".

Mr. BAUCUS. Mr. President, this amendment would ensure that the public has an adequate opportunity to comment on the certification process in transportation management areas.

I urge its adoption.

Mr. CHAFEE. This amendment is agreeable to this side.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1721) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

PRIVILEGE OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that Timothy Hess, a fellow in the office of Senator BOB GRAHAM, be given floor privileges during the ISTEA debate.

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

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

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

AMENDMENT NO. 1722 TO AMENDMENT NO. 1676

(Purpose: To add the projected increase in commercial traffic to the factors that the Secretary of Transportation is required to consider in selecting recipients of grants for trade corridors and border infrastructure safety and congestion relief)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. DOMENICI, proposes an amendment numbered 1722.

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

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

The amendment is as follows:

On page 98, line 13, insert ", and is projected to grow in the future," after "103–182)".

On page 98, line 17, insert ", and is projected to grow," after "grown".

Mr. CHAFEE. Mr. President, this amendment is a modification to the border crossing and trade corridor program. It is for the Secretary to consider an area's future growth while awarding grant funds.

Mr. BAUCUS. Mr. President, we have reviewed the amendment and think it is fine.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1722) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. CHAFEE. 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. BURNS. 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. BURNS. Mr. President, it might be a faulty assumption on my part; are we in a period of morning business?

The PRESIDING OFFICER. We are currently considering S. 1173, the highway bill.

Mr. BURNS. Mr. President, I ask unanimous consent that I may proceed as in morning business for no more than 5 minutes.

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

Mr. BURNS. I thank the Chair.

(The remarks of Mr. BURNS pertaining to the introduction of S. 1725 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. WELLSTONE. I thank the Chair.

Mr. President, I will be really very brief.

I have been involved in negotiations, as all of us are, on this legislation, all of us trying to use our leverage to fight for what we think is right. I have been very focused on a sense-of-the-Senate resolution amendment which I think will command widespread support from both Democrats and Republicans.

I know, for example, that this resolution was initially something I did with Senator MACK, who still strongly supports it—Senator HUTCHINSON, and many, I hope the Chair.

This is just a sense-of-the-Senate resolution—could be amendment; I hope it would be a separate resolution, but one way or the other—that, basically, strongly urges the President, acting through the permanent representatives of the United States—and I am just looking at this; I will quote his record—"to make all efforts necessary to pass a resolution criticizing the People's Republic of China for its human rights abuses in China, Tibet at the annual meeting of the United Nations Commission on Human Rights."

Mr. President, the point is that I am not going to get into any sharp debate or attack people who are not here right now, but I think the point of this resolution, the amendment, is to make sure that we take some action before the United Nations Commission on Human Rights convenes in Geneva, which would be on March 16.

The Senate Foreign Relations Committee will take up this resolution, I think, on Thursday, but my concern, as a U.S. Senator who feels strongly about this, about human rights questions and has worked closely with a number of really great people in these human rights organizations—and I tell you, in some ways, one of the biggest thrills of my life has been to have a chance to work with Wei Jingsheng, who was just in the office and who is very focused in on this.

In any case, what I wanted to make sure of is—and I think many Republicans agree with us—that the Foreign Relations Committee meets, but that still does not guarantee that we have a resolution or amendment on the floor by the end of next week or as soon as possible. And really next week is the critical timeframe that we are talking about.

We have gone back and forth on other resolutions that were going to be introduced. I know Senator SPECTER has one he wants to do on Iraq. My position is, well, then there ought to be one on China.

In any case, I think it is no longer necessary for me to do anything on the floor of the Senate. I have a commitment by the Senate majority leader, Senator LOTT. It is a personal commitment, not an official, formal commitment. I think it is all I need. I think most of us know, if he gives his word, his word is good.

So, I feel very confident that we, indeed, will be able to deal with this resolution in this timeframe, which is so important that really the voice of the Senate be heard, the voice of the Congress be heard. And certainly I hope the voice of the President and the administration will be heard before the Human Rights Commission convenes in Geneva.

So I thank colleagues for working with me. I certainly thank the majority leader for being sensitive and working this out.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHAFEE. 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. CHAFEE. Mr. President, I have a managers' amendment, which I will soon send to the desk.

It is a package of technical and noncontroversial changes to S. 1173. A number of changes included in the amendment were recommended by the Department of Transportation to improve and clarify provisions in the bill.

I ask unanimous consent that the full descriptions of the amendments be printed in the RECORD.

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

SUMMARY OF THE PROVISIONS IN THE MANAGER'S AMENDMENT TO S. 1173

The manager's amendment includes a number of technical and noncontroversial changes to S. 1173. The paragraphs below summarize the items included in the managers amendment that improve the bill.

On page 5, strike lines 15 through 20 and insert the following: Makes a technical change to authorization levels for the Interstate and National Highway System program for fiscal year 1998 through 2001, and 2003.

On page 7, strike 16 through 20.—Eliminates the duplicative authorization of funds for the Cooperative Federal Lands Transportation Program, as funding for this program was authorized in two places in S. 1173.

On page 8, line 20, after "139(a)", insert the following: Adds language to 104(b) to clarify that the reference to 139(a) was to reflect 139(a) before enactment of ISTEA II.

On page 9, line 16, after "139(a)", insert the following: Adds language to 104(b) to clarify that the reference to 139(a) was to reflect 139(a) before enactment of ISTEA II.

On page 10, line 9, insert "and for the purposes specified in subparagraph—Clarifies the flexibility allowed in spending the Interstate maintenance component and the Interstate bridges component funds on either category.

On page 43, line 12, strike "and".—Facilitates the following amendment.

On page 43, between lines 12 and 13, insert the following: Provides full obligation authority for operation lifesaver and railway-highway crossing hazard elimination in high speed rail corridors.

On page 43, line 13, strike "(xi)" and insert "(xii)".—Facilitates the previous amendment.

On page 44, strike line 6 and insert the following: Provides an obligation limitation for administrative expenses deducted under Section 104(a). Similar limitations are included in annual appropriations Acts for the Federal Highway Administration. The obligation limitation totals $301,725,000 for fiscal year 1999; $302,055,000 for fiscal year 2000; $303,480,000 for fiscal year 2001; $310,470,000 for fiscal year 2002; and $320,595,000 for fiscal year 2003.

On page 85, line 10, strike "sections 103 and" and insert "section".—Makes a technical correction to the section on studies and reports. The reference to section 103 is stricken from the list of sections for which the Secretary must annually report rates of obligation. National Highway System funds are not apportioned under section 103, but must be tracked under this section as they are apportioned under section 104 of title 23.

Beginning on page 91, strike line 24 and all that follow through page 92, line 4.—Strikes the definition for "border region," as this term is not used within S. 1173.

On page 92, line 5, . . .

On page 92, line 11, . . .

On page 92, line 17, . . .

On page 93, line 3, . . .

On page 93, line 6, . . . Provides technical corrections (renumbering) to facilitate the above amendment.

On page 130, line 6, insert: Clarifies that Congestion Mitigation and Air Quality Improvement funds are tied to areas classified as marginal or worse for ozone or carbon

monoxide in the 1990 Clean Air Act Amendments.

On page 159, line 21, strike "selection" and insert "bidding".—Makes a technical correction to section 1225, replacing the word "selection" with "bidding," as the term "competitive bidding" is a defined term in title 23, United States Code.

On page 159, line 22, before the period, insert: See amendment description below—line 160, between lines 16 and 17.

On page 160, line 16, strike the quotation marks and—Technical amendment to facilitate the following amendment.

On page 160, between lines 16 and 17—Requires the States that choose to use the design-build process to either use procedure specified in State statute or selection procedures in legislation already adopted by the U.S. Congress and signed into law for use by civilian and military agencies as part of the Federal Acquisition Reform Act of 1996, Public Law 104–106. Section 4105 of the Act established uniform Federal standards for the acquisition of design-build contracts for the first time.

On page 161, line 14, strike "selection".—Makes a technical correction to section 1225, replacing the word "selection" with "competitive bidding," as the term "competitive bidding" is a defined term in title 23, United States Code.

On page 219, line 13, strike "authorized to be appropriated" and insert "made available".—Technical change to make this section's language parallel to the rest of the bill.

On page 250, between lines 18 and 19, insert the following: Clarifies that a metropolitan planning organization designation shall remain in effect until that MPO is redesignated.

On page 290, line 24, strike "agencies" and insert "departments".—Makes a technical correction to section 1701, replacing the word "agencies" with "departments", as the term "transportation department is a defined term in title 23, United States Code.

On page 294, lines 12 and 13 strike: Clarifies the eligibility of INHS funds for use on Interstate highways.

On page 340, line 4, strike "subsection" and

On page 343, line 4, strike "subsection" and—Provides a technical correction.

On page 403, strike lines 11 through 13 and insert the following: Provides language to clarify that the primary use of funds under commercial vehicle intelligent transportation system infrastructure shall include the improvement of inspection and crash data electronic processing.

On page 413, line 1, strike "that" and insert "only if the technologies".—Provides clarifying language.

On page 415, line 14, strike: Provides a reduction to contract authority for the fiscal year 2002 from $110 million to $109 million to stay within the Committee's allocation.

AMENDMENT NO. 1723 TO AMENDMENT NO. 1676

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 1723.

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

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

The amendment is as follows:

On page 5, strike lines 15 through 20 and insert the following:

title $11,977,000,000 for fiscal year 1998, $11,949,000,000 for fiscal year 1999, $11,922,000,000 for fiscal year 2000, $11,950,000,000 for fiscal year 2001, $12,242,000,000 for fiscal year 2002, and $12,659,000,000 for fiscal year 2003, of which—

On page 7, strike lines 16 through 20.

On page 8, line 20, after "139(a)", insert the following: "(as in effect on the day before the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997)".

On page 9, line 16, after "139(a)", insert the following: "(as in effect on the day before the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997)".

On page 10, line 9, insert "and for the purposes specified in subparagraph (A)," before "in the ratio".

On page 43, line 12, strike "and".

On page 43, between lines 12 and 13, insert the following:

"(xi) amounts set aside under section 104(d) for operation lifesaver and railway-highway crossing hazard elimination in high speed rail corridors; and

On page 43, line 13, strike "(xi)" and insert "(xii)".

On page 44, strike line 6 and insert the following:

(e) LIMITATIONS ON OBLIGATIONS FOR ADMINISTRATIVE EXPENSES.—Notwithstanding any other provision of law, the total amount of all obligations under section 104(a) of title 23, United States Code, shall not exceed—

(1) $301,725,000 for fiscal year 1999;

(2) $302,055,000 for fiscal year 2000;

(3) $303,480,000 for fiscal year 2001;

(4) $310,470,000 for fiscal year 2002; and

(5) $320,595,000 for fiscal year 2003.

(f) APPLICABILITY OF OBLIGATION LIMITATIONS.—

On page 85, line 10, strike "sections 103 and" and insert "section".

Beginning on page 91, strike line 24 and all that follows through page 92, line 4.

On page 92, line 5, strike "(2)" and insert "(1)".

On page 92, line 11, strike "(3)" and insert "(2)".

On page 92, line 17, strike "(4)" and insert "(3)".

On page 93, line 3, strike "(5)" and insert "(4)".

On page 93, line 6, strike "(6)" and insert "(5)".

On page 130, line 6, insert "and classified under section 181(a) or 186(a) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a))" before "or classified as".

On page 159, line 21, strike "selection" and insert "bidding".

On page 159, line 22, before the period, insert the following: "in accordance with subparagraph (C)".

On page 160, line 16, strike the quotation marks and the following period.

On page 160, between lines 16 and 17, insert the following:

"(C) PROCEDURES THAT MAY BE APPROVED.—Under subparagraph (A), the Secretary may approve, for use by a State, only procedures that consist of—

"(i) formal design-build contracting procedures specified in a State statute; or

"(ii) in the case of a State that does not have a statute described in clause (i), the design-build selection procedures authorized under section 303M of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253m).".

On page 161, line 14, strike "selection" and insert "competitive bidding".

On page 219, line 13, strike "authorized to be appropriated" and insert "made available".

On page 250, between lines 18 and 19, insert the following:

"(6) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (2).

On page 290, line 24, strike "agencies" and insert "departments".

On page 294, lines 12 and 13, strike "paragraphs (1) and (3) of section 104(b)" and insert "section 104(b)(1)".

On page 340, line 8, strike "subsection" and insert "section".

On page 343, line 4, strike "subsection" and insert "section".

On page 403, strike lines 11 through 13 and insert the following:

"(B) electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information; and

On page 413, line 1, strike "that" and insert "only if the technologies".

On page 415, line 14, strike "$110,000,000" and insert "$109,000,000".

The PRESIDING OFFICER. Is there further debate?

Mr. BAUCUS. Mr. President, we have reviewed the amendment and they are, indeed, technical corrections. There is nothing here that is not technical. There are grammatical errors, spelling errors, et cetera. We agree the amendment should be adopted.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1723) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, I have an amendment here on behalf of Senator DEWINE. It is a repeat offenders amendment.

This amendment would strengthen and clarify the repeat drunk-driving offenders section of the bill. The bill, as currently drafted, requires States to enact and support penalties for drunk drivers, who have a blood alcohol concentration of .15 or greater, and who have been convicted of a second or subsequent drunk-driving offense within 5 years. The DeWine-Lautenberg amendment strikes the reference to .15 blood alcohol concentration and allows the State law on blood alcohol concentration to determine what is a repeat offender. The amendment, therefore, clarifies that a person who is arrested for driving with a blood alcohol concentration level lower than .15 still may be classified as a repeat offender.

Mr. President, I know there is a good deal of concern amongst our colleagues about these drunk-driving amendments and the penalties that occur. I will not

seek to have this agreed to now. I will only file it. It will be my intention to call this amendment up Monday, thus, giving those who might have concerns an opportunity to review it. I think when they review it, they will find that it gives more power to the States than the underlying bill does. Nonetheless, because of the deep interest in this matter, I think it well for it to lie over.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1725 TO AMENDMENT NO. 1676

(Purpose: To make technical amendments to the bill)

Mr. CHAFEE. Mr. President, I send to the desk an amendment that makes a number of technical corrections or revisions to S. 1173, to correct certain grammatical errors, spelling errors, and incorrect references to the law. This amendment has been cleared by both sides. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 1725 to amendment No. 1676.

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

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

The amendment is as follows:

On page 8, lines 5 and 6, strike "National Highway System" and insert "Interstate and National Highway System program".

On page 50, line 2, strike "to the pay" and insert "to pay".

On page 62, line 14, strike "wildernessK" and insert "wilderness".

On page 91, strike lines 3 and 4 and insert the following:

able for use in a national park by this paragraph.

"(d) RIGHTS-OF-WAY ACROSS FEDERAL LAND.—

On page 170, line 3, strike "(2)" and insert "(3)".

On page 170, line 9, strike "(3)" and insert "(4)".

On page 301, line 11, strike "program".

On page 303, between lines 21 and 22, insert the following:

(1) PUBLIC TRANSPORTATION.—Section 142(a)(2) of title 23, United States Code, is amended by striking "the the" and inserting "the".

On page 303, line 22, strike "(l)" and insert "(m)".

On page 304, line 5, strike "(m)" and insert "(n)".

On page 304, line 13, strike "(n)" and insert "(o)".

On page 304, line 17, strike "(o)" and insert "(p)".

On page 357, line 1, strike "SET ASIDE" and insert "SET-ASIDE".

Mr. BAUCUS. Mr. President, let me give you an idea just how technical this is. One of the provisions here is to strike "wildernessK" and insert "wilderness", page 62, line 14. That was just a typo. Another is to strike the words "SET ASIDE" and replace them with "SET-ASIDE". That's the nature of this. This is a very technical amendment. I urge its adoption.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1725) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1687

Mr. INHOFE. Mr. President, while debating my amendment, amendment number 1687, to S. 1173, the ISTEA Reauthorization Act, on Wednesday March 4, I referred to five letters and entered them into the RECORD. Two of those letters were inadvertenly omitted from the RECORD.

I ask unanimous consent that the text of the letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS/ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS,
Washington, DC, March 3, 1998.

Hon. JAMES M. INHOFE,
Chairman, Subcommittee on Clean Air Wetlands, Private Property, and Nuclear Safety, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR INHOFE: On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), we wish to express our support for a particular provision of your proposed amendment to ISTEA legislation that calls for full federal funding for fine particulate matter ($PM_{2.5}$) air monitoring.

STAPPA and ALAPCO are the national associations of state and local air quality agencies in the states and territories and over 165 metropolitan areas across the country. The members of STAPPA and ALAPCO have primary responsibility for implementing our nation's air pollution control laws and regulations. As such, we believe it is essential that EPA provide full funding for the $PM_{2.5}$ monitoring network, as the agency has indicated it would.

In its final $PM_{2.5}$ monitoring regulation (July 18, 1997), EPA estimated that $98.3 million is needed to deploy a national $PM_{2.5}$ monitoring system comprising 1,500 sites (including the purchase of equipment and the costs of operating and maintaining the system and analyzing data). On many occasions, the agency committed to providing full funding over a two-year period for this new program and indicated that this would be new money. Unfortunately, this has not happened.

In FY 1997, EPA allocated $2.7 million for state and local air grants for $PM_{2.5}$ monitoring activities. In FY 1998, EPA earmarked $35.6 million for those activities but, rather than providing full funding, the allocation included only $28.7 million in new money, while the remaining $6.9 million was diverted from other, non-$PM_{2.5}$ monitoring activities that state and local agencies must perform. The proposed FY 1999 budget earmarks $50.7 million for the $PM_{2.5}$ monitoring network. However, this includes only $43.9 million in new funds for $PM_{2.5}$ monitoring activities and again proposes to reprogram funds—$6.8 million—away from other extremely important and grossly underfunded state and local air program activities. Thus, instead of providing $98.3 million over two years to fund the $PM_{2.5}$ monitoring effort, EPA has in fact only allocated $75.3 million in new money, which falls $23 million short of the amount EPA has repeatedly stated is needed and would be provided. Although state and local air agencies remain concerned that $98.3 million may not be sufficient to fully fund the $PM_{2.5}$ monitoring network, we commend your effort to ensure that EPA at least fulfills its commitment.

While we are not commenting on any other provisions of your amendment, we are very pleased with the component of it that calls for full funding under Section 103 of the Clean Air Act for $PM_{2.5}$ monitoring. Moreover, we applaud that the amendment both restores to state and local air grants under Section 105 of the Clean Air Act the $13.7 million that EPA has inappropriately diverted from other important underfunded state and local air quality activities and ensures that the balance of the funds EPA estimated were necessary for the complete fine $PM_{2.5}$ monitoring network is provided with additional monies.

Thank you again for your concern about this important issue. Please contact us if we can answer any questions or provide additional information.

Sincerely,

TIMOTHY J. METHOD,
President of STAPPA.
BRUCE S. ANDERSEN,
President of ALAPCO.

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, March 2, 1998.

Hon. SPENCER ABRAHAM,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ABRAHAM: Senator James Inhofe will be introducing an amendment to the Senate Highway Bill (ISTEA) on Tuesday, March 2, 1998. The amendment is offered to ISTEA in order to avoid the risk of states' losing highway funds as a sanction under the Clean Air Act for failure to demonstrate attainment. It is also designed to ensure that EPA provides states with the necessary funding to construct and operate a new nationwide PM 2.5 monitoring network that the EPA Administrator says is needed without states having to take funds away from other important state programs.

Further, the amendment will ensure that states collect three full years of fine particulate monitoring data, which the President has called for, before deciding which areas of the country will be subject to new stringent requirements.

The agriculture community continues to be concerned over the accuracy of EPA's fine particulate measurements, especially in regard to agriculture emissions. Testimony has been given in both the Senate and House

Agriculture Committees indicating concern that agriculture would be "misregulated" due to inaccurate fine particulate measurements. This amendment will allow a comparison of EPA's approved method used to measure fine particulate and the new monitors to find if both adequately eliminate those particles that are larger than 2.5 micrograms in diameter.

The Inhofe amendment will provide states, small business, agriculture and consumers greater certainty that control strategies for particulate matter compliance are based on reliable data. The amendment is consistent with the timelines set forth in the President's Memorandum on Implementation and is a moderate, common sense approach to making sure the necessary PM 2.5 monitoring data is available to EPA in order to make scientifically sound decisions regarding state compliance designations.

Farm Bureau urges you to vote for the Inhofe amendment to ISTEA when it comes to the floor for a vote on Tuesday.

Sincerely,

DEAN KLECKNER,
President.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. WYDEN. 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. WYDEN. Mr. President, I ask unanimous consent to proceed for up to 15 minutes as in morning business.

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

Mr. WYDEN. Thank you, Mr. President.

(The remarks of Mr. WYDEN pertaining to the introduction of S. 1730 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. WYDEN. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

Mr. LOTT. Mr. President, I believe we have Senators interested on the floor.

Once again, I regret having to address the Senate regarding the lack of cooperation that we have been getting on the part of some Members with respect to trying to find a way to bring the highway bill to a close. We need to do that. I think Senators have had enough time to analyze what is in the bill and offer amendments during the week. We debated it last year, and even with the cloture vote, we still would have a considerable amount of time next week to consider it and have relevant amendments in order.

Senator DASCHLE, for instance, this morning said:

This is the time to move this legislation forward. I am hopeful that we can have a good debate on other amendments on Monday and have that vote on cloture on Monday night so that we can complete our work some time by the middle of the week.

That is Senator DASCHLE's comments. I share the sentiment that he expressed and thought all Members were in agreement with regard to the fact that the Senate needs to complete action on this bill as soon as possible in order to go to other pending bills.

In order to achieve that goal, a successful cloture vote must occur in order for the managers to ascertain their remaining work load, what amendments they will have to deal with, and know what time they are talking about.

As I discussed with the minority leader, and with Senator HARKIN, there are two additional issues, however, that the Senate must consider prior to the passage that are vital to the bill. Those are the Banking Committee transit title and the Finance Committee title. It was my understanding we would make other arrangements for consideration of those two issues outside the parameters of rule XXII.

With that in mind, I now propound a unanimous-consent request that is necessary to do that. I ask unanimous consent that notwithstanding the invoking of cloture on the Chafee substitute the Banking Committee title and the Finance Committee title, and relevant amendments thereto, still be in order.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object, Mr. President, I agree with our key distinguished majority leader that action needs to be taken on this bill. There are many of us who have sought to learn the details in the amendment which was filed by the floor managers. We just got that amendment yesterday. I believe it is a complicated amendment. The details, the analysis came in yesterday.

Many of us of the donor State position, for instance, want very much to try to achieve greater fairness in this bill. We are not trying to hold up the bill. We are trying to offer amendments to this bill that make it fairer from the perspective of States that, over the decades, have provided so much more funding to the highway program than has been received back by those States. We want that opportunity to seek greater fairness.

The managers have been talking to us about some possibilities that would be foreclosed by a cloture vote. Relevant amendments that are not technically germane would be foreclosed. This unanimous consent agreement only protects certain items postcloture that are relevant. Clearly, the two committee provisions which the majority leader talks about need to be considered as part of this bill, but so do other relevant provisions which are very important to States that feel they have not gotten a fair opportunity. So because it treats differently relevant amendments, postcloture and the relevant amendments that are so important to donor States, for instance, which are not technically germane are not treated in the same way in this unanimous consent agreement as are the ones that are specified, I must reluctantly object.

Mr. LOTT. Mr. President, if I could respond to the comments of the Senator from Michigan, first of all, I don't think you can find a Senator more sympathetic to donor States' concerns and desires than this Senator. My State has been very badly underfunded and mistreated over many, many years on a lot of things but on the highway trust fund formula, in particular.

We have been getting much less than an 85 percent return on the dollar here. We are the poorest State in the Nation, a big State, so don't get me started on donor States. I am sympathetic with what the Senator is saying.

I know he will continue to work with the chairman and the ranking member to see if there is a way to work this out without causing a blowout on the other side. This is a very delicately balanced bill. None of us is totally 100 percent happy with it. There are a number of things that came out of the committee that I just detest, but I realize there has to be a balance. There has to be a blend between regions of the country—big States, small States, donor States, donee—and I think they have done about as good as they could to this point.

I know you will work with Senator CHAFEE and Senator BAUCUS to see if your concerns can be worked out, but also I think that most of the amendments that you might want to offer to help solve your problem really would be available. Now, maybe not every one that you can think of—and I know you don't want to give up anything, but I think you also understand, as the majority leader, this tends to make people focus. We kind of gloated all week; the managers are doing the best they can and they made some good progress. The Senate really hasn't been paying attention. Just now they are beginning to say, "Wait, what does this mean, what exactly do I get—90.07 or do I get 91.2 cents back on a dollar?" So, by doing what I have done, this tends to make people say, OK, the train is leaving. It also limits the debate. If we get cloture, in 30 hours we are finished with this bill. So I understand what you are doing, and I hope you understand what I am doing. Try to work it out if you can.

I urge all Senators to vote for cloture so we can begin to move toward bringing this to closure. I think it will put

pressure on the other body to act. Remember, funds are going to be running out on May 1. I have made extra efforts and have met with a lot of Senators to try to get this bill done because I don't want to be blamed when May 1 comes. I don't think anybody would want to do that. We better find a way to make this happen.

The cloture vote will occur at 5:30 on Monday. I hope Senators will vote for cloture. I will continue to try to obtain a consent that allows the Senate to consider these two issues in a fair and orderly fashion. And, certainly, on Monday when we are back, we will get right back to this and see if we can move it along.

Mr. LEVIN. If the majority leader will yield, I want to assure him that the so-called "donor States"—at least, I think I speak for many of those Senators—have been very focused indeed for quite a long time on this issue. It just didn't arise after cloture was filed today. As the majority leader knows, we have worked very hard with the managers. Once we got the analysis of their amendment, we agreed that that amendment would be added as original text. The analysis came in less than 24 hours ago.

I know all the States in the Union feel that they want to do better. We all want a bill. Everybody wants a bill. We are determined to get a bill. Those of us who live in northern States surely would like it before May 1 because we are the ones that a tardy approval of the bill will hurt in terms of getting contracts signed. I know all of my colleagues, whether we are donor States or donee States, will work with the managers to try to come up with something over the weekend if possible.

I thank the majority leader.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I was in a meeting and I heard a unanimous consent request that I didn't quite understand. Was that granted?

Mr. LOTT. The unanimous consent request was objected to with regard to the Banking and Finance Committee provisions.

Mr. STEVENS. The leader has already set a cloture vote for when?

Mr. LOTT. It is 5:30 on Monday.

Mr. STEVENS. What does that do to the banking provision then? Will everything in the banking amendment then have to be germane?

Mr. LOTT. Unless we get permission for the Banking and Finance Committee provisions to be allowed, and that would be my intent. But Senators who have some concerns with it—with the formula, really, the donor States, see this as a way, speaking candidly, to keep a little pressure on this whole issue. Hopefully, we can work their concerns out, and then we would be able to get permission to add the Banking and Finance Committee provisions at that point. But that might be Wednesday of next week.

Mr. STEVENS. I might say to the leader, I am one of those who is disturbed over this "donor" or "donee" designation. As I said the other day, my State is in neither circumstance because we don't have the roads yet. I don't know what this does to us as far as the process is concerned.

May I inquire, before this cloture vote, will we have a breakdown and analysis of the bill on what each State would be entitled to? I have been trying to get that, and I have seen several different versions of what each State is entitled to under the bill. But beyond that, I have some questions about what happens to States that don't have roads.

We have the situation in our State where we are trying to build roads. This bill basically deals with the improvement of existing roads. I think this donor/donee thing sort of means maybe we ought to have a referendum to see whether the State of Alaska can become independent rather than Puerto Rico, because we would be much better off with the money we send to the Treasury. We send money to the Treasury in terms of the revenue from 25 percent of the oil that is produced in the United States. We try to get some of that back in terms of highways and find out we can't do it. I find that it's getting a little serious, as far as we are concerned.

Mr. Leader, I looked, and we have increased the number of miles of roads in our State by 1,100 miles in 40 years. But we had none to start with. Alaska is one-fifth the size of the United States. I am afraid what this means, suddenly, is that we are shut out again for another 6 years. The leader may remember that I had a little bit of an argument 5 years ago on this. We are right back there again. I am at a loss as to what this means to us.

Mr. LOTT. In answer to the Senator's question, I might say that I believe an analysis would be available. I have learned that you can get two different lists, and they might sometimes show a little different analysis or interpretation than what is in the bill.

Would the chairman of the committee like to respond?

Mr. CHAFEE. Well, we certainly have tables and charts that will show what Alaska got under ISTEA I, what Alaska gets under ISTEA II, what Alaska gets under ISTEA II with the added money in the so-called Chafee amendment, what those total dollars are, what the total dollars are in ISTEA II, as amended, compared to ISTEA I. The percentage of the total moneys that are given out, I think, are pretty elaborate—the figures that we have provided. It isn't anything new.

Mr. STEVENS. What I am disturbed about is this concept of 91 percent of the money paid into the Treasury on the gas tax will be returned to each State. How about 91 percent of the money paid into the Treasury from any oil-producing State? We send more money to the Treasury every day than any one of these donor States do. We are not getting it back and we are not getting any roads. I am really getting disturbed.

I must say, Leader, I asked to be notified so I could come and deal with the objection. I understand there is nothing to object to over the cloture vote. But somehow or other, we have to find some way to recognize the plight of States that do not have revenue going into the gas tax fund because they don't have roads. But we are sending more money to the Federal Treasury than any State in the Union with regard to resource production. How about some of that coming back to us? Let us build highways with part of our own tax revenues. Somehow, that has to be worked out. I don't want to be at cross purposes with the leader, but I shall have to vote against cloture once again.

I don't like to do that with the leadership, but it seems to me that there ought to be some way to work out this donor/donee business with relationship to how much money is the State paying into the Treasury from its activities.

These are State lands, Mr. President. We own the lands that the oil is produced from. We send 25 percent of the domestically produced oil to the United States. We could sell it in the world market for a lot more money. But it is getting to be a great problem to me to figure out how to deal with the future for my State. If we can't build roads, we are no longer going to be able to get subsidies for mail transportation, and we have many more of our communities becoming totally isolated now because of the Federal policies that forbid us from building roads across Federal lands in the first place.

Mr. LOTT. Let me say, Mr. President, if I could reclaim my time, I certainly understand what the Senator is saying. I am sympathetic to his concerns. Certainly, he is not getting into cross purposes with me. I am trying to bring this to a conclusion. I understand why he will vote the way he will. By the way, if you want to keep more of that oil and gas revenue in Alaska, put me down, I will be with you. We need to find more ways to leave more money with the people in the States anyway.

Mr. STEVENS. The leader has always been with us. But I have to find a way out of this hole we are in right now, both on building ferries and building roads. I don't have that answer yet. I will be here again and again, Mr. President. Thank you very much.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein for up to 5 minutes each.

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

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, March 5, 1998, the federal debt stood at $5,528,529,698,719.50 (Five trillion, five hundred twenty-eight billion, five hundred twenty-nine million, six hundred ninety-eight thousand, seven hundred nineteen dollars and fifty cents).

One year ago, March 5, 1997, the federal debt stood at $5,359,515,000,000 (Five trillion, three hundred fifty-nine billion, five hundred fifteen million).

Five years ago, March 5, 1993, the federal debt stood at $4,211,535,000,000 (Four trillion, two hundred eleven billion, five hundred thirty-five million).

Twenty-five years ago, March 5, 1973, the federal debt stood at $451,246,000,000 (Four hundred fifty-one billion, two hundred forty-six million) which reflects a debt increase of more than $5 trillion—$5,077,283,698,719.50 (Five trillion, seventy-seven billion, two hundred eighty-three million, six hundred ninety-eight thousand, seven hundred nineteen dollars and fifty cents) during the past 25 years.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING FEBRUARY 27TH

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending February 27, the U.S. imported 7,649,000 barrels of oil each day, 544,000 barrels more than the 7,105,000 imported each day during the same week a year ago.

Americans relied on foreign oil for 54.7 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf War, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970s, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil? By U.S. producers using American workers?

Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the U.S.—now 7,649,000 barrels a day.

THE SITUATION IN KOSOVO

Mr. BIDEN. I rise today to condemn the murderous attacks carried out by Serbian paramilitary units against civilians in the province of Kosovo.

Mr. President, the immediate cause of the violence was an attack several days ago by units of the so-called Kosovo Liberation Army, which killed four Serbian police. The fundamental cause, however, is the Serbian government s brutal repression of the ethnic Albanians, who make up more than ninety percent of Kosovo s population.

In 1989, Slobodan Milosevic, as part of his demogogic policy of whipping up Serb ultra-nationalism, abolished the autonomous status of Kosovo, granted by the Yugoslav Constitution of 1974.

Flooding the province with Yugoslav military units, special police forces, and nationalist militias, Milosevic set up a police state that has prevented the ethnic Albanians from exercising their basic political and cultural rights.

To their credit, Kosovo's Albanian leadership, led by Ibrahim Rugova, opted for a non-violent approach in their struggle for independence. They established alternative institutions, including a shadow parliament with various political parties, independent schools, and trade unions.

For eight years Mr. Rugova was able to keep the lid on a potentially explosive situation. Inevitably, however, the weight of Serbian repression had its effect, particularly on younger Kosovars, as the ethnic Albanians of Kosovo are called.

A so-called Kosovo Liberation Army was formed, and last year began an armed campaign against Serbian officials and ethnic Serb civilians. While this development is understandable, Mr. President, it is regrettable. Aside from causing casualties and deaths, the armed resistance has provided Milosevic the pretext for his brutal crack-down.

The violence in Kosovo could provide the spark to ignite the Balkan tinderbox into full-scale regional war, which, in the worst case, could bring in neighboring Albania, Macedonia—and perhaps even Bulgaria, Greece, and Turkey.

Immediate action is necessary. Already the Administration is consulting with our NATO allies about an appropriate response. One immediate step should be to extend the mandate of the NATO-led UNPREDEP, the U.N. preventive deployment force in neighboring Macedonia which includes several hundred American troops, beyond its August 1998 termination date.

The Clinton Administration has already revoked several concessions granted to Milosevic as a reward for support of the new Prime Minister of the Republika Srpska in Bosnia.

The Bush Administration's Christmas 1992 warning of military action—which meant air strikes against targets across Serbia—unless violence against the Kosovar Albanians stopped, should be restated.

We should mobilize international pressure on Milosevic to restore the pre-1989 autonomy to Kosovo and to the ethnically heterogeneous Vojvodina province in northern Serbia.

To coordinate our policy, President Clinton should name a high-profile Special Representative for dealing with the Kosovo Problem. Our current Special Representative for the former Yugoslavia, Robert Gelbard, is simply stretched too thin to devote adequate time to this explosive situation.

Mr. President, it is difficult to exaggerate the stakes in the current Kosovo violence. A continuation of the Serbian repression and Kosovar Albanian counter-violence could easily spin out of control and endanger the entire Balkan peninsula.

It could undo the recent progress we have made in Bosnia and endanger NATO solidarity.

We must act at once to prevent these developments.

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 the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations:

Treaty Doc. 105–36 Protocols to the North Atlantic Treaty of 1949 On Accession of Poland, Hungary, and the Czech Republic (Exec. Rept. 105–14).

TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION AS REPORTED BY THE COMMITTEE ON FOREIGN RELATIONS

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO DECLARATIONS AND CONDITIONS.

The Senate advises and consents to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic, which were opened for signature at Brussels on December 16, 1997, and signed on behalf of the United States of America and other parties to the North Atlantic Treaty (as defined in section 4(6)), subject to the declarations of section 2 and the conditions of section 3.

SEC. 2. DECLARATIONS.

The advice and consent of the Senate to ratification of the Protocols to the North Atlantic Treaty on the Accession of Poland, Hungary, and the Czech Republic is subject to the following declarations:

(1) REAFFIRMATION THAT UNITED STATES MEMBERSHIP IN THE NATO REMAINS A VITAL NATIONAL SECURITY INTEREST OF THE UNITED STATES OF AMERICA.—The Senate declares that—

(A) for nearly 50 years the North Atlantic Treaty Organization (NATO) has served as the preeminent organization to defend the territory of the countries in the North Atlantic area against all external threats;

(B) through common action, the established democracies of North America and Europe that were joined in NATO persevered and prevailed in the task of ensuring the survival of democratic government in Europe and North America throughout the Cold War;

(C) NATO enhances the security of the United States by embedding European states in a process of cooperative security planning, by preventing the destabilizing renationalization of European military policies, and by ensuring an ongoing and direct leadership role for the United States in European security affairs;

(D) the responsibility and financial burden of defending the democracies of Europe and North America can be more evenly shared through an alliance in which specific obligations and force goals are met by its members;

(E) the security and prosperity of the United States is enhanced by NATO's collective defense against aggression that may threaten the territory of NATO members; and

(F) United States membership in NATO remains a vital national security interest of the United States.

(2) STRATEGIC RATIONALE FOR NATO ENLARGEMENT.—The Senate finds that—

(A) Notwithstanding the collapse of communism in most of Europe and the dissolution of the Soviet Union, the United States and its NATO allies face threats to their stability and territorial integrity, including—

(i) the potential for the emergence of a hegemonic power in Europe;

(ii) conflict stemming from ethnic and religious enmity, the revival of historic disputes, or the actions of undemocratic leaders;

(iii) the proliferation of technologies associated with nuclear, chemical, or biological weapons as well as ballistic and cruise missile systems and other means of the delivery of those weapons; and

(iv) possible transnational threats that would adversely affect the core security interests of NATO members;

(B) the invasion of Poland, Hungary, or the Czech Republic, or their destabilization arising from external subversion, would threaten the stability of Europe and jeopardize vital United States national security interests;

(C) Poland, Hungary, and the Czech Republic, having established democratic governments and having demonstrated a willingness to meet all requirements of membership, including those necessary to contribute to the territorial defense of all NATO members, are in a position to further the principles of the North Atlantic Treaty and to contribute to the security of the North Atlantic area; and

(D) extending NATO membership to Poland, Hungary, and the Czech Republic will strengthen NATO, enhance security and stability in Central Europe, deter potential aggressors, and thereby advance the interests of the United States and its NATO allies.

(3) SUPREMACY OF THE NORTH ATLANTIC COUNCIL IN NATO DECISION-MAKING.—The Senate understands that—

(A) as the North Atlantic Council is the supreme decision-making body of NATO, the North Atlantic Council will not subject its decisions to review, challenge, or veto by any forum affiliated with NATO, including the Permanent Joint Council or the Euro-Atlantic Partnership Council, or by any nonmember state participating in any such forum;

(B) the North Atlantic Council does not require the consent of the United Nations, the Organization for Security and Cooperation in Europe, or any other international organization in order to take any action pursuant to the North Atlantic Treaty in defense of the North Atlantic area, including the deployment, operation, or stationing of forces; and

(C) the North Atlantic Council has direct responsibility for matters relating to the basic policies of NATO, including development of the Strategic Concept of NATO (as defined in section 3(1)(E)), and a consensus position of the North Atlantic Council will precede any negotiation between NATO and non-NATO members that affects NATO's relationship with non-NATO members participating in fora such as the Permanent Joint Council.

(4) FULL MEMBERSHIP FOR NEW NATO MEMBERS.—

(A) IN GENERAL.—The Senate understands that Poland, Hungary, and the Czech Republic, in becoming NATO members, will have all the rights, obligations, responsibilities, and protections that are afforded to all other NATO members.

(B) POLITICAL COMMITMENTS.—The Senate endorses the political commitments made by NATO to the Russian Federation in the NATO-Russia Founding Act, which are not legally binding and do not in any way preclude any future decisions by the North Atlantic Council to preserve the security of NATO members.

(5) NATO-RUSSIA RELATIONSHIP.—The Senate finds that it is in the interest of the United States for NATO to develop a new and constructive relationship with the Russian Federation as the Russian Federation pursues democratization, market reforms, and peaceful relations with its neighbors.

(6) THE IMPORTANCE OF EUROPEAN INTEGRATION.—

(A) SENSE OF THE SENATE.—It is the sense of the Senate that—

(i) the central purpose of NATO is to provide for the collective defense of its members;

(ii) the Organization for Security and Cooperation in Europe is a primary institution for the promotion of democracy, the rule of law, crisis prevention, and post-conflict rehabilitation and, as such, is an essential forum for the discussion and resolution of political disputes among European members, Canada, and the United States; and

(iii) the European Union is an essential organization for the economic, political, and social integration of all qualified European countries into an undivided Europe.

(C) POLICY OF THE UNITED STATES.—The Policy of the United States is—

(i) to utilize fully the institutions of the Organization for Security and Cooperation in Europe to reach political solutions for disputes in Europe; and

(ii) to encourage actively the efforts of the European Union to expand its membership, which will help to stabilize the democracies of Central and Eastern Europe.

(7) FUTURE CONSIDERATION OF CANDIDATES FOR MEMBERSHIP IN NATO.—

(A) SENATE FINDINGS.—The Senate finds that—

(i) Article 10 of the North Atlantic Treaty provides that NATO members by unanimous agreement may invite the accession to the North Atlantic Treaty of any other European state in a position to further the principles of the North Atlantic Treaty and to contribute to the security of the North Atlantic area;

(ii) in its Madrid summit declaration of July 8, 1997, NATO pledged to "maintain an open door to the admission of additional Alliance members in the future" if those countries satisfy the requirements of Article 10 of the North Atlantic Treaty;

(iii) other than Poland, Hungary, and the Czech Republic, the United States has not consented to invite any other country to join NATO in the future; and

(iv) the United States will not support the admission of, or the invitation for admission of, any new NATO member unless—

(I) the President consults with the Senate consistent with Article II, section 2, clause 2 of the Constitution of the United States (relating to the advice and consent of the Senate to the making of treaties); and

(II) the prospective NATO member can fulfill the obligations and responsibilities of membership, and its inclusion would serve the overall political and strategic interests of NATO and the United States.

(B) REQUIREMENT FOR CONSENSUS AND RATIFICATION.—The Senate declares that no action or agreement other than a consensus decision by the full membership of NATO, approved by the national procedures of each NATO member, including, in the case of the United States, the requirements of Article II, section 2, clause 2 of the Constitution of the United States (relating to the advice and consent of the Senate to the making of treaties), will constitute a security commitment pursuant to the North Atlantic Treaty.

SEC. 3. CONDITIONS.

The advice and consent of the Senate to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic is subject to the following conditions, which shall be binding upon the President:

(1) THE STRATEGIC CONCEPT OF NATO.—

(A) THE FUNDAMENTAL IMPORTANCE OF COLLECTIVE DEFENSE.—The Senate declares that—

(i) in order for NATO to serve the security interests of the United States, the core purpose of NATO must continue to be the collective defense of the territory of all NATO members; and

(ii) NATO may also, pursuant to Article 4 of the North Atlantic Treaty, on a case-by-case basis, engage in other missions when there is a consensus among its members that there is a threat to the security and interests of NATO members.

(B) DEFENSE PLANNING, COMMAND STRUCTURES, AND FORCE GOALS.—The Senate declares that NATO must continue to pursue defense planning, command structures, and force goals to meet the requirements of Article 5 of the North Atlantic Treaty as well as the requirements of other missions agreed upon by NATO members, but must do so in a manner that first and foremost ensures under the North Atlantic Treaty the ability of NATO to deter and counter any significant military threat to the territory of any NATO member.

(C) REPORT.—Not later than 180 days after the date of adoption of this resolution, the President shall submit to the President of the Senate and the Speaker of the House of Representatives a report on the Strategic Concept of NATO. The report shall be submitted in both classified and unclassified form and shall include—

(i) an explanation of the manner in which the Strategic Concept of NATO affects United States military requirements both within and outside the North Atlantic area;

(ii) an analysis of all potential threats to the North Atlantic area up to the year 2010, including consideration of a reconstituted conventional threat to Europe, emerging capabilities of non-NATO countries to use nuclear, biological, or chemical weapons affecting the North Atlantic area, and the emerging ballistic and cruise missile threat affecting the North Atlantic area;

(iii) the identification of alternative system architectures for the deployment of a NATO missile defense for the region of Europe that would be capable of countering the threat posed by emerging ballistic and cruise missile systems in countries other than declared nuclear powers, together with a timetable for development and an estimate of costs;

(iv) a detailed assessment of the progress of all NATO members, on a country-by-country basis, toward meeting current force goals; and

(v) a general description of the overall approach to updating the Strategic Concept of NATO.

(D) BRIEFINGS ON REVISIONS TO THE STRATEGIC CONCEPT.—Not less than twice in the 300-day period following the date of adoption of this resolution, each at an agreed time to precede each Ministerial meeting of the North Atlantic Council, the Senate expects the appropriate officials of the executive branch of Government to offer detailed briefings to the Committee on Foreign Relations of the Senate on proposed changes to the Strategic Concept of NATO, including—

(i) an explanation of the manner in which specific revisions to the Strategic Concept of NATO will serve United States national security interests and affect United States military requirements both within and outside the North Atlantic area;

(ii) a timetable for implementation of new force goals by all NATO members under any revised Strategic Concept of NATO;

(iii) a description of any negotiations regarding the revision of the nuclear weapons policy of NATO; and

(iv) a description of any proposal to condition decisions of the North Atlantic Council upon the approval of the United Nations, the Organization for Security and Cooperation in Europe, or any NATO-affiliated forum.

(E) DEFINITION.—For the purposes of this paragraph, the term "Strategic Concept of NATO" means the document agreed to by the Heads of State and Government participating in the meeting of the North Atlantic Council in Rome on November 7–8, 1991 or any subsequent document agreed to by the North Atlantic Council that would serve a similar purpose.

(2) COST, BENEFITS, BURDENSHARING AND MILITARY IMPLICATIONS OF THE ENLARGEMENT OF NATO.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that—

(A) PRESIDENTIAL CERTIFICATION.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that—

(i) the inclusion of Poland, Hungary, and the Czech Republic in NATO will not have the effect of increasing the overall percentage share of the United States in the common budgets of NATO;

(ii) the United States is under no commitment to subsidize the national expenses necessary for Poland, Hungary, or the Czech Republic to meet its NATO commitments; and

(iii) the inclusion of Poland, Hungary, and the Czech Republic in NATO does not detract from the ability of the United States to meet or to fund its military requirements outside the North Atlantic area.

(B) ANNUAL REPORTS.—

(i) REQUIREMENTS.—Not later than April 1 of each year during the five-year period following the date of entry into force of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic, the President shall submit to the appropriate congressional committees a report which may be submitted in an unclassified and classified form and which shall contain the following information:

(I) The amount contributed to the common budgets of NATO by each NATO member during the preceding calendar year.

(II) The proportional share assigned to, and paid by, each NATO member under NATO's cost-sharing arrangements.

(III) The national defense budget of each NATO member, the steps taken by each NATO member to meet NATO force goals, and the adequacy of the national defense budget of each NATO member in meeting common defense and security obligations.

(IV) Any costs incurred by the United States in connection with the membership of Poland, Hungary, or the Czech Republic in NATO, including the deployment of United States military personnel, the provision of any defense article or defense service, the funding of any training activity, or the modification or construction of any military facility.

(ii) DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.—As used in this subparagraph, the term "appropriate congressional committees" means the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Committee on International Relations, the Committee on National Security, and the Committee on Appropriations of the House of Representatives.

(3) THE NATO-RUSSIA FOUNDING ACT AND THE PERMANENT JOINT COUNCIL.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate the following—

(A) IN GENERAL.—The NATO-Russia Founding Act and the Permanent Joint Council do not provide the Russian Federation with a veto over NATO policy.

(B) NATO DECISION-MAKING.—The NATO-Russia Founding Act and the Permanent Joint Council do not provide the Russian Federation any role in the North Atlantic Council or NATO decision-making, including—

(i) any decision NATO makes on an internal matter; or

(ii) the manner in which NATO organizes itself, conducts its business, or plans, prepares for, or conducts any mission that affects one or more of its members, such as collective defense, as stated under Article 5 of the North Atlantic Treaty.

(C) NATURE OF DISCUSSIONS IN THE PERMANENT JOINT COUNCIL.—In discussions in the Permanent Joint Council—

(i) the Permanent Joint Council will not be a forum in which NATO's basic strategy, doctrine, or readiness is negotiated with the Russian Federation, and NATO will not use the Permanent Joint Council as a substitute for formal arms control negotiations such as the adaptation of the Treaty on Conventional Armed Forces in Europe done at Paris on November 19, 1990;

(ii) any discussion with the Russian Federation of NATO doctrine will be for explanatory, not decision-making purposes;

(iii) any explanation described in clause (ii) will not extend to a level of detail that could in any way compromise the effectiveness of NATO's military forces and any such explanation will be offered only after NATO has first set its policies on issues affecting internal matters;

(iv) NATO will not discuss any agenda item with the Russian Federation prior to agreeing to a NATO position within the North Atlantic Council on that agenda item; and

(v) the Permanent Joint Council will not be used to make decision on NATO doctrine, strategy or readiness.

(4) TREATY INTERPRETATION.—

(A) PRINCIPLES OF TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally-based principles of treaty interpretation set forth in condition (1) in the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988.

(B) CONSTRUCTION OF SENATE RESOLUTION OF RATIFICATION.—Nothing in condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, shall be construed as authorizing the President to obtain legislative approval for modifications or amendments to treaties through majority approval of both Houses of Congress.

(C) DEFINITION.—As used in this paragraph, 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, done at Washington on December 8, 1987.

SEC. 4. DEFINITIONS.

In this resolution:

(1) NATO.—The term "NATO" means the North Atlantic Treaty Organization.

(2) NATO MEMBERS.—The term "NATO members" means all countries that are parties to the North Atlantic Treaty.

(3) NATO-RUSSIA FOUNDING ACT.—The term "NATO-Russia Founding Act" means the document entitled the "Founding Act on Mutual Relations, Cooperation and Security Between NATO and the Russian Federation", dated May 27, 1997.

(4) NORTH ATLANTIC AREA.—The term "North Atlantic area" means the area covered by Article 6 of the North Atlantic Treaty, as applied by the North Atlantic Council.

(5) NORTH ATLANTIC TREATY.—The term "North Atlantic Treaty", means the North Atlantic Treaty signed at Washington on April 4, 1949 (63 Stat. 2241; TLAS 1964), as amended.

(6) PROTOCOLS TO THE NORTH ATLANTIC TREATY OF 1949 ON THE ACCESSION OF POLAND, HUNGARY, AND THE CZECH REPUBLIC.—The term "Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic" refers to the following protocols transmitted by the President of the Senate on February 11, 1998 (Treaty Document No. 105–36):

(A) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Poland, signed at Brussels on December 16, 1997.

(B) The Protocol to the North Atlantic Treaty on the Accession of the Republic of Hungary, signed at Brussels on December 16, 1997.

(C) The Protocol to the North Atlantic Treaty on the Accession of the Czech Republic, signed at Brussels on December 16, 1997.

(7) UNITED STATES INSTRUMENT OF RATIFICATION.—The term "United States instrument of ratification" means the instrument of ratification of the United States of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic.

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. LEAHY:

S. 1721. A bill to provide for the Attorney General of the United States to develop guidelines for Federal prosecutors to protect familial privacy and communications between parents and their children in matters that do not involve allegations of violent or drug trafficking conduct and the Judicial Conference of the United States to make recommendations regarding the advisability of amending the Federal Rules of Evidence for such purpose; to the Committee on the Judiciary.

By Mr. FRIST (for himself, Mr. LOTT, Mr. JEFFORDS, Mr. KENNEDY, Mr. GREGG, Mr. DODD, Mr. ENZI, Mr. HARKIN, Mr. HUTCHINSON, Ms. MIKULSKI, Ms. COLLINS, Mr. BINGAMAN, Mr. MCCONNELL, Mr. WELLSTONE, Mrs. MURRAY, Mr. REED, Ms. SNOWE, Mr. NICKLES, Mr. MACK, Mrs. BOXER, Mr. DASCHLE, Mr. CHAFEE, Mrs. FEINSTEIN, Mr. ROTH, Mr. SPECTER, Mr. D'AMATO, Mr. DOMENICI, and Mr. SANTORUM):

S. 1722. A bill to amend the Public Health Service Act to revise and extend certain programs with respect to women's health research and prevention activities at the National Institutes of Health and the Centers for Disease Control and Prevention; to the Committee on Labor and Human Resources.

By Mr. ABRAHAM (for himself, Mr. HATCH, Mr. MCCAIN, Mr. DEWINE, and Mr. SPECTER):

S. 1723. A bill to amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of the United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers; to the Committee on the Judiciary.

By Ms. COLLINS (for herself, Mr. DEWINE, Mr. BOND, Mr. ENZI, Mr. FAIRCLOTH, Mr. HATCH, Mr. HELMS, Mr. ROBERTS, Mrs. HUTCHISON, and Mr. SMITH of Oregon):

S. 1724. A bill to amend the Internal Revenue Code of 1986 to repeal the information reporting requirement relating to the Hope Scholarship and Lifetime Learning Credits imposed on educational institutions and certain other trades and businesses; to the Committee on Finance.

By Mr. BURNS (for himself, Mr. HELMS, Mr. THOMAS, and Mr. KYL):

S. 1725. A bill to terminate the Office of the Surgeon General of the Public Health Service; to the Committee on Labor and Human Resources.

By Mrs. MURRAY (for herself, Mr. GORTON, Mr. SMITH of Oregon, and Mr. WYDEN):

S. 1726. A bill to authorize the States of Washington, Oregon, and economic zone; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY:

S. 1727. A bill authorize the comprehensive independent study of the effects on trademark and intellectual property rights holders of adding new a generic top-level domains and related dispute resolution procedures; to the Committee on the Judiciary.

By Mr. LOTT:

S. 1728. A bill to provide for the conduct of a risk assessment for certain Federal agency rules, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BREAUX:

S. 1729. A bill to amend title 28, United States Code, to create two divisions in the Eastern Judicial District of Louisiana; to the Committee on the Judiciary.

By Mr. WYDEN:

S. 1730. A bill to require Congressional review of Federal programs at least every 5 years, and for other purposes; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY:

S. 1721. A bill to provide for the Attorney General of the United States to develop guidelines for Federal prosecutors to protect familial privacy and communications between parents and their children in matters that do not involve allegations of violent or drug trafficking conduct and the Judicial Conference of the United States to make recommendations regarding the advisability of amending the Federal Rules of Evidence for such purpose; to the Committee on the Judiciary.

PARENT-CHILD PRIVILEGE STUDY LEGISLATION

Mr. LEAHY. Mr. President, I recently spoke on the floor about the disgust that I share with most Americans about the tactics of Special Prosecutor Kenneth Starr and the disturbing spectacle of hauling a mother before a grand jury to reveal her intimate conversations with her daughter in a matter, which—even if all the allegations about the daughter's conduct were true—do not pose grave threats to the public safety. This matter does not, for example, involve any allegations of violence or drug trafficking conduct.

In this instance, as in others, Mr. Starr has scurried to apply all of the legal weapons at his command, but none of the discretion that he is obligated to exercise as one invested with almost unchecked legal authority. I also expressed my intent to introduce legislation to study whether, and under what circumstances, the confidential communications between a parent and his or her child should be protected. A number of professional relationships of trust are already protected by legal privileges, but not familial relationships. This is the legislation I introduce today.

Currently, under Rule 501 of the Federal Rules of Evidence, privileges are "governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." Thus, in the absence of any Supreme Court rules or federal statutes, courts look to the United States Constitution and the principles of federal common law to determine the applicability and the scope of privileges.

Legal academicians have expressed support for a parent-child testimonial privilege. The public policy reasons favoring such a privilege are numerous and relate to the respect we accord to fundamental family values. Recognition of such a privilege could foster and protect strong and trusting family relationships, preserve the family, safeguard the privacy of familial communications and intimate family matters against undue government intrusion, and promote a healthy environment for the psychological development of children.

Despite these myriad reasons, there are indeed cases and circumstances when parents should be compelled in court to share what they know from their children. Indeed, courts have generally not been receptive to the parent-child privilege. Only four States—Idaho, Massachusetts, Minnesota, and New York—have adopted either by statute, or by judicial recognition, some form of a parent-child privilege. No Federal Court of Appeals have recognized this privilege nor has any State Supreme Court that has considered the issue. In my own State of Vermont, such a privilege is not recognized.

To my mind, and as a former prosecutor, prosecutors should show restraint before putting parents in the untenable position of making a legal determination as to whether their children should come to them for advice, or whether the parents instead should feel legally pressured to refer their own children to professional therapists, or lawyers, or doctors in order to protect the confidentiality of the child's communications. To be sure, there are some categories of cases, particularly cases involving grave threats to the public safety, such as violent or drug trafficking crimes, where the government can and should appropriately seek testimony from a parent about what a child has said. But we should all be clear about when prosecutors should also show restraint.

Courts have recognized privilege claims in a variety of professional relationships, ranging from attorneys to priests to psychotherapists. Yet the relationship between parent and child—the most fundamental relationship in our society—is generally not so protected in any circumstances. As one New York court explained:

> It would be difficult to think of a situation which more strikingly embodies the intimate and confidential relationship which exists among family members than that in which a troubled young person, perhaps beset with remorse and guilt, turns for counsel and guidance to his mother and father. There is nothing more natural, more consistent with our concept of the parental role,

than that a child may rely on his parents for help and advice. Shall it be said to those parents, "Listen to your son at the risk of being compelled to testify about his confidences?"—*In re Application of A&M*, 61 A.D.2d 426, 403 N.Y.S.2d 375, 378 (1978).

We should consider the sorts of circumstances and the types of cases in which prosecutors should be asked to show some restraint before turning to parents to provide evidence against their children. That is why my bill calls for a study and report by the Justice Department on what these circumstances should be, and to develop prosecutorial guidelines accordingly. Specifically, these guidelines should identify when the communications between parents and their children should carry the same protections as preferred professional relationships, and the circumstances and types of cases when those communications should be subject to government scrutiny.

We cannot rely on the courts to formulate an appropriate parent-child privilege. The Third Circuit recently declined to recognize the parent-child privilege, noting that:

The legislature, not the judiciary, is institutionally better equipped to perform the balancing of the competing policy issues required in deciding whether the recognition of a parent-child privilege is in the best interests of society. Congress, through its legislative mechanisms, is also better suited for the task of defining the scope of any prospective privilege. . . . In short, if a new privilege is deemed worthy of recognition, the wiser course in our opinion is to leave the adoption of such a privilege to Congress.—*In re Grand Jury Proceedings (Impounded)*, 103 F.3d 1140, 1148, 1153 (3d Cir. 1996).

Likewise, the Seventh Circuit Court of Appeals has made clear that "courts have been reluctant to create new privileges, preferring to leave such matters to the legislature despite any policy reasons supporting recognition of a particular privilege." *United States* v. *Riley*, 653 F.2d 1153, 1160 (7th Cir. 1981).

Congress should accept this challenge. My bill is a start to the process of seeking expert input on the significant question of when the government may not compel parents to betray the confidences of their children, and when because of compelling need or the nature of the case or circumstances, parents should be required to reveal the substance of what their children have told them.

Thus, the bill I introduce today directs the Attorney General to develop Federal prosecutorial guidelines to protect familial privacy and parent-child communications in matters that do not involve allegations of violent or drug trafficking conduct. In addition, the legislation would direct the Judicial Conference to undertake a study and then give us a report on whether the Federal Rules of Evidence should be amended to explicitly recognize a parent-child privilege in cases not involving violent or drug trafficking conduct, and, if so, in what circumstances that privilege should apply.

While we should endeavor to provide the maximum protection for parent-child communications, we should also be careful not to unduly obstruct law enforcement. Nor should the rule be susceptible to litigious mischief.

Accordingly, the Attorney General and the Judicial Conference will need to address, as part of the study and report called for in my bill, a series of important questions, including:

(1) What communications should be considered confidential for purposes of the privilege and, specifically, should the privilege apply in both criminal and civil proceedings?

(2) Should such a privilege apply only to unemancipated minors, or also to adult children?

(3) Should only the child's communications be protected, or should a parent's communications to a child also receive protection?

(4) Should such a privilege extend beyond a child's natural parents to include step-parents or grandparents?

(5) Should such a privilege be subject to rebuttal if the government establishes a compelling need for the information?

This legislation is the first step in evaluating the merits and difficulties inherent in protecting familial privacy and the parent-child relationship against unwarranted intrusions by the government and by overzealous prosecutors. The public and these families themselves should not have to endure repeated scenes of mothers being marched into grand jury inquisitions to reveal intimate talks they may have had with their children about their private relationships. This is a far cry from allegations concerning violent or drug trafficking conduct. Let us find out what the Justice Department and Judicial Conference recommend about how we can best protect child-parent confidences in ways that comport with American notions of family, fidelity, and privacy, without compromising our public safety and the integrity of our judicial system.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 1721

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONFIDENTIALITY OF PARENT CHILD COMMUNICATIONS IN JUDICIAL PROCEEDINGS.

(a) STUDY AND DEVELOPMENT OF PROSECUTORIAL GUIDELINES.—The Attorney General of the United States shall—

(1) study and evaluate the manner in which the States have taken measures to protect the confidentiality of communications between children and parents and, in particular, whether such measures have been taken in matters that do not involve allegations of violent or drug trafficking conduct;

(2) develop guidelines for Federal prosecutors that will provide the maximum protection possible for the confidentiality of communications between children and parents in matters that do not involve allegations of violent or drug trafficking conduct, within any applicable constitutional limits, and without compromising public safety or the integrity of the judicial system, taking into account—

(A) the danger that the free communication between a child and his or her parent will be inhibited and familial privacy and relationships will be damaged if there is no assurance that such communications will be kept confidential;

(B) whether an absolute or qualified testimonial privilege for communications between a child and his or her parents in matters that do not involve allegations of violent or drug trafficking conduct is appropriate to provide the maximum guarantee of familial privacy and confidentiality without compromising public safety or the integrity of the judicial system; and

(C) the appropriate limitations on a testimonial privilege for such communications between a child and his or her parents, including—

(i) whether the privilege should apply in criminal and civil proceedings;

(ii) whether the privilege should extend to all children, regardless of age, unemancipated or emancipated, or be more limited;

(iii) the parameters of the familial relationship subject to the privilege, including whether the privilege should extend to step-parents or grandparents, adopted children, or siblings; and

(iv) whether disclosure should be allowed absent a particularized showing of a compelling need for such disclosure, and adequate procedural safeguards are in place to prevent unnecessary or damaging disclosures; and

(3) prepare and disseminate to Federal prosecutors the findings made and guidelines developed as a result of the study and evaluation.

(b) REPORT AND RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act, the Attorney General of the United States shall submit a report to Congress on—

(1) the findings of the study and the guidelines required under subsection (a); and

(2) recommendations based on the findings on the need for and appropriateness of further action by the Federal Government.

(c) REVIEW OF FEDERAL RULES OF EVIDENCE.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference of the United States shall complete a review and submit a report to Congress on—

(1) whether the Federal Rules of Evidence should be amended to guarantee that the confidentiality of communications by a child to his or her parent in matters that do not involve allegations of violent or drug trafficking conduct will be adequately protected in Federal court proceedings; and

(2) if the rules should be so amended, a proposal for amendments to the rules that provides the maximum protection possible for the confidentiality of such communications, within any applicable constitutional limits and without compromising public safety or the integrity of the judicial system.

By Mr. FRIST (for himself, Mr. LOTT, Mr. JEFFORDS, Mr. KENNEDY, Mr. GREGG, Mr. DODD,

Mr. ENZI, Mr. HARKIN, Mr. HUTCHINSON, Ms. MIKULSKI, Ms. COLLINS, Mr. BINGAMAN, Mr. MCCONNELL, Mr. WELLSTONE, Mrs. MURRAY, Mr. REED, Ms. SNOWE, Mr. NICKLES, Mr. MACK, Mrs. BOXER, Mr. DASCHLE, Mr. CHAFEE, Mrs. FEINSTEIN, Mr. ROTH, Mr. SPECTER, Mr. D'AMATO, Mr. DOMENICI, and Mr. SANTORUM):

S. 1722. A bill to amend the Public Health Service Act to revise and extend certain programs with respect to women's health research and prevention activities at the National Institutes of Health and the Centers for Disease Control and Prevention; to the Committee on Labor and Human Resources.

THE WOMEN'S HEALTH RESEARCH AND PREVENTION AMENDMENTS OF 1998

Mr. FRIST. Mr. President, I am very pleased to introduce today, with the majority leader, the Women's Health Research and Prevention Amendments of 1998. The purpose of this bill is to increase awareness of some of the most pressing diseases and health issues that women in our country face. This bill focuses on women's health research and prevention activities at the National Institutes of Health and the Centers for Disease Control and Prevention.

Our goal, in introducing this bill today, is to create greater awareness of women's health issues and to highlight the critical role our public health agencies—the NIH, the National Institutes of Health, and the CDC, the Centers for Disease Control and Prevention—play in providing a broad spectrum of activities to improve women's health, including research, screening, health data management, prevention and treatment of diseases, and broad health education.

This bill reauthorizes programs at the National Institutes of Health for vital research activities into the causes, prevention, and treatment for some of the major diseases affecting women, including osteoporosis, breast cancer, ovarian cancer, as well as research into the aging processes of women.

Let me cite just a few statistics to illustrate the need for further research into these health issues.

Osteoporosis is a health threat for 28 million Americans, 80 percent of whom are women. One in every two women over the age of 50 years will have an osteoporosis-related fracture.

One out of every eight women will develop breast cancer over the course of their lifetimes, and 1 in 25 will die of breast cancer.

Ovarian cancer is the fourth leading cause of death from cancer among women. One of the most troubling aspects of ovarian cancer is the challenge we have in diagnosing this disease earlier and earlier. We know that a late diagnosis results in a worse outcome. The reauthorization of these research programs will help assure scientific progress in our fight against these diseases and will lessen their burden on women and their families.

For far too long, women in this country have been neglected in many of our research clinical studies. I am very pleased that, since 1993, we have developed guidelines to include women and minorities in NIH-sponsored trials. However, we must continue to do more. We must continue to review our women's health research agenda to set future research priorities and to incorporate new scientific knowledge regarding women's health. We must continue to focus and coordinate all our efforts in research areas, including clinical trial research design, genetic factors, the aging process, and other gender-based differences.

I am also pleased in this bill that we authorize a new research program at the National Heart, Lung, and Blood Institute at the NIH to target heart attack, stroke, and other cardiovascular diseases in women. This program, originally introduced by my colleague, Senator BOXER, will advance research into cardiovascular diseases—the leading cause of death in the United States in women. More than 500,000 American women will die annually from cardiovascular diseases. Cardiovascular diseases—that is, diseases of the heart and the blood vessels—kill almost twice as many American women as all other cancers.

One of the biggest myths in medicine is that heart disease is only a male problem. When we think of a heart attack, many people associate it with men. Even in my own studies during my internship and residency in medicine—not that long ago—all the models, the pictures that were used in textbooks, the warning signs on TV—always pictured a man.

However, since 1984, the number of cardiovascular disease deaths in women has exceeded those of men. And in 1995, 50,000 more women died of heart disease than men. The program we are including in the bill today will expand the research programs at NIH to concentrate more on cardiovascular diseases in women.

Our bill reauthorizes several programs at the Centers for Disease Control and Prevention for prevention and education activities on women's health issues. We are reauthorizing the National Center for Health Statistics, the National Program of Cancer Registries, the National Breast and Cervical Cancer Early Detection Program, the Centers for Research and Demonstration of Health Promotion and Disease Prevention, and the Community Programs on Domestic Violence.

CDC's programs provide critical health services in each of our States and in our communities to detect, prevent, and diagnose diseases such as breast and cervical cancer. For the past 7 years, the National Breast and Cervical Cancer Early Detection Program has provided critical cancer screening services to underserved women, especially low-income women, elderly women, and members of racial and ethnic minority groups. CDC supports early detection programs in all 50 States, in 5 territories, in the District of Columbia, and in 14 American Indian/Alaskan Native organizations. Through March 1997, more than 1.3 million screening tests have been provided by this one program.

CDC programs provide critical data and statistics about women's health that assist us in making informed policy decisions about health care. The National Center for Health Statistics often provides the only national data on the health status of U.S. women and their use of health care. A recent report by the National Center for Health Statistics entitled "Women: Work and Health" summarized the data on health conditions affecting working women. This report is the first comprehensive survey on work-related health issues encountered by the more than 60 million women in the American labor force.

I thank the majority leader for his leadership on this issue and for his efforts in the introduction of this bill. I am pleased to state that this bill is bipartisan. We have included provisions that are the product of the efforts of many of my colleagues—Senators SNOWE, HARKIN, BOXER, and many others. We have the support of nearly the full Senate Labor and Human Resources Committee, and over 27 Members of the Senate are original cosponsors of this bipartisan bill. The level of support for this bill is a real testament to the need to combat the diseases affecting women and to maintain those crucial health services that help prevent these diseases.

This bill, again, is introduced to generate discussion of these important programs. We intend to consider these programs within the context of the upcoming NIH reauthorization bill to be introduced over the next several months. I encourage all Members and constituencies to review the current programs and to provide input as we set the future agenda of women's health research and prevention in this Nation.

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

S. 1722

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 "Women's Health Research and Prevention Amendments of 1998".

TITLE I—PROVISIONS RELATING TO WOMEN'S HEALTH RESEARCH AT THE NATIONAL INSTITUTES OF HEALTH

SEC. 101. EXTENSION OF PROGRAM FOR RESEARCH AND AUTHORIZATION OF NATIONAL PROGRAM OF EDUCATION REGARDING THE DRUG DES.

(a) IN GENERAL.—Section 403A(e) of the Public Health Service Act (42 U.S.C. 283a(e)) is amended by striking "1996" and inserting "2001".

(b) NATIONAL PROGRAM FOR EDUCATION OF HEALTH PROFESSIONALS AND PUBLIC.—From amounts appropriated for carrying out section 403A of the Public Health Service Act (42 U.S.C. 283a), the Secretary of Health and Human Services, acting through the heads of the appropriate agencies of the Public Health Service, shall carry out a national program for the education of health professionals and the public with respect to the drug diethylstilbestrol (commonly know as DES). To the extent appropriate, such national program shall use methodologies developed through the education demonstration program carried out under such section 403A. In developing and carrying out the national program, the Secretary shall consult closely with representatives of nonprofit private entities that represent individuals who have been exposed to DES and that have expertise in community-based information campaigns for the public and for health care providers. The implementation of the national program shall begin during fiscal year 1999.

SEC. 102. RESEARCH ON OSTEOPOROSIS, PAGET'S DISEASE, AND RELATED BONE DISORDERS.

Section 409A(d) of the Public Health Service Act (42 U.S.C. 284e(d)) is amended by striking "and 1996" and inserting "through 2001".

SEC. 103. RESEARCH ON CANCER.

(a) IN GENERAL.—Section 417B(a) of the Public Health Service Act (42 U.S.C. 286a–8(a)) is amended by striking "and 1996" and inserting "through 2001".

(b) RESEARCH ON BREAST CANCER.—Section 417B(b)(1) of the Public Health Service Act (42 U.S.C. 286a–8(b)(1)) is amended—

(1) in subparagraph (A), by striking "and 1996" and inserting "through 2001"; and

(2) in subparagraph (B), by striking "and 1996" and inserting "through 2001".

(c) RESEARCH ON OVARIAN AND RELATED CANCER RESEARCH.—Section 417B(b)(2) of the Public Health Service Act (42 U.S.C. 286a–8(b)(2)) is amended by striking "and 1996" and inserting "through 2001".

SEC. 104. RESEARCH ON HEART ATTACK, STROKE, AND OTHER CARDIOVASCULAR DISEASES IN WOMEN.

Subpart 2 of part C of title IV of the Public Health Service Act (42 U.S.C. 285b et seq.) is amended by inserting after section 424 the following:

"HEART ATTACK, STROKE, AND OTHER CARDIOVASCULAR DISEASES IN WOMEN

"SEC. 424A. (a) IN GENERAL.—The Director of the Institute shall expand, intensify, and coordinate research and related activities of the Institute with respect to heart attack, stroke, and other cardiovascular diseases in women.

"(b) COORDINATION WITH OTHER INSTITUTES.—The Director of the Institute shall coordinate activities under subsection (a) with similar activities conducted by the other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes and agencies have responsibilities that are related to heart attack, stroke, and other cardiovascular diseases in women.

"(c) CERTAIN PROGRAMS.—In carrying out subsection (a), the Director of the Institute shall conduct or support research to expand the understanding of the causes of, and to develop methods for preventing, cardiovascular diseases in women. Activities under such subsection shall include conducting and supporting the following:

"(1) Research to determine the reasons underlying the prevalence of heart attack, stroke, and other cardiovascular diseases in women, including African-American women and other women who are members of racial or ethnic minority groups.

"(2) Basic research concerning the etiology and causes of cardiovascular diseases in women.

"(3) Epidemiological studies to address the frequency and natural history of such diseases and the differences among men and women, and among racial and ethnic groups, with respect to such diseases.

"(4) The development of safe, efficient, and cost-effective diagnostic approaches to evaluating women with suspected ischemic heart disease.

"(5) Clinical research for the development and evaluation of new treatments for women, including rehabilitation.

"(6) Studies to gain a better understanding of methods of preventing cardiovascular diseases in women, including applications of effective methods for the control of blood pressure, lipids, and obesity.

"(7) Information and education programs for patients and health care providers on risk factors associated with heart attack, stroke, and other cardiovascular diseases in women, and on the importance of the prevention or control of such risk factors and timely referral with appropriate diagnosis and treatment. Such programs shall include information and education on health-related behaviors that can improve such important risk factors as smoking, obesity, high blood cholesterol, and lack of exercise.

"(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1999 through 2001. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriation that is available for such purpose.".

SEC. 105. AGING PROCESSES REGARDING WOMEN.

Section 445I of the Public Health Service Act (42 U.S.C. 285e–11) is amended by striking "and 1996" and inserting "through 2001".

SEC. 106. OFFICE OF RESEARCH ON WOMEN'S HEALTH.

Section 486(d)(2) of the Public Health Service Act (42 U.S.C. 287d(d)(2)) is amended by striking "Director of the Office" and inserting "Director of the National Institutes of Health".

TITLE II—PROVISIONS RELATING TO WOMEN'S HEALTH AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION

SEC. 201. NATIONAL CENTER FOR HEALTH STATISTICS.

Section 306(n) of the Public Health Service Act (42 U.S.C. 242k(n)) is amended—

(1) in paragraph (1), by striking "through 1998" and inserting "through 2002"; and

(2) in paragraph (2), by striking "through 1998" and inserting "through 2002".

SEC. 202. NATIONAL PROGRAM OF CANCER REGISTRIES.

Section 399L(a) of the Public Health Service Act (42 U.S.C. 280e–4(a)) is amended by striking "through 1998" and inserting "through 2002".

SEC. 203. NATIONAL BREAST AND CERVICAL CANCER EARLY DETECTION PROGRAM.

(a) GRANTS.—Section 1501(b) of the Public Health Service Act (42 U.S.C. 300k(b)) is amended—

(1) in paragraph (1), by striking "nonprofit"; and

(2) in paragraph (2), by striking "that are not nonprofit entities".

(b) PREVENTIVE HEALTH.—Section 1509(d) of the Public Health Service Act (42 U.S.C. 300n–4a(d)(1)) is amended by striking "through 1998" and inserting "through 2002".

(c) GENERAL PROGRAM.—Section 1510(a) of the Public Health Service Act (42 U.S.C. 300n–5(a)) is amended by striking "through 1998" and inserting "through 2002".

SEC. 204. CENTERS FOR RESEARCH AND DEMONSTRATION OF HEALTH PROMOTION.

Section 1706(e) of the Public Health Service Act (42 U.S.C. 300u–5(e)) is amended by striking "through 1998" and inserting "through 2002".

SEC. 205. COMMUNITY PROGRAMS ON DOMESTIC VIOLENCE.

Section 318(h)(2) of the Family Violence Prevention and Services Act (42 U.S.C. 10418(h)(2)) is amended by striking "fiscal year 1997" and inserting "for each of the fiscal years 1997 through 2002".

Mr. LOTT. Mr. President, this morning I am very pleased to join Senator FRIST of Tennessee, who is an outstanding Senator, and also a doctor, who has been very helpful to me, and a lot of Senators, since he joined this body, in introducing legislation entitled "The Women's Health Research and Prevention Act."

The bill authorizes and reauthorizes a collection of first-class research and prevention programs in the National Institutes of Health and the Centers for Disease Control and Prevention.

Breast cancer is the leading cause of death in women between the ages of 40 and 55. About one out of every eight women in the United States will, unfortunately, develop breast cancer during their lifetime. And so the Frist-Lott bill reauthorizes breast and ovarian cancer research and education programs at NIH.

Osteoporosis is a disease in which bones become fragile and more likely to break. My wife is beginning to confront this particular problem. As women age, they lose bone mass and are at risk of debilitating accidents such as fractures. This bill extends osteoporosis research and education programs at NIH.

Women's health, though, means more than just health issues specific to women. Heart disease, for instance, the No. 1 killer in the U.S. of women, of course, also affects men in great numbers. Hypertension, a leading cause of heart disease, is two to three times more common in women than in men.

In addition to these three key research areas, our bill continues programs in the Centers for Disease Control, including the National Program of Cancer Registries and the National Early Detection Program for breast and cervical cancer.

Senator FRIST, the Senate's only doctor, and an outstanding heart surgeon himself, provided the details of the bill. Senator FRIST is chairman of the Senate Public Health Subcommittee of the Senate Labor Committee, and is one of the Senate's key leaders on all of our health issues.

I am pleased that he is also serving on our Medicare commission that had its first meeting yesterday, including a meeting with the President.

I have often turned to him for advice and guidance on health matters, and will continue to do so in the future. I believe that just this morning Senator FRIST attended a meeting regarding Medicare, and that will be helpful in this effort. I know it will be a bipartisan effort.

I encourage colleagues on both sides of the aisle to cosponsor this important legislation.

This morning I was made aware that Senator MACK is a cosponsor, and Senator D'AMATO. We are inviting all Members to join us in this very serious and very important issue that we need to act on in order to reauthorize some of these programs and authorize new ones.

I thank Senator FRIST for his leadership in this area, and I yield the floor.

Mr. JEFFORDS. Mr. President, I rise to recognize Senator FRIST for taking an important step that brings together a number of Government programs of research, treatment and disease prevention for women. Over the past several years, Congress and the Nation have become increasingly concerned about women's health. I appreciate the leadership and the expertise that Dr. FRIST brings to Congress about these issues. We have much to learn about recognizing and treating the medical needs of women.

In the first session of the 105th Congress, at least 21 bills relating to women's health were introduced and referred to the Senate Labor and Human Resources Committee. At our committee hearing on women's health last July, we heard about important advances being made in research. We also heard about significant gaps of knowledge which need to be filled. More importantly, we recognize how important it is to get information about scientific advances to the public and their health care providers.

Thus, I am pleased the provisions of this bill provide for research and for public and professional education. We know that once the information is out to the public and health care professionals, we need screening programs, closely followed by access to treatment. The bill provides for important patient services.

Finally, once common conditions are well recognized, detected and treated, we need data to track our progress in disease prevention and to alert us to new help in illness trends. This bill provides for these functions through the support for cancer registries, information systems, and program evaluation. It is my hope that having women's issues collected together in one bill will focus the attention of Congress and the Nation on vigorous support of the woman's health initiative.

I am pleased to join Senator FRIST in sponsoring this legislation.

Mr. KENNEDY. Mr. President, I commend Senator FRIST for his leadership on the bill we are introducing today, "The Women's Health Research and Prevention Amendments of 1998." This bill is a bipartisan effort to extend and strengthen several important women's health programs at the National Institutes of Health and the Centers for Disease Control and Prevention.

In recent years, women's health has begun to receive the high priority it deserves. Five years ago government guidelines were finally eliminated that specifically excluded women from many clinical trials. Increasingly, Congress has given higher priority to funds to address breast cancer and other women's health issues. We also established the Office of Women's Health within the Department of Health and Human Services, in order to develop and implement a national agenda for women's health. These successes, however, have revealed that there is much more to be done.

The bill we are introducing today is an attempt to fill some of the gaps in research and prevention that we have identified in women's health. It is time for Congress to acknowledge that women's health involves a wider range of issues, and that the magnitude of these issues varies greatly with age. Car crashes and unintended injuries are the leading killer of women in their teens and twenties. Cancer is the leading killer of women between the ages of 25 and 64. Heart disease is the leading killer among women over 65.

The nation's agenda on women's health must also address other key issues that are more common among women but affect men too, such as osteoporosis, depression, and auto-immune diseases, and illnesses that manifest themselves differently in men and women, such as heart disease, substance abuse, AIDS, and violence.

Our legislation extends important research and prevention activities now being carried out by the National Institutes of Health and the Centers for Disease Control and Prevention in areas traditionally considered women's health issues, such as breast and ovarian cancer, osteoporosis, and domestic violence. It also calls for greater research efforts on heart attacks, strokes, and other cardiovascular diseases, in recognition of the serious effects of these diseases on women.

Our bill also provides continued support for academic health centers to conduct research and demonstration projects related to health promotion and disease prevention to improve quality of life, and to curb premature mortality and illness that contribute to excessive health costs. These academic health centers are effective in informing women and their physicians of steps they can take to prevent serious illness and injury, especially in cases involving chronic and debilitating physical illness, such as arthritis and osteoporosis, which put women at high risk for bone fractures.

In order to enable researchers to monitor health trends among women and to help policymakers make informed decisions on the allocation of resources, it is essential for accurate and timely statistical and epidemiological data to be available. Our bill will provide continued support of the CDC's National Center for Health Statistics, which provides valuable data related to overall health status, lifestyle, onset and diagnosis of illness and disability, and use of health care and rehabilitation services.

It is also important to understand differences between racial and ethnic groups. For example, black women have far higher death rates from heart disease, cancer, stroke and diabetes than white women. Minority women suffer the most from AIDS. More than half of new female cases of AIDS over the past decade were found among blacks. For other chronic diseases, black women have the highest rates of hypertension, while Native American women have higher rates of asthma and chronic bronchitis. This bill will enable the National Center for Health Statistics to continue its important work on the health of ethnic and racial populations, and improve methods to collect data on these subgroups in order to understand and address their various health needs more effectively.

Too many health needs of women continue to be neglected by the nation's health care system. The cost of this national neglect, both in dollars and in lives, is staggering. This bill is an excellent starting point for strengthening current programs and pursuing new initiatives to address urgent national priorities in women's health. I look forward to working with my colleagues and with the women's health community to enact the strongest legislation we can to deal with these vital issues.

Mr. HARKIN. Mr. President, I am pleased today to join many of my colleagues in support of the "Women's Health Research and Prevention Amendments of 1998." This legislation, introduced by my distinguished colleague, Senator BILL FRIST, and cosponsored by nearly all the members of the Committee on Labor and Human Resources, is an important step forward in the study and prevention of diseases and conditions unique to women.

In the late 1980's, I learned that there was an embarrassing lack of research on diseases and conditions prevalent in women. In addition, the General Accounting Office (GAO) reported that women were routinely excluded from medical research studies at NIH. Because of this information, in 1990, I fought for legislation creating the Office of Research on Women's Health at the National Institutes of Health (NIH). Since its creation, the Office successfully worked to ensure that research focuses on women's health and that women be included in clinical trials.

Senator FRIST'S legislation builds upon the base of research and prevention knowledge we have developed over the past few years. The bill reauthorizes essential programs relating to women's health research at NIH and the Centers for Disease Control and Prevention (CDC).

I am particularly proud of the reauthorization of the programs promoting research and education on the drug "diethylstilbestrol," otherwise known as DES. This drug was prescribed to pregnant American women from 1938 to 1971 in the mistaken belief that it would prevent miscarriage. But DES is now known to cause a five-fold increased risk of ectopic pregnancy, as well as a three-fold increased risk of miscarriage. I was proud to introduce legislation in 1992 that established a pilot program through NIH to test ways to educate the public and health professionals about how to deal with DES exposure. Last year I introduced legislation that would give people across the nation access to information developed through this pilot program. I am pleased that this bill has been incorporated in the "Women's Health Research and Prevention Amendments of 1998."

In addition, I am pleased that the bill extends research programs for basic and clinical research and education efforts with respect to cancer, particularly breast cancer and ovarian cancer. I have fought for a long time for increased funding for breast cancer research. During my tenure as Chairman of the Subcommittee on Appropriations that handles NIH we provided dramatic increases in funding for breast cancer research.

This legislation also extends important research at NIH on osteoporosis, Paget's disease and related bone disorders, and research on cardiovascular diseases in women. It reauthorizes programs at the National Institute on Aging, including research into the aging processes of women, with particular emphasis on the effects of menopause and the complications related to aging and the loss of ovarian hormones in women.

CDC also plays an important role in the prevention diseases and conditions in women. This legislation would extend CDC's collection of statistical and epidemiological information, which is often the only national data available on the health status of American women and their use of the health care system. The bill extends CDC's National Cancer Registries Program, which provides funds to states to enhance their cancer surveillance data needed to monitor trends and serve as the foundation of a national comprehensive cancer control strategy.

I am particularly proud that this legislation extends the National Breast and Cervical Cancer Early Detection Program. In 1990 I worked to start and fund this program which provides mammography and cervical cancer screening to low income women without insurance. This program has provided vital access to services for thousands of women across the country.

In addition, the bill would extend authorization for grants to academic health institutions for research on health promotion and disease prevention. A number of these institutions are working together to develop strategies for prevention of cardiovascular disease in women. Finally, the bill reauthorizes grants administered by CDC to non-profit private organizations to establish projects in local communities to coordinate intervention and prevention of domestic violence.

Mr. President, the research into and prevention of diseases prevalent in women is an investment in our daughters, wives, mothers, and sisters. It is an investment in our future.

Mr. BINGAMAN. Mr. President, I rise today to join Senator FRIST and my other colleagues in introducing the Women's Health Research and Prevention Amendments of 1998.

This legislation allows us to reauthorize key women's health research and prevention programs at the National Institutes of Health and the Centers for Disease Control and Prevention. These programs represent a cross section of the current research projects at the federal level that have a direct impact on women's lives here in the United States.

While in the last decade, interest and commitment to women's health has been heightened in the Congress, much work remains. We have taken steps to ensure that women will be included in health care research in the U.S. Prior to 1993, research in women's health was inadequate. Most of the health care studies were conducted only on Anglo men. Quite simply, research studies on men cannot be generalized to women. We know that there are gender and ethnic differences when it comes to health and illness. The time has come to further address the major causes of morbidity and mortality among women: heart disease, osteoporosis, breast cancer, and colorectal cancer.

This bill will provide the basis for looking at the research needs in the spectrum of women's health and as we go to hearings on the bill I am hopeful that additional women's health issues can be addressed.

There is another facet to women's health research that must be considered. It is imperative that we ensure that studies are representative of all women in the United States, including African American, Hispanic, Native American and Asian women. We need research that is culturally sensitive. We must support efforts of community based outreach that allows for recruitment and retention of minority women into research and this should be a factor when projects are planned and conducted.

Mr. President, this legislation has provisions relating to women's health research at the NIH in the disease specific issues of diethylstilbestrol (DES), osteoporosis, breast and ovarian cancer. It expands and allows for increased coordination of research activities with respect to heart attack, stroke, and other cardiovascular diseases in women at the National Heart, Lung, and Blood Institute. This program is critical since cardiovascular disease is the leading cause of death for women in the United States.

Finally, Mr. President, I wanted to take the opportunity to specifically highlight one particular CDC program in the bill. This legislation addresses the Health Promotion and Disease Prevention Research Centers Program at the CDC and will extend authorization for grants to our academic health institutions for research in the areas of health promotion and disease prevention.

The CDC's Prevention Research Center Program is an innovative, extramural link of federal, academic, state, and community based agencies.

For my home state of New Mexico, this CDC project has been particularly useful. In New Mexico a prevention center has been able to focus on health risks and promoting health through applied research at the community level. The project and grant have provided the opportunity to address areas often overlooked such as rural population needs and Native American and Hispanic health needs.

In New Mexico about one of every three American Indian adults has diabetes. The demonstration project has allowed for the promotion of health lifestyles to combat the epidemic of adult onset diabetes. The project has facilitated the formation of a true partnership between the Navajo nation, nineteen pueblos in New Mexico, the New Mexico Department of Health, the University of New Mexico, and the New Mexico State Department of Education. There has been training of community health workers on disease prevention strategies most applicable to American Indian communities. This program is a model for increasing collaboration among established agencies

and nontraditional community partners. It is a culturally sensitive approach that is having a direct, positive impact on the health of New Mexicans. The creative approach at CDC of a community based demonstration and application project coupled with evaluation of strategies through research is unique, successful, and should be reauthorized.

Mr. President, in closing, I look upon this bill as the important first step to reauthorize programs at both the CDC and NIH. I look forward to working with Senator FRIST on these and other issues of import to women's health.

Mr. WELLSTONE. Mr. President, I rise today to join my colleague from Tennessee and others in introducing the "Women's Health Research and Prevention Amendments of 1998," as an original cosponsor. This bill reauthorizes funding to extend and enhance many fine programs at the National Institutes of Health and the Centers for Disease Control and Prevention. I am pleased to join in this important effort.

Mr. President, I would like to commend Senator FRIST for his work in developing this legislation to strengthen and expand Federal efforts to promote women's health. While there is still some work to be done to improve the bill as it moves through the normal legislative process, I believe this bill offers a good start and provides a solid foundation on which to build historic improvements in NIH research programs on breast cancer, heart attack, menopause, and other areas. Let me outline briefly a few critical issues that are not addressed by the bill, but which I hope to see addressed as we move forward.

One notable gap is in the area of substance abuse. I believe this bill could be an important complement to the Substances Abuse Treatment Parity Act (S. 1147), which I introduced last September to improve access to equitable medical care to treat the disease of alcohol and other drug dependencies. Substance abuse is a widespread health concern for many women, who also experience associated health, psychological, and family problems. For example, expectant mothers and mothers with small children can be helped with treatment and support services. This is an investment for them, but as importantly for their children, who would have the opportunity to grow up in a healthy, chemical-free home environment. We have to take the problem of substance abuse as seriously as we do other aspects of women's health.

Important information about this national problem will be highlighted in an upcoming five-part PBS series by Bill Moyers, where treatment programs such as the Hazelden program in my state of Minnesota are highlighted. In working with these and other treatment programs in Minnesota, I have learned a great deal about the problems of substances abuse, but also about the hope and success that occurs when effective treatments are available. The Women's Health Research and Prevention Amendments Act could be substantially improved by an additional focus on substance abuse programs.

Another notable gap is in the area of mental health and behavioral science. On page one of the New York Times today was an article on the criminalization of mental illness. The problem is that we as a nation have needed to focus on the humane, dignified treatment of mental illness, and having failed in that, more and more people who are suffering from mental illness are winding up in prisons where they are out of sight, but where they are not getting the care they need. We need to treat mental health as seriously as we treat cancer and heart disease, because mental illness can be just as serious, chronic, and life-destroying as other diseases.

I intend to work closely with Senator FRIST and others on the committee to improve the bill by including a recognition of the role that behavioral science and psychological factors have in the development of and recovery from disease. Many of the diseases mentioned in the bill are scientifically linked to behavioral or psychological factors that can be critical to prevention and recovery. Women also suffer unduly from specific mental health problems and experiences, such as depression and domestic violence. Depression, for example, is a pervasive and impairing illness which affects women at roughly twice the rate of men. Domestic violence places a significant resource and economic strain on our justice, health, and human services systems. Research conducted at urban hospitals has show that about 25% of emergency room visits by women resulted from domestic assaults. Women who have been raped or battered have significantly great physical health problems, as well as increased vulnerability to psychological and emotional suffering. My wife Sheila and I have worked for years to improve the federal response to the epidemic levels of domestic violence across the country; I want to make sure this bill adequately addresses these issues.

Mr. President, it is my commitment to work closely with the committee to enhance these and other areas that are critical to women's health. A strong focus on research and prevention of mental illness and substance abuse for women is an important investment in the health of the nation and of the health and well being of countless families.

Mr. NICKLES. Mr. President, I want to speak today on the Women's Health Research and Prevention Amendments of 1998 introduced by my colleagues Senator FRIST and Majority Leader LOTT. This bill would amend the Public Health Service Act to revise and extend certain programs with respect to women's health research and prevention activities at the National Institutes of Health and the Centers for Disease Control and Prevention.

Education and Research are the key to providing the best health care for women and for that matter, all Americans. The Women's Health Research and Prevention Amendments promote precisely that. Just two examples are the extension of NIH research programs for basic and clinical research and education efforts with respect to cancer, breast cancer, and ovarian and related cancer; and the extension of the CDC National Breast and Cervical Cancer Early Detection Program. These are the kinds of programs that will improve women's health.

I am pleased to be a cosponsor of the Women's Health bill because I believe that research is the best way for Congress to respond to the concern over women's health issues and health issues generally. I make this point, Mr. President, because I have been disappointed that Congress has recently put on lab coats and begun practicing medicine. We have gotten into the dangerous habit of legislating clinical procedures which are not based in science or research but rather driven by social opinion and special interests.

You only have to look back to the end of the 104th Congress to illustrate my point. A majority of Congress supported an effort last year to mandate that all insurance plans cover 48-hour maternity stays in hospitals. However, serval months following the passage of that legislation an article appeared in the Journal of the American Medical Association stating that the "content does not solve the most important problems regarding the need for early postpartum/postnatal services. The legislation may give the public a false sense of security. It may call into question the reasonableness of relying on legislative mechanisms to micro manage clinical practice."

In other words, Congress made a nice, laudable attempt. We said we are going to mandate 48 hours, but it has had no appreciable improvement on the quality of health care. It appears that our so-called victory in passing 48 hours may have in fact done more harm than good in helping women and newborns. This experience, and others like it, should have taught us what not to do.

It should have taught us that before we endeavor to decide what is the best therapy, procedure, or treatment for any one disease, let us look for a minute at what we are doing. What are the unintended consequences of federal mandates on health insurance companies regarding treatments and coverage of services?

Let's take breast cancer as another example. Various bills have been introduced in the last few months that mandate a length of stay for mastectomies or require coverage of an inpatient stay for women undergoing breast cancer surgery for an unspecified length of time, to be determined by the physician.

Were Congress to legislate in favor of one form of treatment over another, we are sending the message that one treatment is preferable to the other. Treatments are constantly changing. Health care needs to be flexible and should not lock doctors in to a specific approach. Shouldn't we allow medical research to decide the best course of action? If the federal government mandates a specific treatment, length of stay or procedure, that then becomes the standard.

In addition, employing mandates in the place of valid research runs the risk of discouraging innovative treatments. For example, recent improvements in anesthesiology are a result of patient appeals to cut down on nausea and vomiting after breast surgery as well as a desire to recover at home.

Longer mandated stays could discourage doctors and patients from developing the best possible plan for recovery. Patients may choose to stay in the hospital for an extended period of time out of fear or lack of knowledge and risk infection. Patients may have the false idea that longer hospital stays equal the best possible treatment when, in fact, recent research indicates that is not necessarily the case.

According to a November 6, 1996, article in The Wall Street Journal, The Johns Hopkins Breast Center in Baltimore, which has gradually eliminated inpatient stays for some women undergoing certain types of mastectomies, has found that outpatient mastectomies are associated with lower infection rates and high levels of satisfaction among women. We have the responsibility to arm patients with the kind of sound research and education this legislation provides, not prescriptive mandates from Dr. Congress.

Lillie Shockeney, R.N. the Education and Outreach Director at the Johns Hopkins Hospital Breast Center and a breast cancer survivor, summed up best in a Finance Committee hearing on November 5, 1997. ". . . I am concerned that it [S. 249, The Women's Health and Cancer Rights Act of 1997] doesn't solve the real medical dilemma that women battling breast cancer are faced with today. We need to be striving to improve patient care for patients undergoing breast cancer surgery rather than unknowingly promote keeping it at status quo. We need to be promoting the development of a comprehensive patient education program and have teams of health care professionals dedicated to striving to improve the care and treatment provided to women with breast cancer."

Mr. President, I want to congratulate Senator FRIST and Senator LOTT for bringing this issue before us in such a responsible and proactive bill. These programs go a long way to serve women. I thank the chair and encourage my colleagues to support this common sense legislation.

Mrs. BOXER. Mr. President, I am very pleased to join my colleagues in introducing the Women's Health Research and Prevention Amendments of 1998. This is a bipartisan initiative, which is important, because promoting the health of American women is a bipartisan concern. I commend the Senator from Tennessee for his leadership on this bill. He has done a tremendous job in building crucial and broad support for it.

I am particularly pleased that the bill includes a title on cardiovascular disease in women, which incorporates legislation I introduced last June, the Women's Cardiovascular Diseases Research and Prevention Act (S. 349). It is appropriate to include it in this comprehensive legislation because cardiovascular disease is the number one killer of women in the United States, a fact many Americans simply don't realize.

The statistics are alarming. More than 500,000 women and girls die from cardiovascular disease each year. Heart attacks and strokes are the leading causes of disability in women. More than 1 in 5 females have some form of cardiovascular disease. Of women and girls under age 65, approximately 20,000 die of heart attacks each year. Cardiovascular disease claim about as many lives each year as the next eight leading causes of death combined. More than 2,600 Americans die each day from cardiovascular diseases; that's an average of one death every 33 seconds. Cardiovascular diseases kill more women each year than does cancer. Heart attacks kill more than 5 times as many females as does breast cancer. Stroke kills twice as many women as does breast cancer. Each year since 1984, cardiovascular diseases have claimed the lives of more females than males. In 1993, of the number of individuals who died of such diseases, 52 percent were female, and 48 percent were male.

Yet for years, women have been under-represented in studies about heart disease and stroke. Models and tests for detection have largely been conducted on men, and some doctors do not recognize cardiovascular symptoms that are unique to women.

The bill we are introducing today authorizes necessary funding to the National Heart, Lung and Blood Institute to expand and intensify research, prevention, and educational outreach programs for heart attack, stroke and other cardiovascular diseases in women. This legislation will aid our Nation's doctors and scientists in developing a coordinated and comprehensive strategy for fighting this terrible disease.

This bill will help ensure that women are well represented in future cardiovascular studies and that their doctors are well informed about symptoms that are unique to women. It will also promote women's awareness of risk factors, such as smoking, obesity and physical inactivity, which greatly increase their chances of developing cardiovascular disease.

This legislation is a critical component in our efforts to draw attention and resources to cardiovascular disease, which strikes so many of our grandmothers, mothers, aunts and daughters. Through it, and in collaboration with many dedicated groups such as the American Heart Association, we can and will beat this devastating disease.

The Women's Health Research and Prevention Amendments of 1998 reauthorize several programs that are of great importance to American women, including research on osteoporosis, cancer, aging, and the drug DES. The bill extends authorization for programs that promote health, prevent disease, and reduce domestic violence. I encourage the leaders to bring this legislation to the floor as quickly as possible, so that we can move forward in our efforts to promote the health of women across the nation.

Mr. DASCHLE. Mr. President, I am pleased to join my colleagues from both sides of the aisle in support of the Women's Health Research and Prevention Amendments of 1998, a bill that responds to a fundamental weakness in our health care system: the relative paucity of research devoted to women's health issues. As we learn about the unique health care needs of women, we have an historic opportunity to redress the unjustified disparity in the level of effort and resources invested in women's health.

This measure extends several targeted initiatives of the National Institutes of Health (NIH), including research on osteoporosis; breast, cervical and ovarian cancer; and heart disease as it affects women.

This research is clearly needed. While heart disease is the leading cause of death among women, there is inadequate understanding of how heart disease manifests in our female population. Indeed, a recent study showed that 2 out of 3 doctors were not aware that the risk factors for heart disease are different for women than they are for men, and 9 out of 10 did not know the symptoms vary according to gender.

Like cardiovascular research, efforts to understand and treat osteoporosis are critically important. More than 28 million Americans, 80 percent of whom are women, suffer from or are at-risk for osteoporosis. Half of all women age 50 or over will suffer a bone fracture

due to osteoporosis. Research into the causes, treatment and prevention of osteoporosis is a smart public health investment.

An equally strong case can be made for the other NIH research initiatives extended by this bill. Whether the focus is breast cancer, a disease which takes the lives of 44,000 women each year, or ovarian cancer, which currently has a tragically low survival rate, the research priorities identified for inclusion in this bill represent some of the most important initiatives of any kind that we, as a nation, can undertake.

The bill also extends key women's health initiatives at the Centers for Disease Control: One that I believe is particularly important is the CDC National Breast and Cervical Cancer Early Detection program. Over 1.5 million screening tests have been provided by the program, which began its seventh year in 1998. As a result, more than 23,000 women were able to fight back against an otherwise silent killer. The CDC early detection program is now operational in all 50 states. More than 100 women are screened in my own state each month.

Another very important program reauthorized by this bill is CDC's Community Programs on Domestic Violence initiative.

Domestic violence is a threat to women, to children and to the family unit. It is shockingly prevalent and tragically under-reported. Studies indicate that one-quarter of all women in the United States experience domestic violence at some point in their life, and that 92 percent of them do not discuss these incidents with their physician. We need to recognize the problem for what it is—a crime, a killer, and a public health threat—and fight it with every tool we have at our disposal. Through the CDC program, non-profit organizations apply for resources to combat domestic violence in communities throughout the country. Local efforts to increase public awareness, dispel the myth that domestic violence is a private family matter, and help women and children who fall victim can, case-by-case, make a tremendous difference in the lives of millions of present and potential victims.

This bill continues the effort to bridge the gender gap in the quality of research, data, and care. It asserts the fact that women have unique health care needs and addresses areas of particular importance to women's health. It also affirms the value of health research generally and recognizes the important role research plays in both improving health outcomes and decreasing health costs for many diseases. I am proud to be part of this effort.

By Mr. ABRAHAM (for himself, Mr. HATCH, Mr. MCCAIN, Mr. DEWINE, and Mr. SPECTER):

S. 1723. A bill to amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of the United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers; to the Committee on the Judiciary.

THE AMERICAN COMPETITIVENESS ACT

Mr. ABRAHAM. Mr. President, I rise today to introduce the American Competitiveness Act. First, let me thank Senators HATCH, MCCAIN, and DEWINE for cosponsoring this bill. I believe this legislation is important to the country's future because it constitutes an essential ingredient in any long-term strategy to keep the United States a leader in global markets in the 21st century. A coalition of America's leading businesses has endorsed the bill, stating that "The American Competitiveness Act will do more to directly create jobs for Americans—and to keep jobs in this country—than any other bill that will be considered by Congress this year."

Over the past twenty years, no part of the economy has done more to raise the standard of living of the American people than that of information technology. This industry, which barely existed as a handful of companies just a few decades ago, now employs more than 4 million people directly, and many others indirectly. This industry has improved everything from the way we work, shop, travel, and perform financial transactions, to the way our children study. And, as economist Larry Kudlow reports, this industry is central to our economic well-being. The hardware and software industries combined account for about one third of our real economic growth. Overall, electronic commerce is expected to grow to $80 billion by the year 2000.

Yet all is not well with this crucial sector of our economy. American companies today are engaged in fierce competition in global markets. To stay ahead in that competition they must win the battle for human capital. But companies across America are faced with severe high-skill labor shortages that threaten their competitiveness in this new Information Age economy.

A study conducted by Virginia Tech for the Information Technology Association of America (ITAA) estimates that right now we have more than 340,000 unfilled positions for highly skilled information technology (IT) workers in American companies. And that number does not include the non-profit sector, local or federal government agencies, mass transit systems, or companies with fewer than 100 employees.

The Virginia Tech study is hardly alone in identifying this problem. The Department of Labor's figures project that our economy will produce more than 130,000 information technology jobs in each of the next 10 years, for a total of more than 1.3 million. The data also suggest our universities will produce less than a quarter of the necessary number of information technology graduates over the next 10 years. Between 1986 and 1995, the number of bachelor's degrees awarded in computer science declined by 42 percent. This means that even if undergraduate enrollments in this field were to increase as predicted by one survey, we still would not achieve the 1986 level of computer science graduates before 2002. And even then, we would be producing thousands fewer skilled workers than the market demands.

The National Software Alliance, a consortium of concerned government, industry, and academic leaders that includes the U.S. Army, Navy, and Air Force, recently concluded that "The supply of computer science graduates is far short of the number needed by industry." The Alliance points out that the current severe understaffing could lead to inflation and lower productivity and threaten America's competitiveness.

This is serious, both in individual states and for the nation. In Michigan, for example, 24 of every 1,000 private sector workers are employed by high-tech firms, and this figure is growing rapidly in and around Ann Arbor, Lansing, and elsewhere in the state.

Mr. President, if American companies cannot find home grown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related jobs currently held by Americans with them. While companies may need to have some operations abroad, we should not keep in place unnecessary restrictions that artificially drive employers to send more operations out of the country.

Further, our shortage of high skilled workers endangers continued economic growth. The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout our economy will result in a 5 percent drop in the growth rate of GDP. That translates into about $200 billion in lost output, nearly $1,000 for every American. One industry official captured the peril of this situation well when he said "it is as if America ran out of iron ore during the industrial revolution."

This problem calls for both a short term and a long term solution. Let me first address the short term. By this summer American businesses will reach the limit on the small number of highly skilled temporary workers they can bring in from abroad. Last year our employers reached this 65,000 cap on H-1B visas for the first time in history, and we did it by the end of August. If no action is taken, the cap may be reached by May this year, and perhaps January or February of 1999. Backlogs

will worsen the problem until, practically speaking, companies can no longer count on being able to hire the people they need from any source. Particularly given today's short product cycles, this would be disastrous.

That is why the legislation I am introducing today will increase the number of skilled temporary workers we allow into the United States. This will keep American companies in this country, saving American jobs and contributing to the growth of the economy.

This policy also will give us time to formulate a long-term solution. In my view, we can produce, right here in America, the talent we need to keep our high tech industries competitive. Through wise investments in human capital we can give American kids of all backgrounds, including kids whose opportunities seem severely limited, the chance to be part of the new high-tech economy.

U.S. companies cannot be expected to solve all the educational problems in this country by themselves. They now spend over $210 billion a year on the formal and informal training of their workforce, as well as donating more than $2.5 billion a year to colleges, high schools, and elementary schools. But training is not an acceptable alternative to early acquisition of the technical skills necessary to succeed, and we must do more to help kids acquire needed skills as early as possible.

Some say that the entire solution is training and education. Of course, those both are essential, but to suggest that these represent the entire answer ignores a number of factors, including the global nature of today's economy. Recently the Senate held a long and educational hearing in the Judiciary Committee on the issues centrally related to the subject matter of this legislation. We heard from several of America's leading companies and others on the importance of swiftly addressing the high tech worker shortage by raising the H–1B cap before it is hit in May or June of this year.

We heard at the hearing that Microsoft alone spends over $568 million annually on training and education, while Sun Microsystems spends over $50 million a year, not including the 20,000 volunteer hours Sun employees are contributing to link U.S. schools to the Internet in economically disadvantaged areas. Despite these expenditures, Microsoft and Sun today have 2,522 and 2,000 unfilled technical positions respectively. In addition, we heard testimony that many of their products for export need to involve individuals on H–1Bs with specific language and other skills that are pertinent to the target country.

We learned at the hearing that Texas Instruments spends over $100 million a year on training employees and has over 500 openings for skilled positions, despite, like many companies, engaging in massive and ongoing efforts to recruit on college campuses across the nation. Silicon Valley entrepreneurs are themselves making $200 million in charitable contributions to fund fellowships in science and engineering at Stanford University. Clearly more emphasis on training is extremely important, but is not the only solution.

Our young people have what it takes to be valuable employees in our high-tech age. But our educational system is not giving them the skills they need. The National Research Council estimates that three quarters of American high school graduates would fail a college freshman math or engineering course. Unfortunately, most don't even try. Only 12 percent of 1994 college graduates earned degrees in technical fields.

This is not acceptable. In a highly advanced economy like ours we cannot continue to function without highly skilled workers. And our workers cannot continue to prosper unless our educational system gives them the skills they need to succeed.

The Administration has proposed a number of small initiatives to deal with this shortage of skilled labor. I support these initiatives. But in my view it is clear that we must go farther.

Mr. President, allowing more skilled workers to come to the U.S. is in no way incompatible with improved training and education in this country. The question is not: Do we allow more skilled professionals to enter the country or do we help native-born students pursue these fields? Clearly we must do both. And I will work with my colleagues on both sides of the aisle to see to it that this is accomplished.

To that end, Mr. President, this legislation includes a scholarship program aimed at helping 20,000 low-income students a year study mathematics, engineering, and computer science at the undergraduate and graduate levels.

Of course, this is not all that we should do. We also must begin training unemployed Americans in the skills needed in the information technology industry. This legislation includes three times the funding level proposed by the Administration to train the unemployed in IT skills.

Through careful investment in education we can increase the skill levels of our workers, to everyone's benefit.

The legislation I am introducing will address these issues in the following ways:

First, the bill will increase access to skilled personnel for U.S. companies and universities. The bill will make approximately 25,000 more H–1B temporary visas available in 1998. A key goal of the legislation is to make sure there are enough visas this year to avoid backlogs and major disruptions. For that reason, the 1998 cap will be twice the level of the first 6 months of this fiscal year (through March 31, 1998), which, based on current INS data, would give a 12-month total of about 90,000 visas for the year. As a safety valve, if that total is insufficient in a future year, as of FY 1999, other temporary visas that Congress has already authorized (H–2B visas), if they are left unused from the previous year, would be available. No more than 25,000 of these H–2B visas could be made available as a safety valve in a given year.

The bill also responds to those who have expressed concern about certain occupations being included within the H–1B visa category. The bill removes physical/occupational therapists and other specialized health care workers from the H–1B program and places them into a new temporary visa category called H–1C, with a limit of 10,000 placed on such visas. Accordingly, the bill subtracts 10,000 from the H–1B cap in the first year of availability of H–1C visas. In each subsequent year, any unused H–1C visas from the previous year will be added back to the H–1B cap. The bill leaves unchanged the employment-based immigration cap of 140,000 on the number of foreign-born professionals who may remain permanently in the country.

Second, the bill authorizes $50 million for the State Student Incentive Grant (SSIG) program to create approximately 20,000 scholarships a year for low-income students pursuing an associate, undergraduate, or graduate level degree in mathematics, engineering or computer science. The program provides dollar-for-dollar federal matching funds that will grow to $100 million with state matching. The scholarships will be for up to $5,000 each.

Third, the bill authorizes $10 million a year to train unemployed American workers in new skills for the information technology industry. It also authorizes $8 million for improved online talent banks to facilitate job searches and the matching of skills to available positions in high technology.

Fourth, the bill toughens enforcement penalties and improves the operation of the H–1B program. It increases fines by five-fold for companies willfully violating the rules of the H–1B program, from $1,000 to $5,000. The bill adds new enforcement power by creating probationary periods of up to five years for willful violators of the H–1B program. During the probationary period, violating firms are subject to expanded Department of Labor "spot inspections" at the agency's discretion. The bill also includes reforms to achieve greater accuracy in determining prevailing wages for companies and universities.

Fifth, the bill modifies the per-country limits on employment-based visas to eliminate the discriminatory effects of these per-country limits on nationals from certain Asian Pacific nations.

Today, we have a situation where in a given year there are employment-based immigrant visas available within the annual limit of 140,000, yet U.S. law prevents individuals born in particular countries from being able to join employers who want to sponsor them as permanent employees. Do we want to keep in place a provision of law that says you can hire someone who meets all the proper legal criteria set forth by the U.S. government, but just not too many Chinese or Indians in a given year? This area of law calls out for reform.

Finally, in addition to providing American universities and other nonprofits with increased access to skilled personnel, the bill overturns the Hathaway decision by requiring the Department of Labor to differentiate between prevailing wage calculations for universities, charities, and other nonprofit organizations and those of for-profit entities.

Is the current 65,000 cap on H–1Bs the magic number? Let me briefly review the history. Prior to the 1990 Act, there was no cap on H–1B visas, which previously were called H–1 visas. This bill does not eliminate the cap, but I point out the history to give some context to the discussion on this issue. The 65,000 number was chosen, essentially out of thin air, in the 1990 Act. This number proved sufficient for a number of years, but now has shown to be a significant impediment to growth, particularly in certain industries. Simply put, there is no magic to this 65,000 number. In addition, at that time, to respond to concerns about wages, a Labor Condition Application was added to the program that required companies to attest they were paying individuals on H–1Bs the higher of the prevailing wage or actual wage paid to similarly employed Americans. That remains in the law. Also, at the time, a "complaint-driven" system was developed to enforce compliance and prosecute violators. And it was decided that the Department of Labor would respond to complaints and operate the enforcement of the program. This was done under the chairmanship of Democratic Congressman Bruce Morrison.

Inaction on this issue is not very different from outright restriction, because it will result in such massive backlogs, that with today's fast-moving product cycles, access to these key professionals will be for all practical purposes barely possible.

Who will benefit from restricting the entry of these skilled workers? "On a daily basis, our competitors in Tokyo scheme to stop the momentum of the American semiconductor and computer industries," testified Cypress Semiconductor CEO T.J. Rodgers. "Even if they tried, they could not come up with a better plan to cut off our supply of critical engineering talent than by halting immigration. Unfortunately, it appears they may have the United States government as their ally."

At a hearing on a different topic held just this week in the Judiciary Committee we heard views from major executives about some issues facing the software industry. Despite differing opinions on these other important issues, the business leaders testifying were unanimous when the topic was brought up of alleviating the pending crisis involving H–1B visas.

Scott McNealy, President and CEO of Sun Microsystems, noted that two of the four founders of his company, which now employs over 20,000 Americans, were foreign-born individuals who entered the country via the employment-based immigration system. "I cannot imagine having those two unbelievable national treasures not being allowed in," he said. "And by the way, if you go down through the payroll of our organization, for every legal immigrant that we have hired and put on the payroll, they have created vast amounts of wealth and jobs and a byproduct—wonderful byproducts for our economy and for the planet as a whole."

Bill Gates, Chairman and CEO of Microsoft Corporation stated, "Microsoft is in strong agreement that raising these caps to allow very skilled legal immigrants to come in would be a good thing for the technology industry and for the country. We particularly have a lot of people who come to the U.S. to be educated, and it seems a shame when they've been educated here, not to allow them to stay in the country and to take what they've learned and contribute to companies like ours and many others."

Jim Barksdale, President and CEO, Netscape Communications testified, "We employ an awful lot of legal immigrants, who are very bright people and make a great contribution and more than earn their keep and we would like to see the limit raised."

Perhaps the clearest statement about what may be at stake came from Michael Dell, Chairman and CEO of Dell Computer. He told the Committee, "These companies are global companies and if this work does not occur on U.S. soil it occurs on some other soils. We are disarming the economy of the United States of America if we don't allow these folks to come and stay in this country."

The American Competitiveness Act is endorsed by the U.S. Chamber of Commerce, the National Association of Manufacturers, the American Electronics Association, the Electronics Industry Association, the Business Software Alliance, the Information Technology Association of America, American Business for Legal Immigration, the American Immigration Lawyers Association, the American Council of International Personnel, the National Technical Services Association, the Computing Technology Industries Association, and the United States Pan Asian American Chamber of Commerce.

This issue is also extremely important to America's academic community. At the February 25 hearing before the Senate Judiciary Committee, Stephen Director, Dean of the College of Engineering at the University of Michigan, testified as a representative of the nation's higher education community. His testimony, calling for an increase in H–1B visas and a permanent solution for universities on prevailing wage issues, was endorsed by the American Council on Education, the Association of American Universities, the College and University Personnel Association, the Council of Graduate Schools, NAFSA: Association of International Educators and the National Association of State Universities and Land Grant Colleges. As noted in the testimony, the combined memberships of these associations represent over 2,000 U.S. colleges and universities.

As we move forward, Mr. President, people will no doubt ask whether there are additional measures to protect against abuse of the H–1B program that can be enacted without nullifying efforts to increase high tech companies' access to skilled workers.

On that issue let me say that we must crack down on anyone who would abuse the system. As I've noted, this bill contains substantially larger fines for those engaged in willful violations and establishes long probationary periods for such egregious violators. The law already contains provisions for dealing with abuses. And there have been such cases. But let's keep in mind that in America, justice is served not by restricting the law-abiding, but by targeting those who violate our laws.

In 1997, the Department of Labor found three employers who were found to have engaged in willful violations of the H–1B program. Three. These violators accounted for three visas out of 65,000 granted in that year. So while it is important that we make it clear that we will not tolerate abuse, we must keep the number of incidents in perspective and engage in targeted actions that do not punish the innocent with the guilty.

Today, according to ITAA, 70 percent of America's high tech firms identify an inability to find enough skilled people as the leading barrier to their companies' growth and competitiveness in global markets. Other countries are catching on. Canada has loosened its entry requirements for high tech workers. Singapore has announced plans to move aggressively to attract skilled international workers. And India continues its plans to keep its best talent home to build its domestic industries. I repeat, if restrictions prevent American companies from meeting their labor needs for U.S.-based product,

service, and research development, these companies will increasingly locate their facilities offshore. That will mean a loss of jobs, and less innovation and wealth creation in America.

We have a diverse economy, and the relatively small number of people who America can welcome annually to fill key positions at companies and universities benefits us in many ways. We must also pursue the type of long-term strategy, some of which is outlined in this bill, that will increase educational opportunities for U.S. students.

If we are to continue to prosper as a people, we must remain competitive as a nation. To do that, we must do everything within our power to produce more native-born workers who can fill the high skilled positions on which our high-tech and other industries depend. I believe we can accomplish this goal through increased emphasis on training and education. It requires only that we set our minds to the task at hand, and that we not bury our heads in the sand and say that blocking increased access to skilled temporary professionals will somehow help us maintain our way of life. Our universities, our cutting-edge employers, and in particular our workers deserve better.

Mr. President, I ask unanimous consent that the letters of support and the text of the bill be included in the RECORD.

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

S. 1723

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "American Competitiveness Act".

(b) REFERENCES IN ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or a repeal of a provision, the reference shall be deemed to be made to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) American companies today are engaged in fierce competition in global markets.

(2) Companies across America are faced with severe high skill labor shortages that threaten their competitiveness.

(3) The National Software Alliance, a consortium of concerned government, industry, and academic leaders that includes the United States Army, Navy, and Air Force, has concluded that "The supply of computer science graduates is far short of the number needed by industry.". The Alliance concludes that the current severe understaffing could lead to inflation and lower productivity.

(4) The Department of Labor projects that the United States economy will produce more than 130,000 information technology jobs in each of the next 10 years, for a total of more than 1,300,000.

(5) Between 1986 and 1995, the number of bachelor's degrees awarded in computer science declined by 42 percent. Therefore, any short-term increases in enrollment may only return the United States to the 1986 level of graduates and take several years to produce these additional graduates.

(6) A study conducted by Virginia Tech for the Information Technology Association of America estimates that there are more than 340,000 unfilled positions for highly skilled information technology workers in American companies.

(7) The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout the United States economy will result in a 5-percent drop in the growth rate of GDP. That translates into approximately $200,000,000,000 in lost output, nearly $1,000 for every American.

(8) It is necessary to deal with the current situation with both short-term and long-term measures.

(9) In fiscal year 1997, United States companies and universities reached the cap of 65,000 on H-1B temporary visas a month before the end of the fiscal year. In fiscal year 1998 the cap is expected to be reached as early as May if Congress takes no action. And it will be hit earlier each year until backlogs develop of such a magnitude as to prevent United States companies and researchers from having any timely access to skilled foreign-born professionals.

(10) It is vital that more American young people be encouraged and equipped to enter technical fields, such as mathematics, engineering, and computer science.

(11) If American companies cannot find home-grown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related American jobs with them.

(12) Inaction in these areas will carry significant consequences for the future of American competitiveness around the world and will seriously undermine efforts to create and keep jobs in the United States.

SEC. 3. INCREASED ACCESS TO SKILLED PERSONNEL FOR UNITED STATES COMPANIES AND UNIVERSITIES.

(a) ESTABLISHMENT OF H1-C NONIMMIGRANT CATEGORY.—

(1) IN GENERAL.—Section 101(a)(15)(H)(i) (8 U.S.C. 1101(a)(15)(H)(i)) is amended—

(A) by inserting "and other than services described in clause (c)" after "subparagraph (O) or (P)"; and

(B) by inserting after "section 212(n)(1)" the following: ", or (c) who is coming temporarily to the United States to perform labor as a health care worker, other than a physician, if the alien qualifies for the exemption from the grounds of inadmissibility described in section 212(a)(5)(C)".

(2) TRANSITION RULE.—Any petition filed prior to the date of enactment of this Act, for issuance of a visa under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act on behalf of an alien described in the amendment made by paragraph (1)(B) shall, on and after that date, be treated as a petition filed under section 101(a)(15)(H)(i)(c) of that Act, as added by paragraph (1).

(b) ANNUAL CEILINGS FOR H1-B AND H1-C WORKERS.—

(1) AMENDMENT OF THE INA.—Section 214(g)(1) (8 U.S.C. 1184(g)(1)) is amended to read as follows:

"(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year—

"(A) under section 101(a)(15)(H)(i)(b)—

"(i) for each of fiscal years 1992 through 1997, may not exceed 65,000,

"(ii) for fiscal year 1998, may not exceed 2 times the number of aliens issued visas or otherwise provided nonimmigrant status between October 1, 1997, and March 31, 1998,

"(iii) for fiscal year 1999, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, and

"(iv) for fiscal year 2000 and each applicable fiscal year thereafter, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, plus the number of unused visas under subparagraph (C) for the fiscal year preceding the applicable fiscal year;

"(B) under section 101(a)(15)(H)(ii)(b), beginning with fiscal year 1992, may not exceed 66,000; or

"(C) under section 101(a)(15)(H)(i)(c), beginning with fiscal year 1999, may not exceed 10,000.

For purposes of determining the ceiling under subparagraph (A) (iii) and (iv), not more than 25,000 of the unused visas under subparagraph (B) may be taken into account for any fiscal year.".

(2) TRANSITION PROCEDURES.—Any visa issued or nonimmigrant status otherwise accorded to any alien under clause (i)(b) or (ii)(b) of section 101(a)(15)(H) of the Immigration and Nationality Act pursuant to a petition filed during fiscal year 1998 but approved on or after October 1, 1998, shall be counted against the applicable ceiling in section 214(g)(1) of that Act for fiscal year 1998 (as amended by paragraph (1) of this subsection), except that, in the case where counting the visa or the other granting of status would cause the applicable ceiling for fiscal year 1998 to be exceeded, the visa or grant of status shall be counted against the applicable ceiling for fiscal year 1999.

SEC. 4. EDUCATION AND TRAINING IN SCIENCE AND TECHNOLOGY.

(a) DEGREES IN MATHEMATICS, COMPUTER SCIENCE, AND ENGINEERING.—Subpart 4 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070c et seq.) is amended—

(1) in section 415A(b)(1) (20 U.S.C. 1070c(b)(1))—

(A) by striking "$105,000,000 for fiscal year 1993" and inserting "$155,000,000 for fiscal year 1999"; and

(B) by inserting ", of which the amount in excess of $25,000,000 for each fiscal year that does not exceed $50,000,000 shall be available to carry out section 415F for the fiscal year" before the period; and

(2) by adding at the end the following:

"SEC. 415F. DEGREES IN MATHEMATICS, COMPUTER SCIENCE, AND ENGINEERING.

"(a) ALLOTMENTS AND GRANTS.—From amounts made available to carry out this section under section 415A(b)(1) for a fiscal year, the Secretary shall make allotments to States to enable the States to pay not more than 50 percent of the amount of grants awarded to low-income students in the States.

"(b) USE OF GRANTS.—Grants awarded under this section shall be used by the students for attendance on a full-time basis at an institution of higher education in a program of study leading to an associate, baccalaureate or graduate degree in mathematics, computer science, or engineering.

"(c) COMPARABILITY.—The Secretary shall make allotments and grants shall be awarded under this section in the same manner, and under the same terms and conditions, as—

"(1) the Secretary makes allotments and grants are awarded under this subpart (other than this section); and

"(2) are not inconsistent with this section.".

(b) DATA BANK; TRAINING.—

(1) IN GENERAL.—The Secretary of Labor shall—

(A) establish or improve a data bank on the Internet that facilitates—

(i) job searches by individuals seeking employment in the field of technology; and

(ii) the matching of individuals possessing technology credentials with employment in the field of technology; and

(B) provide training in information technology to unemployed individuals who are seeking employment.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1999 and each of the 4 succeeding fiscal years—

(A) $8,000,000 to carry out paragraph (1)(A); and

(B) $10,000,000 to carry out paragraph (1)(B).

SEC. 5. INCREASED ENFORCEMENT PENALTIES AND IMPROVED OPERATIONS.

(a) INCREASED PENALTIES FOR VIOLATIONS OF H1-B OR H1-C PROGRAM.—Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amended—

(1) by striking "a failure to meet" and all that follows through "an application—" and inserting "a willful failure to meet a condition in paragraph (1) or a willful misrepresentation of a material fact in an application—"; and

(2) in clause (i), by striking "$1,000" and inserting "$5,000".

(b) SPOT INSPECTIONS DURING PROBATIONARY PERIOD.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (D) as subparagraph (E); and

(2) by inserting after subparagraph (C) the following:

"(D) The Secretary of Labor may, on a case-by-case basis, subject an employer to random inspections for a period of up to five years beginning on the date that such employer is found by the Secretary of Labor to have engaged in a willful failure to meet a condition of subparagraph (A), or a misrepresentation of material fact in an application.".

(c) EXPEDITED REVIEWS AND DECISIONS.—Section 214(c)(2)(C) (8 U.S.C. 1184(c)(2)(C)) is amended by inserting "or section 101(a)(15)(H)(i)(b)" after "section 101(a)(15)(L)".

(d) DETERMINATIONS ON LABOR CONDITION APPLICATIONS TO BE MADE BY ATTORNEY GENERAL.—

(1) IN GENERAL.—Section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by striking "with respect to whom" and all that follows through "with the Secretary" and inserting "with respect to whom the Attorney General determines that the intending employer has filed with the Attorney General".

(2) CONFORMING AMENDMENTS.—Section 212(n) (8 U.S.C. 1182(n)(1)) is amended—

(A) in paragraph (1)—

(i) in the first sentence, by striking "Secretary of Labor" and inserting "Attorney General";

(ii) in the sixth and eighth sentences, by inserting "of Labor" after "Secretary" each place it appears;

(iii) in the ninth sentence, by striking "Secretary of Labor" and inserting "Attorney General";

(iv) by amending the tenth sentence to read as follows: "Unless the Attorney General finds that the application is incomplete or obviously inaccurate, the Attorney General shall provide the certification described in section 101(a)(15)(H)(i)(b) and adjudicate the nonimmigrant visa petition."; and

(v) by inserting in full measure margin after subparagraph (D) the following new sentence: "Such application shall be filed with the employer's petition for a nonimmigrant visa for the alien, and the Attorney General shall transmit a copy of such application to the Secretary of Labor."; and

(B) in the first sentence of paragraph (2)(A), by striking "Secretary" and inserting "Secretary of Labor".

(e) PREVAILING WAGE CONSIDERATIONS.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following:

"(50) The term 'prevailing wage' means the following:

"(A) If the job opportunity is subject to a wage determination in the area under the Act of March 3, 1931 (commonly known as the Davis-Bacon Act (40 U.S.C. 276a et seq.)), or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing wage shall be the rate required under such Acts.

"(B) If the job opportunity is not covered by a prevailing wage determined under the Acts referred to in subparagraph (A), the prevailing wage shall be—

"(i) the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers, except that the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages; or

"(ii) if the job opportunity is covered by a collective bargaining agreement, the wage rate set forth in the agreement shall be considered as not adversely affecting the wages of United States workers similarly employed and shall be considered the 'prevailing wage'.

"(C) A prevailing wage determination made pursuant to this section shall not permit an employer to pay a wage lower than that required under any other Federal, State, or local law.

"(D) For purposes of this section:

"(i) The term 'similarly employed' means having substantially comparable jobs in the occupational category in the area of intended employment, except that, if no such workers are employed by employers other than the employer applicant in the area of intended employment, the term 'similarly employed' means—

"(I) having jobs requiring a substantially similar level of skills within the area of intended employment; or

"(II) if there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

"(ii) The term 'substantially comparable jobs' means jobs with substantially comparable employers, taking into account size, profit or nonprofit classification, start-up or mature business operations, the specific industry, public or private sector, status as an academic institution, or other defining characteristics which the employer can demonstrate result in a distinct wage scale from the industry at large.

"(iii) The term 'similarly employed' shall be construed to require separate average rates of wage taking into account such factors as years of experience, academic degree, educational institution attended, grade point average, publications or other distinctions, personal traits deemed essential to job performance, specialized training or skills, competitive market factors, or any other factors typically considered by employers within the industry.

(iv) Employers may use either government or nongovernment published surveys, including industry, region, or Statewide wage surveys, to determine the prevailing wage, which shall be considered correct and valid where the employer has maintained a copy of the survey information.

(f) POSTING REQUIREMENT.—Section 212(n)(1)(C)(ii) (8 U.S.C. 1182(n)(1)(C)(ii)) is amended to read as follows:

"(ii) if there is no such bargaining representative, has provided notice of filing to the employer's employees in the occupational classification through such methods as physical posting in a conspicuous location at the employer's place of business, or electronic posting through an internal job bank, or electronic notification available to employees in the occupational classification.".

SEC. 6. ANNUAL REPORTS ON H1-B VISAS.

Section 212(n) (8 U.S.C. 1182(n)) is amended by adding at the end the following:

"(3) Using data from petitions for visas issued under section 101(a)(15)(H)(i)(b), the Attorney General shall annually submit the following reports to Congress:

"(A) Quarterly reports on the numbers of aliens who were provided nonimmigrant status under section 101(a)(15)(H)(i)(b) during the previous quarter and who were subject to the numerical ceiling for the fiscal year established under section 214(g)(1).

"(B) Annual reports on the occupations and compensation of aliens provided nonimmigrant status under such section during the previous fiscal year.".

SEC. 7. LIMITATION ON PER COUNTRY CEILING WITH RESPECT TO EMPLOYMENT-BASED IMMIGRANTS.

(a) SPECIAL RULES.—Section 202(a) (8 U.S.C. 1152(a)) is amended by adding at the end the following new paragraph:

"(5) RULES FOR EMPLOYMENT-BASED IMMIGRANTS.—

"(A) EMPLOYMENT-BASED IMMIGRANTS NOT SUBJECT TO PER COUNTRY LIMITATION IF ADDITIONAL VISAS AVAILABLE.—If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

"(B) LIMITING FALL ACROSS FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(b) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(b) consistent with subsection (e) (determined without regard to this paragraph), in applying subsection (e) all visas shall be deemed to have been required for the classes of aliens specified in section 203(b).".

(b) CONFORMING AMENDMENTS.—

(1) Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended by striking "paragraphs (3) and (4)" and inserting "paragraphs (3), (4), and (5)".

(2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is amended by striking "the proportion of the visa numbers" and inserting "except as provided in subsection (a)(5), the proportion of the visa numbers".

(c) ONE-TIME PROTECTION UNDER PER COUNTRY CEILING.—Notwithstanding section 214(g)(4) of the Immigration and Nationality Act, any alien who—

(1) as of the date of enactment of this Act is a nonimmigrant described in section 101(a)(15)(H)(i) of that Act;

(2) is the beneficiary of a petition filed under section 204(a) for a preference status under paragraph (1), (2), or (3) of section 203(b); and

(3) would be subject to the per country limitations applicable to immigrants under those paragraphs but for this subsection,

may apply for and the Attorney General may grant an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.

SEC. 8. ACADEMIC HONORARIA.

Section 212 (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

"(p) Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities, as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965) or other nonprofit entity and is made for services conducted for the benefit of that institution or entity.".

AMERICAN BUSINESS FOR LEGAL IMMIGRATION,
March 2, 1998.

Hon. SPENCER ABRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABRAHAM: We write to applaud you, on behalf of American businesses, for introducing legislation that addresses the critical shortage of skilled employees in the workforce. The American Competitiveness Act, which you have introduced, will improve the important H–1B visa program and help to ensure that U.S. companies can continue to create jobs and meet the demands of the future.

Today, as you well know, hundreds of thousands of positions in the fastest growing sectors of the U.S. economy go unfilled. In order for American companies to remain competitive in a global market we need to attract the best talent, regardless of place of birth. Professionals who come here on temporary H–1B visas are a key component of America's high technology workforce. With the cap on H–1B visas expected to be hit by early summer of this year, your legislation could hardly come to a more crucial time for American business. In addition, your legislation recognizes the need to provide additional training to American-born workers, so that they can continue to be the world's best workforce in the 21st century. For this recognition we also give you credit and offer our thanks.

We appreciate your steadfast dedication to the vital issues facing the American workforce, and hope that your colleagues will also recognize this problem of crisis proportions. Under your leadership, Congress can solve a major dilemma for American business and simultaneously reaffirm the value of hard work, innovation, and competition. We also firmly believe that the American Competitiveness Act will do more to directly create jobs for Americans—and to keep jobs in this country—than any other bill that will be considered by Congress this year.

Thank you once again for your continued leadership on this critical issue. We look forward to working with you to advance this much needed legislation in the weeks and months ahead.

Sincerely,

SCOTT HOFFMAN,
Director.

American Council on International Personnel; American Electronics Association; American Immigration Lawyers Association; Business Software Alliance; Computing Technology Industries Association; Electronic Industries Association; Information Technology Association of America; National Association of Manufacturers; National Technical Services Association; United States Chamber of Commerce.

UNITED STATES PAN ASIAN AMERICAN CHAMBER OF COMMERCE,
Washington, DC, March 3, 1998.

Re the American Competitiveness Act.

Senator SPENCER ABRAHAM,
Chairman, Immigration Subcommittee, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR ABRAHAM: We write to endorse the American Competitiveness Act.

This is a new age. Americans and U.S. businesses are operating in an increasingly competitive global environment. Although we are the first and best in the world, we must strive to stay on top. To this end, a well-educated citizenry, a hospitable workplace that offers equal opportunity to all without regard to race or gender, and a skilled work force are essential to sustained growth in the U.S. economy.

In my own business, I represent American companies who have an unfulfilled need for information technology professionals. Because our colleges and universities do not produce enough of them, and whomever they have trained are immediately absorbed into the workforce; our companies must recruit from outside the country to get jobs done. That is why your proposal to increase H–1B temporary visas by 25,000 is so timely and important. This increase will reduce the backlog of issuing H–1B visas to qualified workers whom our companies need to render their services, save jobs and create more jobs.

We would oppose granting the Department of Labor the vastly expanded authority it is now seeking. The Administration's proposals to shorten the maximum length of stay for an individual on an H–1B, require up-front recruiting, which could delay hiring for many months or even years, and broad no-layoff attestations are clearly designed to kill, rather than improve the program. These "reforms" will severely diminish companies' access to necessary personnel and will therefore work against any increase in the H–1B visa quota.

The Labor Department claims it is protecting U.S. workers, but against whom are they being protected? Many of those entering the United States on H–1B visas are from Asian Pacific countries. Our organization finds it offensive that the Administration would try to demonize such individuals in the minds of the American public. This type of immigrant-bashing coming from the Administration must stop.

As a non-profit organization, we wholeheartedly support your proposal to permit different prevailing wage calculations for universities, charities and other non-profit organizations. This proposal brings reality to the administration of our immigration laws. It also reflects the true condition of the market place where non-profit organizations do not pay at the rate of for profit businesses. The proposal makes good sense.

The Act's provisions for scholarships for low-income students to pursue higher education in mathematics, engineering and computer science, and increased training and job search support in the information technology industry will indeed prepare America's work force for the coming century.

We applaud your efforts in the bill to eliminate the discriminatory effect of per country employment immigration limits on nationals from certain Asian Pacific nations.

The American Competitiveness Act is a significant step into the direction that will keep us competitive into the next millenium. We are pleased to support it.

Sincerely,

SUSAN AU ALLEN,
President.

By Ms. COLLINS (for herself, Mr. DEWINE, Mr. BOND, Mr. ENZI, Mr. FAIRCLOTH, Mr. HATCH, Mr. HELMS, Mr. ROBERTS, Mrs. HUTCHISON, and Mr. SMITH of Oregon):

S. 1724. A bill to amend the Internal Revenue Code of 1986 to repeal the information reporting requirement relating to the Hope Scholarship and Lifetime Learning Credits imposed on educational institutions and certain other trades and businesses; to the Committee on Finance.

THE HIGHER EDUCATION REPORTING RELIEF ACT

Ms. COLLINS. Mr. President, today I am introducing legislation, the Higher Education Reporting Relief Act, to reduce the burdensome reporting requirements imposed on educational institutions by the Hope Scholarship and Lifetime Learning tax credits. I am very pleased to be joined by my principal cosponsor, the distinguished Senator from Ohio, Senator DEWINE, who has been a real leader in education issues. I am also pleased to have the Presiding Officer, Senator GORDON SMITH, as one of my cosponsors as well as Senators BOND, ENZI, FAIRCLOTH, HATCH, HELMS, HUTCHISON, and ROBERTS.

Mr. President, when Congress created the Hope Scholarship and the Lifetime Learning Tax Credit, it, unfortunately, at the same time also created a very burdensome and costly reporting requirement for our universities, our colleges, and our proprietary schools. Beginning with the tax year 1998, the regulations will require schools to report to the IRS information on their students—including name, address, Social Security number, information about attendance status, program level, a campus contact, and the amount of qualified tuition and student aid.

Mr. President, this is a perfect example of the law of unintended consequences. We have inadvertently imposed a costly burden on our institutions of higher education. In the words of the president of the University of Maine at Farmington:

At a time when we are working to increase access and to contain college costs, new government reporting requirements are working against us. We will need to add personnel, not in support of our educational functions, but to comply with the new IRS regulations. This is not sensible and it is definitely not in

the interests of the people we are here to serve.

Mr. President, she said it very well. This is not sensible and it is not in the interests of the people that we are here to serve.

Yet another example from my State comes from the University of Maine at Presque Isle, a small campus with fewer than 1,000 students. The President there has told me that he may well need to hire an additional person to oversee the data collection and reporting requirements of this new law. Indeed, Mr. President, analysis of these reporting requirements indicate that they will cost America's postsecondary educational institutions as much as $125 million, and that is just to set up the system. In addition, tens of millions of dollars will have to be spent each year on an ongoing basis to comply with these onerous new regulations.

Mr. President, this simply does not make sense. The Collins-DeWine bill will repeal the provision of the Internal Revenue Code that requires a school to report this information for its students. Instead, Mr. President, we will treat these educational tax credits just the way we would treat any kind of tax credit. Taxpayers will be required to report the necessary information on their tax returns and to maintain records of their expenses that will support any tax credits that they claim.

Mr. President, the rationale for the Hope and Lifetime Learning education credits is to make postsecondary education both more affordable and thus more accessible to lower income individuals. But in this case, Mr. President, what Congress is giving with one hand it is taking away at least in part with its regulatory hand. The cost of conforming to these regulatory requirements will inevitably result in increases in tuition, chipping away at the very benefit of these tax credits.

Mr. President, the American Council on Education strongly supports this bill. It will help avoid a wasteful expenditure of the resources, the scarce resources, of America's colleges and universities.

I ask unanimous consent a letter from the president of the American Council on Education endorsing our bill on behalf of seven national education associations be printed in the RECORD.

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

AMERICAN COUNCIL ON EDUCATION,
OFFICE OF THE PRESIDENT,
Washington, DC, March 5, 1998.

Hon. SUSAN M. COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: The creation last year of the Hope Scholarship and Lifetime Learning tax credits through the Taxpayer Relief Act was met with great enthusiasm by the higher education community. These education tax incentives will clearly benefit students and their families. Unfortunately, the creation of these tax credits has an extraordinarily negative by-product: an unprecedented barrage of new regulatory and recordkeeping requirements for colleges and universities.

The cost of complying with the education tax provisions in the Taxpayer Relief Act will be enormous. More than 15 million degree-seeking students currently are enrolled in America's colleges and universities; we believe, based on preliminary estimates, that the cost of reporting will be approximately $6 to $8 per student. Note that this estimate does not include the cost of collecting and reporting the data on the roughly 15 million students who take continuing (i.e. non-degree) courses every year. When examined on an institution by institution basis, the cost is alarming. The University of California at Los Angeles estimates it will cost $427,000 to comply with the requirements of the new law; Colorado State University estimates the cost will be approximately $250,000. Unavoidably, the cost of complying with these externally imposed requirements will be passed on to students.

Given the costs and burdens that will be associated with implementing these important provisions, we are grateful for your efforts to minimize the burden to be placed on schools by introducing the "Higher Education Reporting Relief Act."

The higher education community is involved in efforts to minimize or eliminate the reporting burden while preserving important accountability for the use of federal funds. We have established a task force comprised of nine associations to analyze and document the full extent of the burden that these regulations pose. Led by the National Association of College and University Business Officers, this task force will estimate the costs associated with compliance; make recommendations to alleviate the regulatory burden; and assess the possible use of third-party service providers to manage reporting for individual colleges and universities. This group is expected to complete its work in mid-May; we hope that it will be an excellent source of technical assistance to you and others.

We greatly appreciate your leadership on this issue and expect that many of our campuses will contact you directly to express their thanks. We look forward to working with you to relieve higher education institutions from the reporting requirements associated with the new education tax incentives. Thank you for your attention to his issue and for your consistent commitment to students and families, and to American higher education.

Sincerely

STANLEY O. IKENBERRY,
President.

On behalf of: American Association of Community Colleges; American Council on Education; Association of American Universities; Association of Governing Boards of Universities and Colleges; National Association of College and University Business Officers; National Association of State Universities and Land-Grant Colleges; National Association of Student Financial Aid Administrators; The College Fund/UNCF.

Mr. DEWINE. Mr. President, I am delighted to join Senator COLLINS today in the introduction of the Higher Education Reporting Relief Act. This bill, as my colleague has explained, would repeal section 605 of the Internal Revenue Code, thereby eliminating responsibility of schools to file returns to the IRS on behalf of their students.

Now, the National Commission on the Cost of Higher Education has recommended that the most direct way to minimize the regulatory burden on colleges and universities would be to repeal the sections of law that impose reporting requirements.

What is the problem? Here is the problem: Current law relating to the Hope Scholarship and the Lifetime Learning tax credit requires all colleges and universities to comply with very burdensome and costly regulations. Beginning with tax year 1998, schools will be expected to provide the IRS with information regarding its students, including the following: name, address, Social Security number of the students, whether the student was in attendance at least half-time during the academic period, whether the student was enrolled exclusively in a program leading to a graduate-level educational credential, the person to contact at the institution in case there are questions, the amount of qualified tuition and gift aid a student receives—on and on.

The Taxpayer Relief Act of 1997 that we are amending today contained a provision requiring colleges, universities, and trade schools to begin issuing annual reports to students and to the Internal Revenue Service detailing the students' tuition payments in case they apply for the new education tax credit. Preliminary analysis shows the reporting requirements will cost 6,000 colleges in America more than $125 million to implement and tens of millions of dollars annually to maintain.

The bill that Senator COLLINS and I are introducing will free colleges, universities, and trade schools from complying with these very burdensome and costly requirements. Under our bill, taxpayers will now simply claim the new education tax credits on their income tax returns as they do with other tax credits and deductions.

Now, Mr. President, in my home State of Ohio, I have heard from many colleges. They have told me that the reporting requirement will place a significant financial and human resource burden on colleges and universities that will ultimately lead to an increase in the cost of higher education.

Ohio institutions such as Cleveland State, Bowling Green State University, Shawnee State University, and North Central Technical College have all written me and told me these requirements place schools in a very difficult position, putting them between students and parents and the IRS, because the schools are required under the current law to collect information that, frankly, they would not otherwise have to collect. While these schools are very supportive of the Hope Scholarship and

Lifetime Learning tax credit, the burden placed on universities will increase the cost of higher education, which, of course, reduces the benefit of the tax credit to the students.

The bill that my colleague from Maine and I are introducing is commonsense legislation that will eliminate an unfunded mandate placed upon colleges and universities. In realistic terms, if the new reporting requirement is not lifted off the backs of colleges and universities, those schools will be forced to raise tuition costs to cover this unfunded mandate. In effect, students and families will not benefit from passage of the Hope Scholarship because the money received from the tax credit will be used to pay this higher tuition.

I support the Hope Scholarship, and I am excited that students will be given a financial boost in their plans to attain a higher education. However, the Hope Scholarship and Lifetime Learning tax credit will not be as beneficial if it means that colleges and universities will raise their tuition to cover the costs of this unfunded mandate. Trying to pay for an unfunded mandate shifts a school's focus away from its primary goal, which, of course, is giving the students the best possible education.

Now, similar legislation to our bill has already been introduced in the House of Representatives. The House bill is supported by a bipartisan coalition of Members of the House. In addition, Mr. President, the American Association of State Colleges and Universities, representing 425 of the largest colleges and universities in the country, and also the American Association of Community Colleges, representing 1,200 community colleges, have both endorsed this initiative.

Mr. President, I conclude today by asking my colleagues to take a closer look at how this legislation will benefit students and families in this country. I invite any of my colleagues to join us today to cosponsor this bill. Passage of the Hope Scholarship and Lifetime Learning tax credit was a good beginning, but we must now assure that universities and colleges will not raise tuition costs simply to cover the costs of this unfunded mandate.

Our bill, then, is simple. It is simple, fair legislation that will greatly benefit any person who wants to obtain a higher education in this country.

Mr. FAIRCLOTH. Mr. President, I am pleased to be a co-sponsor of the Higher Education Reporting Relief Act. Last year, this body was instrumental in providing key incentives for students who want to go to school to improve their lives and build job skills. The Hope Scholarship and Lifetime Learning tax credits, as adopted in the Taxpayer Relief Act, give financial assistance to young and old who want to attend a community college, university or trade school.

Unfortunately, the legislation also contained a provision requiring these institutions to comply with burdensome reporting procedures such as issuing annual reports to students and the Internal Revenue Service. Preliminary analysis shows the reporting requirements will cost the 6,000 institutions of higher learning in America more than $125 million combined to implement and tens of millions of dollars annually to maintain.

The Higher Education Reporting Relief Act would repeal the Taxpayer Relief Act requirements that higher education institutions collect and report information on all eligible students to the Internal Revenue Service. In lieu of these extensive reporting requirements, taxpayers would be allowed to claim the tax credits on their income tax forms, similar to the way other tax deductions are now reported.

Let's not let this tremendous accomplishment for education be overshadowed by burdensome paperwork. Please join Senators COLLINS, DEWINE, and me in supporting the Higher Education Reporting Relief Act.

By Mr. BURNS (for himself, Mr. HELMS, Mr. THOMAS, and Mr. KYL):

S. 1725. A bill to terminate the Office of the Surgeon General of the Public Health Service; to the Committee on Labor and Human Resources.

THE OFFICE OF SURGEON GENERAL SUNSET ACT

Mr. BURNS. Mr. President, I rise to introduce the Office of Surgeon General Sunset Act, along with Senators HELMS, THOMAS, and KYL. This legislation has the same purpose as my bill from the 104th Congress, but has a different enactment provision. This bill will sunset the Office of Surgeon General only after Dr. Satcher vacates the office; this bill would not remove him from that position.

Every recent Surgeon General nomination, including that of Dr. Koop, has resulted in a political battle which has detracted from important health issues. The position has been used by both parties as a political advocate as much as a public health advocate. In the wake of the recent nomination process, I am more persuaded than ever that the office is a lightning rod for controversy which provides no public benefit.

The Surgeon General and his staff of six serve no compelling purpose. It is often said that the Surgeon General occupies a bully pulpit from which to address the nation on important health issues. But we've been without a surgeon general since the end of 1994, and there was no shortage of voices on major health issues. The president, the first lady, the Secretary of Health and human services, the commissioner of the Food and Drug Administration, and the former surgeon general all spoke on public health issues.

What's more, the Surgeon General and his office are duplicative. The office performs no crucial function that is not handled by a different bureaucracy. In fact, the budget for the office has already been folded into the Office of Public Health and Science, headed by Dr. Satcher in his role as Assistant Secretary for Health. This office has a staff of 300 and a current budget of over $80 million. My bill will merely complete the transition to the Assistant Secretary for Health, eliminating a redundant federal office.

This legislation is not about Dr. Satcher, or about any previous Surgeon General. Dr. Satcher will continue to be Surgeon General and the office would sunset immediately after he vacates it. This legislation will sunset an office that has become a political football and has long since outlived its usefulness.

By Mrs. MURRAY (for herself, Mr. GORTON, Mr. SMITH of Oregon, and Mr. WYDEN):

S. 1726. A bill to authorize the States of Washington, Oregon, and California to regulate the Dungeness crab fishery in the exclusive economic zone; to the Committee on Commerce, Science, and Transportation.

THE DUNGENESS CRAB CONSERVATION AND MANAGEMENT ACT

Mrs. MURRAY. Mr. President, I rise today with my colleagues, Senator GORTON, Senator SMITH of Oregon, and Senator WYDEN to introduce the Dungeness Crab Conservation and Management Act. Having outlined the history and intent of this important piece of legislation on February 12, 1998, 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. 1726

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 "Dungeness Crab Conservation and Management Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the ocean Dungeness crab (Cancer magister) fishery adjacent to the States of Washington, Oregon, and California has been successfully conserved and managed by those States since the 19th century;

(2) in recognition of the need for coastwide conservation of Dungeness crab, the States of Washington, Oregon, and California have—

(A) enacted certain laws that promote conservation of the resource;

(B) signed a memorandum of understanding declaring the intent of those States to take mutually supportive actions to further the management of Dungeness crab; and

(C) through the Pacific States Marine Fisheries Commission, formed the Tri-State Dungeness Crab Committee to provide a public forum for coordinating conservation and management actions;

(3) tribal treaty rights to crab under the subproceeding numbered 89-3 in United

States v. Washington, D.C. No. CV-70-09213, are being implemented by the State of Washington through annual preseason negotiations with the affected Indian tribes;

(4) the expiration of interim authority referred to in paragraph (7) will jeopardize the ability of the State to effectively provide for State-tribal harvest agreements that include restrictions on nontreaty fishers in the exclusive economic zone;

(5) the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) requires that Federal fishery management plans be established for fisheries that require conservation and management;

(6) under the Magnuson-Stevens Fishery Conservation and Management Act, several fisheries in the Atlantic and Pacific Oceans, including king crab in the Gulf of Alaska, have remained under the jurisdiction of individual States or interstate organizations because conservation and management can be better achieved without the implementation of a Federal fishery management plan;

(7) section 112(d) of the Sustainable Fisheries Act (Public Law 104-297; 110 Stat. 3596 though 3597) provided interim authority for the States of Washington, Oregon, and California to exercise limited jurisdiction over the ocean Dungeness crab fishery in the exclusive economic zone and required the Pacific Fishery Management Council to report to Congress on progress in developing a fishery management plan for ocean Dungeness crab and any impediments to that progress;

(8) the Pacific Fishery Management Council diligently carried out the responsibilities referred to in paragraph (7) by holding public hearings, requesting recommendations from a committee of that Council and the Tri-State Dungeness Crab Committee;

(9) representatives from the Indian tribes involved, the west coast Dungeness crab industry, and the fishery management agencies of the States of Washington, Oregon, and California were consulted by the Pacific Fishery Management Council, and the Council voted in public session on its final report; and

(10) by a unanimous vote, the Pacific Fishery Management Council found that amending section 112 of the Sustainable Fisheries Act and providing for permanent authority to the States of Washington, Oregon, and California to manage, with certain limitations, the ocean Dungeness crab fishery in that portion of the exclusive economic zone adjacent to each of the States, respectively, and continued participation by fishermen and the Indian tribes subject to the tribal treaty rights referred to in paragraph (3) would—

(A) best accomplish the conservation and management of the ocean Dungeness crab fishery; and

(B) best serve the public interest.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide for the continued conservation and management of ocean Dungeness crab in a manner that recognizes the contributions of the States of Washington, Oregon, and California and the needs of the Indian tribes that are subject to the tribal treaty rights to crab described in subsection (a)(3); and

(2) to carry out the recommendations that the Pacific Fishery Management Council made in accordance with requirements established by Congress.

SEC. 3. DEFINITIONS.

In this Act:

(1) EXCLUSIVE ECONOMIC ZONE.—The term "exclusive economic zone" has the meaning given that term in section 3(11) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(11)).

(2) FISHERY.—The term "fishery" has the meaning given that term in section 3(13) of the Magnuson-Stevens Fishery Management Act (16 U.S.C. 1802(13)).

(3) FISHING.—The term "fishing" has the meaning given that term in section 3(15) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(15)).

SEC. 4. AUTHORITY FOR MANAGEMENT OF DUNGENESS CRAB.

(a) IN GENERAL.—Subject to the provisions of this section, and notwithstanding section 306(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1856(a)), each of the States of Washington, Oregon, and California may adopt and enforce State laws (including regulations) governing fishing and processing in the exclusive economic zone adjacent to that State in any Dungeness crab (Cancer magister) fishery for which there is no fishery management plan in effect under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) REQUIREMENTS FOR STATE LAWS.—Any law adopted by a State under this section for a Dungeness crab fishery—

(1) except as provided in paragraph (2), shall, without regard to the State that issued the permit under which a vessel is operating, apply equally to—

(A) vessels engaged in the fishery in the exclusive economic zone; and

(B) vessels engaged in the fishery in the waters of the State;

(2) shall not apply to any fishing by a vessel in the exercise of tribal treaty rights; and

(3) shall include any provisions necessary to implement tribal treaty rights in a manner consistent with the decision of the United States District Court for the Western District of Washington in United States v. Washington, D.C. No. CV-70-09213.

(c) EXCLUSIVE ECONOMIC ZONE.—

(1) IN GENERAL.—Subject to paragraph (2), any law of the State of Washington, Oregon, or California that establishes or implements a limited entry system for a Dungeness crab fishery may not be enforced against a vessel that—

(A) is otherwise legally fishing in the exclusive economic zone adjacent to that State; and

(B) is not registered under the laws of that State.

(2) EXCLUSION.—A State referred to in paragraph (1) may regulate the landing of Dungeness crab.

(d) REQUIREMENTS FOR HARVEST.—No vessel may harvest or process Dungeness crab in the exclusive economic zone adjacent to the State of Washington, Oregon, or California, except—

(1) as authorized by a permit issued by any of the States referred to in subsection (c)(1); or

(2) under any tribal treaty rights to Dungeness crab in a manner consistent with the decision of the United States District Court for the Western District of Washington in United States v. Washington, D.C. No. CV-70-09213.

(e) STATUTORY CONSTRUCTION.—Except as expressly provided in this section, nothing in this section is intended to reduce the authority of any State under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to regulate fishing, fish processing, or landing of fish.

SEC. 5. ELIMINATION OF INTERIM AUTHORITY.

Section 112 of the Sustainable Fisheries Act (Public Law 104-297; 110 Stat. 3596) is amended by striking subsection (d).

[From the CONGRESSIONAL RECORD, Feb. 12, 1998]

Mrs. MURRAY. Mr. President, soon after the upcoming recess, I will join my colleague, Senator Slade Gorton, to introduce the Dungeness Crab Conservation and Management Act. The ocean Dungeness crab fishery in WA, OR, and CA has been successfully managed by the three states for many years. The states cooperate on season openings, male-only harvest requirements, and minimum sizes; and all three states have enacted limited entry programs. Although the resource demonstrates natural cycles in abundance, over time the fishery has been sustained at a profitable level for fishermen and harvesters with no biological programs.

The fishery is conducted both within state waters and in the federal exclusive economic zone (EEZ). Although state landing laws restrict fishermen to delivering crab only to those states in which they are licensed, the actual harvest takes place along most of the West Coast, roughly from San Francisco to the Canadian border. Thus, it is not unusual for an Oregon-licensed fisherman from Newport to fish in the EEA northwest of Westport, WA, and deliver his catch to a processor in Astoria, OR.

In recent years, federal court decisions under the umbrella of *U.S.* v. *Washington* have held that Northwest Indian tribes have treaty rights to harvest a share of the crab resource off Washington. To accommodate these rights, the State of Washington has restricted fishing by Washington-licensed fishermen. This led Washington fishermen to request an extension of state fisheries jurisdiction into the EEZ. The Congress partially granted this request during the last Congress by giving the West Coast states interim authority over Dungeness crab, which expires in 1999 (16 U.S.C. 1856 note). The Congress also expressed its interest in seeing a fishery management plan established for Dungeness crab and asked the Pacific Fishery Management Council (PFMC) to report to Congress on this issue by December, 1997.

The PFMC established an industry committee to examine the issues, which developed several options. At its June meeting, the PFMC selected two options for further development and referred them for analysis to the Tri-State Dungeness Crab Committee which operates under the Pacific States Marine Fisheries Commission. After lengthy debate, the Tri-State Committee recommended to the Council that the Congress be requested to make the interim authority permanent with certain changes, including a clarification of what license is required for the fishery, broader authority for the states to ensure equitable access to the resource, and clarification of tribal rights. The Tri-State Committee agrees that each state's limited entry laws should apply only to vessels registered in that state. I ask unanimous consent to include the report of the Tri-State Dungeness Crab Committee and the membership list of the Committee in the RECORD.

On September 12, 1997, the PFMC unanimously agreed to accept and support the Tri-State Committee recommendation. The Council agreed that the existing management structure effectively conserves the resource, that allocation issues are resolved by

the restriction on application of state limited entry laws, that tribal rights are protected, and that the public interest in conservation and fiscal responsibility after better served by the legislative proposal than by developing and implementing a fishery management plan under the Magnuson-Stevens Fishery Conservation and Management Act. This legislation will fully implement the Tri-State Committee recommendation and ensure the conservation and sound management of this important West Coast fishery.

I look forward to the Senate's timely consideration of this bill.

REPORT OF THE TRI-STATE DUNGENESS CRAB COMMITTEE TO THE PACIFIC FISHERY MANAGEMENT COUNCIL ON OPTIONS FOR DUNGENESS CRAB FISHERY MANAGEMENT, AUGUST 7, 1997

The Tri-State Dungeness Crab Committee met on August 6–7, 1997 to review the Pacific Fishery Management Council (PFMC) Analysis of Options for Dungeness Crab Management. A list of the attending Committee members, advisors, and observers is attached. After completing that review, the Committee discussed the merits of each option and offered the following comments for PFMC consideration.

There was general agreement within the Committee that Option 1, No Action, would not satisfy the current needs of the industry. There was unanimous opposition, however, among Oregon and California representatives to Option 3, Development of a Limited Federal Fishery Management Plan (FMP). Washington representatives were not strongly in favor of a FMP, but viewed it as the only realistic means to address their concerns for the fishery. After an extended discussion, it was the consensus of the Committee that a modified version of Option 2, Extension of Interim Authority, was preferred.

There were three common themes that appeared during the discussion. No Committee members believed that there should be fishing or processing of Dungeness crab in waters of the EEZ under PFMC jurisdiction by any vessel not permitted or licensed in either Washington, Oregon, or California. The Committee generally accepted that additional tools beyond area closures and pot limits could be needed to address tribal allocation issues. Finally, the Committee also agreed that as a matter of fairness, vessels fishing alongside each other in an area should be subject to the same regulations. On that basis, the Tri-State Dungeness Crab Committee recommends that:

1. The PFMC immediately request that Congress make the current Interim Authority a permanent part of the Magnuson-Stevens Fishery Conservation and Management Act, applying only to Pacific coast Dungeness crab, with the following adjustments.

(a) delete the limitations listed in the current Section 2 of the Interim Authority so that state regulations will apply equally to all vessels in the EEZ and adjacent State waters; and

(b) clarify the language in the current Section 3B of the Interim Authority to prohibit participation in the fishery by vessels that are not registered in either Washington, Oregon, or California.

2. The PFMC defer action on a Dungeness crab FMP until March 1998 to determine whether Congress will be receptive to this extension of the Interim Authority.

Proposed draft bill language for an extension of the Interim Authority is attached.

This recommendation is not made without reservations on both sides. Washington representatives were reluctant to totally withdraw consideration of a federal FMP option, in the event that efforts to extend the Interim Authority fail. They expressed little confidence that a request for Congressional action would be successful. Representatives from Oregon were concerned that discriminatory regulations could be enacted in the future by other states that could effectively exclude them from participation on traditional fishing grounds. They preferred this risk over the involvement of federal agencies under a federal fishery management plan.

TRI-STATE DUNGENESS CRAB COMMITTEE MEETING ATTENDANCE—AUGUST 6–7, 1997, PORTLAND, OR

COMMITTEE MEMBERS

Dick Sheldon: Columbia River Dungeness Crab Fishermen's Association, Ocean Park, WA
Ernie Summers: Washington Dungeness Crab Fishermen's Association, Westport, WA
Larry Thevik: Washington Dungeness Crab Fishermen's Association, Westport, WA
Terry Krager: Chinook Packing, Chinook, WA
Paul Davis: Oregon Fisher, Brookings, OR
Bob Eder: Oregon Fisher, Newport, OR
Tom Nowlin: Oregon Fisher, Coos Bay, OR
Stan Schones: Oregon Fisher, Newport, OR
Russell Smotherman: Oregon Fisher, Warrenton, OR
Joe Speir: Oregon Fisher, Brookings, OR
Rod Moore: West Coast Seafood Processors Association, Portland, OR
Harold Ames: CA Fisher, Bodega Bay, CA
Mike Cunningham: CA Fisher, Eureka, CA
Tom Fulkerson: CA Fisher, Trinidad, CA
Tom Timmer: CA Fisher, Crescent City, CA
Jerry Thomas: Eureka Fisheries, Inc., Eureka, CA

ADVISORS

Steve Barry: Washington Department of Fish and Wildlife, Montesano, WA
Paul LaRiviere: Washington Department of Fish and Wildlife, Montesano, WA
Neil Richmond: Oregon Department of Fish and Wildlife, Charleston, OR

OBSERVERS

Tom Kelly: WA Fisher, Westport, WA
Mike Mail: Quinault Tribe, Taholah, WA
Nick Furman: Oregon Dungeness Crab Commission, Coos Bay, OR

By Mr. LEAHY:

S. 1727. A bill to authorize the comprehensive independent study of the effects on trademark and intellectual property rights holders of adding new generic top-level domains and related dispute resolution procedures; to the Committee on the Judiciary.

STUDY AUTHORIZATION LEGISLATION

Mr. LEAHY. Mr. President, from its origins as a U.S.-based research vehicle, the Internet has matured into a democratic, international medium for communication, commerce and education. As the Internet evolves, the traditional means of organizing its technical functions need to evolve as well.

In the days before the Internet, the U.S. Defense Department's research network—called the ARPAnet—used a naming system that would map a computer's numerical address to a more user-friendly host name. With only a few computers linked to the ARPAnet, the U.S. Defense Department's research network maintained a master list of each computer's numerical address and host name. Sending an electronic message or file was a simple matter of looking up the computer's host name on a master list to find its numerical address. As the number of host computers grew, however, it became clear that a new addressing system was needed. Thus, in 1987, the current Domain Name System (DNS) was created.

On today's Internet, the DNS works through a hierarchy of names. At the top of this hierarchy are a set of Top Level Domains that can be classified into two categories: generic Top Level Domains (gTLD) such as ".gov," ".net," ".com," ".edu," ".org," ".int," and ".mil," and the country code Top Level Domain names, such as ".us" and ".uk." Before each TLD suffix, is a Second Level Domain name.

Since the Internet is an outgrowth of U.S. government investments carried out under agreements with U.S. agencies, major components of the DNS are still performed by or subject to agreements with U.S. agencies. Examples include assignments of numerical addresses to Internet users, management of the system of registering names for Internet users, operation of the root server system, and protocol assignment.

For the past five years, a company based in Herndon, Virginia, named Network Solutions, Inc., has served under a cooperative agreement with the National Science Foundation as the exclusive registry of all second level domain names in several of the gTLDs (e.g., .com, .net, .org, and .edu). This contract will end next month, with an optional ramp-down period that expires on September 30, 1998.

The National Science Foundation's exclusive arrangement with Network Solutions regarding the assignment of domain names has drawn criticism from Internet users. This arrangement has also been the subject of antitrust scrutiny by the Justice Department and of two lawsuits in Federal Court. I wrote to Attorney General Reno in July 1997, asking to be kept apprised, as appropriate, of any developments in the Justice Department's antitrust investigation concerning the assignment of the most popular domain names for Internet addresses. I was assured that the Department's objective was consistent with my concerns to ensure that the DNS functions, to the maximum extent possible, in an open, competitive environment that maximizes innovation and consumer choice.

Despite the controversies associated with certain aspects of Network Solutions' management of the gTLDs, many of us have been concerned about what would happen at the end of that company's exclusive contract. Simply put, how will we avoid chaos on the

Internet and the potential risk of multiple registrations of the same domain name for different computers?

That is why I welcomed the Administration's intent to address this issue comprehensively. In the Administration's "Framework for Global Electronic Commerce," the President last year directed the Secretary of Commerce to privatize, increase competition and promote international participation in the DNS. At the beginning of this year, I wrote to Secretary Daley requesting that the Administration present its policy recommendations regarding the management of the DNS without further delay, lest the stability and integrity of the Internet domain name system be threatened.

On January 30, 1998, the Commerce Department released a "Green Paper," or discussion draft, entitled "A Proposal to Improve Technical Management of Internet Names and Addresses," proposing privatization of the management of the DNS through the creation of a new, not-for-profit corporation. This organization would set policy for the allocation of number blocks to regional number registries; oversee operation of the root server system; determine when new top-level-domains should be added to the root system; and coordinate development of protocol parameters for the Internet.

While the corporation would be able to decide when to add new gTLDs, the Administration has indicated that it does not want to wait until the corporation is formed to bring competition to the domain name registration process. Thus, the Green Paper proposes to allow firms other than Network Solutions assign addresses that end in the gTLDs: ".com," ".org" and ".net." The Green Paper also proposes the creation of five new gTLDs, each of which would be based on registries operated by separate firms. The Administration continues to solicit comments on the Green Paper from the DNS stakeholder community, and hopes to finalize and begin implementation of the Green Paper's proposals in April 1998.

Developing this proposal to privatize and increase competition in the DNS was an important and difficult task. I am delighted that the Administration undertook this herculean effort and has finally released its draft proposal to improve the DNS. I especially applaud the hard work of Ira Magaziner, Senior Advisor to the President for Policy Development, Larry Irving, Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration (NTIA), and Becky Burr, Associate Administrator, NTIA, Office of International Affairs.

I fully agree with the four basic principles guiding the Administration's proposal to structure this evolution; namely that private sector control is preferable to government control; competition should be encouraged; management of the Internet should reflect the diversity of its users and their needs; and stability of the Internet should be maintained during the transition period. These shared principles form the basis of a solid framework from which to determine the evolution of the DNS. That being said, I think it prudent that the Green Paper—already shaped by months of discussions with a variety of Internet stakeholders—is in the form of a discussion draft and that additional public comments are being solicited. The Internet is a democratic form of communication, and changes in its management structure warrant consideration through an open and democratic process.

Among the more challenging questions presented by the Green Paper are how to protect consumers' interests in locating the brand or vendor of their choice on the Internet without being deceived or confused, and how to protect companies from having their brand equity diluted in an electronic environment. Adding new gTLDs, as the Green Paper proposes, would allow more competition and more individuals and businesses to obtain addresses that more closely reflect their names and functions. On the other hand, businesses are also rightly concerned that the increase in gTLDs may make the job of protecting their trademarks from infringement or dilution more difficult. Recent news reports have highlighted the prevalence of "stealth" domain name addresses, which are slight spelling variations on the addresses of popular Web sites used to increase visits by potential subscribers. For instance, as reported in the March 2, 1998 edition of Newsweek, "www.whitehouse.com" is an explicit adult Web site. One needs to use the domain name "www.whitehouse.gov" to reach the White House's web site.

Congress recently addressed certain trademark issues with passage of the Federal Trademark Dilution Act. That legislation proscribes the dilution of famous trademarks in circumstances that might not otherwise amount to trademark infringement. When that legislation passed the Senate, I noted that "no one else has yet considered this application," but expressed "my hope that this antidilution statute can help stem the use of deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others." CONGRESSIONAL RECORD, S 19312 (December 29, 1995).

Over the past several years, I understand that disputes between trademark owners and domain name owners have been on the rise. To address the legitimate concerns of trademark holders and the diverse needs of Internet users, the Green Paper proposes that a study be undertaken on the effects of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property rights holders. Specifically, the Green Paper states:

> We also propose that . . . a study be undertaken on the effects of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property rights holders. This study should be conduced under the auspices of a body that is internationally recognized in the area of dispute resolution procedures, with input from trademark and domain name holders and registries.

Although some of the recommendations in the Green Paper have proved to be controversial, I understand that DNS stakeholders of diverse background and interests, including those businesses who are concerned that the increase in gTLDs may make the job of protecting their trademarks from infringement or dilution more difficult, such as ATT and Bell Atlantic, support this Green Paper recommendation. The legislation I introduce today directs the Secretary of Commerce, acting through the Assistant Secretary of Commerce and Commissioner of Patent and Trademarks, to request the National Research Council (NRC) of the National Academy of Sciences to conduct a comprehensive study of the effects on trademark and intellectual property rights holders of adding new gTLDs and related dispute resolution procedures. The study shall assess and, as appropriate, make recommendations for policy, practice, or legislative changes regarding: (1) the short-term and long-term effects on the protection of trademark and intellectual property rights and consumer interests of increasing or decreasing the number of gTLDs; (2) trademark and intellectual property rights clearance processes for domain names, including whether domain name databases should be readily searchable through a common interface to facilitate the "clearing" of trademarks and intellectual property rights and proposed domain names across a range of gTLDs; identifying what information from domain name databases should be accessible for the "clearing" of trademarks and intellectual property rights; and whether gTLDs registrants should be required to provide certain information; (3) domain name trademark and intellectual property rights dispute resolution mechanisms, including how to reduce trademark and intellectual property rights conflicts associated with the addition of any new gTLDs and how to reduce trademark and intellectual property rights conflicts through new technical approaches to Internet addressing; (4) choice of law or jurisdiction for resolution of trademark and intellectual property rights disputes relating to domain names, including which jurisdictions should be available for trademark and intellectual property rights owners to file suit to protect

their trademarks and intellectual property rights; (5) trademark and intellectual property rights infringement liability for registrars, registries, or technical management bodies; and (6) short-term and long-term technical and policy options for Internet addressing schemes and their impact on current trademark and intellectual property issues.

The bill also calls upon the Secretary of Commerce to seek the cooperation of the Patent and Trademark Office, the National Telecommunications and Information Administration, other Commerce Department entities and all other appropriate Federal departments, Government contractors, and similar entities with the study.

I use the Internet frequently, and I therefore have a personal stake in ensuring that the evolution of the DNS is one that makes sense from an end-user perspective. In addition, I am proud to say that Vermont companies have been leaders in cyber selling. Both users and companies seeking to do business on the Internet have a direct stake in ensuring that the DNS develops in a manner that protects the rights and promotes their shared interests.

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. 1727

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STUDY OF EFFECTS ON TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS OF ADDING GENERIC TOP-LEVEL DOMAINS.

(a) STUDY BY NATIONAL RESEARCH COUNCIL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Commerce, acting through the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, shall request the National Research Council of the National Academy of Sciences to conduct a comprehensive study, taking into account the diverse needs of Internet users, of the short-term and long-term effects on trademark and intellectual property rights holders of adding new generic top-level domains and related dispute resolution procedures.

(b) MATTERS TO BE ASSESSED IN STUDY.—The study shall assess and, as appropriate, make recommendations for policy, practice, or legislative changes relating to—

(1) the short-term and long-term effects on the protection of trademark and intellectual property rights and consumer interests of increasing or decreasing the number of generic top-level domains;

(2) trademark and intellectual property rights clearance processes for domain names, including—

(A) whether domain name databases should be readily searchable through a common interface to facilitate the clearing of trademarks and intellectual property rights and proposed domain names across a range of generic top-level domains;

(B) the identification of what information from domain name databases should be accessible for the clearing of trademarks and intellectual property rights; and

(C) whether generic top-level domain registrants should be required to provide certain information;

(3) domain name trademark and intellectual property rights dispute resolution mechanisms, including how to—

(A) reduce trademark and intellectual property rights conflicts associated with the addition of any new generic top-level domains; and

(B) reduce trademark and intellectual property rights conflicts through new technical approaches to Internet addressing;

(4) choice of law or jurisdiction for resolution of trademark and intellectual property rights disputes relating to domain names, including which jurisdictions should be available for trademark and intellectual property rights owners to file suit to protect such trademarks and intellectual property rights;

(5) trademark and intellectual property rights infringement liability for registrars, registries, or technical management bodies; and

(6) short-term and long-term technical and policy options for Internet addressing schemes and the impact of such options on current trademark and intellectual property rights issues.

(c) COOPERATION WITH STUDY.—

(1) INTERAGENCY COOPERATION.—The Secretary of Commerce shall—

(A) direct the Patent and Trademark Office, the National Telecommunications and Information Administration, and other Department of Commerce entities to cooperate fully with the National Research Council in its activities in carrying out the study under this section; and

(B) request all other appropriate Federal departments, Federal agencies, Government contractors, and similar entities to provide similar cooperation to the National Research Council.

(2) PRIVATE CORPORATION COOPERATION.—The Secretary of Commerce shall request that any private, not-for-profit corporation established to manage the Internet root server system and the top-level domain names provide similar cooperation to the National Research Council.

(d) REPORT.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the National Research Council shall complete the study under this section and submit a report on the study to the Secretary of Commerce. The report shall set forth the findings, conclusions, and recommendations of the Council concerning the effects of adding new generic top-level domains and related dispute resolution procedures on trademark and intellectual property rights holders.

(2) SUBMISSION TO CONGRESSIONAL COMMITTEES.—Not later than 30 days after the date on which the report is submitted to the Secretary of Commerce, the Secretary shall submit the report to the Committees on the Judiciary of the Senate and House of Representatives.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $800,000 for the study conducted under this Act.

By Mr. LOTT:

S. 1728. A bill to provide for the conduct of a risk assessment for certain Federal agency rules, and for other purposes; to the Committee on Governmental Affairs.

THE RISK ASSESSMENT IMPROVEMENT ACT

Mr. LOTT. Mr. President, federal bureaucrats issued thousands of new rules and regulations last year, adding billions to the regulatory costs already imposed on American businesses and the economy. Whether you realize it or not, almost every aspect of our daily existence is regulated in some way by the government.

That is not to say that the government should not regulate when it's necessary to protect human health and the environment. However, we would all agree that there are reasonable limits to how much protection we really need. For instance, cars are dangerous vehicles. If not properly operated, they can cause serious injury or death. It is certainly acceptable for the government to issue regulations ensuring that a vehicle is able to withstand anticipated impacts. But should we outlaw cars simply because improper operation can lead to death? Of course not. We all can see that the benefits of being able to drive a car far outweigh any risk of death.

Mr. President, how do we separate true risks from inflated risks? How do we parcel out real problems from those created by fear or misinformation? How do we rank risks so that we attend to the most pressing ones first?

I believe that the solution is to strengthen the risk assessment portion of the current federal law. It is about time that federal agencies focused on finding solutions to problems that present real risks, risks that are based on sound science. For too long, agencies have been allowed to use scant science and political windsocks to determine what should be considered a risk to human health or the environment. From an overblown analysis of risk comes irrational and ineffective solutions—some even more harmful than the basic problem.

That is why I am introducing the Risk Assessment Improvement Act.

Before an agency can issue a rule or carry out a cost/benefit analysis, it must determine that there is indeed a risk. Since risk assessment is the first threshold for issuing regulations, I believe that a targeted bill like this one would address the most important part of regulatory reform.

Simply put, Mr. President, this bill ensures that there is no ambiguity about whether or not there is a risk. By requiring rulemaking agencies to follow a prescribed and stringent set of evaluations, the bill strengthens the current method of evaluating risk. In addition, the Risk Assessment Improvement Act states that risks must be reviewed in light of other risks. In other words, it would require agencies to rank risks from least to most severe, guaranteeing that the most serious ones are addressed first. This is not only smart regulatory and health policy, it is smart fiscal policy. We will be

better able to allocate federal resources if we know ahead of time which risks are most pressing.

I know that Senator THOMPSON has done his best to assemble a comprehensive regulatory reform package, and I certainly commend his efforts. But a comprehensive approach offers many complexities, both substantively and procedurally. That is why I am introducing a bill to deal with just one element of the regulatory process—risk.

If you take a look at the language of my bill, you will find that it is identical to that in the risk assessment title of the original Levin-Thompson bill. The reason for this is simple: their language is both strong and well written. And it gets the job done. I hope that I can count on Senators THOMPSON and LEVIN's support in moving the bill through the Government Affairs Committee.

In closing, Mr. President, I ask my colleagues to join me in taking an incremental and doable step towards real regulatory reform by supporting the Risk Assessment Improvement Act.

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. 1728

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 Regulatory Risk Assessment Act of 1997".

SEC. 2. RISK ASSESSMENTS.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER II—RISK ASSESSMENTS

"§ 621. Definitions

"For purposes of this subchapter the definitions under section 551 shall apply and—

"(1) the term 'cost' means the reasonably identifiable significant adverse effects, including social, health, safety, environmental, economic, and distributional effects that are expected to result directly or indirectly from implementation of, or compliance with, a rule;

"(2) the term 'Director' means the Director of the Office of Management and Budget, acting through the Administrator of the Office of Information and Regulatory Affairs;

"(3) the term 'flexible regulatory options' means regulatory options that permit flexibility to regulated persons in achieving the objective of the statute as addressed by the rule making, including regulatory options that use market-based mechanisms, outcome oriented performance-based standards, or other options that promote flexibility;

"(4) the term 'major rule' means a rule or a group of closely related rules that—

"(A) the agency proposing the rule or the Director reasonably determines is likely to have an annual effect on the economy of $100,000,000 or more in reasonably quantifiable costs; or

"(B) is otherwise designated a major rule by the Director on the ground that the rule is likely to adversely affect, in a material way, the economy, a sector of the economy, including small business, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities;

"(5) the term 'reasonable alternative' means a reasonable regulatory option that would achieve the objective of the statute as addressed by the rule making and that the agency has authority to adopt under the statute granting rule making authority, including flexible regulatory options;

"(6) the term 'risk assessment' means the systematic process of organizing hazard and exposure assessments to estimate the potential for specific harm to exposed individuals, populations, or natural resources;

"(7) the term 'rule' has the same meaning as in section 551(4), and shall not include—

"(A) a rule exempt from notice and public comment procedure under section 553;

"(B) a rule that involves the internal revenue laws of the United States, or the assessment and collection of taxes, duties, or other revenue or receipts;

"(C) a rule of particular applicability that approves or prescribes for the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

"(D) a rule relating to monetary policy proposed or promulgated by the Board of Governors of the Federal Reserve System or by the Federal Open Market Committee;

"(E) a rule relating to the safety or soundness of federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)); credit unions; the Federal Home Loan Banks; government-sponsored housing enterprises; a Farm Credit System Institution; foreign banks, and their branches, agencies, commercial lending companies or representative offices that operate in the United States and any affiliate of such foreign banks (as those terms are defined in the International Banking Act of 1978 (12 U.S.C. 3101)); or a rule relating to the payments system or the protection of deposit insurance funds or Farm Credit Insurance Fund;

"(F) a rule or order relating to the financial responsibility, recordkeeping, or reporting of brokers and dealers (including Government securities brokers and dealers) or futures commission merchants, the safeguarding of investor securities and funds or commodity future or options customer securities and funds, the clearance and settlement of securities, futures, or options transactions, or the suspension of trading under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or emergency action taken under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or a rule relating to the protection of the Securities Investor Protection Corporation, that is promulgated under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), or a rule relating to the custody of Government securities by depository institutions under section 3121 or 9110 of title 31;

"(G) a rule issued by the Federal Election Commission or a rule issued by the Federal Communications Commission under sections 312(a)(7) and 315 of the Communications Act of 1934 (47 U.S.C. 312(a)(7) and 315);

"(H) a rule required to be promulgated at least annually pursuant to statute; or

"(I) a rule or agency action relating to the public debt; and

"(8) the term 'substitution risk' means an increased risk to health, safety, or the environment reasonably likely to result from a regulatory option.

"§ 622. Applicability

"Except as provided in section 623(d), this subchapter shall apply to all proposed and final major rules the primary purpose of which is to address health, safety, or environmental risk.

"§ 623. Risk assessments

"(a)(1) Before publishing a notice of a proposed rule making for any rule, each agency shall determine whether the rule is or is not a major rule covered by this subchapter.

"(2) The Director may designate any rule to be a major rule under section 621(4)(B), if the Director—

"(A) makes such designation no later than 30 days after the close of the comment period for the rule; and

"(B) publishes such determination in the Federal Register together with a succinct statement of the basis for the determination within 30 days after such determination.

"(b)(1) When an agency publishes a notice of proposed rule making for a major rule to which section 624(a) applies, the agency shall prepare and place in the rule making file an initial risk assessment, and shall include a summary of such assessment in the notice of proposed rule making.

"(2)(A) When the Director has published a determination that a rule is a major rule to which section 624(a) applies, after the publication of the notice of proposed rule making for the rule, the agency shall promptly prepare and place in the rule making file an initial risk assessment for the rule and shall publish in the Federal Register a summary of such assessment.

"(B) Following the issuance of an initial risk assessment under subparagraph (A), the agency shall give interested persons an opportunity to comment under section 553 in the same manner as if the initial risk assessment had been issued with the notice of proposed rule making.

"(c)(1) When the agency publishes a final major rule to which section 624(a) applies, the agency shall also prepare and place in the rule making file a final risk assessment, and shall prepare a summary of the assessment.

"(2) Each final risk assessment shall address each of the requirements for the initial risk assessment under subsection (b), revised to reflect—

"(A) any material changes made to the proposed rule by the agency after publication of the notice of proposed rule making;

"(B) any material changes made to the risk assessment; and

"(C) agency consideration of significant comments received regarding the proposed rule and the risk assessment.

"(d)(1) A major rule may be adopted without prior compliance with this subchapter if—

"(A) the agency for good cause finds that conducting the risk assessment under this subchapter is contrary to the public interest due to an emergency, or an imminent threat to health or safety that is likely to result in significant harm to the public or the environment; and

"(B) the agency publishes in the Federal Register, together with such finding, a succinct statement of the basis for the finding.

"(2) If a major rule is adopted under paragraph (1), the agency shall comply with this subchapter as promptly as possible unless compliance would be unreasonable because the rule is, or soon will be, no longer in effect.

"§ 624. Principles for risk assessments

"(a)(1) Subject to paragraph (2), each agency shall design and conduct risk assessments in accordance with this subchapter for each proposed and final major rule, or that results in a significant substitution risk, in a manner that promotes rational and informed risk management decisions and informed public input into and understanding of the process of making agency decisions.

"(2) If a risk assessment under this subchapter is otherwise required by this section, but the agency determines that—

"(A) a final rule subject to this subchapter is substantially similar to the proposed rule with respect to the risk being addressed;

"(B) a risk assessment for the proposed rule has been carried out in a manner consistent with this subchapter; and

"(C) a new risk assessment for the final rule is not required in order to respond to comments received during the period for comment on the proposed rule,

the agency may publish such determination along with the final rule in lieu of preparing a new risk assessment for the final rule.

"(b) Each agency shall consider in each risk assessment reliable and reasonably available scientific information and shall describe the basis for selecting such scientific information.

"(c)(1) Each agency may use reasonable assumptions to the extent that relevant and reliable scientific information, including site-specific or substance-specific information, is not reasonably available.

"(2) When a risk assessment involves a choice of assumptions, the agency shall—

"(A) identify the assumption and its scientific or policy basis, including the extent to which the assumption has been validated by, or conflicts with, empirical data;

"(B) explain the basis for any choices among assumptions and, where applicable, the basis for combining multiple assumptions; and

"(C) describe reasonable alternative assumptions that were considered but not selected by the agency for use in the risk assessment, how such alternative assumptions would have changed the conclusions of the risk assessment, and the rationale for not using such alternatives.

"(d) Each agency shall provide appropriate opportunity for public comment and participation during the development of a risk assessment.

"(e) Each risk assessment supporting a major rule under this subchapter shall include, as appropriate, each of the following:

"(1) A description of the hazard of concern.

"(2) A description of the populations or natural resources that are the subject of the risk assessment.

"(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

"(4) A description of the nature and severity of the harm that could reasonably occur as a result of exposure to the hazard.

"(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

"(f) To the extent scientifically appropriate, each agency shall—

"(1) express the overall estimate of risk as a reasonable range or probability distribution that reflects variabilities, uncertainties, and lack of data in the analysis;

"(2) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the range and distribution and likelihood of risk to the general population and, as appropriate, to more highly exposed or sensitive subpopulations, including the most plausible estimates of the risks; and

"(3) where quantitative estimates are not available, describe the qualitative factors influencing the range, distribution, and likelihood of possible risks.

"(g) When scientific information that permits relevant comparisons of risk is reasonably available, each agency shall use the information to place the nature and magnitude of a risk to health, safety, or the environment being analyzed in relationship to other reasonably comparable risks familiar to and routinely encountered by the general public. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks.

"(h) When scientifically appropriate information on significant substitution risks to health, safety, or the environment is reasonably available to the agency, the agency shall describe such risks in the risk assessment.

"§ 625. Deadlines for rule making

"(a) All deadlines in statutes or imposed by a court of the United States, that require an agency to propose or promulgate any major rule to which section 624(a) applies, during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

"(1) the date on which the requirements of this subchapter are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

"(b) In any case in which the failure to promulgate a major rule to which section 624(a) applies by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

"(1) the date on which the requirements of this subchapter are satisfied; or

"(2) the date occurring 6 months after the date of the applicable deadline.

"§ 626. Judicial review

"(a) Compliance or noncompliance by an agency with the provisions of this subchapter shall only be subject to judicial review in accordance with this section.

"(b) Any determination of an agency whether a rule is or is not a major rule under section 621(4)(A) shall be set aside by a reviewing court only upon a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination.

"(c) Any determination by the Director that a rule is a major rule under section 621(4), or any failure to make such determination, shall not be subject to judicial review in any manner.

"(d) Any risk assessment required under this subchapter shall not be subject to judicial review separate from review of the final rule to which the assessment applies. Any risk assessment shall be part of the whole rule making record for purposes of judicial review of the rule and shall be considered by a court in determining whether the final rule is arbitrary or capricious unless the agency can demonstrate that the assessment would not be material to the outcome of the rule.

"(e) If an agency fails to perform the risk assessment, a court shall remand or invalidate the rule.".

(b) PRESIDENTIAL AUTHORITY.—Nothing in this Act shall limit the exercise by the President of the authority and responsibility that the President otherwise possesses under the Constitution and other laws of the United States with respect to regulatory policies, procedures, and programs of departments, agencies, and offices.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"SUBCHAPTER I—ANALYSIS OF REGULATORY FLEXIBILITY

"Sec.
"601. Definitions.
"602. Regulatory agenda.
"603. Initial regulatory flexibility analysis.
"604. Final regulatory flexibility analysis.
"605. Avoidance of duplicative or unnecessary analyses.
"606. Effect on other law.
"607. Preparation of analysis.
"608. Procedure for waiver or delay of completion.
"609. Procedures for gathering comments.
"610. Periodic review of rules.
"611. Judicial review.
"612. Reports and intervention rights.

"SUBCHAPTER II—RISK ASSESSMENTS

"621. Definitions.
"622. Applicability.
"623. Risk assessments.
"624. Principles for risk assessments.
"625. Deadlines for rule making.
"626. Judicial review.".

(2) Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

"SUBCHAPTER I—ANALYSIS OF REGULATORY FLEXIBILITY".

SEC. 3. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act shall take effect 180 days after the date of enactment of this Act, but shall not apply to any agency rule for which a notice of proposed rulemaking is published on or before August 1, 1997.

By Mr. BREAUX:

S. 1729. A bill to amend title 28, United States Code, to create two divisions in the Eastern Judicial District of Louisiana; to the Committee on the Judiciary.

EASTERN JUDICIAL DISTRICT OF LOUISIANA LEGISLATION

Mr. BREAUX. Mr. President, I rise today to introduce legislation to amend Title 28 of the U.S. Code to create two divisions in the Eastern Judicial District of Louisiana: a New Orleans Division, which would be comprised of Jefferson, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint John the Baptist, Saint Tammany, Tangipahoa, and Washington Parishes; and a Houma Division, which would be comprised of Terrebonnne, Lafourche, Saint James, and Assumption Parishes.

It has long been recognized that there is a distinct need for a permanent United States District Court Judge in Houma, Louisiana. The Houma-

Thibodaux metropolitan area is the fourth largest in Louisiana, and the area is growing by leaps and bounds, due in no small part to a revitalized oil and gas industry. With this increase in population and commercial activity, the number of court cases filed in the area will likewise grow.

This inevitable increase in litigation will mean that an increasing number of people from the Houma-Thibodaux area will be forced to travel to New Orleans to appear in federal district court. This is a difficult, congested, and time-consuming trip. Also, many of the rural areas in the Eastern Judicial District have easier access to Houma than they do to New Orleans. Because of these factors, it makes sense to provide residents of the Houma-Thibodaux area and the surrounding, rural areas access to a federal district court closer to home.

A brand new federal courthouse already exists for this very purpose. The George M. Arceneaux Federal Courthouse in Houma, Louisiana, was dedicated for use by the United States District Court for the Eastern District of Louisiana. Unfortunately, this new courthouse is not being used as originally intended. Judges have difficulty making the trip from New Orleans to Houma. As a result, Houma area residents must travel to New Orleans and the new courthouse remains severely under-used.

It is for these reasons, Mr. President, that I offer this legislation today. I also want to note that the Assumption, Terrebonne, Lafourche, Saint James, and 29th Judicial District Court Bar Associations have all passed resolutions expressing their support for this legislation. Furthermore, the bill contains language to ensure that neither pending cases nor summoned, impaneled, or actually serving juries will be affected by the change. I urge my colleagues to join me in supporting the passage of 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. 1729

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREATION OF TWO DIVISIONS.

Section 98(a) of title 28, United States Code, is amended to read as follows:

"(a) The Eastern District comprises two divisions.

"(1) The New Orleans Division comprises the parishes of Jefferson, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint John the Baptist, Saint Tammany, Tangipahoa, and Washington.

"Court for the New Orleans Division shall be held at New Orleans.

"(2) The Houma Division comprises the parishes of Assumption, Lafourche, Saint James, and Terrebonne.

"Court for the Houma Division shall be held at Houma.".

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

(b) PENDING CASES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending on such date in the United States District Court for the Eastern District of Louisiana or in the United States District Court for the Western District of Louisiana.

(c) JURIES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on the effective date of this Act.

By Mr. WYDEN:

S. 1730. A bill to require Congressional review of Federal programs at least every 5 years, and for other purposes; to the Committee on Governmental Affairs.

THE FEDERAL PROGRAM SUNSET REVIEW ACT OF 1998

Mr. WYDEN. Mr. President, someone once said that the only thing which truly lives forever is a Government program in Washington, DC. I am introducing legislation today to rein in the growth of those big Government programs and to require the Congress to stop rubberstamping programs in this body. The sunset legislation that I put forward today will require the key programs of Government to face regular scrutiny and stand or fall on their merits.

This legislation would give Congress a new and powerful tool to rein in the bureaucracy and create a Federal Government that would be smaller, less costly, and more accountable to the American people.

The legislation that I introduce today would establish a special bipartisan, bicameral congressional committee which would be charged with reviewing the key programs of Government every 5 years. Any U.S. citizen of voting age could petition this committee for the termination of these programs. If the committee recommended termination and Congress failed to reauthorize that program within 1 year of that recommendation, it would then become impossible to provide any appropriation for that program without a three-fifths vote in both Houses. In other words, a sunset law would provide a mechanism for shutting the door on unneeded, mismanaged, or failed efforts in Government.

This legislation would end the inertia which sometimes carries Federal programs forward in perpetuity. It would be a meaningful, effective check on the continual growth of Government.

Mr. President, I think that each of us sees, as we look at the Federal budget and carry out our duties, some programs that we believe have served their purpose and can be terminated, some programs that were mistakes in the first place, some that were well-intentioned and just have not worked out.

I look, for example, at programs like the 1872 mining statute which costs the Government about $1 billion per year; the tobacco subsidy programs where we continue to pay out vast sums year after year and then have to encourage, through public education campaigns, individuals not to smoke. I see fighter jet programs that cost billions; the $4.7 billion National Ignition Facility. The list goes on and on.

So it is time, Mr. President, to look at new tools to put the brakes on some of this spending. The legislation that I am introducing today will do that by putting an end to programs and providing an end date for those programs that would otherwise sit on the shelf forever. Twenty-four States, including my own, already have statutes like the Federal sunset law that I propose to the Senate today.

What has been the experience of those sunset laws? One analysis found that during a 5-year period, as many as 23 percent of the agencies reviewed under States' sunset laws were eliminated, including some legislative dinosaurs that would oversee lightning rod salesmen, septic tank cleaners, tourist guides, massage therapists, rainmakers, horse hunters, textbook salesmen, and even tattoo artists.

Sunset laws have given the State governments the chance to streamline and rationalize the myriad of agencies that spring up as governmental bodies respond to the concerns of the moment. I am of the view that the Federal Government needs a similar process to help clean up what former President Reagan used to call "the puzzle palaces on the Potomac."

At its heart, the legislation that I introduce today calls for using a sunset concept on Federal programs as a tool for good and careful government. There is a tendency in Washington, DC, to focus exhaustive attention on programs before they are created and then virtually ignore them from that point out. I sat on the Oversight and Investigations Subcommittee of the Commerce Committee as a Member of the other body, and I saw firsthand that the Congress can spend an extraordinary amount of time and effort trying to pass laws and very little to actually see if what is on the books works.

Requiring that each and every program is periodically reauthorized would focus the Congress' attention and the attention of the media on the operations and effectiveness of individual Government programs in a way that is simply not done today. It will, in my view, increase the pressure on agency managers to perform and do so in a cost-effective fashion. I suspect that some Federal agencies will function a bit differently when they know

that there is a certainty of accountability and potential termination of their program that hangs over them.

Mr. President, when any Member of this body has a town meeting at home, they will hear from citizens who are tired of Government programs that don't work and still grow larger each year. Now is the time for the Senate to establish a system to assure that only those parts of Government are kept that work and that there is a renewed effort to terminate programs which simply take up space and waste the taxpayers' money. Our constituents deserve better.

The States have found that sunset laws can provide them the opportunity to reduce waste while still keeping programs that work, and I believe that it is high time for the U.S. Senate to pass favorably on the sunset concept that is working at the State level across this country.

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. 1730

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 Program Sunset Review Act of 1998".

SEC. 2. PURPOSE.

The purpose of this Act is to require Congressional reexamination and review of selected Federal programs once every 5 years.

SEC. 3. DEFINITIONS, BUDGET CATEGORIES, REVIEW DATE.

(a) DEFINITIONS.—In this Act:

(1) AGENCY.—The term "agency" means an executive agency as defined in section 105 of title 5, United States Code, except that such term includes the United States Postal Service and the Postal Rate Commission but does not include the General Accounting Office.

(2) BUDGET AUTHORITY.—The term "budget authority" has the same meaning given that term in section 3(2) of the Congressional Budget Act of 1974.

(3) COMPTROLLER GENERAL.—The term "Comptroller General" means the Comptroller General of the United States.

(4) PERMANENT BUDGET AUTHORITY.—The term "permanent budget authority" means budget authority provided for an indefinite period of time or an unspecified number of fiscal years which does not require recurring action by the Congress, but does not include budget authority provided for a specified fiscal year which is available for obligation or expenditure in one or more succeeding fiscal years.

(b) BUDGET CATEGORIES.—For purposes of this Act, each program (including any program exempted by a provision of law from inclusion in the Budget of the United States) shall be assigned to the functional and subfunctional categories to which it is assigned in the Budget of the United States Government, fiscal year 1998. Each committee of the Senate or the House of Representatives which reports any bill or resolution which authorizes the enactment of new budget authority for a program not included in the fiscal year 1998 budget shall include, in the committee report accompanying such bill or resolution (and, where appropriate, the conferees shall include in their joint statement on such bill or resolution), a statement as to the functional and subfunctional category to which such program is to be assigned.

(c) REVIEW DATE.—For purposes of titles I, II, and III of this Act, the review date applicable to a program is the date specified for such program under section 201(b).

TITLE I—FEDERAL PROGRAM REVIEW BY CONGRESS

SEC. 101. JOINT COMMITTEE ON SUNSET REVIEW OF FEDERAL PROGRAMS.

(a) ESTABLISHMENT.—

(1) COMMITTEE MEMBERSHIP.—There is established not later than 60 days after the date of enactment a Joint Committee on Sunset Review of Federal Programs (in this title referred to as the "Joint Committee") to be composed of 8 Members of the Senate to be appointed by the President and Minority Leader of the Senate, and 8 Members of the House of Representatives to be appointed by the Speaker and Minority Leader. In each instance, not more than 4 Members shall be members of the same political party. No Member shall serve on the Joint Committee for more than 6 years (excluding any period of service of less than 1 year) but a Member may be reappointed after the expiration of 2 years.

(2) CHAIRMAN.—The Chairman shall be elected by the members of the Joint Committee and the chairmanship shall rotate between the Senate and the House of Representatives with the first Chairman being selected from Members of the Senate.

(3) VACANCIES.—Vacancies in the membership of the Joint Committee shall not affect the power of the remaining Members to execute the functions of the Joint Committee and shall be filled in the same manner as in the case of the original appointment.

(4) HEARINGS, ETC.—The Joint Committee is authorized to hold such hearings as it deems advisable. Such hearings must be held in public. The Joint Committee may appoint and fix the compensation of not more than 3 professional staff. The Joint Committee may use the services, information, and facilities of the departments and agencies of the Federal Government that have jurisdiction of the programs being reviewed by the Joint Committee.

(b) FUNCTION.—

(1) IN GENERAL.—In each year, the Joint Committee shall review the programs that have review dates, set under section 201(b), which will occur on September 30 of the following year to determine if such programs should be reauthorized or terminated.

(2) CRITERIA.—The Joint Committee shall consider the following criteria in determining if a program should be reauthorized or terminated:

(A) The efficiency with which the program operates.

(B) An identification of the objectives intended for the program and the problem or need that the program was intended to address, the extent to which the objectives have been achieved, and any activities of the program in addition to those granted by statute and the authority for these activities.

(C) The extent to which the program is needed and is used.

(D) The extent to which the jurisdiction of the program and the other programs administered with the program overlap or duplicate others and the extent to which the program can be consolidated with the other programs.

(E) Whether the agency administering the program has recommended to Congress statutory changes calculated to be of benefit to the public at large rather than only those served directly by the program.

(F) The promptness and effectiveness with which the program disposes of complaints concerning persons affected by the program.

(G) The extent to which the program has encouraged participation by the public in making its rules and decisions and the extent to which the public participation has resulted in rules compatible with the objectives of the program.

(H) The extent to which the program has complied with applicable requirements regarding equality of employment opportunity.

(I) The extent to which changes are necessary in the enabling statutes of the program so that the program can adequately comply with the criteria listed in this paragraph.

(J) The effect on State and local governments if the program is terminated.

(3) RECOMMENDATION.—Upon completion of its review of a program, the Joint Committee shall submit to the appropriate legislative committees of the House of Representatives and the Senate not later than December 31 of the year preceding the year of a program's review date a recommendation for the extension, including extension with change, or termination of the program. Each such recommendation shall be voted on in public by the Joint Committee and shall be published.

(c) LEGISLATIVE COMMITTEES.—

(1) IN GENERAL.—Each year, each legislative committee shall review the programs within the jurisdiction of the committee subject to review under section 201(b) for that year.

(2) RECOMMENDATIONS OF THE JOINT COMMITTEE.—The legislative committee shall—

(A) consider the recommendations of the Joint Committee with respect to programs reviewed; and

(B) with respect to any program recommended for termination by the Joint Committee, report legislation terminating the program or reauthorizing the program.

(d) SPECIAL REQUESTS.—

(1) MEMBERS OF CONGRESS.—A Member of the Senate or House of Representatives may submit to the Joint Committee a written recommendation that a program be terminated. Any such recommendation shall address each of the criteria set forth in subsection (b)(2) and shall contain the views of each department or agency of the executive branch which is responsible for the administration of a program subject to reexamination pursuant to this section. The Joint Committee may consider in advance of the review schedule set forth in subsection (b)(1) each such recommendation.

(2) CITIZENS.—The Joint Committee may consider in advance of the review schedule set forth in subsection (b)(1) a written petition for termination of a program submitted by a United States citizen who is of voting age. Any such petition shall address each of the criteria set forth in subsection (b)(2).

SEC. 102. POINT OF ORDER.

(a) FAILURE TO TERMINATE OR REAUTHORIZE.—It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which provides new budget authority for a program for any fiscal year beginning after any review date applicable to such program under section 201(b) if the program was recommended for termination by

the Joint Committee and was not reauthorized, unless the provision of such new budget authority is specifically authorized by a law which constitutes a required authorization for such program.

(b) SUPERMAJORITY REQUIREMENT.—This section may be waived or suspended only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required in the Senate and the House of Representatives to sustain an appeal of a ruling of the Chair on a point of order sustained under this section.

SEC. 103. EXECUTIVE BRANCH.

Each department or agency of the executive branch which is responsible for the administration of a program subject to reexamination pursuant to section 201 shall, by the first Monday of June the year before the review year for that program, submit to the Joint Committee a report of its findings, recommendations, and justifications with respect to each of the matters set forth in section 101(b)(3).

TITLE II—SCHEDULE OF SUNSET REVIEW OF FEDERAL PROGRAMS

SEC. 201. REVIEW.

(a) IN GENERAL.—Each Federal program (except those listed in section 202) shall be reviewed at least once during each sunset review cycle during Congress in which the review date applicable to such program (pursuant to subsection (b)) occurs.

(b) REVIEW DATE.—The first review date applicable to a Federal program is the date specified in the following table, and each subsequent review date applicable to a program is 5 years.

Programs included within subfunctional category	First sunset review date
272 Energy Conservation.	September 30, 2000.
301 Water Resources.	
352 Agricultural Research and Services.	
371 Mortgage Credit.	
373 Deposit Insurance.	
376 Other Advancement of Commerce.	
501 Elementary, Secondary, and Vocational Education.	
601 General Retirement and Disability Insurance (excluding social security).	
602 Federal Employee Retirement and Disability.	
703 Hospital and Medical Care for Veterans.	
808 Other General Government.	
050 National Defense.	September 30, 2001.
051 Department of Defense—Military.	
053 Atomic Energy Defense Activities.	
154 Foreign Information and Exchange Activities.	
251 General Science and Basic Research.	
306 Other Natural Resources.	
351 Farm Income Stabilization.	
401 Ground Transportation.	
502 Higher Education.	
701 Income Security for Veterans.	
752 Federal Litigative and Judicial Activities.	
802 Executive Direction and Management.	
803 Central Fiscal Operations.	
054 Defense Related Activities.	September 30, 2002.
152 International Security Assistance.	
155 International Financial Programs.	
252 Space Flight, Research, and Supporting Activities.	
274 Emergency Energy Preparedness.	
302 Conservation and Land Management.	
304 Pollution Control and Abatement.	
407 Other Transportation.	
504 Training and Employment.	
506 Social Services.	
554 Consumer and Occupational Health and Safety.	
704 Veterans Housing.	
751 Federal Law Enforcement Activities.	
801 Legislative Functions.	
806 General Purpose Fiscal Assistance.	
153 Conduct of Foreign Affairs.	September 30, 2003.
271 Energy Supply.	
303 Recreational Resources.	
402 Air Transportation.	
505 Other Labor Services.	
551 Health Care Services.	
604 Housing Assistance.	
702 Veterans Education, Training, and Rehabilitation.	
753 Federal Correctional Activities.	
805 Central Personnel Management.	
908 Other Interest.	
151 International Development and Humanitarian Assistance.	September 30, 2004.
276 Energy Information, Policy and Regulation.	
372 Postal Service.	
403 Water Transportation.	
451 Community Development.	
452 Area and Regional Development.	
453 Disaster Relief and Insurance.	
503 Research and General Education Aids.	
552 Health Research and Training.	
603 Unemployment Compensation.	
705 Other Veterans Benefits and Services.	
754 Criminal Justice Assistance.	
804 General Property and Record Management.	
901 Interest on the Public Debt.	

SEC. 202. PROGRAMS NOT SUBJECT TO REVIEW.

Section 201 shall not apply to the following:

(1) Programs included within functional category 900 (Interest).

(2) Any Federal program or activity to enforce civil rights guaranteed by the Constitution of the United States or to enforce antidiscrimination laws of the United States, including the investigation of violations of civil rights, civil or criminal litigation the implementation or enforcement of judgments resulting from such litigation, and administrative activities in support of the foregoing.

(3) Programs that are related to the administration of the Federal judiciary and which are classified in the fiscal year 1997 budget under subfunctional category 752 (Federal litigative and judicial activities).

(4) Payments of refunds of internal revenue collections as provided in title I of the Supplemental Treasury and Post Office Departments Appropriation Act of 1949 (62 Stat. 561).

(5) Programs included in the fiscal year 1997 budget in subfunctional categories 701 (Income security for veterans), 704 (Veterans housing), and programs for providing health care which are included in such budget in subfunctional category 703 (Hospital and medical care for veterans).

(6) Social Security and Federal retirement programs including the following:

(A) Programs funded through trust funds which are included with subfunctional categories 551 (Health care services), 601 (General retirement and disability insurance (excluding social security)), 602 (Federal employee retirement and disability), or 602 (Department of Defense military retirement and survivor annuities).

(B) Retirement pay and medical benefits for retired commissioned officers of the Coast Guard, the Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Commissioned Corps and their survivors and dependents, classified in the fiscal year 1997 budget in subfunctional category 551 (Health care services) or in subfunctional category 306 (Other natural resources).

(C) Retired pay of military personnel of the Coast Guard and Coast Guard Reserve, members of the former Lighthouse Service, and for annuities payable to beneficiaries of retired military personnel under chapter 73 of title 10, United States Code, classified in the fiscal year 1997 budget in subfunctional category 403 (Water transportation).

(D) Payments to the Central Intelligence Agency Retirement and Disability Fund, classified in fiscal year 1997 budget in subfunctional category 054 (Defense-related activities).

(E) Payments to the Civil Service Retirement and Disability Fund for financing unfunded liabilities, classified in fiscal year 1997 budget in subfunctional category 805 (Central personnel management).

(F) Payments to the Foreign Service Retirement and Disability Fund, classified in fiscal year 1997 budget in subfunctional category 153 (Conduct of foreign affairs) or in subfunctional category 602 (Federal employee retirement and disability).

(G) Payments to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, classified in fiscal year 1997 budget in various subfunctional categories.

(H) Administration of the retirement and disability programs set forth in this section.

(7) Programs included within subfunctional category 373 (Deposit insurance).

TITLE III—PROGRAM INVENTORY

SEC. 301. PROGRAM INVENTORY.

(a) PREPARATION.—The Comptroller General and the Director of the Congressional Budget Office, in cooperation with the Director of the Congressional Research Service, shall prepare an inventory of Federal programs (hereafter in this title referred to as the "program inventory").

(b) PURPOSE.—The purpose of the program inventory is to advise and assist Congress in carrying out the requirements of titles I and II. Such inventory shall not in any way bind the committees of the Senate or the House of Representatives with respect to their responsibilities under such titles and shall not infringe on the legislative and oversight responsibilities of such committees. The Comptroller General shall compile and maintain the inventory and the Director of the Congressional Budget Office shall provide budgetary information for inclusion in the inventory.

(c) SUBMISSION.—Not later than 120 days of the date of enactment of this Act, the Comptroller General, after consultation with the Director of the Congressional Budget Office, the Director of the Congressional Research Service, and each committee of the Senate and the House of Representatives, shall submit the program inventory to the Senate and the House of Representatives.

(d) GROUPING OF PROGRAMS.—In the report submitted under subsection (c), the Comptroller General, after consultation and in cooperation with and consideration of the

views and recommendations of each committee of the Senate and the House of Representatives and of the Director of the Congressional Budget Office, shall group programs into program areas appropriate for the exercise of the review and reexamination requirements of this Act. Such groupings shall identify program areas in a manner that classifies each program in only 1 functional and only 1 subfunctional category and that is consistent with the structure of national needs, agency missions, and basic programs developed pursuant to section 1105 of title 31, United States Code.

(e) INVENTORY CONTENT.—The program inventory shall set forth for each program each of the following matters:

(1) The specific provision or provisions of law authorizing the program.

(2) The committees of the Senate and the House of Representatives which have legislative or oversight jurisdiction over the program.

(3) A brief statement of the purpose or purposes to be achieved by the program.

(4) The committees that have jurisdiction over legislation providing new budget authority for the program, including the appropriate subcommittees of the Committees on Appropriations of the Senate and the House of Representatives.

(5) The agency and, if applicable, the subdivision thereof responsible for administering the program.

(6) The grants-in-aid, if any, provided by such program to State and local governments.

(7) The next review date for the program.

(8) A unique identification number which links the program and functional category structure.

(9) The year in which the program was originally established and, where applicable, the year in which the program expires.

(10) Where applicable, the year in which new budget authority for the program was last authorized and the year in which current authorizations of new budget authority expire.

(f) LISTING OF EXEMPT PROGRAMS.—The inventory shall contain a separate tabular listing of programs that are not required to be reviewed pursuant to section 102.

(g) BUDGET AUTHORITY.—The report also shall set forth for each program whether the new budget authority provided for such programs is—

(1) authorized for a definite period of time;

(2) authorized in a specific dollar amount but without limit of time;

(3) authorized without limit of time or dollar amounts;

(4) not specifically authorized; or

(5) permanently provided,

as determined by the Director of the Congressional Budget Office.

(h) CBO INFORMATION.—For each program or group of programs, the program inventory also shall include information prepared by the Director of the Congressional Budget Office indicating each of the following matters:

(1) The amounts of new budget authority authorized and provided for the program for each of the preceding 4 fiscal years and, where applicable, the 4 succeeding fiscal years.

(2) The functional and subfunctional category in which the program is presently classified and was classified under the fiscal year 1997 budget.

(3) The identification code and title of the appropriation account in which budget authority is provided for the program.

SEC. 302. MUTUAL EXCHANGE OF INFORMATION.

The General Accounting Office, the Congressional Research Service, and the Congressional Budget Office shall permit the mutual exchange of available information in their possession that would aid in the compilation of the program inventory.

SEC. 303. ASSISTANCE BY EXECUTIVE BRANCH.

The Office of Management and Budget, and the Executive agencies and the subdivisions thereof shall, to the extent necessary and possible, provide the General Accounting Office with assistance requested by the Comptroller General in the compilation of the program inventory.

SEC. 304. REVISION OF PROGRAM INVENTORY.

(a) REVIEW AND REVISION.—The Comptroller General, after the close of each session of Congress, shall review and revise the program inventory and report the revisions to the Senate and the House of Representatives.

(b) REPORT.—After the close of each session of Congress, the Director of the Congressional Budget Office shall prepare a report, for inclusion in the revised inventory, with respect to each program included in the program inventory and each program established by law during such session, that includes the amount of the new budget authority authorized and the amount of new budget authority provided for the current fiscal year and each of the 5 succeeding fiscal years. If new budget authority is not authorized or provided or is authorized or provided for an indefinite amount for any of such 5 succeeding fiscal years with respect to any program, the Director shall make projections of the amounts of such new budget authority necessary to be authorized or provided for any such fiscal year to maintain a current level of services.

(c) NEW BUDGET AUTHORITY NOT AUTHORIZED.—Not later than 1 year after the first or any subsequent review date, the Director of the Congressional Budget Office, in consultation with the Comptroller General and the Director of the Congressional Research Service, shall compile a list of the provisions of law related to all programs subject to such review date for which new budget authority was not authorized. The Director of the Congressional Budget Office shall include such a list in the report required by subsection (a). The committees with legislative jurisdiction over the affected programs shall study the affected provisions and make any recommendations they deem to be appropriate with regard to such provisions to the Senate and the House of Representatives.

TITLE IV—MISCELLANEOUS

SEC. 401. APPROPRIATION REQUESTS.

Section 1108(e) of title 31, United States Code, is amended by inserting before the period "or at the request of a committee of either House of Congress or of the Joint Committee on Sunset Review of Federal Programs presented after the day on which the President transmits the budget to Congress under section 1105 of this title for the fiscal year".

SEC. 402. DISCLOSURE.

Nothing in this Act shall require the public disclosure of matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order, or which are otherwise specifically protected by law.

SEC. 403. RULEMAKING.

The provisions of this section, section 304, and titles I and II are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 404. EXECUTIVE BRANCH ASSISTANCE.

To assist in the review or reexamination of a program, the head of an agency that administers such program and the head of any other agency, when requested, shall provide to each committee of the Senate and the House of Representatives that has legislative jurisdiction over such program, or to the Joint Committee on Sunset Review of Federal Programs, such studies, information, analyses, reports, and assistance as the committee may request.

SEC. 405. CONGRESSIONAL REVIEW.

The Committee on Rules and Administration of the Senate and the Committee on Rules of the House of Representatives shall review the operation of the procedures established by this Act, and shall submit a report not later than December 31, 2002, and each 5 years thereafter, setting forth their findings and recommendations. Such reviews and reports may be conducted jointly.

ADDITIONAL COSPONSORS

S. 61

At the request of Mr. LOTT, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of 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.

S. 1153

At the request of Mr. BAUCUS, the name of the Senator from Illinois (Ms. MOSELEY-BRAUN) was added as a cosponsor of S. 1153, a bill to promote food safety through continuation of the Food Animal Residue Avoidance Database program operated by the Secretary of Agriculture.

S. 1465

At the request of Mr. DURBIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1465, a bill to consolidate in a single independent agency in the executive branch the responsibilities regarding food safety, labeling, and inspection currently divided among several Federal agencies.

S. 1563

At the request of Mr. SMITH, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 1563, a bill to amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted

into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation.

S. 1618

At the request of Mr. MCCAIN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1618, a bill to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes.

S. 1701

At the request of Ms. COLLINS, the names of the Senator from Louisiana (Ms. LANDRIEU), the Senator from California (Mrs. BOXER), and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 1701, a bill to amend the Higher Education Act of 1965 in order to increase the dependent care allowance used to calculate Pell Grant Awards.

SENATE JOINT RESOLUTION 41

At the request of Mr. SARBANES, the name of the Senator from Michigan (Mr. ABRAHAM) was added as a cosponsor of Senate Joint Resolution 41, a joint resolution approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital.

SENATE CONCURRENT RESOLUTION 77

At the request of Mr. SESSIONS, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of Senate Concurrent Resolution 77, a concurrent resolution expressing the sense of the Congress that the Federal government should acknowledge the importance of at-home parents and should not discriminate against families who forego a second income in order for a mother or father to be at home with their children.

SENATE CONCURRENT RESOLUTION 78

At the request of Mr. DORGAN, the name of the Senator from Nebraska (Mr. KERREY) was added as a cosponsor of Senate Concurrent Resolution 78, A concurrent resolution relating to the indictment and prosecution of Saddam Hussein for war crimes and other crimes against humanity.

SENATE RESOLUTION 155

At the request of Mr. LOTT, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of Senate Resolution 155, a resolution designating April 6 of each year as "National Tartan Day" to recognize the outstanding achievements and contributions made by Scottish Americans to the United States.

SENATE RESOLUTION 179

At the request of Mr. DORGAN, the names of the Senator from Nebraska (Mr. KERREY), and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of Senate Resolution 179, a resolution relating to the indictment and prosecution of Saddam Hussein for war crimes and other crimes against humanity.

SENATE RESOLUTION 184

At the request of Mr. D'AMATO, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of Senate Resolution 184, A resolution expressing the sense of the Senate that the United States should support Italy's inclusion as a permanent member of the United Nations Security Council if there is to be an expansion of this important international body.

AMENDMENTS SUBMITTED

THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1998

ABRAHAM AMENDMENT NO. 1715

(Ordered to lie on the table.)

Mr. ABRAHAM submitted an amendment intended to be proposed by him to amendment No. 1708 proposed by Mr. MCCONNELL to amendment No. 1676 proposed by Mr. CHAFEE to the bill (S. 1173) to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes; as follows:

On page 2, line 10, strike "and".

On page 2, line 15, strike the period and insert "; and".

On page 2, between lines 15 and 16, insert the following:

(D) is a targeted business.

On page 4, line 21, strike "an emerging business enterprise" and insert "a business".

On page 5, lines 6 and 7, strike "targeted businesses and".

On page 5, line 21, strike "targeted businesses and for".

On page 6, line 23, strike "a targeted business or".

JEFFORDS (AND OTHERS) AMENDMENT NO. 1716

Mr. JEFFORDS (for himself, Mr. SPECTER, Mr. MOYNIHAN, Mr. LEAHY, Ms. SNOWE, Mr. GREGG, Mr. SARBANES, Mr. SANTORUM, Mr. GRASSLEY, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

At the end of subtitle A of title I, add the following:

SEC. 11__. NATIONAL HISTORIC COVERED BRIDGE PRESERVATION.

(a) DEFINITIONS.—In this section:

(1) COVERED BRIDGE.—The term "covered bridge"—

(A) means a roofed bridge that is made primarily of wood; and

(B) includes the roof, flooring, trusses, joints, walls, piers, footings, walkways, support structures, arch systems, and underlying land.

(2) HISTORIC COVERED BRIDGE.—The term "historic covered bridge" means a covered bridge that—

(A) is at least 50 years old; or

(B) is listed on the National Register of Historic Places.

(b) HISTORIC COVERED BRIDGE PRESERVATION.—The Secretary shall—

(1) develop and maintain a list of historic covered bridges;

(2) collect and disseminate information concerning historic covered bridges;

(3) foster educational programs relating to the history, construction techniques, and contribution to society of historic covered bridges;

(4) sponsor or conduct research on the history of covered bridges; and

(5) sponsor or conduct research, and study techniques, on protecting covered bridges from rot, fire, natural disasters, or weight-related damage.

(c) DIRECT FEDERAL ASSISTANCE.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

(2) TYPES OF PROJECT.—A grant under paragraph (1) may be made for a project—

(A) to rehabilitate or repair a historic covered bridge;

(B) to preserve a historic covered bridge, including through—

(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

(ii) installation of a system to prevent vandalism and arson; or

(iii) relocation of a bridge to a preservation site; and

(C) to conduct a field test on a historic covered bridge or evaluate a component of a historic covered bridge, including through destructive testing of the component.

(3) AUTHENTICITY.—A grant under paragraph (1) may be made for a project only if—

(A) to the maximum extent practicable, the project—

(i) is carried out in the most historically appropriate manner, using practices in use at the time the bridge was originally constructed; and

(ii) preserves the existing structure of the historic covered bridge; and

(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

(d) FUNDING.—There is authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1999 through 2005, to remain available until expended.

JEFFORDS AMENDMENT NO. 1717

Mr. JEFFORDS submitted an amendment intended to be proposed by him to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

At the appropriate place in subtitle E of title III, insert the following:

SEC. 35__. RAIL AND PORT ACCESS MODERNIZATION.

(a) DEFINITIONS.—In this section:

(1) FUND.—The term "Fund" means the Older Industrial Rail Modernization and Port Access Fund established by subsection (b)(7).

(2) OLDER INDUSTRIAL REGION.—The term "older industrial region" means the northeastern area of the United States.

(3) OLDER INDUSTRIAL STATE.—The term "older industrial State" means—

(A) Vermont;

(B) Maine; and

(C) New Hampshire.

(4) RAIL PROJECT.—The term "rail project" means a project for the acquisition, rehabilitation, or improvement of railroad facilities or equipment, as described in section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831).

(b) DIRECT FEDERAL ASSISTANCE.—

(1) IN GENERAL.—

(A) GRANTS.—Subject to the availability of appropriations, the Secretary shall make a grant under this subsection to each older industrial State that submits an application to the Secretary that demonstrates, to the satisfaction of the Secretary, a need for assistance under this subsection in carrying out 1 or more transportation projects described in paragraph (2), (3), (4), or (5) that are necessary to improve rail transport in that State.

(B) GRANT AGREEMENT.—The Secretary shall enter into a grant agreement with each older industrial State that receives a grant under this subsection. At a minimum, the agreement shall specify that the grant recipient will meet the applicable requirements of this subsection, including the cost-sharing requirement under paragraph (6)(B).

(2) GRANTS FOR PORT ACCESS.—The Secretary shall make grants under this subsection for the purposes of connecting all railroads to ports and ensuring that double-stack rail cars can travel freely throughout older industrial States.

(3) GRANTS FOR BRIDGE AND TUNNEL OBSTRUCTION REPAIR AND REPLACEMENT.—The Secretary shall make grants under this subsection for the purpose of enlarging tunnels and embankments, removing, repairing, or replacing bridges or other obstructions that inhibit the free movement of freight or passenger rail cars and the use of double-stack rail cars.

(4) GRANTS FOR REPAIR OF RAILROAD BEDS.—The Secretary shall make grants under this subsection for the purposes of repairing, upgrading, and purchasing railbeds and tracks, including improving safety of all railroad tracks.

(5) GRANTS FOR DEVELOPMENT OF INTERMODAL FACILITIES.—The Secretary shall make grants under this subsection for the purposes of constructing and rehabilitating train maintenance facilities and facilities for the transfer of goods and individuals between other transportation modes, including—

(A) intermodal truck-train transfer facilities;

(B) passenger rail stations; and

(C) bulk fuel transfer facilities.

(6) FUNDING LIMITATIONS ON EXPENDITURES OF FUNDS.—

(A) FUNDING.—The grants made under this subsection shall be made with funds transferred from the Fund.

(B) COST-SHARING.—

(i) IN GENERAL.—A grant made under this subsection shall be used to pay the Federal share of the cost of a project conducted under a grant agreement.

(ii) FEDERAL SHARE.—The Federal share of the cost of a project referred to in clause (i) shall be 80 percent of the cost of the project.

(C) ALLOCATION AMONG STATES.—

(i) IN GENERAL.—For each of fiscal years 1999 through 2002, the Secretary shall, in making grants under this subsection, allocate available amounts in the Fund among older industrial States in accordance with a formula established by the Secretary in accordance with clause (ii).

(ii) ALLOCATION FORMULA.—In making grants under this subsection, for each of the fiscal years specified in clause (i), the Secretary shall allocate an equal amount of the amounts available from the Fund to each of the older industrial States that submits 1 or more grant applications that meet the requirements of this subsection.

(7) OLDER INDUSTRIAL RAIL MODERNIZATION AND PORT ACCESS FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund, to be known as the "Older Industrial Rail Modernization and Port Access Fund". The Fund shall consist of—

(i) such amounts as are appropriated to the Fund; and

(ii) any interest earned on investment of amounts in the Fund under subparagraph (B).

(B) INVESTMENT OF FUND.—

(i) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet then current withdrawals. Those investments may be made only in interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States. For that purpose, those obligations may be acquired—

(I) on original issue at the issue price; or

(II) by purchase of outstanding obligations at the market price.

(ii) SALE OF OBLIGATION.—Any obligation acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold by the Secretary of the Treasury at the market price. The special obligations may be redeemed at par plus accrued interest.

(iii) CREDITS TO FUND.—The interest on, and the proceeds from, the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(C) TRANSFERS FROM FUND.—The Secretary of the Treasury shall, on the request of the Secretary of Transportation, transfer from the Fund to the Secretary of Transportation, any amounts that the Secretary of Transportation determines to be necessary to carry out the grant program under this subsection.

(D) ADMINISTRATIVE EXPENSES.—Not more than 1 percent of the amounts in the Fund may be used by the Secretary to cover administrative expenses for carrying out the grant program under this subsection.

(8) APPLICABILITY OF TITLE 23.—Except as otherwise provided in this subsection, funds made available to an older industrial State under this subsection shall be available for obligation in the manner provided for funds apportioned under chapter 1 of title 23, United States Code.

(9) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated to the Fund to carry out this subsection $65,000,000 for each of fiscal years 1999 through 2002.

(B) AVAILABILITY OF FUNDS.—The amounts appropriated pursuant to this paragraph shall remain available for obligation until the end of the third fiscal year following the fiscal year for which the amounts are appropriated.

(c) RAILROAD LOAN AND ASSISTANCE PROGRAM.—

(1) PURPOSE.—The purpose of this subsection is to provide assistance for rail projects in older industrial States.

(2) ISSUANCE OF OBLIGATIONS.—The Secretary shall issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 832), in such amounts, and at such times, as may be necessary, during the period that the guaranteed obligation is outstanding, to—

(A) pay any amounts required pursuant to the guarantee of the principal amount of an obligation under section 511 of that Act (45 U.S.C. 831) for any eligible rail project described in paragraph (3); and

(B) meet the applicable requirements of this subsection and sections 511 and 513 of that Act (45 U.S.C. 832 and 833).

(3) ELIGIBILITY.—A rail project that is eligible for assistance under this subsection is a rail project—

(A) for a railroad that is located in an older industrial State; and

(B) that promotes the mobility of goods and individuals.

(4) LIMITATION.—Notwithstanding any other provision of law, the aggregate unpaid principal amounts of obligations that may be guaranteed by the Secretary under this subsection may not exceed $50,000,000 during any of fiscal years 1999 through 2002.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Transportation, to be used by the Secretary to make guarantees under this subsection, $5,000,000 for each of fiscal years 1999 through 2002.

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress and the Governor of each older industrial State a report concerning the rehabilitation of the rail infrastructure of older industrial States.

CHAFEE AMENDMENT NO. 1718

Mr. CHAFEE submitted an amendment intended to be proposed by him to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 5, line 8, insert "(a) IN GENERAL.—" before "For".

On page 7, between lines 20 and 21, insert the following:

(b) REDUCTION FOR AMOUNTS MADE AVAILABLE FOR FISCAL YEAR 1998 UNDER SURFACE TRANSPORTATION EXTENSION ACT OF 1997.—Notwithstanding any other provision of this Act, the Secretary shall reduce the amounts made available under this section, other provisions of this Act, and the amendments made by this Act for fiscal year 1998 by the amounts made available under the Surface Transportation Extension Act of 1997 (Public Law 105–130) in the following manner:

(1) INTERSTATE MAINTENANCE.—

(A) REDUCTION.—The amount made available to each State under the Interstate maintenance component of the Interstate and National Highway System program under section 104(b)(1)(A) of title 23, United States Code, shall be reduced by the amount made available to the State under section 2 of the Surface Transportation Extension Act of 1997 (23 U.S.C. 104 note; 111 Stat. 2552) (and the amendments made by that Act) (collectively referred to in this subsection as "STEA") for the Interstate maintenance program.

(B) INSUFFICIENT INTERSTATE MAINTENANCE FUNDS.—If—

(i) the amount made available to the State under section 2 of STEA for the Interstate maintenance program; exceeds

(ii) the amount made available to the State under the Interstate maintenance component under section 104(b)(1)(A) of title 23, United States Code;

then, after the reduction required by subparagraph (A) is made, the amount made

available to the State under the Interstate bridge and other National Highway System components of the Interstate and National Highway System program under subparagraphs (B) and (C) of section 104(b)(1) of that title shall be reduced by the amount of the excess.

(2) BRIDGES.—The amount made available to each State under the Interstate bridge and other National Highway System components of the Interstate and National Highway System program under subparagraphs (B) and (C) of section 104(b)(1) of title 23, United States Code, shall be reduced by the amount made available to the State under section 2 of STEA for the bridge program.

(3) NATIONAL HIGHWAY SYSTEM.—The amount made available to each State under the Interstate bridge and other National Highway System components of the Interstate and National Highway System program under subparagraphs (B) and (C) of section 104(b)(1) of title 23, United States Code, shall be reduced by the amount made available to the State under section 2 of STEA for the National Highway System.

(4) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—The amount made available to each State for the congestion mitigation and air quality improvement program under section 104(b)(2) of title 23, United States Code, shall be reduced by the amount made available to the State under section 2 of STEA for the congestion mitigation and air quality improvement program.

(5) METROPOLITAN PLANNING.—The amount made available to each State for metropolitan planning under section 104(f) of title 23, United States Code, shall be reduced by the amount made available to the State under section 5 of STEA for metropolitan planning.

(6) SURFACE TRANSPORTATION PROGRAM.—

(A) SAFETY PROGRAMS.—

(i) REDUCTION.—The amount set aside for safety programs from the amount made available to each State for the surface transportation program under section 104(b)(3) of title 23, United States Code, shall be reduced by the amount set aside for safety programs from the amount made available to the State under section 2 of STEA for the surface transportation program, minimum allocation, Interstate reimbursement, the donor State bonus, hold harmless, and 90 percent of payments adjustments.

(ii) INSUFFICIENT SAFETY PROGRAM FUNDS.—If—

(I) the amount set aside for safety programs from the amount made available to the State under section 2 of STEA for the surface transportation program, minimum allocation, Interstate reimbursement, the donor State bonus, hold harmless, and 90 percent of payments adjustments; exceeds

(II) the amount set aside for safety programs from the amount made available to the State for the surface transportation program under section 104(b)(3) of title 23, United States Code;

then, after the reduction required by clause (i) is made, the amount made available to the State for the surface transportation program under section 104(b)(3), other than the amounts set aside or suballocated under section 133(d) or 505 of that title, shall be reduced by the amount of the excess.

(B) TRANSPORTATION ENHANCEMENT ACTIVITIES.—

(i) REDUCTION.—The amount set aside for transportation enhancement activities from the amount made available to each State for the surface transportation program under section 104(b)(3) of title 23, United States Code, shall be reduced by the amount set aside for transportation enhancement activities from the amount made available to the State under section 2 of STEA for the surface transportation program, minimum allocation, Interstate reimbursement, the donor State bonus, hold harmless, and 90 percent of payments adjustments.

(ii) INSUFFICIENT TRANSPORTATION ENHANCEMENT FUNDS.—If—

(I) the amount set aside for transportation enhancement activities from the amount made available to the State under section 2 of STEA for the surface transportation program, minimum allocation, Interstate reimbursement, the donor State bonus, hold harmless, and 90 percent of payments adjustments; exceeds

(II) the amount set aside for transportation enhancement activities from the amount made available to the State for the surface transportation program under section 104(b)(3) of title 23, United States Code; then, after the reduction required by clause (i) is made, the amount made available to the State for the surface transportation program under section 104(b)(3), other than the amounts set aside or suballocated under section 133(d) or 505 of that title, shall be reduced by the amount of the excess.

(C) SUBALLOCATION BY POPULATION.—The total of—

(i) the amount suballocated by population from the amount made available to each State for the surface transportation program under section 104(b)(3) of title 23, United States Code;

(ii) the amount suballocated by population from the amount made available to the State for ISTEA transition under section 1102(c); and

(iii) the amount suballocated by population from the amount made available to the State for minimum guarantee under section 105 of that title;

shall be reduced by the amount suballocated by population from the amount made available to the State under section 2 of STEA for the surface transportation program, minimum allocation, Interstate reimbursement, the donor State bonus, hold harmless, and 90 percent of payments adjustments.

(D) SURFACE TRANSPORTATION PROGRAM FLEXIBLE FUNDS; INTERSTATE REIMBURSEMENT; EQUITY ADJUSTMENTS.—

(i) REDUCTION.—The total of—

(I) the amount made available to each State for the surface transportation program under section 104(b)(3) of title 23, United States Code, other than the amounts set aside or suballocated under section 133(d) or 505 of that title;

(II) the amount made available to the State for ISTEA transition under section 1102(c), other than the amounts subject to section 133(d)(3) or 505 of that title; and

(III) the amount made available to the State for minimum guarantee under section 105 of that title, other than the amount subject to section 133(d)(3) of that title;

shall be reduced by the amount made available to the State under section 2 of STEA for the surface transportation program, minimum allocation, Interstate reimbursement, the donor State bonus, hold harmless, and 90 percent of payments adjustments, other than the amounts set aside or suballocated under section 133(d) or 307(c) (as in effect on the day before the date of enactment of this Act) of that title.

(ii) INSUFFICIENT SURFACE TRANSPORTATION PROGRAM FLEXIBLE, ISTEA TRANSITION, AND MINIMUM GUARANTEE FUNDS.—If—

(I) the amount made available to the State under section 2 of STEA for the surface transportation program, minimum allocation, Interstate reimbursement, the donor State bonus, hold harmless, and 90 percent of payments adjustments, other than the amounts set aside or suballocated under section 133(d) or 307(c) (as in effect on the day before the date of enactment of this Act) of that title; exceeds

(II) the sum of the amounts described in subclauses (I) through (III) of clause (i), after application of the preceding provisions of this subsection;

then, after the reduction required by clause (i) is made, the amount made available under the Interstate bridge and other National Highway System components of the Interstate and National Highway System program under subparagraphs (B) and (C) of section 104(b)(1) of that title shall be reduced by the amount of the excess.

(7) FUNDING RESTORATION; ISTEA SECTIONS 1103–1108 FUNDS; STATE PLANNING AND RESEARCH.—

(A) REDUCTION.—The amount made available to each State for the surface transportation program under section 104(b)(3) of title 23, United States Code, other than the amounts set aside or suballocated under section 133(d) or 505 of that title, shall be reduced by the sum of—

(i) the amount made available to the State for funding restoration under section 2 of STEA;

(ii) the amount equal to the funds provided to the State under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027) under section 2 of STEA; and

(iii) the amount made available from the surface transportation program under section 104(b)(3) of that title for State planning and research under section 307(c) of that title (as in effect on the day before the date of enactment of this Act) for fiscal year 1998.

(B) INSUFFICIENT SURFACE TRANSPORTATION PROGRAM FLEXIBLE FUNDS.—If—

(i) the sum of the amounts described in clauses (i) through (iii) of subparagraph (A); exceeds

(ii) the amount made available to each State for the surface transportation program under section 104(b)(3) of title 23, United States Code, other than the amounts set aside or suballocated under section 133(d) or 505 of that title, after application of the preceding provisions of this subsection;

then, after the reduction required by subparagraph (A) is made, the amount made available under the Interstate bridge and other National Highway System components of the Interstate and National Highway System program under subparagraphs (B) and (C) of section 104(b)(1) of that title shall be reduced by the amount of the excess.

(8) ADDITIONAL ALLOCATION.—The amount made available to each State for the surface transportation program under section 104(b)(3) of title 23, United States Code, that remains available after the set-asides required by section 133(d) of that title shall be reduced by the amount made available to the State under section 2 of STEA for section 1015(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1944).

(9) ADMINISTRATIVE EXPENSES.—

(A) FEDERAL HIGHWAY ADMINISTRATION.—The amount made available for administrative expenses under section 104(a) of title 23, United States Code, shall be reduced by the amount made available under section 4(a)(2) of STEA.

(B) WOODROW WILSON MEMORIAL BRIDGE.—The amount made available under section 412

of the Woodrow Wilson Memorial Bridge Authority Act of 1995 shall be reduced by the amount made available under section 4(a)(3) of STEA.

(C) BUREAU OF TRANSPORTATION STATISTICS.—The amount made available under section 111(m) of title 49, United States Code, shall be reduced by the amount made available under section 4(b) of STEA.

(10) FEDERAL LANDS HIGHWAYS PROGRAM.—

(A) INDIAN RESERVATION ROADS.—The amount made available for Indian reservation roads under section 204 of title 23, United States Code, shall be reduced by the amount made available under section 5(a)(1) of STEA.

(B) PUBLIC LANDS HIGHWAYS.—The amount made available for public lands highways under section 204 of title 23, United States Code, shall be reduced by the amount made available under section 5(a)(2) of STEA.

(C) PARKWAYS AND PARK ROADS.—The amount made available for parkways and park roads under section 204 of title 23, United States Code, shall be reduced by the amount made available under section 5(a)(3) of STEA.

(11) RECREATIONAL TRAILS PROGRAM.—The amount made available for the recreational trails program under section 206 of title 23, United States Code, shall be reduced by the amount made available under section 5(b) of STEA.

(12) HIGHWAY USE TAX EVASION PROJECTS.—The amount made available for highway use tax evasion projects under section 143 of title 23, United States Code, shall be reduced by the amount made available under section 5(c)(1) of STEA.

(13) NATIONAL SCENIC BYWAYS PROGRAM.—The amount made available for the national scenic byways program under section 165 of title 23, United States Code, shall be reduced by the amount made available under section 5(c)(2) of STEA.

(14) INTELLIGENT TRANSPORTATION SYSTEMS.—The amount made available for intelligent transportation systems under subchapter II of chapter 5 of title 23, United States Code, shall be reduced by the amount made available under by section 5(d) of STEA.

(15) SURFACE TRANSPORTATION RESEARCH.—

(A) OPERATION LIFESAVER.—The amount made available for operation lifesaver under section 104(d)(1) of title 23, United States Code, shall be reduced by the amount made available under section 5(e)(1) of STEA.

(B) DWIGHT DAVID EISENHOWER TRANSPORTATION FELLOWSHIP PROGRAM.—The amount made available for the Dwight David Eisenhower Transportation Fellowship Program under section 506(c) of title 23, United States Code, shall be reduced by the amount made available under section 5(e)(2) of STEA.

(C) NATIONAL HIGHWAY INSTITUTE.—The amount made available for the National Highway Institute under section 506(b) of title 23, United States Code, shall be reduced by the amount made available under section 5(e)(3) of STEA.

(16) EDUCATION AND TRAINING.—The amount made available for education and training under section 506(a) of title 23, United States Code, shall be reduced by the amount made available under section 5(e)(4) of STEA.

(17) TERRITORIES.—The amount made available for the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under section 104(b)(1)(C)(i) of title 23, United States Code, shall be reduced by the amount made available under section 5(g) of STEA.

KERRY AMENDMENT NOS. 1719–1720

Mr. BAUCUS (for Mr. KERRY) proposed two amendments to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

AMENDMENT NO. 1719

On page 385, strike lines 13 and 14 and insert the following:

"creasing the number and severity of collisions;

"(14) to encourage the use of intelligent transportation systems to promote the achievement of national transportation safety goals, including safety at at-grade railway-highway crossings; and

"(15) to accommodate the needs of all users of".

AMENDMENT NO. 1720

On page 371, strike lines 6 and 7 and insert the following:

"in highway bridges and structures;

"(5) the development of cost-effective and innovative techniques to separate vehicle and pedestrian traffic from railroad traffic and

"(6) the development of highway bridges and".

WELLSTONE AMENDMENT NO. 1721

Mr. BAUCUS (for Mr. WELLSTONE) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

Beginning on page 265, strike line 15 and all that follows through page 266, line 1 and insert the following:

"(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

"(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law;

"(ii) there is a transportation improvement program for the area that has been approved by the metropolitan planning organization and the Governor;

"(iii) the public has been given adequate opportunity during the certification process to comment on—

"(I) the public participation process conducted by the metropolitan planning organization; and

"(II) the extent to which the transportation improvement program for the metropolitan area takes into account the needs of the entire metropolitan area, including the needs of low and moderate income residents, and the requirement of Title VI of the Civil Rights Act; and

"(iv) public comments are—

"(I) included in the documentation supporting the metropolitan planning organization's request for certification; and

"(II) made publicly available.

"(C) EFFECT OF FAILURE TO CERTIFY.—

DOMENICI AMENDMENT NO. 1722

Mr. CHAFEE (for Mr. DOMENICI) proposed an amendment to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 98, line 13, insert ", and is projected to grow in the future," after "103-182)".

On page 98, line 17, insert ", and is projected to grow," after "grown".

CHAFEE AMENDMENT NO. 1723

Mr. CHAFEE proposed an amendment to amendment No. 1676 proposed by him to the bill, S. 1173, supra; as follows:

On page 5, strike lines 15 through 20 and insert the following:

title $11,977,000,000 for fiscal year 1998, $11,949,000,000 for fiscal year 1999, $11,922,000,000 for fiscal year 2000, $11,950,000,000 for fiscal year 2001, $12,242,000,000 for fiscal year 2002, and $12,659,000,000 for fiscal year 2003, of which—

On page 7, strike lines 16 through 20.

On page 8, line 20, after "139(a)", insert the following: "(as in effect on the day before the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997)".

On page 9, line 16, after "139(a)", insert the following: "(as in effect on the day before the date of enactment of the Intermodal Surface Transportation Efficiency Act of 1997)".

On page 10, line 9, insert "and for the purposes specified in subparagraph (A)," before "in the ratio".

On page 43, line 12, strike "and".

On page 43, between lines 12 and 13, insert the following:

"(xi) amounts set aside under section 104(d) for operation lifesaver and railway-highway crossing hazard elimination in high speed rail corridors; and

On page 43, line 13, strike "(xi)" and insert "(xii)".

On page 44, strike line 6 and insert the following:

(e) LIMITATIONS ON OBLIGATIONS FOR ADMINISTRATIVE EXPENSES.—Notwithstanding any other provision of law, the total amount of all obligations under section 104(a) of title 23, United States Code, shall not exceed—

(1) $301,725,000 for fiscal year 1999;

(2) $302,055,000 for fiscal year 2000;

(3) $303,480,000 for fiscal year 2001;

(4) $310,470,000 for fiscal year 2002; and

(5) $320,595,000 for fiscal year 2003.

(f) APPLICABILITY OF OBLIGATION LIMITATIONS.—

On page 85, line 10, strike "sections 103 and" and insert "section".

Beginning on page 91, strike line 24 and all that follows through page 92, line 4.

On page 92, line 5, strike "(2)" and insert "(1)".

On page 92, line 11, strike "(3)" and insert "(2)".

On page 92, line 17, strike "(4)" and insert "(3)".

On page 93, line 3, strike "(5)" and insert "(4)".

On page 93, line 6, strike "(6)" and insert "(5)".

On page 130, line 6, insert "and classified under section 181(a) or 186(a) of the Clean Air Act (42 U.S.C. 7511(a), 7512(a))" before "or classified as".

On page 159, line 21, strike "selection" and insert "bidding".

On page 159, line 22, before the period, insert the following: "in accordance with subparagraph (C)".

On page 160, line 16, strike the quotation marks and the following period.

On page 160, between lines 16 and 17, insert the following:

"(C) PROCEDURES THAT MAY BE APPROVED.—Under subparagraph (A), the Secretary may approve, for use by a State, only procedures that consist of—

"(i) formal design-build contracting procedures specified in a State statute; or

"(ii) in the case of a State that does not have a statute described in clause (i), the design-build selection procedures authorized

under section 303M of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253m).".

On page 161, line 14, strike "selection" and insert "competitive bidding".

On page 219, line 13, strike "authorized to be appropriated" and insert "made available".

On page 250, between lines 18 and 19, insert the following:

"(6) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (2).

On page 290, line 24, strike "agencies" and insert "departments".

On page 294, lines 12 and 13, strike "paragraphs (1) and (3) of section 104(b)" and insert "section 104(b)(1)".

On page 340, line 8, strike "subsection" and insert "section".

On page 343, line 4, strike "subsection" and insert "section".

On page 403, strike lines 11 through 13 and insert the following:

"(B) electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information; and

On page 413, line 1, strike "that" and insert "only if the technologies".

On page 415, line 14, strike "$110,000,000" and insert "$109,000,000".

DEWINE (AND OTHERS) AMENDMENT NO. 1724

(Ordered to lie on the table.)

Mr. DEWINE (for himself, Mr. WARNER, Mr. CHAFEE, Mr. LAUTENBERG, Mr. DORGAN, Mrs. MURRAY, and Mr. LIEBERMAN) submitted an amendment intended to be proposed by them to amendment No. 1676 proposed by Mr. Chafee to the bill, S. 1173, supra; as follows:

Beginning on page 225, strike line 12 and all that follows through page 227, line 13, and insert the following:

"(5) REPEAT INTOXICATED DRIVER LAW.—The term 'repeat intoxicated driver law' means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

"(A) receive a driver's license suspension for not less than 1 year;

"(B) be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;

"(C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and

"(D) receive—

"(i) in the case of the second offense—

"(I) an assignment of not less than 30 days of community service; or

"(II) not less than 5 days of imprisonment; and

"(ii) in the case of the third or subsequent offense—

"(I) an assignment of not less than 60 days of community service; or

"(II) not less than 10 days of imprisonment.

"(b) TRANSFER OF FUNDS.—

"(1) FISCAL YEARS 2001 AND 2002.—

"(A) IN GENERAL.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under paragraphs (1) and (3) of section 104(b) to the apportionment of the State under section 402—

"(i) to be used for alcohol-impaired driving countermeasures; or

"(ii) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

"(B) DERIVATION OF AMOUNT TO BE TRANSFERRED.—An amount transferred under subparagraph (A) may be derived—

"(i) from the apportionment of the State under section 104(b)(1);

"(ii) from the apportionment of the State under section 104(b)(3); or

"(iii) partially from the apportionment of the State under section 104(b)(1) and partially from the apportionment of the State under section 104(b)(3).

"(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.—

"(A) IN GENERAL.—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer 3 percent of the funds apportioned to the State on that date under each of paragraphs (1) and (3) of section 104(b) to the apportionment of the State under section 402—

"(i) to be used for alcohol-impaired driving countermeasures; or

"(ii) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

"(B) DERIVATION OF AMOUNT TO BE TRANSFERRED.—An amount transferred under subparagraph (A) may be derived—

"(i) from the apportionment of the State under section 104(b)(1);

"(ii) from the apportionment of the State under section 104(b)(3); or

"(iii) partially from the apportionment of the State under section 104(b)(1) and partially from the apportionment of the State under section 104(b)(3).

CHAFEE AMENDMENT NO. 1725

Mr. CHAFEE proposed an amendment to amendment No. 1676 proposed by him to the bill, S. 1173, supra; as follows:

On page 8, lines 5 and 6, strike "National Highway System" and insert "Interstate and National Highway System program".

On page 50, line 2, strike "to the pay" and insert "to pay".

On page 62, line 14, strike "wildernessK" and insert "wilderness".

On page 91, strike lines 3 and 4 and insert the following:

able for use in a national park by this paragraph.

"(d) RIGHTS-OF-WAY ACROSS FEDERAL LAND.—

On page 170, line 3, strike "(2)" and insert "(3)".

On page 170, line 9, strike "(3)" and insert "(4)".

On page 301, line 11, strike "program".

On page 303, between lines 21 and 22, insert the following:

(l) PUBLIC TRANSPORTATION.—Section 142(a)(2) of title 23, United States Code, is amended by striking "the the" and inserting "the".

On page 303, line 22, strike "(l)" and insert "(m)".

On page 304, line 5, strike "(m)" and insert "(n)".

On page 304, line 13, strike "(n)" and insert "(o)".

On page 304, line 17, strike "(o)" and insert "(p)".

On page 357, line 1, strike "SET ASIDE" and insert "SET-ASIDE".

MCCAIN (AND OTHERS) AMENDMENT NO. 1726

(Ordered to lie on the table.)

Mr. MCCAIN (for himself, Mr. MACK, Mr. GRAHAM, Mr. BROWNBACK, and Mr. THURMOND) submitted an amendment intended to be proposed by them to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

On page 41, line 11, insert "(excluding demonstration projects)" after "programs".

On page 41, line 16, insert "(excluding demonstration projects)" after "programs".

On page 44, strike line 5 and insert the following:

date of enactment of this subparagraph).

"(3) DEMONSTRATION PROJECTS.—

"(A) APPLICABILITY OF OBLIGATION LIMITATIONS.—Notwithstanding any other provision of law, a demonstration project shall be subject to any limitation on obligations established by law that applies to Federal-aid highways and highway safety construction programs.

"(B) MAXIMUM OBLIGATION LEVEL.—For each fiscal year, a State may obligate for demonstration projects an amount of the obligation authority for Federal-aid highways and highway safety construction programs made available to the State for the fiscal year that is not more than the product obtained by multiplying—

"(i) the total of the sums made available for demonstration projects in the State for the fiscal year; by

"(ii) the ratio that—

"(I) the total amount of the obligation authority for Federal-aid highways and highway safety construction programs (including demonstration projects) made available to the State for the fiscal year; bears to

"(II) the total of the sums made available for Federal-aid highways and highway safety construction programs (including demonstration projects) that are apportioned or allocated to the State for the fiscal year.

"(4) DEFINITION OF DEMONSTRATION PROJECT.—In this subsection, the term 'demonstration project' means a demonstration project or similar project (including any project similar to a project authorized under any of sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027)) that is funded from the Highway Trust Fund (other than the Mass Transit Account) and authorized under—

"(A) the Intermodal Surface Transportation Efficiency Act of 1997; or

"(B) any law enacted after the date of enactment of that Act.".

SNOWE AMENDMENTS NOS. 1727–1729

(Ordered to lie on the table.)

Ms. SNOWE submitted three amendments intended to be proposed by her to amendment No. 1676 proposed by Mr. CHAFEE to the bill, S. 1173, supra; as follows:

AMENDMENT NO. 1727

On page 309, strike line 3 and insert the following: designated Route.

SEC. 18 . VEHICLE WEIGHT LIMITATIONS ON CERTAIN PORTIONS OF INTERSTATE SYSTEM.

Section 127(a) of title 23, United States Code, is amended by adding at the end the following: "With respect to Interstate Route 95 in the State of New Hampshire, State laws (including regulations) concerning vehicle weight limitations that were in effect on January 1, 1987, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection. With respect to that portion of the Maine Turnpike designated Interstate Route 95 and 495, and that portion of Interstate Route 95 from the southern terminus of the Maine Turnpike to the New Hampshire State line, laws (including regulations) of the State of Maine concerning vehicle weight limitations that were in effect on October 1, 1995, and are applicable to State highways other than the Interstate System, shall be applicable in lieu of the requirements of this subsection.".

AMENDMENT NO. 1728

On page 309, between lines 3 and 4, insert the following:

SEC. 18 . FUNDING TRANSFER.

The Intermodal Surface Transportation Efficiency Act of 1991 is amended—

(1) in the table contained in section 1103(b) (105 Stat. 2027), in item 9, by striking "32.1" and inserting "25.1"; and

(2) in the table contained in section 1104(b) (105 Stat. 2029)—

(A) in item 27, by striking "10.5" and inserting "12.5"; and

(B) in item 44, by striking "10.0" and inserting "15.0".

AMENDMENT NO. 1729

SEC. . NHTSA ACCIDENT PREVENTION EDUCATION EFFORT.

Section 402(a) of title 23, United States Code, is amended by striking "(4) to reduce deaths" and inserting "(4) to prevent accidents and reduce deaths".

AUTHORITY FOR COMMITTEE TO MEET

COMMITTEE ON THE JUDICIARY

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Friday, March 6, 1998, at 9:30 a.m. in room 226 of the Senate Dirksen Office Building to hold a hearing on "S. 1530, the Protection Act: Civil Liability Provisions."

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

ADDITIONAL STATEMENTS

HEALTH CARE QUEST ACT

• Mr. LIEBERMAN. Mr. President, I am pleased to join with Senator JEFFORDS to announce the introduction of the Health Care Quest Act. Last year, he and I worked together on a bill to improve the quality of health care purchased by the federal government for Medicare, Medicaid, TRICARE, and VA beneficiaries. The Health Care Quest Act extends our effort to improve health care quality to the more than 100 million beneficiaries in private sector plans.

For millions of these individuals, passage of the bill will bring for the first time rights for external appeals when their plan denies payment for medical treatments. The appeals process will be available to any person who thinks they were wrongly denied coverage, and gives them the right of appeal to an impartial body outside the health plan with a decision guaranteed on a timely basis. A timely decision is crucial to a sick person or parent of a child with an illness and this bill sets out very specific timeliness the health plan must meet for the appeal.

The bill guarantees reimbursement for people who go to the emergency room thinking they are sick. Without enactment, a father who goes to the emergency room because he thinks that he is having a heart attack could be left with thousands of dollars of bills. I think that we can rely on the wisdom of people to decide when they need to go to the hospital. a person with a medical emergency should not have to wait to be buzzed in to the emergency room by a managed care bureaucrat hundreds of miles away. Medical care is more serious than admitting visitors to an apartment building.

Patients should expect physicians to recommend the best treatment options and serve as their advocates. Protections from so-called "gag clauses" were included in last year's Balance Budget Act for Medicare beneficiaries. We are extending these protections to beneficiaries of private sector plans.

One distinctive feature of the Health Care Quest Act is its focus on empowering purchasers, providers, and consumers with useful information about their health care. At the center of this effort is a new health care quality advisory body to follow up on the good work conducted by the President's Advisory Commission. The Health Quality Council will continuously update and expand the comparative measures of quality available to drive competition based on value. If the new grievance process in the bill provides a floor under quality, the new information requirements point consumers toward the best care available.

I would like to end with a comment on the need for quality legislation. A recent poll by the Kaiser Family Foundation and Harvard University found that close to half of Americans—48 percent—report they personally, or someone they know, have experienced problems such as lack of information, problems with access to specialists, disputes over emergency room coverage, or no recourse to external grievance procedure.

Low-quality health care's tragic result is sobering, 34.7% children in HMO's not immunized in 1996. 1,600 unnecessary cardiac deaths occurred among 57 million HMO enrollees because a common treatment for heart attacks (beta-blockers) was not used appropriately. 1,200 breast cancers undetected resulting in 1,800 years of life that could have been saved.

Quality is often an issue of where you get your care with wide variations at sites within easy driving distance of each other. One of the premier hospitals in Connecticut, Yale-Haven, discharges over 92% of its heart attack victims alive—despite taking sicker patients with more health problems. Other hospitals within a thirty-minute drive have survival rates as much as 10 percent lower. Yet few patients know their choice of destination may be a life-and-death decision.

The Health Care Quest Act attacks these deadly problems. After it is enacted, a Connecticut resident with an emergency can go to a hospital armed with information, and once there expect their care to be covered by their insurer. If they have a problem they will be get an appeal. And each day they are healthy, a Health Quality Council will be working to make sure the best possible health system is there when they need it.•

UNANIMOUS-CONSENT AGREEMENT—S. 1668

Mr. LOTT. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to the consideration of S. 1668, relating to disclosure of certain classified information. I further ask unanimous consent that there be 20 minutes for debate on the bill, equally divided between the chairman and ranking member. I ask unanimous consent that no amendments or motions be in order to the bill and, at the conclusion or yielding back of debate time, the bill be read the third time and set aside. I finally ask unanimous consent that a vote on passage of S. 1668 occur at a time to be determined by the majority leader, after consultation with the Democratic leader.

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

WILLIAM AUGUSTUS BOOTLE FEDERAL BUILDING AND U.S. COURTHOUSE

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of H.R. 595, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 595) to designate the Federal building and United States Courthouse located at 475 Mulberry Street in Macon, Georgia, as the "William Augustus Bootle Federal Building and U.S. Courthouse."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LOTT. Mr. President, I ask unanimous consent that the bill be considered read the third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The bill (H.R. 595) was considered read the third time and passed.

SAM NUNN ATLANTA FEDERAL CENTER DESIGNATION ACT OF 1998

Mr. LOTT. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 347) to designate the Federal building located at 100 Alabama Street NW, in Atlanta, Georgia, as the "Sam Nunn Federal Center."

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 347) entitled "An Act to designate the Federal building located at 100 Alabama Street NW, in Atlanta, Georgia, as the "Sam Nunn Federal Center", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. DESIGNATION.

The Federal building located at 61 Forsyth Street SW., in Atlanta, Georgia, shall be known and designated as the "Sam Nunn Atlanta Federal Center".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the "Sam Nunn Atlanta Federal Center".

Amend the title so as to read "An Act to designate the Federal building located at 61 Forsyth Street SW., in Atlanta, Georgia, as the 'Sam Nunn Atlanta Federal Center'.".

Mr. LOTT. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

EXAMINATION PARITY AND YEAR 2000 READINESS ACT

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3116, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3116) to address the year 2000 computer problems with regard to financial institutions, to extend examination parity to the Director of the Office of Thrift Supervision and the National Credit Union Administration, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. D'AMATO. Mr. President, I rise today in support of the Examination Parity and Year 2000 Readiness Act and I encourage the support of my colleagues in order to address the serious threat facing our Nations' financial industry. While the new millennium brings with it the hopes and dreams of a new era, it is also accompanied by a significant threat to all Americans who use our technology dependent banking industry. The Congress must insure that our regulators are provided with the power and authority to protect the savings of all Americans.

Mr. President, nearly every hard-working American citizen uses a bank, savings and loan or credit union. Banks in particular represent a symbol of safety and trust where Americans feel confident about placing their savings and conducting financial transactions. The widely reported Year 2000 problem places that safety and trust at risk. For a variety of reasons, computer software systems and devices have traditionally used two characters to represent the year in date calculations. A typical scenario involves a system that arranges a date to perform a comparison or calculation. For example, comparing the year 2000 to the year 1998, could result in 1998 being identified greater than 2000. The potential fallout could range from a simple miscalculation of interest on savings accounts, to the complete loss of customer records, and possibly even jeopardizing the viability of an institution. These systems must be validated to insure that they will function properly after December 31, 1999.

The Examination Parity and Year 2000 Readiness Act requires Federal financial regulatory agencies to conduct seminars on the implication of the Year 2000 problem and extends the same examination authority bank regulators already posses to thrift and credit union regulators. This legislation enjoys bipartisan Congressional support and has the endorsement of the executive branch. With the proper attention and focus of our federal regulators, the savings of American citizens can be protected and the safety and soundness of the American banking industry can be assured.

Mr. President, I want to commend Senator BENNETT, the chairman of the Subcommittee on Financial Services and Technology, for his tireless effort to help solve the problems our financial intermediaries will face because of the year 2000 problem. With his usual perseverance, he has demonstrated the important role Congress has in understanding the impact of technology on the financial system. I also commend Senator DODD for cosponsoring the Senate bill. Of course, quick action on this measure by the House was made possible by Chairman LEACH's recognition of the need for this legislation.

Mr. SARBANES. Mr. President, I would like to offer my support for H.R. 3116, a measure that will help our Nation's bank regulators address the so-called Year 2000 computer problem, and enhance the safety and soundness of our financial system.

The Banking Committee has held five important hearings on the Year 2000 problem and its consequences. It became clear during these hearings that the Year 2000 problem, in which computer systems may crash because they fail to process the date change from the 20th to the 21st century, could have a significant impact both on our financial system, and on the U.S. economy as a whole. witnesses testified that the problem is extensive, and will be expensive to solve. Our banking system is heavily dependent on computer technology, and failures at one institution could spread to others through their closely linked networks. Every single financial institution in the United States will need to solve this problem, and some individual banks plan to spend $250 million or more on computer replacements and repairs.

The consequences go far beyond the financial sector, however. Estimates of the worldwide cost of Year 2000 remediation range as high as $600 billion. One Banking Committee witness, economist Edward Yardeni of the investment firm Deutsche Morgan Grenfell, said that there is a 40% or greater risk that business dislocations caused by the Year 2000 problem could bring about a global recession as severe as the one that followed the OPEC oil embargo in 1973. The stakes involved clearly are high.

I want to commend Senators BENNETT, BOXER, and DODD, along with Chairman D'AMATO, for their leadership on this issue through their efforts in the Banking Committee. The committee has been working hard to make sure that our financial industry regulators solve their internal Year 2000 difficulties, and that our banks, thrifts, brokers, and credit unions are ready to enter the new century as well. Thanks to these efforts, our financial institutions are generally acknowledged as leaders in solving the problem, although much work remains to be done.

This bill is a first legislative step toward helping our financial regulators

meet the Year 2000 challenge. It directs each federal banking agency—the Federal Deposit Insurance Corporation, the Federal Reserve, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, along with the National Credit Union Administration—to provide financial institutions with informational seminars on, and model approaches to, the problem. It also gives our thrift and credit union regulators the authority they need to examine an institution's vendors, particularly computer services vendors, for Year 2000 compliance. This will put all of our financial regulators on an equal footing with respect to these crucial examinations.

Mr. President, the Year 2000 will not wait: there is no extending the deadline, and our financial institutions must be ready. To help our regulators meet that goal, I urge speedy adoption of this legislation.

Mr. BENNETT. Mr. President, I rise today with my distinguished colleague, Senator DODD, in support of H.R. 3116, the Examination Parity and Year 2000 Readiness for Financial Institutions Act. We jointly introduced the Senate version of this bill, S. 1671 and are in full agreement with it in every respect.

The subcommittee has held five hearings on Year 2000 compliance and I will chair another hearing on this issue next week. Generally speaking, most of our financial institutions are ill prepared to face the millenial date change at this time. None of our regulatory agencies are in the position they should be, based on the time schedule issued by OMB and GAO. This problem is compounded because several of our regulatory agencies have insufficient enforcement authority to ensure that the financial institutions they regulate can continue to function in a safe and sound manner after the millennial date change.

The bill before us at this time will give authority to the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA) in parity with the authority provided to other Federal banking agencies under the Bank Service Company Act (BSCA) with respect to the performance of services by contracted service providers. For example, OTS will be able to examine service providers that contract with a savings association, its subsidiary, or any savings and loan affiliate or other entity as identified in this legislation, as if it were inspecting the savings association itself. Under the BSCA, other Federal banking agencies already have this authority over service providers that contract with an insured bank or any subsidiary or affiliate of the bank that is examined by the agency.

This authority enables all of the Federal banking agencies to take appropriate action against service providers, if for example, the services are provided in such a way as to jeopardize the safety and soundness of the financial institutions in question. This authority allows the regulatory agencies to take appropriate action against a service provider if the services being performed may result in a regulated entity not being Y2K complaint. We expect that the Federal banking agencies will continue to use their authority under the BSCA, and the authority provided by this legislation, to remedy the situation of services being rendered which will result in Year 2000 noncompliance, as well as to prevent any other unsafe and unsound practices. To ensure that the legislation is interpreted to give OTS parity with the other regulators and that Congressional intent is clear, the bill references the OTS's ability to issue orders under section 8 of the Federal Deposit Insurance Act, which includes the Federal banking agencies' general enforcement authority to address unsafe or unsound practices.

This bill also requires that federal financial regulatory agencies hold seminars for financial institutions on the implications of the Year 2000 problem for safe and sound operations, and to provide model approaches for solving common Y2K problems.

Passage of this bill is supported by both the NCUA and OTS. In a "Statement of Administration Policy," OMB has notified us that "the Administration supports passage of H.R. 3116."

I want to take this opportunity to thank Chairman D'AMATO, Senator SARBANES, and Senator DODD for their assistance and support. In particular, I want to thank Howard Mennell, Steve Harris, Andrew Lowenthal, Robert Cresanti, Robert Andros, and Laura Ayoud for their efforts in bringing this bill to a prompt and mutually satisfactory resolution. I also want to thank my House colleagues and their staff for adopting the language of our Senate bill, S. 1671, in the final version of the House passed H.R. 3116. This has greatly expedited the handling of this bill in the Senate.

Mr. DODD. Mr. President, I am very pleased that the Senate is poised to pass Examination Parity and Year 2000 Readiness For Financial Institutions Act, which I introduced with Senator BENNETT last week. The legislation will provide badly needed authority and guidance to Federal financial regulators to help their supervised institutions cope with the Year 2000 computer problem.

The Year 2000—or Y2K—computer problem is caused by the inability of most of the major financial systems to process the year 2000 as the one that follows the year 1999. This is caused by the fact that basic computer code, much of it written as many as thirty years ago, reads dates as two-digits, "98" or "99," instead of four digits "1999" or "2000." If left untreated, computers will read the year 2000 as the years 1900, 1980 or some other default date. The result is not only erroneous calculations, but the total disruption of many critical financial systems.

Unfortunately, neither the Office of Thrift Supervision or the National Credit Union Administration have the authority to examine the Year 2000 preparations of service providers to thrifts and credit unions. Currently, other federal financial regulators—the Federal Reserve, Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation—have this authority.

These service providers perform many of the key transaction and data processing for federally-insured thrifts and credit unions, particularly smaller institutions for whom it is not cost-effective to establish their own computer systems. As a result, it is imperative to the safety and soundness of these institutions for the regulators to be able to establish that their service providers will be Year 2000 compliant.

The legislation also contains provisions that require all financial regulators to hold seminars to educate their respective supervised institutions and, to the maximum extent possible, provide model solutions for fixing the problem. The beneficial impact of such outreach and education efforts for federally-insured institutions is self-evident.

Mr. President, as I've said many times before, the Year 2000 problem is one that we will have to confront in many more ways than this legislation. The extent of the problem goes well beyond the financial services industry to affect virtually every segment of our nation's economy. But this sensible bill is a good first step to ensuring that Federal financial regulators have the tools necessary to address the problem in their area of jurisdiction.

I urge my colleagues to join me in supporting this sensible, bipartisan legislation.

Mr. LOTT. Mr. President, I ask unanimous consent that the bill be considered read the third time, and passed, and the motion to reconsider be laid upon the table.

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

The bill (H.R. 3116) was considered read the third time, and passed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. LOTT. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of the nomination of George McGovern to be U.S. Representative to the United Nations Agencies for Food and Agriculture.

I further ask consent that the Senate proceed to its consideration, the nomination of Robert Grey, Jr., Executive

Calendar No. 527, and nominations on the Secretary's desk in the Foreign Service. I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements relating to the nominations appear at this point in the RECORD, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nomination considered and confirmed en bloc, are as follows:

DEPARTMENT OF STATE

George McGovern, of South Dakota, for the rank of Ambassador during his tenure of service as U.S. Representative to the United Nations Agencies for Food and Agriculture.

Robert T. Grey, Jr., of Virginia, for the rank of Ambassador during his tenure of service as United States Representative to the Conference on Disarmament.

IN THE FOREIGN SERVICE

Foreign Service nominations beginning Kenneth A. Thomas, and ending Charles Grandin Wise, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 31, 1997.

Foreign Service nominations beginning Dolores F. Harrod, and ending Stephan Wasylko, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of February 2, 1998.

Foreign Service nomination of Lyle J. Sebranek, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of February 2, 1998.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ORDERS FOR MONDAY, MARCH 9, 1998

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon on Monday, March 9, and immediately following the prayer, the routine requests through the morning hour be granted and the Senate begin a period for the transaction of morning business, with the time equally divided between the two leaders.

I also ask consent that at the hour of 1 p.m. on Monday, the Senate resume consideration of S. 1173, the so-called ISTEA legislation.

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

Mr. LOTT. I further ask unanimous consent that at the hour of 5:10 p.m. on Monday, the Senate proceed to consideration of S. 1668, the intelligence disclosure bill, as under the previous order.

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

Mr. LOTT. Finally, I ask unanimous consent that at the hour of 5:30 p.m., the Senate proceed to a vote on the motion to invoke cloture on the modified substitute amendment to S. 1173, the so-called ISTEA legislation, the surface transportation legislation, and then proceed to a rollcall vote on passage of S. 1668, the intelligence disclosure bill.

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

PROGRAM

Mr. LOTT. In conjunction with the previous consent agreements, then, on Monday the Senate will be in for a period of morning business from 12 to 1 p.m. At 1 o'clock, the Senate will resume consideration of S. 1173, the so-called ISTEA bill. It is hoped the Senate will be able to consider some of the numerous amendments which have been offered and filed in regard to this legislation throughout Monday's session. And then, at 5:10 p.m., the Senate will set aside the legislation and have 20 minutes of debate on the intelligence disclosure bill. Under the previous order, at 5:30 p.m. the Senate will proceed to a vote on the cloture motion on the modified substitute amendment to S. 1173, followed by a vote on the intelligence disclosure bill.

So, there will more than likely be two rollcall votes, back to back, on Monday, beginning at 5:30.

ORDER FOR ADJOURNMENT

Mr. LOTT. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator DASCHLE.

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

Mr. LOTT. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. I yield the floor.

ADJOURNMENT UNTIL MONDAY, MARCH 9, 1998

The PRESIDING OFFICER. The Senate, under the previous order, stands adjourned until 12 noon, Monday, March 9, 1998.

Thereupon, the Senate, at 3:22 p.m., adjourned until Monday, March 9, 1998, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate March 6, 1998:

DEPARTMENT OF DEFENSE

JOSEPH W. WESTPHAL, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE ARMY, VICE H. MARTIN LANCASTER.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. LOUIS C. FERRARO, JR., [redacted]
BRIG. GEN. DANNY A. HOGAN, [redacted]
BRIG. GEN. ROBERT B. STEPHENS, [redacted]
BRIG. GEN. GEOFFREY P. WIEDEMAN, JR., [redacted]
BRIG. GEN. ROBERT J. WINNER, [redacted]

To be brigadier general

COL. MARVIN J. BARRY, [redacted]
COL. BRUCE M. CARSKADON, [redacted]
COL. JOHN M. DANAHY, [redacted]
COL. JOHN D. DORRIS, [redacted]
COL. ROBERT E. DUIGNAN, [redacted]
COL. SALLY ANN EAVES, [redacted]
COL. BOBBY L. EFFERSON, [redacted]
COL. WILLIAM F. GORDON, [redacted]
COL. JOSEPH G. LYNCH, [redacted]
COL. MARK V. ROSENKER, [redacted]
COL. RONALD M. SEGA, [redacted]
COL. STEPHEN A. SMITH, [redacted]
COL. EDWIN B. TATUM, [redacted]
COL. KATHY E. THOMAS, [redacted]

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS THE CHIEF OF CHAPLAINS, UNITED STATES ARMY AND FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 3036:

To be major general

BRIG. GEN. GAYLORD T. GUNHUS, [redacted]

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. MICHAEL J. AGUILAR, [redacted]
COL. JAMES F. AMOS, [redacted]
COL. JOHN G. CASTELLAW, [redacted]
COL. TIMOTHY E. DONOVAN, [redacted]
COL. JAMES M. FEIGLEY, [redacted]
COL. EMERSON N. GARDNER, JR., [redacted]
COL. STEPHEN T. JOHNSON, [redacted]
COL. JAMES N. MATTIS, [redacted]
COL. GORDON C. NASH, [redacted]
COL. ROBERT M. SHEA, [redacted]
COL. KEITH J. STALDER, [redacted]
COL. JOSEPH F. WEBER, [redacted]

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) MICHAEL W. SHELTON, [redacted]

SECURITIES AND EXCHANGE COMMISSION

ARTHUR LEVITT, JR., OF NEW YORK, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE TERM EXPIRING JUNE 5, 2003. (REAPPOINTMENT)

IN THE ARMY

THE FOLLOWING NAMED OFFICERS, FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AND FOR REGULAR APPOINTMENT IN THE JUDGE ADVOCATE GENERAL'S CORPS (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C. SECTIONS 624, 531 AND 3064:

To be major

JAMES R. AGAR II, [redacted]
*ELIZABETH ARNOLD, [redacted]
*JANE E. BAGWELL, [redacted]
*RANDALL J. BAGWELL, [redacted]
*BRYANT S. BANES, [redacted]
*MICHAEL R. BLACK, [redacted]
*EUGENE E. BOWEN, JR., [redacted]
*STEVEN M. BRODSKY, [redacted]
*RICHARD E. BURNS, [redacted]
*BRADFORD B. BYRNES, [redacted]
*JOHN P. CARRELL, [redacted]
*LARSS G. CELTNIEKS, [redacted]
*DAVID CHATHAM, [redacted]
*PAUL S. COHEN, [redacted]
*STEPHEN A. COPETAS, [redacted]
*DANIEL J. COWHIG, [redacted]
*VANESSA A. CROCKFORD, [redacted]
*DAVID K. DALITION, [redacted]
*DOUGLAS M. DEPEPPE, [redacted]
*THERESA A. GALLAGHER, [redacted]
*PATRICK M. GARCIA, [redacted]
MATTHEW J. GILLIGAN, [redacted]
*TYLER J. HARDER, [redacted]
*CHARLOTTE R. HERRING, [redacted]
*WILLIAM R. HINCHMAN, [redacted]

*EUGENE R. INGRAO, X...
DALE N. JOHNSON, X...
*MARK L. JOHNSON, X...
*PHILIP W. JUSSEL, X...
*JONATHAN A. KENT, X...
*CHRISTINE A. KIEFER, X...
*FRANCIS P. KING, X...
DINAH R. KIRK, X...
*CARL W. KUHN, X...
MICHAEL O. LACEY, X...
*DANIEL A. LAURETANO, X...
*STEVEN F. LERICHE, X...
*STEPHEN J. LUND, X...
*MICHAEL R. LUTTON, X...
TIMOTHY C. MACDONNELL, X...
*GREG S. MATHERS, X...
*MARK D. MAXWELL, X...
*LEAH S. MCCARTY, X...
*MICHAEL J. MCHUGH, X...
*JAMES J. MILLER, JR., X...
*THOMAS C. MODESZTO, X...
*MATTHEW A. MYERS, SR., X...
MARK A. PACELLA, X...
*JAMES M. PATTERSON, X...
*WILLIAM C. PETERS, X...
*FRANKLIN D. RAAB, X...
*MISTI E. RAWLES, X...
JAMES H. ROBINETTE II, X...
*CHRISTOPHER W. RYAN, X...
*PAUL T. SALUSSOLIA, X...
*JULIE P. SCHRANK, X...
*MICHAEL G. SEIDEL, X...
*MARTIN L. SIMS, X...
*BARRY J. STEPHENS, X...
*STEPHEN C. STOKES, X...
*RALPH J. TREMAGLIO III, X...
*KEVIN M. WALKER, X...
*STEVEN B. WEIR, X...
*JOHN B. WELLS III, X...
*NEOMA J. WHITE, X...
*PAUL S. WILSON, X...
*NOEL L WOODWARD, X...
*EVERETT F. YATES, X...

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be Colonel

MICHAEL H. ABREU, X...
JOSEPH W. ALBRIGHT, X...
KENNETH D. ALDRIDGE, X...
OSCAR R. ANDERSON, X...
JOSEPH E. ANDRADE, X...
STEVEN L. ANDRASCHKO, X...
DAVID M. ANNEN, X...
DAVID R. APT, X...
REAMER W. ARGO III, X...
ROBERT F. ARNONE, X...
MICHAEL K. ASADA, X...
DANIEL A. AUMUSTINE, X...
MAYNARD A. AUSTIN, JR., X...
NANCY S. AUSTIN, X...
BRUCE D. BACHUS, X...
JAMES E. BAGLEY IV, X...
SHERRIE L. BALKO, X...
CHARLES R. BALL, X...
JOHN L. BALLANTYNE IV, X...
PATTY S. BARBOUR, X...
DENNIS M. BARLETTA, X...
WELLSFORD V. BARLOW, JR., X...
MICHAEL C. BARRON, X...
ARTHUR M. BARTELL, X...
JOHN R. BARTLEY, X...
GLENN P. BEARD, X...
RICHARD E. BEDWELL, X...
DAVID R. BISSELL, X...
TODD E. BLOSE, X...
DEWEY L. BLYTH, X...
MICHAEL W. BOARDMAN, X...
FRANKLIN C. BOHME, SR., X...
JAMES A. BOLAND, JR., X...
KENNETH H. BOLL, JR., X...
STEVEN J. BOLTZ, X...
JOHN H. BORDWELL, JR., X...
STEVEN A. BOURGEOIS, X...
MICHAEL R. BOZEMAN, X...
CHARLES BRADLEY, JR., X...
FRANK B. BRAGG, JR., X...
HOWARD T. BRAMBLETT, X...
RUFUS T. BRINN, JR., X...
WILLIAM F. BRISCOE, X...
LEO A. BROOKS, JR., X...
VINCENT K. BROOKS, X...
DOYLE D. BROOME, JR., X...
MARK L. BROWN, X...
MICHAEL T. BROWN, X...
MICHAEL W. BROWN, X...
JAMES M. BROWNE, X...
BOYCE K. BUCKNER, X...
ROBERT D. BUCKSTAD, X...
NICHOLAS J. BUECHLER, X...
JOHN C. BURSLEY, X...
NANCY J. BURT, X...
RANDALL J. BUTLER, X...
SALVATORE F. CAMBRIA, X...
SAMUEL M. CANNON, X...
EDUARDO CARDENAS, X...
JOHN M. CARMICHAEL, X...
JOHN P. CARROLL, X...
JOHN H. CARTER, JR., X...
JAMES M. CASTLE, X...
JAMES A. CERRONE, X...
BERNARD S. CHAMPOUX, X...
ANTHONY W. CHANEY, X...
STEVEN T. CHAPMAN, X...
LINDA D. CHRIST, X...
JEFFERY T. CHRISTIANSEN, X...
BRIAN C. CLEARMAN, X...
RICHARD A. CLINE, X...
DONNA L. COFFMAN, X...
ROBERT W. CONE, X...
EDWARD M. COOK III, X...
PETER S. CORPAC, X...
MICHAEL C. COX, X...
ROBERT E. COX, JR., X...
ROBERT L. COXE, JR., X...
ANTHONY A. CUCOLO III, X...
KEVIN R. CUNNINGHAM, X...
WILLIAM W. CURL, JR., X...
JOHN M. CUSTER III, X...
MARK A. DANIELS, X...
RICKY DANIELS, X...
HAL M. DAVIS, X...
MICHAEL H. DAVIS, X...
WALLACE J. DEES, X...
KATHLEEN R. DENNIS, X...
GLENN M. DESOTO, X...
MARK J. DEVLIN, X...
GENE A. DEWULF, X...
PAUL C. DIAMONTI, X...
JAMES G. DIEHL, X...
THOMAS M. DOCKENS, X...
LEONARD E. DODD, X...
MICHAEL J. DOOLEY, X...
RICHARD D. DOWNIE, X...
PAUL J. DRONKA, X...
JOHN A. DURKIN, X...
GREGORY J. DYSON, X...
EDWARD D. EARLE, X...
LAWYN C. EDWARDS, X...
KRISTI G. ELLEFSON, X...
KENNETH E. ELLIS, X...
ERIC O. ENGELBREKTSSON, X...
ROBERT W. ENGLISH III, X...
JACK E. FAIRES, X...
JAMES T. FAUST, X...
GERALD E. FERGUSON, JR., X...
MICHAEL FERRITER, X...
MICHAEL L. FINDLAY, X...
CRAIG R. FIRTH, X...
EDWARD L. FLINN II, X...
JEFFREY W. FOLEY, X...
STEVE A. FONDACARO, X...
YVES J. FONTAINE, X...
REX FORNEY, JR., X...
ANTHONY W. FORTUNE, SR., X...
ALFRED H. FOXX, JR., X...
MARK R. FRENCH, X...
ALLEN FRENZEL, X...
DAVID P. FRIDOVICH, X...
ROBERT J. FRUSHA, X...
ROBERT L. FULLER, X...
JAMES H. GANT, JR., X...
JOHNNY L. GARRETT, X...
RANDY GARVER, X...
PHILLIP J. GICK, X...
DANIEL B. GLODOWSKI, X...
ELLIS W. GOLSON, X...
MARK A. GRAHAM, X...
RALPH H. GRAVES, X...
WILLIAM T. GRISOLI, X...
ROBERT K. GRISWOLD, X...
JOHN D. GROSS, X...
IRA R. GRUPPER, X...
PETER J. GUSTAITIS, JR., X...
RICHARD C. HALBLEIB, X...
RUSSELL J. HALL, X...
DAVID D. HALVERSON, X...
FINLEY R. HAMILTON, X...
MICHAEL A. HAMILTON, X...
JEFFERY W. HAMMOND, X...
DAVID R. HAMPTON, JR., X...
ALLAN C. HARDY, X...
JONATHAN M. HARRIS, X...
ROBERT B. HARRISON, X...
TIMOTHY D. HARROD, X...
DONALD P. HART, X...
FRED L. HART, JR., X...
CLYDE T. HARTHCOCK, X...
WALTER L. HAWKINS, JR., X...
AARON B. HAYES, X...
PAUL T. HENGST, X...
GAREY R. HEUMPHREUS, X...
KEVIN M. HIGGINS, X...
JOHN D. HIGHTOWER, X...
GREGG L. HILL, X...
JOHN R. HILLS, X...
STEPHANIE L. HOEHNE, X...
JOHN H. HOLLER, X...
LLOYD W. HOLLOWAY, X...
STEVEN D. HOLTMAN, X...
STEVEN J. HOOGLAND, X...
ROBERT R. HORBACK, X...
CARL W. HORN, X...
STEPHEN C. HORNER, X...
RONALD G. HOULE, X...
GARY R. HOVATTER, X...
LARRY K. HUFFMAN, X...
GEOFFREY L. IRONS, X...
STOVER S. JAMES, JR., X...
KAREN M. JANSEN, X...
GARY D. JERAULD, X...
BRUCE D. JETTE, X...
CLARENCE D. JOHNSON, X...
JOSEPH E. JOHNSON, X...
RODNEY L. JOHNSON, X...
ROY E. JOHNSON, X...
ALFRED P. JONES, JR., X...
GREGG D. JONES, X...
THOMAS M. JORDAN, X...
THOMAS F. JULICH, X...
KIM R. KADESCH, X...
RICHARD G. KAIURA, X...
GENE C. KAMENA, X...
DEAN E. KATTELMANN, X...
RONALD E. KAY, X...
DANIEL J. KEEFE, X...
STEPHEN E. KEELING, X...
KEVIN T. KELLEY, X...
JOHN J. KELLY, X...
THOMAS P. KELLY, X...
JOE E. KILGORE, X...
DAVID A. KINGSTON, X...
JOHN V. KLEMENCIC, X...
THOMAS W. KLEWIN, X...
DAVID J. KNACK, X...
GARY K. KNAPP, X...
KARL B. KNOBLAUCH, JR., X...
GARY K. KOLLMANN, X...
TIMOTHY G. KONKUS, X...
ARTHUR S. KRON, X...
DAVID W. LAMM, X...
MARK S. LANDRITH, X...
ALAN D. LANDRY, X...
HARVEY T. LANDWERMEYER, X...
WILLIAM E. LANE, X...
DAVID E. LAPE, X...
WILLIAM T. LASHER, X...
ROBERT J. LAUNSTEIN, X...
STEPHEN R. LAYFIELD, X...
WILLIAM A. LAYMON, JR., X...
JOHN P. LEAKE, X...
CHRISTOPHER F. LESNIAK, X...
TIMOTHY C. LINDSAY, X...
RICHARD LLITERAS, X...
SCOTT A. LOOMER, X...
ALBERT N. LOVE, X...
STEVEN M. LOVING, X...
JOHN R. LOYD, X...
DAVID W. LUDWIG, X...
JEANINE A. LUGO, X...
WILLIAM J. LUK, X...
ROBERT W. MADDEN, X...
EARL L. MADISON III, X...
THOMAS C. MAFFEY, X...
EDWARD B. MAJOR, X...
DAVID E. MAKI, X...
JEAN P. MANLEY, X...
RICHARD J. MARCHANT, X...
PAUL G. MARKSTEINER, X...
NICHOLAS R. MARSELLA, X...
ELMER J. MASON, X...
WILLIAM G. MASON, X...
MARION C. MATTINGLY, X...
ROBERT L. MCCLURE, X...
MELITA E. MCCULLY, X...
DENISE R. MCGANN, X...
WILLIAM N. MCMILLAN, X...
PHILIP A. MCNAIR, X...
RAYMOND MELNYK, X...
DAVID P. MERIWETHER, X...
CARL R. MERKT, X...
EDWARD D. MILLER, JR., X...
MICHAEL J. MILLER, X...
PAMELA S. MITCHELL, X...
KELLEY B. MOHRMANN, X...
LANCE A. MOORE, X...
SIDNEY L. MORGAN, X...
JAMES M. MORRIS IV, X...
MICHAEL R. MORROW, X...
STEPHEN D. MUNDT, X...
GAYLAND D. MUSE, X...
JOHN B. MUSSER II, X...
MARK C. NELSON, X...
VICTOR L. NELSON, X...
CAMERON B. NERDAHL, X...
JAMES L. NEWMAN, X...
CHARLES B. NEWTON, JR., X...
DANIEL A. NOLAN III, X...
PETER A. NOTARIANNI, X...
JAMES H. NUNN, X...
MICHAEL L. OATES, X...
PATRICK E. O'DONNELL, X...
JOSEPH E. ORR, X...
PAUL A. OSKVAREK, X...
DONALD A. OSTERBERG, X...
BRIAN E. OSTERNDORF, X...
DAVID J. PAGANO, X...
JAMES A. PAGE, X...
SCOTT W. PAGE, X...
EUGENE J. PALKA, X...
BRUCE T. PALMATIER, X...
HERMAN T. PALMER, JR., X...
CONSTANTINE T. PAPAS, X...
STEPHEN P. PASSERO, X...
DONALD R. PAWLOWSKI, X...
CHARLES W. PAXTON, X...
GARY E. PAYNE, X...
JOHN R. PAYNE, X...
FRANCISCO J. PEDROZO, X...
STEVEN T. PERRENOT, X...
HUGH W. PERRY III, X...
RONALD L. PERRY, X...
WILLIAM N. PHILLIPS, X...

LAWRENCE A. PIPPINS, X...
PHILIP T. POPE, X...
BRUCE J. PORTER, X...
CHRISTOPHER PRITCHETT, X...
DAVID J. PYLE, X...
GEORGE A. QUINN, X...
ROBERT M. RADIN, X...
PAUL A. RAGGIO, X...
MICHAEL L. RAMIREZ, X...
JAMES C. RANSICK, X...
JEFFREY N. RAPP, X...
TOMMY L. RICH, X...
RICKEY L. RIFE, X...
JOHN D. RIVENBURGH, X...
LARRY W. ROBERSON, X...
MELVIN A. ROBERSON, X...
JOSEPH P. ROBINSON, X...
RONALD ROBINSON, X...
JORGE E. RODRIGUEZ, X...
DARRELL L. ROLL, X...
MARTIN R. ROLLINSON, X...
CHARLETTE I. ROMAN, X...
MICHAEL G. ROSE, X...
ELLIOT J. ROSNER, X...
BLAIR ROSS, X...
CHARLES A. ROWCLIFFE, X...
MICHAEL J. ROZSYPAL, X...
RONALD C. RUSSELL, X...
KASSEM R. SALEH, X...
LEONARD J. SAMBOROWSKI, X...
CHARLES F. SARDO, X...
CURTIS M. SCAPARROTTI, X...
JOHN F. SCHORSCH, JR., X...
DAVID J. SCHROER, X...
RICHARD A. SCHWARTZMAN, X...
CHARLES R. SCOTT, X...
ROBERT E. SEETIN, X...
KARL A. SEMANCIK, X...
ROBERT W. SHAFFER, X...
PATRICK J. SHAHA, X...
JED A. SHEEHAN, X...
CHRISTOPHER L. SHEPHERD, X...
AMMON A. SINK III, X...
EDWARD M. SIOMACCO, X...
THOMAS E. SITTNICK, X...
ROBERT E. SLOCKBOWER, X...
BRADLEY E. SMITH, X...
JOSEPH A. SMITH, X...
RICKEY E. SMITH, X...
KEITH H. SNOOK, X...
MARTIN T. SPAINHOUR, X...
STEPHEN M. SPATARO, X...
ROBERT M. SPEER, X...
GREGORY V. STANLEY, X...
BENNY G. STEAGALL, X...
KEITH A. STELZER, X...
JOHN E. STERLING, JR., X...
GREGORY A. STONE, X...
HAROLD T. STOTT, JR., X...
ROBERT A. STROM, X...
RANDOLPH P. STRONG, X...
EDWARD W. SULLIVAN, X...
CHARLES E. SUMPTER, X...
ALAN D. SWAIN, X...
ROBIN P. SWAN, X...
ROBERT N. SWEENEY, X...
RICHARD E. SWISHER, JR., X...
CARYL T. TALLON, X...
PAUL A. TATE, X...
WILLIAM H. TAYLOR III, X...
DWIGHT E. THOMAS, X...
EUGENE L. THOMPSON, X...
MICHAEL J. THOMPSON, X...
HARRY C. THORNSVARD, JR., X...
MARK E. TILLOTSON, X...
HARRY A. TOMLIN, X...
HECTOR E. TOPETE, X...
GEORGE L. TOPIC, X...
MICHAEL W. TRAHAN, X...
JAMES A. TREADWELL, X...
GARY A. TREDE, X...
THOMAS H. TUTT II, X...
CONSTANTINE S. VAKAS, X...
PETER M. VANGJEL, X...
GLENN S. VAVRA, X...
GERALD N. VEVON, JR., X...
CHARLES F. VONDRA, X...
LLOYD S. WAGNER, X...
CRAIG A. WALLING, X...
MICHAEL J. WALSH, X...
JAMES J. WARD, X...
DONALD W. WARNER, X...
JERRY B. WARNER, X...
KURT A. WEAVER, X...
LOUIS W. WEBER, X...
CECIL R. WEBSTER, X...
KURT WEIDENTHAL II, X...
CHARLES K. WELLIVER, JR., X...
JAMES W. WHITEHEAD, JR., X...
JOSEPH W. WHITLEY, X...
SAMUEL A. WHITSON, X...
SAMMY G. WIGLESWORTH, X...
HAROLD E. WILLIAMS, X...
RONALD B. WILLIAMS, X...
PAUL L. WILLIS, X...
WILLIAM L. WIMBISH III, X...
DAVID A. WOOD, X...
MICHAEL R. WOOD, X...
BRYON J. YOUNG, X...
BRIAN R. ZAHN, X...
BERNARD F. ZIPP, X...

CONFIRMATIONS

Executive nominations confirmed by the Senate March 6, 1998:

DEPARTMENT OF STATE

ROBERT T. GREY, JR., OF VIRGINIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS UNITED STATES REPRESENTATIVE TO THE CONFERENCE ON DISARMAMENT.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

GEORGE MCGOVERN, OF SOUTH DAKOTA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS U.S. REPRESENTATIVE TO THE UNITED NATIONS AGENCIES FOR FOOD AND AGRICULTURE.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING KENNETH A. THOMAS, AND ENDING CHARLES GRANDIN WISE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 31, 1997.

FOREIGN SERVICE NOMINATIONS BEGINNING DOLORES F. HARROD, AND ENDING STEPHAN WASYLKO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 2, 1998.

FOREIGN SERVICE NOMINATION OF LYLE J. SEBRANEK, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 2, 1998.