SENATE—*Tuesday May 19, 1998*

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

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Dr. Jere Allen, Executive Director, District of Columbia Baptist Convention.

We are very pleased to have you with us.

PRAYER

The guest Chaplain, Dr. Jere Allen, offered the following prayer:

Let us pray.

Dear Heavenly Father, we acknowledge that Thou art the creator and sustainer of this, Thy universe, and we are called to be caretakers of all Thou hast made for an appointed time. Guide the inner control centers of these Thy servants in the Senate that they might be responsible stewards of the power of decision granted to them. Bring to their consciousness that evil rewards with temporary power and impermanent gain, but righteousness is eternally on the scaffolds and will ultimately sway the future. Move their consciousness upward toward the crystal clear purity of Thyself. Grant those who serve here the ability to hear Thy voice in the midst of a cacophony of conflicting opinions that vie for attention. Endow them with wisdom, patience, courage and peace as they make and live with decisions that affect so many. In Your holy Name we pray. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. HUTCHINSON. I thank the Chair.

APPRECIATION OF THE OPENING PRAYER

Mr. HUTCHINSON. Mr. President, I join my colleagues in thanking our visiting Chaplain for the opening prayer today.

SCHEDULE

Mr. HUTCHINSON. Mr. President, for the information of all Senators, today there will be a period of morning business until 10 a.m. Following morning business, the Senate will resume consideration of S. 1415, the tobacco legislation. It is hoped that Members will come to the floor to debate this important legislation and other amendments under short time agreements. Rollcall votes may occur prior to the 12:30 policy luncheons, and Members should expect those throughout today's session in order to make good progress on the tobacco bill.

I thank my colleagues for their attention.

The PRESIDENT pro tempore. The able minority leader is recognized.

(Mr. HUTCHINSON assumed the Chair.)

TOBACCO AND PUBLIC HEALTH

Mr. DASCHLE. Mr. President, the debate on tobacco legislation that we will begin again at 10 o'clock this morning is one of the most significant in which any of us will ever be involved.

Smoking is, in the words of former Surgeon General C. Everett Koop, "the chief, single avoidable cause of death in our society, and the most important public health issue of our time."

Every year, tobacco kills more than 400,000 Americans—accounting for more than one out of every five deaths in our country. Smoking kills more people than die from AIDS, alcohol, car accidents, murders, suicides and fires—combined.

So often, when we hear that someone has died as a result of smoking, we think, "That was their choice. They were adults."

But chances are, they were not adults when they made the decision to pick up that first cigarette.

Ninety percent of adult smokers started smoking at or before the age of 18—before they were even old enough to buy cigarettes legally.

The average youth smoker starts smoking at 13, and is addicted by the time he or she is 14. One out of every three of those children will eventually die from smoking.

It may take another 20 or 30—or even 50—years until that decision catches up with them. But the decision is made when they are children.

That is what this debate is really about. Are we willing, as a nation, to protect our children from an epidemic that may eventually kill them?

During the first half of this century, another epidemic threatened America's children: polio.

Summer was a time of fear for American parents and their children. Parents kept their children out of swimming pools, movie theaters—anywhere the virus might be spread.

Still, thousands of children died every year from polio, and tens of thousands were crippled.

The worst polio epidemic in U.S. history occurred in 1952, when nearly 60,000 new cases were reported.

Back then, America marshaled all its resources and all its resolve and, in 1953, Jonas Salk discovered a vaccine.

As a result, polio has all but vanished from this nation.

We may not be able to eliminate all tobacco-related disease, as we eliminated polio. But we can dramatically reduce the number of people who pick up that first cigarette as teenagers and become addicted and eventually die from smoking.

The bill that will be pending in just a few moments provides the comprehensive approach that is needed to do that.

It is supported by a majority of this Senate—Democrats and Republicans—and by the President.

More importantly, it is supported by the American people.

CIGARETTE COMPANIES TARGET KIDS

Smoking by teenagers is now at a 19-year high.

Every day, 3,000 kids become regular smokers. That's more than a million kids a year.

The increase in teen smoking is not an accident. It is the result of a deliberate and aggressive marketing campaign.

Once-secret internal industry documents make it clear that the tobacco industry targets kids—and has for more than 25 years.

The tobacco industry spends $13 million a day—$5 billion a year—on advertising. Many of their ads are specifically targeted to kids.

A 1981 Philip Morris internal memo makes clear why.

According to that memo, "The overwhelming majority of smokers first begin to smoke while still in their teens. . . . The smoking patterns of teenagers are particularly important to Philip Morris."

A 1984 RJ Reynolds internal memo—written just before RJR launched its "Joe Camel" campaign—is even more blunt.

"If younger adults turn away from smoking," it says, "the (tobacco) industry must decline, just as a population that does not give birth will eventually dwindle . . . Younger adult smokers are our only source of replacement smokers."

"Replacement smokers." That's how RJR sees children: as "replacements" for older smokers who quit—or die from tobacco-related disease.

If we can keep kids from smoking when they're young, chances are they will never smoke.

Tobacco companies know that. That's one reason they're spending $50 million to try to kill this bill.

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

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THE TOBACCO INDUSTRY IS SCARED

Another reason is because they don't want to be held accountable for the damage they knowingly caused in the past.

The tobacco industry is being sued by states across the country. States are demanding to be reimbursed for billions of dollars they have already spent treating smoking-related illnesses.

The cases aren't going well for the industry. In the last year alone, it has settled out of court with four states, rather than risk going into court and losing even more.

The $6.6 billion the tobacco industry agreed to earlier this month to pay Minnesota is the third-largest court settlement in U.S. history. It is topped only by the $11.3 billion it agreed to pay Florida, and the $15.3 billion it will pay Texas.

THE TRUTH ABOUT THE TOBACCO BILL

The tobacco industry is scared. So they are spending $50 million to try to kill this bill. We have all heard their arguments.

First, they are trying to convince the American people that the only reason Congress wants to pass a tobacco bill is to raise mountains of money.

The truth is, 40 percent of the money that would be raised by this bill wouldn't go to the federal government at all.

It would go to state taxpayers, to reimburse them for money they've already spent treating tobacco-related illnesses.

The rest of the money would be used for three purpose: To support medical research on treating smoking-related illness and preventing smoking; to dramatically reduce teen smoking; and to help tobacco farmers make the transition to other crops.

The industry's second argument is that this bill will create a black market for cigarettes.

They point to the cigarette smuggling problems Canada experienced in the early 1990s when it raised tobacco prices.

The reality is, our bill includes tough anti-smuggling, anti-black market provisions that Canada lacked.

It is worth mentioning, I think, that a lobbyist who enlisted several law enforcement groups to warn that this bill could create a black market in cigarettes also has another employer: a leading tobacco company.

The third argument the tobacco industry makes is that our bill would drive cigarette companies into bankruptcy.

Mr. President, the tobacco industry makes $100 billion a year.

Even if it made only $100 million a year, it still would not be in danger of bankruptcy because, under this bill, it is smokers—not tobacco companies—who pay.

Finally, the tobacco industry wants people to believe that we're on a slippery slope; that today, tobacco is the whipping boy, but next it will be alcohol or some other product.

This argument ignores one crucial distinction: tobacco is the only legal product sold in the United States that will kill you when used as intended.

Mr. President, the companies that are making these claims are the same companies whose CEOs raised their hands and swore before Congress that cigarettes are not addictive.

They were blowing smoke then, and they are blowing smoke now.

As I said, this is a historic opportunity. If we fail to grasp it, our Nation will pay a terrible price. Unless we reverse current trends, 5 million children who are under the age of 18 today will die from smoking-related illnesses.

Have you ever known anyone who has died from cancer or emphysema or some other tobacco-related disease?

It's torture—on them, and for the people who love them. Unless we act now to reverse current trends, Americans will spend $1 trillion over the next 20 years—$1 trillion, a thousand-billion dollars—to treat smoking-related illnesses.

This bill would raise $516 billion over 25 years, $516 billion over 25 years to save $1 trillion over 20 years—and 5 million children. Mr. President, that sounds like a pretty good deal to me.

Several years ago, internal documents that the tobacco industry had for years kept secret—that the industry had for years denied even existed—began to trickle out. After a while, the trickle became a flood. As a result of these documents, we now know cigarette manufacturers have known for decades that tobacco is addictive.

We now know that cigarettes kill people directly, and they are a contributing cause of illnesses from heart disease to sudden infant death syndrome. We now know that tobacco companies manipulate the level of nicotine in cigarettes to hook smokers. We now know that the industry aggressively targets children. We now know that the price of cigarettes influences kids' decision to smoke. We know that's true. But we also know it's not enough.

The only way we are going to break the deadly cycle of teen smoking and addiction and death is with a comprehensive bill that includes price hikes, plus strong counter-advertising efforts and effective retail licensing, and sets goals for reducing teen smoking and sanctions against tobacco companies for failure to attain them. That is what this bill contains. If we can improve it, we should. And then we should pass this bill, and urge the House to pass it as well.

Teen smoking is an epidemic. If this Congress can't protect children from a deadly health threat, what in the world can we do?

In 1973, a senior RJ Reynolds employee wrote a memo entitled "research planning memorandum on some thoughts about new brands of cigarettes for the youth market." In that memo, he argued—and I quote—"there is certainly nothing immoral or unethical about our company attempting to attract (teen) smokers to our products."

Mr. President, most Americans disagree with that assertion. Most Americans believe that aggressively marketing to children a product you know could eventually kill them is both immoral and unethical. And, they believe it ought to be illegal.

As the industry's own documents reveal, most adult smokers start smoking as teenagers. Victor Crawford was one of those kids.

He started smoking when he was 13 years old. He died 50 years later, after the cancer that was caused by smoking had spread from his throat to his pelvis, lungs and liver. As an adult Victor Crawford served 16 years as a member of Maryland's House of Delegates and its state Senate. He was a colorful and effective politician. He was also a 2½ pack-a-day smoker. In 1986, Victor Crawford left politics and went to work in Maryland's state capital into the work of lobbying. One of his clients was the Tobacco Institute, the propaganda arm of the tobacco industry. The Tobacco Institute paid him $200 an hour to help kill whatever tobacco restrictions came before the Maryland General Assembly.

Six years later, in 1992, he was diagnosed with throat cancer. His doctors told him he had three months to live. But, with the help of new and experimental treatments, he managed to hang on for three years.

Victor Crawford used those last three years of his life to prevent other young people from making the same mistake he had made when he picked up that first cigarette at 13.

At first reluctantly, then passionately, he spoke about the pain of his illness, and his remorse over having contributed, through his work, to the suffering of others.

He described his former employers, the tobacco industry, as "hard-nosed, brilliant and ruthless. I can also state without question," he said, "that the profit motive is supreme, and that there is no avenue they will not explore and no means they will not use to that end."

He told his story to state legislatures, on "60 Minutes," in Ann Landers' column—wherever he thought it would get through.

A year and a half before he died, he returned to the Maryland Statehouse—to the place where he had worked as a legislator and lobbyist. Only this time he as a witness, testifying in support of a law regulating public smoking. He wore a wig to hide the baldness caused by chemotherapy, and he was terribly gaunt. But everyone who heard him was deeply moved.

Said on of his former colleagues after his testimony, "Yours was the voice of truth."

Mr. President, Victor Crawford's voice—and the voice of America's children—are calling to us today.

They are asking us to protect them from addiction.

They are asking us to protect them from painful and premature death.

Are we listening?

It is time for Congress to pass a national bill to reduce teen smoking and to tell the cigarette manufacturers, "Our children are not 'replacement smokers,' and you cannot prey on them anymore."

I yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for up to 5 minutes each.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand we are in morning business?

The PRESIDING OFFICER. The Senator is correct.

TROUBLING NEW DEVELOPMENTS IN SOUTH ASIA

Mr. HARKIN. Mr. President, I wanted to take just a little bit of time this morning to again alert Senators and others about troubling new developments in South Asia after India thumbed its nose at the world community and exploded five underground nuclear weapons. Conditions seem to be spiraling out of control in the nation of India. We now see that a key Indian official, according to the news this morning, a key Indian official is warning Pakistan and making very threatening, provocative statements, about the area that we know as Jammu-Kashmir. Indian Home Minister Advani—there is a picture of him here clenching his fist, saying they were, basically, not going to have a peaceful resolution at all of the situation in Kashmir. I am quoting from the article:

> While India's previous government had a policy of not making hostile statements about Pakistan, the BJP [that is the party that is now in power in India] as recently as two years ago advocated "reclaiming" Pakistan's portion of Kashmir.

It is interesting that:

> In the course [it says here] of broadening its platforms for this year's parliamentary elections—and cobbling together a coalition government of 14 disparate parties—such references to Kashmir were dropped. But Advani [the Home Minister] was pointed in his reference today to the disputed state, although he couched it more in terms of Pakistan's stance toward Kashmir than India's.

But now Advani said, and I quote from the article:

> [Nuclear weapons testing] has brought about a qualitatively new stage in Indo-Pakistan relations and signifies—even while adhering to the principle of no first strike—[that] India is resolved to deal firmly with Pakistan's hostile activities in Kashmir.

Wait a minute, Mr. President. He is talking about Pakistan's hostile activities in Kashmir? It is India that has around 300,000 troops in Kashmir. It is India that is spending about a large portion of its military budget every year in Kashmir. It is by Indian troops that human rights groups have said that in the last several years, perhaps in the last 10 years, upwards of 13,000 people have been killed in Kashmir—not by Pakistani troops, but by Indian troops.

What this Home Minister Advani is doing is trying to cover what India has done in Kashmir by blaming it on Pakistan.

Quite frankly, Kashmir is the East Timor of South Asia, to those of us who have followed the problems of East Timor, a tiny little island nation on the eastern tip of Indonesia. It was a Portuguese colony for several hundred years. When the Portuguese left, the Indonesians came in to claim East Timor, but they have no rightful claim to it; it is a separate island nation.

Since that time, East Timorese have been put to death by the Indonesians, slaughtered, people driven out of their homes, driven out of their jobs. What has happened in East Timor is a blight on Indonesia, and the world community has spoken out forcefully against what Indonesia has done in East Timor. But the world community is standing silently by while the same kind of slaughter and repression is occurring in the tiny state of Kashmir.

If you go back to when India and Pakistan were partitioned off, this tiny area up in northwest India on the border of Pakistan and India, the United Nations recognized in the late 1940s that this issue needed to be resolved, and urged for it to be resolved through a plebiscite, to have a vote of the people in this area: Did they want to stay with Pakistan, or did they want to go with India?

But India refuses outside mediation, even from the UN. I had always hoped, as many have hoped, that we would have some kind of a peaceful resolution of Kashmir. But now India is shaking its fist at Pakistan and speaking provocatively of reclaiming certain areas of Kashmir that have already been recognized as being at least an adjunct to, adhering to Pakistan, an area called Azad Kashmir.

Mr. President, I don't think we can idly stand by and let India continue these kinds of provocative measures. The world community must speak with one voice in condemning the actions by India with strong sanctions. I will have a sense-of-the-Senate resolution, which I hope we can bring up sometime this week in conjunction with others, dealing with the Indian explosion of nuclear weapons and dealing with the Pressler amendment that Senator BROWNBACK and I will be offering sometime this week, I hope.

I have a sense-of-the-Senate resolution calling upon the United States to take the lead in getting other nations together to act as an intermediary in the dispute on Kashmir. Better that we act now, better that we try to seek peaceful resolutions of Kashmir before this whole thing blows up, before the BJP of India is able to take it to a higher level, a more provocative level that would involve the use of arms.

I hope we can get the support of other Senators in asking the United States to act as a mediator to this very dangerous situation that now exists in Kashmir and South Asia.

I thank the President. I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I am on the floor this morning to introduce a bill called the Emergency Medical Services Efficiency Act. My statement is going to take about 10 or 15 minutes. I ask unanimous consent that I be allowed to have up to 15 minutes, even though I know it is going to run into the time of 10 o'clock.

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

Mr. GRAMS. Thank you very much.

(The remarks of Mr. GRAMS pertaining to the introduction of S. 2091 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GRAMS. Thank you very much, Mr. President, for the time. I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The legislative clerk read as follows:

> A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

MODIFIED COMMITTEE SUBSTITUTE

(The text of the committee substitute, as modified to incorporate the text of amendment No. 2420, submitted on May 18, 1998, reads as follows:)

> Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Tobacco Policy and Youth Smoking Reduction Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purpose.
Sec. 4. Scope and effect.
Sec. 5. Relationship to other, related Federal, State, local, and Tribal laws.
Sec. 6. Definitions.
Sec. 7. Notification if youthful cigarette smoking restrictions increase youthful pipe and cigar smoking.
Sec. 8. FTC jurisdiction not affected.
Sec. 9. Congressional review provisions.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

Sec. 101. Amendment of Federal Food, Drug, and Cosmetic Act of 1938.
Sec. 102. Conforming and other amendments to general provisions.
Sec. 103. Construction of current regulations.

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

Sec. 201. Findings.
Sec. 202. Purpose.
Sec. 203. Goals for reducing underage tobacco use.
Sec. 204. Look-back assessment.
Sec. 205. Definitions.

Subtitle B—State Retail Licensing and Enforcement Incentives

Sec. 231. State retail licensing and enforcement block grants.
Sec. 232. Block grants for compliance bonuses.
Sec. 233. Conforming change.

Subtitle C—Tobacco Use Prevention and Cessation Initiatives

Sec. 261. Tobacco use prevention and cessation initiatives.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

Sec. 301. Cigarette label and advertising warnings.
Sec. 302. Authority to revise cigarette warning label Statements.
Sec. 303. Smokeless tobacco labels and advertising warnings.
Sec. 304. Authority to revise smokeless tobacco product warning label statements.
Sec. 305. Tar, nicotine, and other smoke constituent disclosure to the public.

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

Sec. 311. Regulation requirement.

TITLE IV—NATIONAL TOBACCO TRUST FUND

Sec. 401. Establishment of trust fund.
Sec. 402. Payments by industry.
Sec. 403. Adjustments.
Sec. 404. Payments to be passed through to consumers.
Sec. 405. Tax treatment of payments.
Sec. 406. Enforcement for nonpayment.

Subtitle B—General Spending Provisions

Sec. 451. Allocation accounts.
Sec. 452. Grants to States.
Sec. 453. Indian health service.
Sec. 454. Research at the National Science Foundation.
Sec. 455. Medicare cancer patient demonstration project; evaluation and report to Congress.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

Sec. 501. Definitions.
Sec. 502. Smoke-free environment policy.
Sec. 503. Citizen actions.
Sec. 504. Preemption.
Sec. 505. Regulations.
Sec. 506. Effective date.
Sec. 507. State choice.

TITLE VI—APPLICATION TO INDIAN TRIBES

Sec. 601. Short title.
Sec. 602. Findings and purposes.
Sec. 603. Application of title to Indian lands and to Native Americans.

TITLE VII—TOBACCO CLAIMS

Sec. 701. Definitions.
Sec. 702. Application; preemption.
Sec. 703. Rules governing tobacco claims.

TITLE VIII—TOBACCO INDUSTRY ACCOUNTABILITY REQUIREMENTS AND EMPLOYEE PROTECTION FROM REPRISALS

Sec. 801. Accountability requirements and oversight of the tobacco industry.
Sec. 802. Tobacco product manufacturer employee protection.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

Sec. 901. Findings.
Sec. 902. Applicability.
Sec. 903. Document disclosure.
Sec. 904. Document review.
Sec. 905. Resolution of disputed privilege and trade secret claims.
Sec. 906. Appeal of panel decision.
Sec. 907. Miscellaneous.
Sec. 908. Penalties.
Sec. 909. Definitions.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

Sec. 1001. Short title.
Sec. 1002. Definitions.

Subtitle A—Tobacco Community Revitalization

Sec. 1011. Authorization of appropriations.
Sec. 1012. Expenditures.
Sec. 1013. Budgetary treatment.

Subtitle B—Tobacco Market Transition Assistance

Sec. 1021. Payments for lost tobacco quota.
Sec. 1022. Industry payments for all department costs associated with tobacco production.
Sec. 1023. Tobacco community economic development grants.
Sec. 1024. Flue-cured tobacco production permits.
Sec. 1025. Modifications in Federal tobacco programs.

Subtitle C—Farmer and Worker Transition Assistance

Sec. 1031. Tobacco worker transition program.
Sec. 1032. Farmer opportunity grants.

Subtitle D—Immunity

Sec. 1041. General immunity for tobacco producers and tobacco warehouse owners.

TITLE XI—MISCELLANEOUS PROVISIONS

Subtitle A—International Provisions

Sec. 1101. Policy.
Sec. 1102. Tobacco control negotiations.
Sec. 1103. Report to Congress.
Sec. 1104. Funding.
Sec. 1105. Prohibition of funds to facilitate the exportation or promotion of tobacco.
Sec. 1106. Health labeling of tobacco products for export.
Sec. 1107. International tobacco control awareness.

Subtitle B—Anti-smuggling Provisions

Sec. 1131. Definitions.
Sec. 1132. Tobacco product labeling requirements.
Sec. 1133. Tobacco product licenses.
Sec. 1134. Prohibitions.
Sec. 1135. Labeling of products sold by Native Americans.
Sec. 1136. Limitation on activities involving tobacco products in foreign trade zones.
Sec. 1137. Jurisdiction; penalties; compromise of liability.
Sec. 1138. Amendments to the Contraband Cigarette Trafficking Act.
Sec. 1139. Funding.
Sec. 1140. Rules and regulations.

Subtitle C—Other Provisions

Sec. 1161. Improving child care and early childhood development.
Sec. 1162. Ban of sale of tobacco products through the use of vending machines.
Sec. 1163. Amendments to the Employee Retirement Income Security Act of 1974.

TITLE XII—ASBESTOS-RELATED TOBACCO CLAIMS

Sec. 1201. National tobacco trust funds available under future legislation.

TITLE XIII—VETERANS' BENEFITS

Sec. 1301. Recovery by Secretary of Veterans' Affairs.

TITLE XIV—EXCHANGE OF BENEFITS FOR AGREEMENT

Sec. 1401. Conferral of benefits on participating tobacco product manufacturers in return for their assumption of specific obligations.
Sec. 1402. Participating tobacco product manufacturer.
Sec. 1403. General provisions of protocol.
Sec. 1404. Tobacco product labeling and advertising requirements of protocol.
Sec. 1405. Point-of-sale requirements.
Sec. 1406. Application of title.
Sec. 1407. Governmental claims.
Sec. 1408. Addiction and dependency claims; Castano Civil Actions.
Sec. 1409. Substantial non-attainment of required reductions.
Sec. 1410. Public health emergency.
Sec. 1411. Tobacco claims brought against participating tobacco product manufacturers.
Sec. 1412. Payment of tobacco claim settlements and judgments.
Sec. 1413. Attorneys' fees and expenses.
Sec. 1414. Effect of court decisions.
Sec. 1415. Criminal laws not affected.
Sec. 1416. Congress reserves the right to enact laws in the future.
Sec. 1417. Definitions.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under Article I, Section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) The citizens of the several States are exposed to, and adversely affected by, environmental smoke in public buildings and other facilities which imposes a burden on interstate commerce.

(13) Civil actions against tobacco product manufacturers and others are pending in Federal and State courts arising from the use, marketing, and sale of tobacco products. Among these actions are cases brought by the attorneys general of more than 40 States, certain cities and counties, and the Commonwealth of Puerto Rico, and other parties, including Indian tribes, and class actions brought by private claimants (such as in the Castano Civil Actions), seeking to recover monies expended to treat tobacco-related diseases and for the protection of minors and consumers, as well as penalties and other relief for violations of antitrust, health, consumer protection, and other laws.

(14) Civil actions have been filed throughout the United States against tobacco product manufacturers and their distributors, trade associations, law firms, and consultants on behalf of individuals or classes of individuals claiming to be dependent upon and injured by tobacco products.

(15) These civil actions are complex, time-consuming, expensive, and burdensome for both the litigants and Federal and State courts. To date, these civil actions have not resulted in sufficient redress for smokers or non-governmental third-party payers. To the extent that governmental entities have been or may in the future be compensated for tobacco-related claims they have brought, it is not now possible to identify what portions of such past or future recoveries can be attributed to their various antitrust, health, consumer protection, or other causes of action.

(16) It is in the public interest for Congress to adopt comprehensive public health legislation because of tobacco's unique position in the Nation's history and economy; the need to prevent the sale, distribution, marketing and advertising of tobacco products to persons under the minimum legal age to purchase such products; and the need to educate the public, especially young people, regarding the health effects of using tobacco products.

(17) The public interest requires a timely, fair, equitable, and consistent result that will serve the public interest by (A) providing that a portion of the costs of treatment for diseases and adverse health effects associated with the use of tobacco products is borne by the manufacturers of these products, and (B) restricting throughout the Nation the sale, distribution, marketing, and advertising of tobacco products only to persons of legal age to purchase such products.

(18) Public health authorities estimate that the benefits to the Nation of enacting Federal legislation to accomplish these goals would be significant in human and economic terms.

(19) Reducing the use of tobacco by minors by 50 percent would prevent well over 60,000 early deaths each year and save up to $43 billion each year in reduced medical costs, improved productivity, and the avoidance of premature deaths.

(20) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(21) In 1995, the tobacco industry spent close to $4,900,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(22) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(23) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(24) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(25) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(26) Tobacco advertising increases the size of the tobacco market by increasing consumption of tobacco products including increasing tobacco use by young people.

(27) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands, and children as young as 3 to 6 years old can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(28) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

(29) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(30) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(31) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones. Text-only requirements, while not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(32) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(33) If, as a direct or indirect result of this Act, the consumption of tobacco products in the United States is reduced significantly, then tobacco farmers, their families, and their communities may suffer economic hardship and displacement, notwithstanding their lack of involvement in the manufacturing and marketing of tobacco products.

(34) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to clarify the authority of the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to require the tobacco industry to fund both Federal and State oversight of the tobacco industry from on-going payments by tobacco product manufacturers;

(3) to require tobacco product manufacturers to provide ongoing funding to be used for an aggressive Federal, State, and local enforcement program and for a nationwide licensing system to prevent minors from obtaining tobacco products and to prevent the unlawful distribution of tobacco products, while expressly permitting the States to adopt additional measures that further restrict or eliminate the products' use;

(4) to ensure that the Food and Drug Administration and the States may continue to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(5) to impose financial surcharges on tobacco product manufacturers if tobacco use by young people does not substantially decline;

(6) to authorize appropriate agencies of the Federal government to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(7) to provide new and flexible enforcement authority to ensure that the tobacco industry makes efforts to develop and introduce less harmful tobacco products;

(8) to confirm the Food and Drug Administration's authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(9) in order to ensure that adults are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as

research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(10) to impose on tobacco product manufacturers the obligation to provide funding for a variety of public health initiatives;

(11) to establish a minimum Federal standard for stringent restrictions on smoking in public places, while also to permit State, Tribal, and local governments to enact additional and more stringent standards or elect not to be covered by the Federal standard if that State's standard is as protective, or more protective, of the public health;

(12) to authorize and fund from payments by tobacco product manufacturers a continuing national counter-advertising and tobacco control campaign which seeks to educate consumers and discourage children and adolescents from beginning to use tobacco products, and which encourages current users of tobacco products to discontinue using such products;

(13) to establish a mechanism to compensate the States in settlement of their various claims against tobacco product manufacturers;

(14) to authorize and to fund from payments by tobacco product manufacturers a nationwide program of smoking cessation administered through State and Tribal governments and the private sector;

(15) to establish and fund from payments by tobacco product manufacturers a National Tobacco Fund;

(16) to affirm the rights of individuals to access to the courts, to civil trial by jury, and to damages to compensate them for harm caused by tobacco products;

(17) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(18) to impose appropriate regulatory controls on the tobacco industry; and

(19) to protect tobacco farmers and their communities from the economic impact of this Act by providing full funding for and the continuation of the Federal tobacco program and by providing funds for farmers and communities to develop new opportunities in tobacco-dependent communities.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—This Act is not intended to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) except as provided in this Act, affect any action pending in State, Tribal, or Federal court, or any agreement, consent decree, or contract of any kind.

(b) TAXATION.—Notwithstanding any other provision of law, this Act and the amendments made by this Act shall not affect any authority of the Secretary of the Treasury (including any authority assigned to the Bureau of Alcohol, Tobacco and Firearms) or of State or local governments with regard to taxation for tobacco or tobacco products.

(c) AGRICULTURAL ACTIVITIES.—The provisions of this Act which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. 5. RELATIONSHIP TO OTHER, RELATED FEDERAL, STATE, LOCAL, AND TRIBAL LAWS.

(a) AGE RESTRICTIONS.—Nothing in this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended by this Act, shall prevent a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe from adopting and enforcing additional measures that further restrict or prohibit tobacco product sale to, use by, and accessibility to persons under the legal age of purchase established by such agency, State, subdivision, or government of an Indian tribe.

(b) ADDITIONAL MEASURES.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall limit the authority of a Federal agency (including the Armed Forces), a State or its political subdivisions, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products, including laws, rules, regulations, or other measures relating to or prohibiting the sale, distribution, possession, exposure to, or use of tobacco products by persons of any age that are in addition to the provisions of this Act and the amendments made by this Act. No provision of this Act or amendment made by this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(c) NO LESS STRINGENT.—Nothing in this Act or the amendments made by this Act is intended to supersede any State, local, or Tribal law that is not less stringent than this Act, or other Acts as amended by this Act.

(d) STATE LAW NOT AFFECTED.—Except as otherwise expressly provided in this Act, nothing in this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or rules promulgated under such Acts, shall supersede the authority of the States, pursuant to State law, to expend funds provided by this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) BRAND.—The term "brand" means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

(2) CIGARETTE.—The term "cigarette" has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

(3) CIGARETTE TOBACCO.—The term "cigarette tobacco" means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

(4) COMMERCE.—The term "commerce" has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

(5) DISTRIBUTOR.—The term "distributor" as regards a tobacco product means any person who furthers the distribution of cigarette or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this Act.

(6) INDIAN COUNTRY; INDIAN LANDS.—The terms "Indian country" and "Indian lands" have the meaning given the term "Indian country" by section 1151 of title 18, United States Code, and includes lands owned by an Indian tribe or a member thereof over which the United States exercises jurisdiction on behalf of the tribe or tribal member.

(7) INDIAN TRIBE.—The term "Indian tribe" has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(8) LITTLE CIGAR.—The term "little cigar" has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

(9) NICOTINE.—The term "nicotine" means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

(10) PACKAGE.—The term "package" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(11) POINT-OF-SALE.—The term "point-of-sale" means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

(12) RETAILER.—The term "retailer" means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

(13) ROLL-YOUR-OWN TOBACCO.—The term "roll-your-own tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(14) SECRETARY.—Except in title VII and where the context otherwise requires, the term "Secretary" means the Secretary of Health and Human Services.

(15) SMOKELESS TOBACCO.—The term "smokeless tobacco" means any product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

(16) STATE.—The term "State" means any State of the United States and, for purposes of this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

(17) TOBACCO PRODUCT.—The term "tobacco product" means cigarettes, cigarette tobacco, smokeless tobacco, little cigars, roll-your-own tobacco, and fine cut products.

(18) TOBACCO PRODUCT MANUFACTURER.—Except in titles VII, X, and XIV, the term "tobacco product manufacturer" means any person, including any repacker or relabeler, who—

(A) manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product; or

(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

(19) UNITED STATES.—The term "United States" means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

SEC. 7. NOTIFICATION IF YOUTHFUL CIGARETTE SMOKING RESTRICTIONS INCREASE YOUTHFUL PIPE AND CIGAR SMOKING.

The Secretary shall notify the Congress if the Secretary determines that underage use of pipe tobacco and cigars is increasing.

SEC. 8. FTC JURISDICTION NOT AFFECTED.

(a) IN GENERAL.—Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

(b) ENFORCEMENT BY FTC.—Any advertising that violates this Act or part 897 of title 21, Code of Federal Regulations, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

SEC. 9. CONGRESSIONAL REVIEW PROVISIONS.

In accordance with section 801 of title 5, United States Code, the Congress shall review, and may disapprove, any rule under this Act that is subject to section 801. This section does not apply to the rule set forth in part 897 of title 21, Code of Federal Regulations.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT OF 1938.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

"(kk) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).".

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

"CHAPTER IX—TOBACCO PRODUCTS

"SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS

"(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

"(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

"(2) a health claim is made for such products under section 201(g)(1)(C) or 201(h)(3).

"(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the provisions of part 897 of title 21, Code of Federal Regulations, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

"(c) SCOPE.—

"(1) Nothing in this chapter, any policy issued or regulation promulgated thereunder, or the National Tobacco Policy and Youth Smoking Reduction Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V of the Federal Food, Drug and Cosmetic Act or any other chapter of that Act.

"(2) The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority whatsoever to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer. Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production. For purposes of the preceding sentence, the term 'controlled by' means a member of the same controlled group of corporations as that term is used in section 52(a) of the Internal Revenue Code of 1986, or under common control within the meaning of the regulations promulgated under section 52(b) of such Code.

"SEC. 902. ADULTERATED TOBACCO PRODUCTS.

"A tobacco product shall be deemed to be adulterated if—

"(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any poisonous or deleterious substance that may render the product injurious to health;

"(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

"(3) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

"(4) it is, or purports to be or is represented as, a tobacco product which is subject to a performance standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

"(5) it is required by section 910(a) to have premarket approval, is not exempt under section 906(f), and does not have an approved application in effect;

"(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

"(7) it is a tobacco product for which an exemption has been granted under section 906(f) for investigational use and the person who was granted such exemption or any investigator who uses such tobacco product under such exemption fails to comply with a requirement prescribed by or under such section.

"SEC. 903. MISBRANDED TOBACCO PRODUCTS.

"(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

"(1) if its labeling is false or misleading in any particular;

"(2) if in package form unless it bears a label containing—

"(A) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

"(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count,

except that under subparagraph (B) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

"(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

"(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

"(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

"(7) if, in the case of any tobacco product distributed or offered for sale in any State—

"(A) its advertising is false or misleading in any particular; or

"(B) it is sold, distributed, or used in violation of regulations prescribed under section 906(d);

"(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

"(A) a true statement of the tobacco product's established name as defined in paragraph (4) of this subsection, printed prominently; and

"(B) a brief statement of—

"(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

"(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

"(9) if it is a tobacco product subject to a performance standard established under section 907, unless it bears such labeling as may be prescribed in such performance standard; or

"(10) if there was a failure or refusal—

"(A) to comply with any requirement prescribed under section 904 or 908;

"(B) to furnish any material or information required by or under section 909; or

"(C) to comply with a requirement under section 912.

"(b) PRIOR APPROVAL OF STATEMENTS ON LABEL.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement and no advertisement of a tobacco product, published after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall, with respect to the matters specified in this section or covered by regulations issued hereunder, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55). This subsection does not apply to any printed matter which the Secretary determines to be labeling as defined in section 201(m).

"SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

"(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit to the Secretary the following information:

"(1) A listing of all tobacco ingredients, substances and compounds that are, on such date, added by the manufacturer to the tobacco, paper, filter, or other component of each tobacco product by brand and by quantity in each brand and subbrand.

"(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine.

"(3) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, behavioral, or physiologic effects of tobacco products, their constituents, ingredients, and components, and tobacco additives, described in paragraph (1).

"(4) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

"(5) All documents (including underlying scientific information) relating to marketing research involving the use of tobacco products.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

"(b) ANNUAL SUBMISSION.—A tobacco product manufacturer or importer that is required to submit information under subsection (a) shall update such information on an annual basis under a schedule determined by the Secretary.

"(c) TIME FOR SUBMISSION.—

"(1) NEW PRODUCTS.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of this chapter, the manufacturer of such product shall provide the information required under subsection (a) and such product shall be subject to the annual submission under subsection (b).

"(2) MODIFICATION OF EXISTING PRODUCTS.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive, increases or decreases the quantity of an existing tobacco additive or the nicotine content, delivery, or form, or eliminates a tobacco additive from any tobacco product, the manufacturer shall within 60 days of such action so advise the Secretary in writing and reference such modification in submissions made under subsection (b).

"SEC. 905. ANNUAL REGISTRATION.

"(a) DEFINITIONS.—As used in this section—

"(1) the term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user; and

"(2) the term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

"(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

"(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

"(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

"(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) of this section shall list such tobacco products in accordance with such system.

"(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

"(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by one or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

"(h) FOREIGN ESTABLISHMENTS MAY REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, may register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

"(i) REGISTRATION INFORMATION.—

"(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), or (d) of this section shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

"(A) in the case of a tobacco product contained in the applicable list with respect to which a performance standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

"(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

"(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a performance standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

"(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

"(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1) of this subsection. A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

"(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

"(C) If since the date the registrant reported under subparagraph (B) a notice of

discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

"(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

"(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

"(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, as defined by the Secretary by regulation shall, at least 90 days before making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall by regulation prescribe)—

"(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act; and

"(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

"(2) APPLICATION TO CERTAIN POST-AUGUST 11TH PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act shall be submitted to the Secretary within 6 months after the date of enactment of that Act.

"SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

"(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, or subsection (d) of this section shall not apply to such tobacco product.

"(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, or 910, or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

"(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

"(2) the period within which interested persons may present their comments on the notice or findings (including the need therefor) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefor.

"(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 904, 907, 908, 909, or 910 or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

"(d) RESTRICTIONS.—

"(1) The Secretary may by regulation require that a tobacco product be restricted to sale, distribution, or use upon such conditions, including restrictions on the access to, and the advertising and promotion of, the tobacco product, as the Secretary may prescribe in such regulation if, because of its potentiality for harmful effect or the collateral measures necessary to its use, the Secretary determines that such regulation would be appropriate for the protection of the public health. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

"(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

"(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such condition may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

"(2) The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

"(3) No restriction under paragraph (1) may prohibit the sale of any tobacco product in face-to face transactions by a specific category of retail outlets.

"(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

"(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

"(A) The Secretary may, in accordance with subparagraph (B), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a tobacco product), packing and storage of a tobacco product, conform to current good manufacturing practice, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter.

"(B) The Secretary shall—

"(i) before promulgating any regulation under subparagraph (A), afford an advisory committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

"(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

"(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

"(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities; and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

"(2) EXEMPTIONS; VARIANCES.—

"(A) Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

"(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

"(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

"(iii) contain such other information as the Secretary shall prescribe.

"(B) The Secretary may refer to an advisory committee any petition submitted under subparagraph (A). The advisory committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

"(i) the date the petition was submitted to the Secretary under subparagraph (A); or

"(ii) the day after the petition was referred to an advisory committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

"(C) The Secretary may approve—

"(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

"(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

"(D) An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

"(E) After the issuance of an order under subparagraph (B) respecting a petition, the

petitioner shall have an opportunity for an informal hearing on such order.

"(3) Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act.

"(f) EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from this chapter under such conditions as the Secretary may prescribe by regulation .

"(g) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

"SEC. 907. PERFORMANCE STANDARDS.

"(a) IN GENERAL.—

"(1) FINDING REQUIRED.—The Secretary may adopt performance standards for a tobacco product if the Secretary finds that a performance standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

"(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

"(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

"(2) CONTENT OF PERFORMANCE STANDARDS.—A performance standard established under this section for a tobacco product—

"(A) shall include provisions to provide performance that is appropriate for the protection of the public health, including provisions, where appropriate—

"(i) for the reduction or elimination of nicotine yields of the product;

"(ii) for the reduction or elimination of other constituents or harmful components of the product; or

"(iii) relating to any other requirement under (B);

"(B) shall, where necessary to be appropriate for the protection of the public health, include—

"(i) provisions respecting the construction, components, ingredients, and properties of the tobacco product;

"(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

"(iii) provisions for the measurement of the performance characteristics of the tobacco product;

"(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

"(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

"(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

"(3) PERIODIC RE-EVALUATION OF PERFORMANCE STANDARDS.—The Secretary shall provide for periodic evaluation of performance standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (2) by any person.

"(4) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall, to the maximum extent practicable—

"(A) use personnel, facilities, and other technical support available in other Federal agencies;

"(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

"(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, or consumer organizations who in the Secretary's judgment can make a significant contribution.

"(b) ESTABLISHMENT OF STANDARDS.—

"(1) NOTICE.—

(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a tobacco product.

"(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a tobacco product shall—

"(i) set forth a finding with supporting justification that the performance standard is appropriate for the protection of the public health;

"(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate; and

"(iii) invite interested persons to submit an existing performance standard for the tobacco product, including a draft or proposed performance standard, for consideration by the Secretary.

"(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to be appropriate for the protection of the public health.

"(D) The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the performance standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

"(E) The Secretary shall provide for a comment period of not less than 60 days.

"(2) PROMULGATION.—

"(A) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from an advisory committee, the Secretary shall—

"(i) promulgate a regulation establishing a performance standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

"(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

"(B) A regulation establishing a performance standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before one year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

"(3) SPECIAL RULE FOR STANDARD BANNING CLASS OF PRODUCT OR ELIMINATING NICOTINE CONTENT.—Because of the importance of a decision of the Secretary to issue a regulation establishing a performance standard—

"(A) eliminating all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or

"(B) requiring the reduction of nicotine yields of a tobacco product to zero,

it is appropriate for the Congress to have the opportunity to review such a decision. Therefore, any such standard may not take effect before a date that is 2 years after the President notifies the Congress that a final regulation imposing the restriction has been issued.

"(4) AMENDMENT; REVOCATION.—

"(A) The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B) of this subsection, amend or revoke a performance standard.

"(B) The Secretary may declare a proposed amendment of a performance standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

"(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary—

"(A) may, on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a performance standard; or

"(B) shall, upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to an advisory committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this subparagraph to the advisory committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The advisory committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

"SEC. 908. NOTIFICATION AND OTHER REMEDIES

"(a) NOTIFICATION.—If the Secretary determines that—

"(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

"(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

"(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

"(c) RECALL AUTHORITY.—

"(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

"(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

"(A) If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

"(B) An amended order under subparagraph (A)—

"(i) shall not include recall of a tobacco product from individuals; and

"(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

"(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

"SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

"(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

"(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

"(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

"(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

"(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

"(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

"(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) of this subsection continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

"(b) REPORTS OF REMOVALS AND CORRECTIONS.—

(1) Except as provided in paragraph (3), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

"(A) to reduce a risk to health posed by the tobacco product; or

"(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

"(2) No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a) of this section.

"SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

"(a) IN GENERAL.—

"(1) PREMARKET APPROVAL REQUIRED.—

"(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any tobacco product that is not commercially marketed (other than for test marketing) in the United States as of August 11, 1995, is required unless the manufacturer has submitted a report under section 905(j), and the Secretary has issued an order that the tobacco product is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of August 11, 1995, that is in compliance with the requirements of this Act.

"(B) PRODUCTS INTRODUCED BETWEEN AUGUST 11, 1995, AND ENACTMENT OF THIS CHAPTER.—Subparagraph (A) does not apply to a tobacco product that—

"(i) was first introduced or delivered for introduction into interstate commerce for commerce for commercial distribution in the United States after August 11, 1995, and before the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act; and

"(ii) for which a report was submitted under section 905(j) within 6 months after such date,

until the Secretary issues an order that the tobacco product is substantially equivalent for purposes of this section or requires premarket approval.

"(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

"(A) For purposes of this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

"(i) has the same characteristics as the predicate tobacco product; or

"(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

"(B) For purposes of subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

"(C) A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

"(3) HEALTH INFORMATION.—

"(A) As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

"(B) Any summary under subparagraph (A) respecting a tobacco product shall contain

detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

"(b) APPLICATION.—

"(1) CONTENTS.—An application for premarket approval shall contain—

"(A) full reports of all information, published or known to or which should reasonably be known to the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

"(B) a full statement of the components, ingredients, and properties, and of the principle or principles of operation, of such tobacco product;

"(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

"(D) an identifying reference to any performance standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such performance standard or adequate information to justify any deviation from such standard;

"(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

"(F) specimens of the labeling proposed to be used for such tobacco product; and

"(G) such other information relevant to the subject matter of the application as the Secretary may require.

"(2) REFERENCE TO ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

"(A) may, on the Secretary's own initiative; or

"(B) shall, upon the request of an applicant,

refer such application to an advisory committee and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

"(c) ACTION ON APPLICATION.—

"(1) DEADLINE.—

"(A) As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b) of this section, the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

"(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

"(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that one or more grounds for denial specified in paragraph (2) of this subsection apply.

"(B) An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

"(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

"(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

"(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

"(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

"(D) such tobacco product is not shown to conform in all respects to a performance standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

"(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with one or more protocols prescribed by the Secretary).

"(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

"(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

"(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

"(5) BASIS FOR ACTION.—

"(A) For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include one or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

"(B) If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

"(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

"(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

"(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

"(B) that the application contained or was accompanied by an untrue statement of a material fact;

"(C) that the applicant—

"(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

"(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

"(iii) has not complied with the requirements of section 905;

"(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

"(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

"(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a performance standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

"(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the thirtieth day after the date upon which he receives notice of such withdrawal, obtain review thereof in accordance with subsection (e) of this section.

"(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

"(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

"(1) in person by any officer or employee of the department designated by the Secretary; or

"(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

"SEC. 911. JUDICIAL REVIEW.

"(a) IN GENERAL.—Not later than 30 days after—

"(1) the promulgation of a regulation under section 907 establishing, amending, or revoking a performance standard for a tobacco product; or

"(2) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or order may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit wherein such person resides or has his principal place of business for judicial review of such regulation or order. A copy of the petition shall be transmitted by the clerk of the court to the Secretary or other officer designated by the Secretary for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based the Secretary's regulation or order and each record or order shall contain a statement of the reasons for its issuance and the basis, on the record, for its issuance. For purposes of this section, the term 'record' means all notices and other matter published in the Federal Register with respect to the regulation or order reviewed, all information submitted to the Secretary with respect to such regulation or order, proceedings of any panel or advisory committee with respect to such regulation or order, any hearing held with respect to such regulation or order, and any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

"(b) COURT MAY ORDER SECRETARY TO MAKE ADDITIONAL FINDINGS.—If the petitioner applies to the court for leave to adduce additional data, views, or arguments respecting the regulation or order being reviewed and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceedings before the Secretary, the court may order the Secretary to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Secretary may modify the Secretary's findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file with the court such modified or new findings, and the Secretary's recommendation, if any, for the modification or setting aside of the regulation or order being reviewed, with the return of such additional data, views, or arguments.

"(c) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) of this section for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. A regulation or order described in paragraph (1) or (2) of subsection (a) of this section shall not be affirmed if it is found to be unsupported by substantial evidence on the record taken as a whole.

"(d) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

"(e) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

"(f) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review under this section or under any other provision of law of a regulation or order issued under section 906, 907, 908, 909, 910, or 914, each such regulation or order shall contain a statement of the reasons for its issuance and the basis, in the record of the proceedings held in connection with its issuance, for its issuance.

"SEC. 912. POSTMARKET SURVEILLANCE

"(a) DISCRETIONARY SURVEILLANCE.—The Secretary may require a tobacco product manufacturer to conduct postmarket surveillance for a tobacco product of the manufacturer if the Secretary determines that postmarket surveillance of the tobacco product is necessary to protect the public health or is necessary to provide information regarding the health risks and other safety issues involving the tobacco product.

"(b) SURVEILLANCE APPROVAL.—Each tobacco product manufacturer required to conduct a surveillance of a tobacco product under subsection (a) of this section shall, within 30 days after receiving notice that the manufacturer is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of useful data or other information necessary to protect the public health. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.

"SEC. 913. REDUCED RISK TOBACCO PRODUCTS.

"(a) REQUIREMENTS.—

"(1) IN GENERAL.—For purposes of this section, the term 'reduced risk tobacco product' means a tobacco product designated by the Secretary under paragraph (2).

"(2) DESIGNATION.—

"(A) IN GENERAL.—A product may be designated by the Secretary as a reduced risk tobacco product if the Secretary finds that the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect public health, based on an application submitted by the manufacturer of the product (or other responsible person) that—

"(i) demonstrates through testing on animals and short-term human testing that use of such product results in ingestion or inhalation of a substantially lower yield of toxic substances than use of conventional tobacco products in the same category as the proposed reduced risk product; and

"(ii) if required by the Secretary, includes studies of the long-term health effects of the product.

If such studies are required, the manufacturer may consult with the Secretary regarding protocols for conducting the studies.

"(B) BASIS FOR FINDING.—In making the finding under subparagraph (A), the Secretary shall take into account—

"(i) the risks and benefits to the population as a whole, including both users of tobacco products and non-users of tobacco products;

"(ii) the increased or decreased likelihood that existing users of tobacco products will stop using such products including reduced risk tobacco products;

"(iii) the increased or decreased likelihood that those who do not use tobacco products will start to use such products, including reduced risk tobacco products; and

"(iv) the risks and benefits to consumers from the use of a reduced risk tobacco product as compared to the use of products approved under chapter V to reduce exposure to tobacco.

"(3) MARKETING REQUIREMENTS.—A tobacco product may be marketed and labeled as a reduced risk tobacco product if it—

"(A) has been designated as a reduced risk tobacco product by the Secretary under paragraph (2);

"(B) bears a label prescribed by the Secretary concerning the product's contribution to reducing harm to health; and

"(C) complies with requirements prescribed by the Secretary relating to marketing and advertising of the product, and other provisions of this chapter as prescribed by the Secretary.

"(b) REVOCATION OF DESIGNATION.—At any time after the date on which a tobacco product is designated as a reduced risk tobacco product under this section the Secretary may, after providing an opportunity for an informal hearing, revoke such designation if the Secretary determines, based on information not available at the time of the designation, that—

"(1) the finding made under subsection (a)(2) is no longer valid; or

"(2) the product is being marketed in violation of subsection (a)(3).

"(c) LIMITATION.—A tobacco product that is designated as a reduced risk tobacco product that is in compliance with subsection (a) shall not be regulated as a drug or device.

"(d) DEVELOPMENT OF REDUCED RISK TOBACCO PRODUCT TECHNOLOGY.—A tobacco product manufacturer shall provide written notice to the Secretary upon the development or acquisition by the manufacturer of any technology that would reduce the risk of a tobacco product to the health of the user for which the manufacturer is not seeking designation as a 'reduced risk tobacco product' under subsection (a).

"SEC. 914. PRESERVATION OF STATE AND LOCAL AUTHORITY.

"(a) ADDITIONAL REQUIREMENTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act shall be construed as prohibiting a State or political subdivision thereof from adopting or enforcing a requirement applicable to a tobacco product that is in addition to, or more stringent than, requirements established under this chapter.

"(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

"(A) Except as provided in subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement applicable under the provisions of this chapter relating to performance standards, premarket approval, adulteration, misbranding, registration, reporting, good manufacturing standards, or reduced risk products.

"(B) Subparagraph (A) does not apply to requirements relating to the sale, use, or distribution of a tobacco product including requirements related to the access to, and the advertising and promotion of, a tobacco product.

"(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

"(c) WAIVERS.—Upon the application of a State or political subdivision thereof, the Secretary may, by regulation promulgated after notice and an opportunity for an oral hearing, exempt from subsection (a), under such conditions as may be prescribed in such regulation, a requirement of such State or

political subdivision applicable to a tobacco product if—

"(1) the requirement is more stringent than a requirement applicable under the provisions described in subsection (a)(3) which would be applicable to the tobacco product if an exemption were not in effect under this subsection; or

"(2) the requirement—

"(A) is required by compelling local conditions; and

"(B) compliance with the requirement would not cause the tobacco product to be in violation of any applicable requirement of this chapter.

"SEC. 915. EQUAL TREATMENT OF RETAIL OUTLETS.

–"The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.".

SEC. 102. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) by inserting "tobacco product," in subsection (a) after "device,";

(2) by inserting "tobacco product," in subsection (b) after "device,";

(3) by inserting "tobacco product," in subsection (c) after "device,";

(4) by striking "515(f), or 519" in subsection (e) and inserting "515(f), 519, or 909";

(5) by inserting "tobacco product," in subsection (g) after "device,";

(6) by inserting "tobacco product," in subsection (h) after "device,";

(7) by striking "708, or 721" in subsection (j) and inserting "708, 721, 904, 905, 906, 907, 908, or 909";

(8) by inserting "tobacco product," in subsection (k) after "device,";

(9) by striking subsection (p) and inserting the following:

"(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(J)(2).";

(10) by striking subsection (q)(1) and inserting the following:

"(q)(1) The failure or refusal—

"(A) to comply with any requirement prescribed under section 518, 520(g), 906(f), or 908;

"(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 906(f), or 909; or

"(C) to comply with a requirement under section 522 or 912.";

(11) by striking "device," in subsection (q)(2) and inserting "device or tobacco product,";

(12) by inserting "or tobacco product" in subsection (r) after "device" each time that it appears; and

(13) by adding at the end thereof the following:

"(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).".

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) by amending the caption to read as follows:

"(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—";

(2) by inserting "or tobacco products" after "devices" in paragraph (1)(A);

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

"(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).";

(4) by striking "assessed" the first time it appears in subparagraph (A) of paragraph (4), as redesignated, and inserting "assessed, or a no-tobacco-sale order may be imposed,";

(5) by striking "penalty" in such subparagraph and inserting "penalty, or upon whom a no-tobacco-order is to be imposed,";

(6) by inserting after "penalty," in subparagraph (B) of paragraph (4), as redesignated, the following: "or the period to be covered by a no-tobacco-sale order,";

(7) by adding at the end of such subparagraph the following: "A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.";

(8) by adding at the end of paragraph (4), as redesignated, the following:

"(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.";

(9) by striking "(3)(A)" in paragraph (5), as resdesignated, and inserting "(4)(A)";

(10) by inserting "or the imposition of a no-tobacco-sale order" after "penalty" the first 2 places it appears in such paragraph;

(11) by striking "issued." in such paragraph and inserting "issued, or on which the no-tobacco-sale order was imposed, as the case may be."; and

(12) by striking "paragraph (4)" each place it appears in paragraph (6), as redesignated, and inserting "paragraph (5)".

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) by striking "and" before "(D)" in subsection (a)(2);

(2) by striking "device." in subsection (a)(2) and inserting a comma and "(E) Any adulterated or misbranded tobacco product.";

(3) by inserting "tobacco product," in subsection (d)(1) after "device,";

(4) by inserting "or tobacco product" in subsection (g)(1) after "device" each place it appears; and

(5) by inserting "or tobacco product" in subsection (g)(2)(A) after "device" each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following:

"(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.".

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting "tobacco product," after "device," each place it appears; and

(2) by inserting "tobacco products," after "devices," each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) by inserting "tobacco products," in subsection (a)(1)(A) after "devices," each place it appears;

(2) by inserting "or tobacco products" in subsection (a)(1)(B) after "restricted devices" each place it appears; and

(3) by inserting "tobacco product," in subsection (b) after "device,".

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting "tobacco products," after "devices,".

(i) SECTION 709.—Section 709 (21 U.S. C. 379) is amended by inserting "or tobacco product" after "device".

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) by inserting "tobacco products," after "devices," in subsection (a) the first time it appears;

(2) by inserting "or subsection (j) of section 905" in subsection (a) after "section 510"; and

(3) by striking "drugs or devices" each time it appears in subsection (a) and inserting "drugs, devices, or tobacco products";

(4) by inserting "tobacco product," in subsection (e)(1) after "device,";

(2) by redesignating paragraph (4) of subsection (e) as paragraph (5) and inserting after paragraph (3), the following:

"(4) Paragraph (1) does not apply to any tobacco product—

"(A) which does not comply with an applicable requirement of section 907 or 910; or

"(B) which under section 906(f) is exempt from either such section.

This paragraph does not apply if the Secretary has determined that the exportation of the tobacco product is not contrary to the public health and safety and has the approval of the country to which it is intended for export or the tobacco product is eligible for export under section 802.".

(k) SECTION 802.—Section 802 (21 U.S.C. 382) is amended—

(1) by striking "device—" in subsection (a) and inserting "device or tobacco product—";

(2) by striking "and" after the semicolon in subsection (a)(1)(C);

(3) by striking subparagraph (C) of subsection (a)(2) and all that follows in that subsection and inserting the following:

"(C) is a banned device under section 516; or

"(3) which, in the case of a tobacco product—

"(A) does not comply with an applicable requirement of section 907 or 910; or

"(B) under section 906(f) is exempt from either such section,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug, device, or tobacco product is, except as provided in subsection (f), authorized under subsection (b), (c), (d), or (e) of this section or section 801(e)(2) or 801(e)(4). If a drug, device, or tobacco product described in paragraph (1), (2), or (3) may be exported under subsection (b) and if an application for such drug or device under section 505, 515, or 910 of this Act or section 351 of the Public Health Service Act (42 U.S.C. 262) was disapproved, the Secretary shall notify the appropriate public health official of the country to which such drug, device, or tobacco product will be exported of such disapproval.";

(4) by inserting "or tobacco product" in subsection (b)(1)(A) after "device" each time it appears;

(5) by inserting "or tobacco product" in subsection (c) after "device" and inserting "or section 906(f)" after "520(g).";

(6) by inserting "or tobacco product" in subsection (f) after "device" each time it appears; and

(7) by inserting "or tobacco product" in subsection (g) after "device" each time it appears.

(l) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking "and" after "cosmetics,"; and

(2) inserting a comma and "and tobacco products" after "devices".

(m) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) thereof, shall take effect only upon the promulgation of final regulations by the Secretary—

(1) defining the term "repeated violation", as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time that constitute a repeated violation;

(2) providing for notice to the retailer of each violation at a particular retail outlet;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on false identification does not constitute a violation of any minimum age requirement for the sale of tobacco products.

SEC. 103. CONSTRUCTION OF CURRENT REGULATIONS.

(a) IN GENERAL.—The final regulations promulgated by the Secretary in the August 28, 1996, issue of the Federal Register (62 Red. Reg. 44615-44618) and codified at part 897 of title 21, Code of Federal Regulations, are hereby deemed to be lawful and to have been lawfully promulgated by the Secretary under chapter IX and section 701 of the Federal Food, Drug, and Cosmetic Act, as amended by this Act, and not under chapter V of the Federal Food, Drug, and Cosmetic Act. The provisions of part 897 that are not in effect on the date of enactment of this Act shall take effect as in such part or upon such later date as determined by the Secretary by order. The Secretary shall amend the designation of authority in such regulations in accordance with this subsection.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary or the Food and Drug Administration as binding precedent.

(1) The preamble to the proposed rule in the document entitled "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents" (60 Fed. Reg. 41314-41372 (August 11, 1995)).

(2) The document entitled "Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act;; (60 Fed. Reg. 41453-41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents" (61 Fed. Reg. 44396-44615 (August 28, 1996)).

(4) The document entitled "Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination;; (61 Fed. Reg. 44619-45318 (August 28, 1996)).

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

SEC. 201. FINDINGS.

The Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and ensure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSE.

This title is intended to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways: by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and providing support for further reduction efforts.

SEC. 203. GOALS FOR REDUCING UNDERAGE TOBACCO USE.

(a) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required percentage reductions in underage use of tobacco products set forth in this title are achieved.

(b) REQUIRED REDUCTIONS FOR CIGARETTES.—With respect to cigarettes, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Cigarette Use
Years 3 and 4	15 percent
Years 5 and 6	30 percent
Years 7, 8, and 9	50 percent
Year 10 and thereafter	60 percent

(c) REQUIRED REDUCTIONS FOR SMOKELESS TOBACCO.—With respect to smokeless tobacco products, the required percentage reduction in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use
Years 3 and 4	12.5 percent
Years 5 and 6	25 percent
Years 7, 8, and 9	35 percent
Year 10 and thereafter	45 percent

SEC. 204. LOOK-BACK ASSESSMENT.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning no later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (d)(1), to determine—

(1) the percentage of all young individuals who used a type of tobacco product within the past 30 days; and

(2) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand of that type smoked or used within the past 30 days.

(b) ANNUAL DETERMINATION.—The Secretary shall make an annual determination, based on the annual performance survey conducted under subsection (a), of whether the required percentage reductions in underage use of tobacco products for a year have been achieved for the year involved. The determination shall be based on the annual percent prevalence of the use of tobacco products, for the industry as a whole and of particular manufacturers, by young individuals (as determined by the surveys conducted by the Secretary) for the year involved as compared to the base incidence percentages.

(c) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information or described in it to be identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purpose. The information may not be published or released in any other form if the individual supplying the information or described in it is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(d) METHODOLGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) be a household-based, in person survey (which may include computer-assisted technology);

(C) measure use of each type of tobacco product within the past 30 days;

(D) identify the usual brand of each type of tobacco product used within the past 30 days; and

(E) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(E) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of

tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a particular manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) is such that the 95-percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(e) INDUSTRY-WIDE NON-ATTAINMENT SURCHARGES.—

(1) SECRETARY TO DETERMINE INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT SURCHARGE FOR CIGARETTES.—For each calendar year in which the percentage reduction in underage use required by section 203b) is not attained, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$80,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$400,000,000, plus $160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$1,200,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$4,000,000,000

(3) NON-ATTAINMENT SURCHARGE FOR SMOKELESS TOBACCO.—For each year in which the percentage reduction in underage use required by section 203c) is not attained, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	$8,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	$40,000,000, plus $16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	$120,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	$400,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under subsection (e) shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under subsection (e)(2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under subsection (e)(3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the non-attainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall make such allocations according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(f) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) REQUIRED PERCENTAGE REDUCTIONS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act shall reduce the percentage of young individuals who use such manufacturer's brand or brands as their usual brand in accordance with the required percentage reductions described under subsections (b) (with respect to cigarettes) and (c) (with respect to smokeless tobacco).

(2) APPLICATION TO LESS POPULAR BRANDS.—Each manufacturer which manufactured a brand or brands of tobacco product on or before the date of the enactment of this Act for which the base incidence percentage is equal to or less than the *de minimis* level shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand remains equal to or less than the *de minimis* level described in paragraph (4).

(3) NEW ENTRANTS.—Each manufacturer of a tobacco product which begins to manufacture a tobacco product after the date of the enactment of this Act shall ensure that the percent prevalence of young individuals who use the manufacturer's tobacco products as their usual brand is equal to or less than the *de minimis* level.

(4) DE MINIMIS LEVEL DEFINED.—The *de minimis* level is equal to 1 percent prevalence of the use of each manufacturer's brands of tobacco product by young individuals (as determined on the basis of the annual performance survey conducted by the Secretary) for a year.

(5) TARGET REDUCTION LEVELS.—

(A) EXISTING MANUFACTURERS.— For purposes of this section, the target reduction level for each type of tobacco product for a year for a manufacturer is the product of the required percentage reduction for a type of tobacco product for a year and the manufacturers base incidence percentage for such tobacco product.

(B) NEW MANUFACTURERS; MANUFACTURERS WITH LOW BASE INCIDENCE PERCENTAGES.—With respect to a manufacturer which begins to manufacture a tobacco product after the date of the enactment of this Act or a manufacturer for which the baseline level as measured by the annual performance survey is equal to or less than the *de minimis* level described in paragraph (4), the base incidence percentage is the *de minimis* level, and the required percentage reduction in underage use for a type of tobacco product with respect to a manufacturer for a year shall be deemed to be the number of percentage points necessary to reduce the actual percent prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used for such year to the *de minimis* level.

(6) SURCHARGE AMOUNT.—

(A) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by such manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(B) AMOUNT.—The amount of the manufacturer-specific surcharge for a type of tobacco product for a year under this paragraph is $1,000, multiplied by the number of young individuals for which such firm is in noncompliance with respect to its target reduction level.

(C) DETERMINATION OF NUMBER OF YOUNG INDIVIDUALS.—For purposes of subparagraph (B) the number of young individuals for which a manufacturer is in noncompliance for a year shall be determined by the Secretary from the annual performance survey and shall be calculated based on the estimated total number of young individuals in such year and the actual percentage prevalence of young individuals identifying a brand of such tobacco product of such manufacturer as the usual brand smoked or used in such year as compared to such manufacturer's target reduction level for the year.

(7) DE MINIMIS RULE.—The Secretary may not impose a surcharge on a manufacturer for a type of tobacco product for a year if the Secretary determines that actual percent prevalence of young individuals identifying that manufacturer's brands of such tobacco product as the usual products smoked or used for such year is less than 1 percent.

(g) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (e)(2), (e)(3), and (f)(6)(B) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(4) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(h) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(i) BUSINESS EXPENSE DEDUCTION.—Any surcharge paid by a tobacco product manufacturer under this section shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(j) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(k) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 205. DEFINITIONS.

In this subtitle:

(1) BASE INCIDENCE PERCENTAGE.—The term "base incidence percentage" means, with respect to each type of tobacco product, the percentage of young individuals determined to have used such tobacco product in the first annual performance survey for 1999.

(2) MANUFACTURERS BASE INCIDENCE PERCENTAGE.—The term "manufacturers base incidence percentage" is, with respect to each type of tobacco product, the percentage of young individuals determined to have identified a brand of such tobacco product of such manufacturer as the usual brand smoked or used in the first annual performance survey for 1999.

(3) YOUNG INDIVIDUALS.—The term "young individuals" means individuals who are over 11 years of age and under 18 years of age.

(4) CIGARETTE MANUFACTURERS.—The term "cigarette manufacturers" means manufacturers of cigarettes sold in the United States.

(5) NON-ATTAINMENT PERCENTAGE FOR CIGARETTES.—The term "non-attainment percentage for cigarettes" means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of cigarettes is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of cigarettes is greater than the base incidence percentage, adding—

(i) the percentage by which the percent incidence of underage use of cigarettes in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(6) NON-ATTAINMENT PERCENTAGE FOR SMOKELESS TOBACCO PRODUCTS.—The term "non-attainment percentage for smokeless tobacco products" means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is less than the base incidence percentage, by subtracting—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is less than the base incidence percentage, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of smokeless tobacco products is greater than the base incidence percentage, by adding—

(i) the percentage by which the percent incidence of underage use of smokeless tobacco products in that year is greater than the base incidence percentage; and

(ii) the required percentage reduction applicable in that year.

(7) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term "smokeless tobacco product manufacturers" means manufacturers of smokeless tobacco products sold in the United States.

Subtitle B—State Retail Licensing and Enforcement Incentives

SEC. 231. STATE RETAIL LICENSING AND ENFORCEMENT BLOCK GRANTS.

(a) IN GENERAL.—The Secretary shall make State retail licensing and enforcement block grants in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $200,000,000 for each fiscal year to carry out the provisions of this section.

(b) REQUIREMENTS.—

(1) ESTABLISHMENT.—The Secretary shall provide a block grant, based on population, under this subtitle to each State that has in effect a law that—

(A) provides for the licensing of entities engaged in the sale or distribution of tobacco products directly to consumers;

(B) makes it illegal to sell or distribute tobacco products to individuals under 18 years of age; and

(C) meets the standards described in this section.

(2) STATE AGREEMENT REQUIRED.—In order to receive a block grant under this section, a State—

(A) shall enter into an agreement with the Secretary to assume responsibilities for the implementation and enforcement of a tobacco retailer licensing program;

(B) shall prohibit retailers from selling or otherwise distributing tobacco products to individuals under 18 years of age in accordance with the Youth Access Restrictions regulations promulgated by the Secretary (21 C.F.R. 897.14(a) and (b));

(C) shall make available to appropriate Federal agencies designated by the Secretary requested information concerning retail establishments involved in the sale or distribution of tobacco products to consumers; and

(D) shall establish to the satisfaction of the Secretary that it has a law or regulation that includes the following:

(i) LICENSURE; SOURCES; AND NOTICE.—A requirement for a State license for each retail establishment involved in the sale or distribution of tobacco products to consumers. A requirement that a retail establishment may purchase tobacco products only from Federally-licensed manufacturers, importers, or wholesalers. A program under which notice is provided to such establishments and their employees of all licensing requirements and responsibilities under State and Federal law relating to the retail distribution of tobacco products.

(ii) PENALTIES.—

(I) CRIMINAL.—Criminal penalties for the sale or distribution of tobacco products to a consumer without a license.

(II) CIVIL.—Civil penalties for the sale or distribution of tobacco products in violation of State law, including graduated fines and suspension or revocation of licenses for repeated violations.

(III) OTHER.—Other programs, including such measures as fines, suspension of driver's license privileges, or community service requirements, for underage youths who possess, purchase, or attempt to purchase tobacco products.

(iii) JUDICIAL REVIEW.—Judicial review procedures for an action of the State suspending, revoking, denying, or refusing to renew any license under its program.

(c) ENFORCEMENT.—

(1) UNDERTAKING.—Each State that receives a grant under this subtitle shall undertake to enforce compliance with its tobacco retailing licensing program in a manner that can reasonably be expected to reduce the sale and distribution of tobacco products to individuals under 18 years of age. If the Secretary determines that a State is not enforcing the law in accordance with such an undertaking, the Secretary may withhold a portion of any unobligated funds under this section otherwise payable to that State.

(2) ACTIVITIES AND REPORTS REGARDING ENFORCEMENT.—A State that receives a grant under this subtitle shall—

(A) conduct monthly random, unannounced inspections of sales or distribution outlets in the State to ensure compliance with a law prohibiting sales of tobacco products to individuals under 18 years of age;

(B) annually submit to the Secretary a report describing in detail—

(i) the activities carried out by the State to enforce underage access laws during the fiscal year;

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18 years;

(iii) how the inspections described in subparagraph (A) were conducted and the methods used to identify outlets, with appropriate protection for the confidentiality of information regarding the timing of inspections and other investigative techniques whose effectiveness depends on continued confidentiality; and

(iv) the identity of the single State agency designated by the Governor of the State to be responsible for the implementation of the requirements of this section.

(3) MINIMUM INSPECTION STANDARDS.—Inspections conducted by the State shall be conducted by the State in such a way as to ensure a scientifically sound estimate (with a 95 percent confidence interval that such estimates are accurate to within plus or minus 3 percentage points), using an accurate list of retail establishments throughout the State. Such inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations. The sample must reflect the distribution of the population under the age of 18 years throughout the State and the distribution of the outlets throughout the State accessible to youth. Except as provided in this paragraph, any reports required by this paragraph shall be made public. As used in this paragraph, the term "outlet" refers to any location that sells at retail or otherwise distributes tobacco products to consumers, including to locations that sell such products over-the-counter.

(d) NONCOMPLIANCE.—

(1) INSPECTIONS.—The Secretary shall withhold from any State that fails to meet the

requirements of subsection (b) in any calendar year an amount equal to 5 percent of the amount otherwise payable under this subtitle to that State for the next fiscal year.

(2) COMPLIANCE RATE.—The Secretary shall withhold from any State that fails to demonstrate a compliance rate of—

(A) at least the annual compliance targets that were negotiated with the Secretary under section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) as such section was in effect before its repeal by this Act through the third fiscal year after the date of enactment of this Act;

(B) at least 80 percent in the fourth fiscal year after such date;

(C) at least 85 percent in the fifth and sixth fiscal years after such date; and

(D) at least 90 percent in every fiscal year beginning with the seventh fiscal year after such date,

an amount equal to one percentage point for each percentage point by which the State failed to meet the percentage set forth in this subsection for that year from the amount otherwise payable under this subtitle for that fiscal year.

(e) RELEASE AND DISBURSEMENT.—

(1) Upon notice from the Secretary that an amount payable under this section has been ordered withheld under subsection (d), a State may petition the Secretary for a release and disbursement of up to 75 percent of the amount withheld, and shall give timely written notice of such petition to the attorney general of that State and to all tobacco product manufacturers.

(2) The agency shall conduct a hearing on such a petition, in which the attorney general of the State may participate and be heard.

(3) The burden shall be on the State to prove, by a preponderance of the evidence, that the release and disbursement should be made. The Secretary's decision on whether to grant such a release, and the amount of any such disbursement, shall be based on whether—

(A) the State presents scientifically sound survey data showing that the State is making significant progress toward reducing the use of tobacco products by individuals who have not attained the age of 18 years;

(B) the State presents scientifically-based data showing that it has progressively decreased the availability of tobacco products to such individuals;

(C) the State has acted in good faith and in full compliance with this Act, and any rules or regulations promulgated under this Act;

(D) the State provides evidence that it plans to improve enforcement of these laws in the next fiscal year; and

(E) any other relevant evidence.

(4) A State is entitled to interest on any withheld amount released at the average United States 52-Week Treasury Bill rate for the period between the withholding of the amount and its release.

(5) Any State attorney general or tobacco product manufacturer aggrieved by a final decision on a petition filed under this subsection may seek judicial review of such decision within 30 days in the United States Court of Appeals for the District of Columbia Circuit. Unless otherwise specified in this Act, judicial review under this section shall be governed by sections 701 through 706 of title 5, United States Code.

(6) No stay or other injunctive relief enjoining a reduction in a State's allotment pending appeal or otherwise may be granted by the Secretary or any court.

(f) NON-PARTICIPATING STATES LICENSING REQUIREMENTS.—For retailers in States which have not established a licensing program under subsection (a), the Secretary shall promulgate regulations establishing Federal retail licensing for retailers engaged in tobacco sales to consumers in those States. The Secretary may enter into agreements with States for the enforcement of those regulations. A State that enters into such an agreement shall receive a grant under this section to reimburse it for costs incurred in carrying out that agreement.

(g) DEFINITION.—For the purposes of this section, the term "first applicable fiscal year" means the first fiscal year beginning after the fiscal year in which funding is made available to the States under this section.

SEC. 232. BLOCK GRANTS FOR COMPLIANCE BONUSES.

(a) IN GENERAL.—The Secretary shall make block grants to States determined to be eligible under subsection (b) in accordance with the provisions of this section. There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund $100,000,000 for each fiscal year to carry out the provisions of this section.

(b) ELIGIBLE STATES.—To be eligible to receive a grant under subsection (a), a State shall—

(1) prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require; and

(2) with respect to the year involved, demonstrate to the satisfaction of the Secretary that fewer than 5 percent of all individuals under 18 years of age who attempt to purchase tobacco products in the State in such year are successful in such purchase.

(c) PAYOUT.—

(1) PAYMENT TO STATE.—If one or more States are eligible to receive a grant under this section for any fiscal year, the amount payable for that fiscal year shall be apportioned among such eligible States on the basis of population.

(2) YEAR IN WHICH NO STATE RECEIVES GRANT.—If in any fiscal year no State is eligible to receive a grant under this section, then the Secretary may use not more than 25 percent of the amount appropriated to carry out this section for that fiscal year to support efforts to improve State and local enforcement of laws regulating the use, sale, and distribution of tobacco products to individuals under the age of 18 years.

(3) AMOUNTS AVAILABLE WITHOUT FISCAL YEAR LIMITATION.—Any amount appropriated under this section remaining unexpended and unobligated at the end of a fiscal year shall remain available for obligation and expenditure in the following fiscal year.

SEC. 233. CONFORMING CHANGE.

Section 1926 of the Public Health Service Act (42 U.S.C. 300x—26) is hereby repealed.

Subtitle C—Tobacco Use Prevention and Cessation Initiatives

SEC. 261. TOBACCO USE PREVENTION AND CESSATION INITIATIVES.

Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end the following:

"PART D—TOBACCO USE PREVENTION AND CESSATION INITIATIVES

"SUBPART I—CESSATION AND COMMUNITY-BASED PREVENTION BLOCK GRANTS

"SEC. 1981. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

"(a) IN GENERAL.—From amounts contained in the Public Health Allocation Account under section 451(b)(2)(A) and (C) of the National Tobacco Policy and Youth Smoking Reduction Act for a fiscal year, there are authorized to be appropriated (under subsection (d) of such section) to carry out this subpart—

(1) for cessation activities, the amounts appropriated under section 451 (b)(2)(A); and

(2) for prevention and education activities, the amounts appropriated under section 451 (b)(2)(C).

"(b) NATIONAL ACTIVITIES.—

"(1)Not more than 10 percent of the amount made available for any fiscal year under subsection (a) shall be made available to the Secretary to carry out activities under section 1981B and 1981D(d).

"(2) Not more than 10 percent of the amount available for any fiscal year under subsection (a)(1) shall be available to the Secretary to carry out activities under section 1981D(d).

"SEC. 1981A. ALLOTMENTS.

"(a) AMOUNT.—

"(1) IN GENERAL.—From the amount made available under section 1981 for any fiscal year the Secretary, acting through the Director of the Centers for Disease Control and Prevention (referred to in this subpart as the 'Director'), shall allot to each State an amount based on a formula to be developed by the Secretary that is based on the tobacco prevention and cessation needs of each State including the needs of the State's minority populations.

"(2) MINIMUM AMOUNT.—In determining the amount of allotments under paragraph (1), the Secretary shall ensure that no State receives less than ½ of 1 percent of the amount available under section 1981(a) for the fiscal year involved.

"(b) REALLOTMENT.—To the extent that amounts made available under section 1981 for a fiscal year are not otherwise allotted to States because—

"(1) 1 or more States have not submitted an application or description of activities in accordance with section 1981D for the fiscal year;

"(2) 1 or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) the Secretary has determined that the State is not in compliance with this subpart, and therefore is subject to penalties under section 1981D(g);

such excess amount shall be reallotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year involved without regard to this subsection.

"(c) PAYMENTS.—

"(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall utilize the funds made available under this section to make payments to States under allotments under this subpart as provided for under section 203 of the Intergovernmental Cooperation Act of 1968.

"(2) FEDERAL GRANTEES.—From amounts available under section 1981(b)(2), the Secretary may make grants, or supplement existing grants, to entities eligible for funds under the programs described in section 1981C(d)(1) and (10) to enable such entities to carry out smoking cessation activities under this subpart, except not less than 25 percent of this amount shall be used for the program described in 1981C(d)(6).

"(3) AVAILABILITY OF FUNDS.—Any amount paid to a State for a fiscal year under this subpart and remaining unobligated at the end of such year shall remain available to

such State for the next fiscal year for the purposes for which such payment was made.

"(d) REGULATIONS.—Not later than 9 months after the date of enactment of this part, the Secretary shall promulgate regulations to implement this subpart. This subpart shall take effect regardless of the date on which such regulations are promulgated.

"SEC. 1981B. TECHNICAL ASSISTANCE AND PROVISION OF SUPPLIES AND SERVICES IN LIEU OF FUNDS.

"(a) TECHNICAL ASSISTANCE.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, without charge to a State receiving an allotment under section 1981A, provide to such State (or to any public or nonprofit private entity within the State) technical assistance and training with respect to the planning, development, operation, and evaluation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance or training directly, through contract, or through grants.

"(b) PROVISION OF SUPPLIES AND SERVICE IN LIEU OF GRANT FUNDS.—The Secretary, at the request of a State, may reduce the amount of payments to the State under section 1981A(c) by—

"(1) the fair market value of any supplies or equipment furnished by the Secretary to the State; and

"(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Federal Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 1981C. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

"SEC. 1981C. PERMITTED USERS OF CESSATION BLOCK GRANTS AND OF COMMUNITY-BASED PREVENTION BLOCK GRANTS.

"(a) TOBACCO USE CESSATION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(1) may be used for the following:

"(1) Evidence-based cessation activities described in the plan of the State, submitted in accordance with section 1981D, including—

"(A) evidence-based programs designed to assist individuals, especially young people and minorities who have been targeted by tobacco product manufacturers, to quit their use of tobacco products;

"(B) training in cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

"(C) programs to encourage health insurers and health plans to provide coverage for evidence-based tobacco use cessation interventions and therapies, except that the use of any funds under this clause to offset the cost of providing a smoking cessation benefit shall be on a temporary demonstration basis only;

"(D) culturally and linguistically appropriate programs targeted toward minority and low-income individuals, individuals residing in medically underserved areas, uninsured individuals, and pregnant women;

"(E) programs to encourage employer-based wellness programs to provide evidence-based tobacco use cessation intervention and therapies; and

"(F) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

"(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

"(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

"(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

"(b) STATE AND COMMUNITY ACTION ACTIVITIES.—Except as provided in subsections (d) and (e), amounts described in subsection (a)(2) may be used for the following:

"(1) Evidence-based activities for tobacco use prevention and control described in the plan of the State, submitted in accordance with section 1981D, including—

"(A) State and community initiatives;

"(B) community-based prevention programs, similar to programs currently funded by NIH;

"(C) programs focused on those populations within the community that are most at risk to use tobacco products or that have been targeted by tobacco advertising or marketing;

"(D) school programs to prevent and reduce tobacco use and addiction, including school programs focused in those regions of the State with high smoking rates and targeted at populations most at risk to start smoking;

"(E) culturally and linguistically appropriate initiatives targeted towards minority and low-income individuals, individuals residing in medically underserved areas, and women of child-bearing age;

"(F) the development and implementation of tobacco-related public health and health promotion campaigns and public policy initiatives;

"(G) assistance to local governmental entities within the State to conduct appropriate anti-tobacco activities.

"(H) strategies to ensure that the State's smoking prevention activities include minority, low-income, and other undeserved populations; and

"(I) programs that target populations whose smoking rate is disproportionately high in comparison to the smoking rate population-wide in the State.

"(2) Planning, administration, and educational activities related to the activities described in paragraph (1).

"(3) The monitoring and evaluation of activities carried out under paragraphs (1) and (2), and reporting and disseminating resulting information to health professionals and the public.

"(4) Targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

"(c) COORDINATION.—Tobacco use cessation and community-based prevention activities permitted under subsections (b) and (c) may be conducted in conjunction with recipients of other Federally—funded programs within the State, including—

"(1) the special supplemental food program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

"(2) the Maternal and Child Health Services Block Grant program under title V of the Social Security Act (42 U.S.C. 701 et seq.);

"(3) the State Children's Health Insurance Program of the State under title XXI of the Social Security Act (42 U.S.C. 13397aa et seq.);

"(4) the school lunch program under the National School Lunch Act (42 U.S.C. 1751 et seq.);

"(5) an Indian Health Service Program;

"(6) the community, migrant, and homeless health centers program under section 330 of the Public Health Service Act (42 U.S.C. 254b);

"(7) state-initiated smoking cessation programs that include provisions for reimbursing individuals for medications or therapeutic techniques;

"(8) the substance abuse and mental health services block grant program, and the preventive health services block grant program, under title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.);

"(9) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

"(10) programs administered by the Department of Defense and the Department of Veterans Affairs.

"(d) LIMITATION.—A State may not use amounts paid to the State under section 1981A(c) to—

"(1) make cash payments except with appropriate documentation to intended recipients of tobacco use cessation services;

"(2) fund educational, recreational, or health activities not based on scientific evidence that the activity will prevent smoking or lead to success of cessation efforts

"(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

"(4) satisfy any requirement for the expenditure of non-Federal funds as a condition of the receipt of Federal funds; or

"(5) provide financial assistance to any entity other than a public or nonprofit private entity or a private entity consistent with subsection (b)(1)(C).

This subsection shall not apply to the support of targeted pilot programs that use innovative and experimental new methodologies and include an evaluation component.

"(e) ADMINISTRATION.—Not more than 5 percent of the allotment of a State for a fiscal year under this subpart may be used by the State to administer the funds paid to the State under section 1981A(c). The State shall pay from non-Federal sources the remaining costs of administering such funds.

"SEC. 1981D. ADMINISTRATIVE PROVISIONS.

"(a) APPLICATION.—The Secretary may make payments under section 1981A(c) to a State for a fiscal year only if—

"(1) the State submits to the Secretary an application, in such form and by such date as the Secretary may require, for such payments;

"(2) the application contains a State plan prepared in a manner consistent with section 1905(b) and in accordance with tobacco-related guidelines promulgated by the Secretary;

"(3) the application contains a certification that is consistent with the certification required under section 1905(c); and

"(4) the application contains such assurances as the Secretary may require regarding the compliance of the State with the requirements of this subpart (including assurances regarding compliance with the agreements described in subsection (c)).

"(b) STATE PLAN.—A State plan under subsection (a)(2) shall be developed in a manner consistent with the plan developed under section 1905(b) except that such plan—

"(1) with respect to activities described in section 1981C(b)—

"(A) shall provide for tobacco use cessation intervention and treatment consistent with the tobacco use cessation guidelines issued by the Agency for Health Care Policy and Research, or another evidence-based guideline approved by the Secretary, or treatments using drugs, human biological products, or medical devices approved by the Food and Drug Administration, or otherwise legally marketed under the Federal Food, Drug and Cosmetic Act for use as tobacco use cessation therapies or aids;

"(B) may, to encourage innovation and experimentation with new methodologies, provide for or may include a targeted pilot program with an evaluation component;

"(C) shall provide for training in tobacco use cessation intervention methods for health plans and health professionals, including physicians, nurses, dentists, health educators, public health professionals, and other health care providers;

"(D) shall ensure access to tobacco use cessation programs for rural and underserved populations;

"(E) shall recognize that some individuals may require more than one attempt for successful cessation; and

"(F) shall be tailored to the needs of specific populations, including minority populations; and

"(2) with respect to State and community-based prevention activities described in section 1981C(c), shall specify the activities authorized under such section that the State intends to carry out.

"(c) CERTIFICATION.—The certification referred to in subsection (a)(3) shall be consistent with the certification required under section 1905(c), except that

"(1) the State shall agree to expend payments under section 1981A(c) only for the activities authorized in section 1981C;

"(2) paragraphs (9) and (10) of such section shall not apply; and

"(3) the State is encouraged to establish an advisory committee in accordance with section 1981E.

"(d) REPORTS, DATA, AND AUDITS.—The provisions of section 1906 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part, except that the data sets referred to in section 1905(a)(2) shall be developed for uniformly defining levels of youth and adult use of tobacco products, including uniform data for racial and ethnic groups, for use in the reports required under this subpart.

"(e) WITHHOLDING.—The provisions of 1907 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

"(f) NONDISCRIMINATION.—The provisions of 1908 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

"(g) CRIMINAL PENALTIES.—The provisions of 1909 shall apply with respect to a State that receives payments under section 1981A(c) and be applied in a manner consistent with the manner in which such provisions are applied to a State under part A.

"SEC. 1981E. STATE ADVISORY COMMITTEE.

"(a) IN GENERAL.—For purposes of sections 1981D(c)(3), an advisory committee is in accordance with this section if such committee meets the conditions described in this subsection.

"(b) DUTIES.—The recommended duties of the committee are—

"(1) to hold public hearings on the State plans required under sections 1981D; and

"(2) to make recommendations under this subpart regarding the development and implementation of such plans, including recommendations on—

"(A) the conduct of assessments under the plans;

"(B) which of the activities authorized in section 1981C should be carried out in the State;

"(C) the allocation of payments made to the State under section 1981A(c);

"(D) the coordination of activities carried out under such plans with relevant programs of other entities; and

"(E) the collection and reporting of data in accordance with section 1981D.

"(c) COMPOSITION.—

"(1) IN GENERAL.—The recommended composition of the advisory committee is members of the general public, such officials of the health departments of political subdivisions of the State, public health professionals, teenagers, minorities, and such experts in tobacco product research as may be necessary to provide adequate representation of the general public and of such health departments, and that members of the committee shall be subject to the provisions of sections 201, 202, and 203 of title 18, United States Code.

"(2) REPRESENTATIVES.—With respect to compliance with paragraph (1), the membership of the advisory committee may include representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized under section 1981C.

"SUBPART II—TOBACCO-FREE COUNTER-ADVERTISING PROGRAMS

"SEC. 1982. FEDERAL-STATE COUNTER-ADVERTISING PROGRAMS.

"(a) NATIONAL CAMPAIGN.—

"(1) IN GENERAL.—The Secretary shall conduct a national campaign to reduce tobacco usage through media-based (such as counter-advertising campaigns) and nonmedia-based education, prevention and cessation campaigns designed to discourage the use of tobacco products by individuals, to encourage those who use such products to quit, and to educate the public about the hazards of exposure to environmental tobacco smoke.

"(2) REQUIREMENTS.—The national campaign under paragraph (1) shall—

"(A) target those populations that have been targeted by tobacco industry advertising using culturally and linguistically appropriate means;

"(B) include a research and evaluation component; and

"(C) be designed in a manner that permits the campaign to be modified for use at the State or local level.

"(b) ESTABLISHMENT OF AN ADVISORY BOARD.—

"(1) IN GENERAL.—The Secretary shall establish a board to be known as the 'National Tobacco Free Education Advisory Board' (referred to in this section as the 'Board') to evaluate and provide long range planning for the development and effective dissemination of public informational and educational campaigns and other activities that are part of the campaign under subsection (a).

"(2) COMPOSITION.—The Board shall be composed of—

"(A) 9 non-Federal members to be appointed by the President, after consultation and agreement with the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the Health or Representatives, of which—

"(i) at least 3 such members shall be individuals who are widely recognized by the general public for cultural, educational, behavioral science or medical achievement;

"(ii) at least 3 of whom shall be individuals who hold positions of leadership in major public health organizations, including minority public health organizations; and

"(iii) at least 3 of whom shall be individuals recognized as experts in the field of advertising and marketing, of which—

"(I) 1 member shall have specific expertise in advertising and marketing to children and teens; and

"(II) 1 member shall have expertise in marketing research and evaluation; and

"(B) the Surgeon General, the Director of the Centers for Disease Control and Prevention, or their designees, shall serve as an ex officio members of the Board.

"(3) TERMS AND VACANCIES.—The members of the Board shall serve for a term of 3 years. Such terms shall be staggered as determined appropriate at the time of appointment by the Secretary. Any vacancy in the Board shall not affect its powers, but shall be filled in the same manner as the original appointment.

"(4) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

"(5) AWARDS.—In carrying out subsection (a), the Secretary may—

"(A) enter into contracts with or award grants to eligible entities to develop messages and campaigns designed to prevent and reduce the use of tobacco products that are based on effective strategies to affect behavioral changes in children and other targeted populations, including minority populations;

"(B) enter into contracts with or award grants to eligible entities to carry out public informational and educational activities designed to reduce the use of tobacco products;

"(6) POWERS AND DUTIES.—The Board may—

"(A) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this section; and

"(B) secure directly from any Federal department or agency such information as the Board considers necessary to carry out the provisions of this section.

"(c) ELIGIBILITY.—To be eligible to receive funding under this section an entity shall—

"(1) be a—

"(A) public entity or a State health department; or

"(B) private or nonprofit private entity that—

"(i)(I) is not affiliated with a tobacco product manufacturer or importer;

"(II) has a demonstrated record of working effectively to reduce tobacco product use; or

"(III) has expertise in conducting a multimedia communications campaign; and

"(ii) has expertise in developing strategies that affect behavioral changes in children and other targeted populations, including minority populations;

"(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the activities to be conducted using amounts received under the grant or contract;

"(3) provide assurances that amounts received under this section will be used in accordance with subsection (c); and

"(4) meet any other requirements determined appropriate by the Secretary.

"(d) USE OF FUNDS.—An entity that receives funds under this section shall use amounts provided under the grant or contract to conduct multi-media and non-media public educational, informational, marketing and promotional campaigns that are designed to discourage and de-glamorize the use of tobacco products, encourage those using such products to quit, and educate the public about the hazards of exposure to environmental tobacco smoke. Such amounts may be used to design and implement such activities and shall be used to conduct research concerning the effectiveness of such programs.

"(e) NEEDS OF CERTAIN POPULATIONS.—In awarding grants and contracts under this section, the Secretary shall take into consideration the needs of particular populations, including minority populations, and use methods that are culturally and linguistically appropriate.

"(f) COORDINATION.—The Secretary shall ensure that programs and activities under this section are coordinated with programs and activities carried out under this title.

"(g) ALLOCATION OF FUNDS.—Not to exceed—

"(1) 25 percent of the amount made available under subsection (h) for each fiscal year shall be provided to States for State and local media-based and nonmedia-based education, prevention and cessation campaigns;

"(2) no more than 20 percent of the amount made available under subsection (h) for each fiscal year shall be used specifically for the development of new messages and campaigns;

"(3) the remainder shall be used specifically to place media messages and carry out other dissemination activities described in subsection (d); and

"(4) half of 1 percent for administrative costs and expenses.

"(h) TRIGGER.—No expenditures shall be made under this section during any fiscal year in which the annual amount appropriated for the Centers for Disease Control and Prevention is less than the amount so appropriated for the prior fiscal year.".

"PART E—REDUCING YOUTH SMOKING AND TOBACCO-RELATED DISEASES THROUGH RESEARCH

"SEC. 1991. FUNDING FROM TOBACCO SETTLEMENT TRUST FUND.

No expenditures shall be made under sections 451(b) or (c)—

"(1) for the National Institutes of Health during any fiscal year in which the annual amount appropriated for such Institutes is less than the amount so appropriated for the prior fiscal year;

"(2) for the Centers for Disease Control and Prevention during any fiscal year in which the annual amount appropriated for such Centers is less than the amount so appropriated for the prior fiscal year; or

"(3) for the Agency for Health Care Policy and Research during any fiscal year in which the annual amount appropriated for such Agency is less than the amount so appropriated for the prior fiscal year.

"SEC. 1991A. STUDY BY THE INSTITUTE OF MEDICINE.

"(a) CONTRACT.—Not later than 60 days after the date of enactment of this title, the Secretary shall enter into a contract with the Institute of Medicine for the conduct of a study on the framework for a research agenda and research priorities to be used under this part.

"(b) CONSIDERATIONS.—

"(1) IN GENERAL.—In developing the framework for the research agenda and research priorities under subsection (a) the Institute of Medicine shall focus on increasing knowledge concerning the biological, social, behavioral, public health, and community factors involved in the prevention of tobacco use, reduction of tobacco use, and health consequences of tobacco use.

"(2) SPECIFIC CONSIDERATIONS.—In the study conducted under subsection (a), the Institute of Medicine shall specifically include research on—

"(A) public health and community research relating to tobacco use prevention methods, including public education, media, community strategies;

"(B) behavioral research relating to addiction, tobacco use, and patterns of smoking, including risk factors for tobacco use by children, women, and racial and ethnic minorities;

"(C) health services research relating to tobacco product prevention and cessation treatment methodologies;

"(D) surveillance and epidemiology research relating to tobacco;

"(E) biomedical, including clinical, research relating to prevention and treatment of tobacco-related diseases, including a focus on minorities, including racial and ethnic minorities;

"(F) the effects of tobacco products, ingredients of tobacco products, and tobacco smoke on the human body and methods of reducing any negative effects, including the development of non-addictive, reduced risk tobacco products;

"(G) differentials between brands of tobacco products with respect to health effects or addiction;

"(H) risks associated with environmental exposure to tobacco smoke, including a focus on children and infants;

"(I) effects of tobacco use by pregnant women; and

"(J) other matters determined appropriate by the Institute.

"(c) REPORT.—Not later than 10 months after the date on which the Secretary enters into the contract under subsection (a), the Institute of Medicine shall prepare and submit to the Secretary, the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives, a report that shall contain the findings and recommendations of the Institute for the purposes described in subsection (b).

"SEC. 1991B. RESEARCH COORDINATION.

"(a) IN GENERAL.—The Secretary shall foster coordination among Federal research agencies, public health agencies, academic bodies, and community groups that conduct or support tobacco-related biomedical, clinical, behavioral, health services, public health and community, and surveillance and epidemiology research activities.

"(b) REPORT.—The Secretary shall prepare and submit a report on a biennial basis to the Committee on Labor and Human Resources, and the Committee on Appropriations of the Senate, and the Committee on Commerce of the House of Representatives on the current and planned tobacco-related research activities of participating Federal agencies.

"SEC. 1991C. RESEARCH ACTIVITIES OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

"(a) DUTIES.—The Director of the Centers for Disease Control and Prevention shall, from amounts provided under section 451(c), and after review of the study of the Institute of Medicine, carry out tobacco-related surveillance and epidemiologic studies and develop tobacco control and prevention strategies; and

"(b) YOUTH SURVEILLANCE SYSTEMS.—From amounts provided under section 451(b), the Director of the Centers for Disease Control and Prevention shall provide for the use of youth surveillance systems to monitor the use of all tobacco products by individuals under the age of 18, including brands-used to enable determinations to be made of company-specific youth market share.

"SEC. 1991D. RESEARCH ACTIVITIES OF THE NATIONAL INSTITUTES OF HEALTH.

"(a) FUNDING.—There are authorized to be appropriated, from amounts in the National Tobacco Settlement Trust Fund established by section 401 of the National Tobacco Policy and Youth Smoking Reduction Act.

"(b) EXPENDITURE OF FUNDS.—The Director of the National Institutes of Health shall provide funds to conduct or support epidemiological, behavioral, biomedical, and social science research, including research related to the prevention and treatment of tobacco addiction, and the prevention and treatment of diseases associated with tobacco use.

"(c) GUARANTEED MINIMUM.—Of the funds made available to the National Institutes of Health under this section, such sums as may be necessary, may be used to support epidemiological, behavioral, and social science research related to the prevention and treatment of tobacco addiction.

"(d) NATURE OF RESEARCH.—Funds made available under subsection (d) may be used to conduct or support research with respect to one or more of the following—

"(1) the epidemiology of tobacco use;

"(2) the etiology of tobacco use;

"(3) risk factors for tobacco use by children;

"(4) prevention of tobacco use by children, including school and community-based programs, and alternative activities;

"(5) the relationship between tobacco use, alcohol abuse and illicit drug abuse;

"(6) behavioral and pharmacological smoking cessation methods and technologies, including relapse prevention;

"(7) the toxicity of tobacco products and their ingredients;

"(8) the relative harmfulness of different tobacco products;

"(9) environmental exposure to tobacco smoke;

"(10) the impact of tobacco use by pregnant women on their fetuses;

"(11) the redesign of tobacco products to reduce risks to public health and safety; and

"(12) other appropriate epidemiological, behavioral, and social science research.

"(e) COORDINATION.—In carrying out tobacco-related research under this section, the Director of the National Institutes of Health shall ensure appropriate coordination

with the research of other agencies, and shall avoid duplicative efforts through all appropriate means.

"(h) ADMINISTRATION.—The director of the NIH Office of Behavioral and Social Sciences Research may—

"(1) identify tobacco-related research initiatives that should be conducted or supported by the research institutes, and develop such projects in cooperation with such institutes;

"(2) coordinate tobacco-related research that is conducted or supported by the National Institutes of Health;

"(3) annually recommend to Congress the allocation of anti-tobacco research funds among the national research institutes; and

"(4) establish a clearinghouse for information about tobacco-related research conducted by governmental and non-governmental bodies.

"(f) TRIGGER.—No expenditure shall be made under subsection (a) during any fiscal year in which the annual amount appropriated for the National Institutes of Health is less than the amount so appropriated for the prior fiscal year.

"(g) REPORT.—The Director of the NIH shall every 2 years prepare and submit to the Congress a report ——— research activities, including funding levels, for research made available under subsection (c).

(b) MEDICAID COVERAGE OF OUTPATIENT SMOKING CESSATION AGENTS.—Paragraph (2) of section 1927(d) of the Public Health Service Act (42 U.S.C. 1396r-8(d)) is amended—

(1) by striking subparagraph (E) and redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I); and

(2) by striking "drugs." in subparagraph (F), as redesignated, and inserting "drugs, except agents, approved by the Food and Drug Administration, when used to promote smoking cessation.".

"SEC. 1991E. RESEARCH ACTIVITIES OF THE AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

"(a) IN GENERAL.—The Administrator of the Agency for Health Care Policy and Research shall carry out outcomes, effectiveness, cost-effectiveness, and other health services research related to effective interventions for the prevention and cessation of tobacco use and appropriate strategies for implementing those services, the outcomes and delivery of care for diseases related to tobacco use, and the development of quality measures for evaluating the provision of those services.

"(b) ANALYSES AND SPECIAL PROGRAMS.—The Secretary, acting through the Administrator of the Agency for Health Care Policy and Research, shall support—

"(1) and conduct periodic analyses and evaluations of the best scientific information in the area of smoking and other tobacco product use cessation; and

"(2) the development and dissemination of special programs in cessation intervention for health plans and national health professional societies.".

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) IN GENERAL.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

"SEC. 4. LABELING.

"(a) LABEL REQUIREMENTS.—

"(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

"WARNING: Cigarettes are addictive"

"WARNING: Tobacco smoke can harm your children"

"WARNING: Cigarettes cause fatal lung disease"

"WARNING: Cigarettes cause cancer"

"WARNING: Cigarettes cause strokes and heart disease"

"WARNING: Smoking during pregnancy can harm your baby"

"WARNING: Smoking can kill you"

"WARNING: Tobacco smoke causes fatal lung disease in non-smokers"

"WARNING: Quitting smoking now greatly reduces serious risks to your health"

"(2) PLACEMENT; TYPOGRAPHY; ETC..—

"(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 25 percent of the front and rear panels of the package. The word "WARNING" shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

"(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

"(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

"(b) ADVERTISING REQUIREMENTS.—

"(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

"(2) TYPOGRAPHY, ETC..—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word "WARNING" shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital "W" of the word "WARNING" in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

"(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

"(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

"(3) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

"(4) MARKETING REQUIREMENTS.—

"(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

"(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

"(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

"(i) will provide for the equal distribution and display on packaging and the rotation

required in advertising under this subsection; and

"(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.".

(b) REPEAL OF PROHIBITION ON STATE RESTRICTION.—Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended—

(1) by striking "(a) ADDITIONAL STATEMENTS.—" IN SUBSECTION (A); AND

(2) by striking subsection (b).

SEC. 302. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 301 of this title, is further amended by adding at the end the following:

"(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.".

SEC. 303. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

"SEC. 3. SMOKELESS TOBACCO WARNING.

"(a) GENERAL RULE.—

"(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

"WARNING: This product can cause mouth cancer"

"WARNING: This product can cause gum disease and tooth loss"

"WARNING: This product is not a safe alternative to cigarettes"

"WARNING: Smokeless tobacco is addictive"

"(2) Each label statement required by paragraph (1) shall be—

"(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 25 percent of each such display panel; and

"(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

"(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

"(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

"(b) REQUIRED LABELS.—

"(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

"(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

"(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

"(B) the word "WARNING" shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

"(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

"(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

"(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

"(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

"(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

"(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.".

SEC. 304. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 303 of this title, is further amended by adding at the end the following:

"(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.".

SEC. 305. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 301 of this title, is further amended by adding at the end the following:

"(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

"(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

"(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).".

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

SEC. 311. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of this Act, the Secretary, through the Commissioner of the Food and Drug Administration, shall promulgate regulations under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that meet the requirements of subsection (b) of this section.

(b) CONTENTS OF RULES.—The rules promulgated under subsection (a) of this section shall require the testing, reporting, and disclosure of tobacco product smoke constituents and ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon

monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The rule may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

(c) AUTHORITY.—The Food and Drug Administration shall have authority to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

TITLE IV—NATIONAL TOBACCO TRUST FUND

SEC. 401. ESTABLISHMENT OF TRUST FUND.

(a) CREATION.—There is established in the Treasury of the United States a trust fund to be known as the "National Tobacco Trust Fund", consisting of such amounts as may be appropriated or credited to the trust fund.

(b) TRANSFERS TO NATIONAL TOBACCO TRUST FUND.—There shall be credited to the trust fund the net revenues resulting from the following amounts:

(1) Amounts paid under section 402.

(2) Amounts equal to the fines or penalties paid under section 402, 403, or 405, including interest thereon.

(3) Amounts equal to penalties paid under section 202, including interest thereon.

(c) NET REVENUES.—For purposes of subsection (b), the term "net revenues" means the amount estimated by the Secretary of the Treasury based on the excess of—

(1) the amounts received in the Treasury under subsection (b), over

(2) the decrease in the taxes imposed by chapter 1 and chapter 52 of the Internal Revenue Code of 1986, and other offsets, resulting from the amounts received under subsection (b).

(d) EXPENDITURES FROM THE TRUST FUND.—Amounts in the Trust Fund shall be available in each fiscal year, as provided in appropriation Acts. The authority to allocate net revenues as provided in this title and to obligate any amounts so allocated is contingent upon actual receipt of net revenues.

(e) BUDGETARY TREATMENT.—The amount of net receipts in excess of that amount which is required to offset the direct spending in this Act under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) shall be available exclusively to offset the appropriations required to fund the authorizations of appropriations in this Act (including the amendments made by this Act), and the amount of such appropriations shall not be included in the estimates required under section 251 of that Act (2 U.S.C. 901).

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 98 of such Code, except that, for purposes of section 9602(b)(3), any interest or proceeds shall be covered into the Treasury as miscellaneous receipts.

SEC. 402. PAYMENTS BY INDUSTRY.

(a) INITIAL PAYMENT.—

(1) CERTAIN TOBACCO PRODUCT MANUFACTURERS.—The following participating tobacco product manufacturers, subject to the provisions of title XIV, shall deposit into the National Tobacco Trust Fund an aggregate payment of $10,000,000,000, apportioned as follows:

(A) Phillip Morris Incorporated—65.8 percent.

(B) Brown and Williamson Tobacco Corporation—17.3 percent.

(C) Lorillard Tobacco Company—7.1 percent.

(D) R.J. Reynolds Tobacco Company—6.6 percent.

(E) United States Tobacco Company—3.2 percent.

(2) NO CONTRIBUTION FROM OTHER TOBACCO PRODUCT MANUFACTURERS.—No other tobacco product manufacturer shall be required to contribute to the payment required by this subsection.

(3) PAYMENT DATE; INTEREST.—Each tobacco product manufacturer required to make a payment under paragraph (1) of this subsection shall make such payment within 30 days after the date of compliance with this Act and shall owe interest on such payment at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the date of enactment of this Act, for payments made after the required payment date.

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in section 403:

(1) year 1—$14,400,000,000.

(2) year 2—$15,400,000,000.

(3) year 3—$17,700,000,000.

(4) year 4—$21,400,000,000.

(5) year 5—$23,600,000,000.

(6) year 6 and thereafter—the adjusted applicable base amount under section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION .—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—Beginning with the sixth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(6) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI, adjusted (for calendar year 2002 and later years) by the volume adjustment under paragraph (2).

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2002, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio of the actual volume for the calendar year to the base volume. For purposes of this paragraph, the term "base volume" means 80 percent of the number of units of taxable domestic removals and taxed imports of cigarettes in calendar year 1997, as reported to the Secretary of the Treasury. For purposes of this subsection, the term "actual volume" means the number of adjusted unites as defined in section 402(d)(3)(A).

SEC. 404. PAYMENTS TO BE PASSED THROUGH TO CONSUMERS.

Each tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such tobacco product manufacturer under this Act for the year in which the sale occurs.

SEC. 405. TAX TREATMENT OF PAYMENTS.

All payments made under section 402 are ordinary and necessary business expenses for purposes of chapter 1 of the Internal Revenue Code of 1986 for the year in which such payments are made, and no part thereof is either in settlement of an actual or potential liability for a fine or penalty (civil or criminal) or the cost of a tangible or intangible asset or other future benefit.

SEC. 406. ENFORCEMENT FOR NONPAYMENT.

(a) PENALTY.—Any tobacco product manufacturer that fails to make any payment required under section 402 or 404 within 60 days after the date on which such fee is due is liable for a civil penalty computed on the unpaid balance at a rate of prime plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date, during the period the payment remains unmade.

(b) NONCOMPLIANCE PERIOD.—For purposes of this section, the term "noncompliance period" means, with respect to any failure to make a payment required under section 402 or 404, the period—

(1) beginning on the due date for such payment; and

(2) ending on the date on which such payment is paid in full.

(c) LIMITATIONS.—

(1) IN GENERAL.—No penalty shall be imposed by subsection (a) on any failure to make a payment under section 402 during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(2) CORRECTIONS.—No penalty shall be imposed under subsection (a) on any failure to make a payment under section 402 if—

(A) such failure was due to reasonable cause and not to willful neglect; and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew or, exercising reasonable diligence, should have known, that such failure existed.

(3) WAIVER.—In the case of any failure to make a payment under section 402 that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed under subsection (a) to the extent that the Secretary determines that the payment of such penalty would be excessive relative to the failure involved.

Subtitle B—General Spending Provisions

SEC. 451. ALLOCATION ACCOUNTS.

(a) STATE LITIGATION SETTLEMENT ACCOUNT.—

(1) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, 40 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. Such amounts shall be reduced by the additional estimated Federal expenditures that will be incurred as a result of State expenditures under section 452, which amounts shall be transferred to the miscellaneous receipts of the Treasury. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than $196,500,000,000, then beginning with the eleventh year the 40 percent share will be adjusted as necessary, to a percentage not in excees of 50 percent and not less than 30 percent, to achieve that 25-year total amount.

(2) APPROPRIATION.—Amounts so calculated are hereby appropriated and available until expended and shall be available to States for grants authorized under this Act.

(3) DISTRIBUTION FORMULA.—The Secretary of the Treasury shall consult with the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislators on a formula for the distribution of amounts in the State Litigation Settlement Account and report to the Congress within 90 days after the date of enactment of this Act with recommendations for implementing a distribution formula.

(4) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate, consistent with the other provisions of this Act.

(5) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(b) PUBLIC HEALTH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Public Health Account. Twenty-two percent of the net revenues credited to the trust fund under section 401(b)(1) and all the net revenues credited to the trust fund under section 401(b)(3) shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.—Amounts in the Public Health Account shall be available to the extent and only in the amounts provided in advance in appropriations Acts, to remain available until expended, only for the purposes of:

(A) CESSATION AND OTHER TREATMENTS.—Of the total amounts allocated to this account, not less than 25 percent, but not more than 35 percent are to be used to carry out smoking cessation activities under part D of title XIX of the Public Health Service Act, as added by title II of this Act.

(B) INDIAN HEALTH SERVICE.—Of the total amounts allocated to this account, not less than 3 percent, but not more than 7 percent are to be used to carry out activities under section 453.

(C) EDUCATION AND PREVENTION.—Of the total amounts allocated to this account, not less than 50 percent, but not more than 65 percent are to be used to carry out—

(i) counter-advertising activities under section 1982 of the Public Health Service Act as amended by this Act;

(ii) smoking prevention activities under section 223;

(iii) surveys under section 1991C of the Public Health Service Act, as added by this Act (but, in no fiscal year may the amounts used to carry out such surveys be less than 10 percent of the amounts available under this subsection); and

(iv) international activities under section 1132.

(D) ENFORCEMENT.—Of the total amounts allocated to this account, not less than 17.5 percent nor more than 22.5 percent are to be used to carry out the following:

(i) Food and Drug Administration activities.

(I) The Food and Drug Administration shall receive not less than 15 percent of the funds provided in subparagraph (D) in the first fiscal year beginning after the date of enactment of this Act, 35 percent of such funds in the second year beginning after the date of enactment, and 50 percent of such funds for each fiscal year beginning after the date of enactment, as reimbursements for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(II) No expenditures shall be made under subparagraph (D) during any fiscal year in which the annual amount appropriated for the Food and Drug Administration is less than the amount so appropriated for the prior fiscal year.

(ii) State retail licensing activities under section 251.

(iii) Anti-Smuggling activities under section 1141.

(c) HEALTH AND HEALTH-RELATED RESEARCH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Health and Health-Related Research Account. Of the net revenues credited

to the trust fund under section 401(b)(1), 22 percent shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.—Amounts in the Health and Health-Related Research Account shall be available to the extent and in the amounts provided in advance in appropriations acts, to remain available until expended, only for the following purposes:

(A) $750,000 shall be made vailable in fiscal year 1999 for the study to be conducted under section 1991 of the Public Health Service Act.

(B) National Institutes of Health Research under section 1991D of the Public Health Service Act, as added by this Act. Of the total amounts allocated to this account, not less than 75 percent, but not more than 87 percent shall be used for this purpose.

(C) Centers for Disease Control under section 1991C of the Public Health Service Act, as added by this Act, and Agency for Health Care Policy and Research under section 1991E of the Public Health Service Act, as added by this Act authorized under sections 2803 of that Act, as so added. Of the total amounts allocated to this account, not less than 12 percent, but not more than 18 percent shall be used for this purpose.

(D) National Science Foundation Research under section 454. Of the total amounts allocated to this account, not less than 1 percent, but not more than 1 percent shall be used for this purpose.

(E) Cancer Clinical Trials under section 455. Of the total amounts allocated to this account, $750,000,000 shall be used for the first 3 fiscal years for this purpose.

(d) FARMERS ASSISTANCE ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Farmers Assistance Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year—

(A) 16 percent shall be allocated to this account for the first 10 years after the date of enactment of this Act; and

(B) 4 percent shall be allocated to this account for each subsequent year until the account has received a total of $28,500,000,000.

(2) APPROPRIATION.—Amounts allocated to this account are hereby appropriated and shall be available until expended for the purposes of section 1012.

(e) MEDICARE PRESERVATION ACCOUNT.—There is established within the trust fund a separate account, to be known as the Medicare Preservation Account. If, in any year, the net amounts credited to the trust fund for payments under section 402(b) are greater than the net revenues originally estimated under section 401(b), the amount of any such excess shall be credited to the Medicare Preservation Account. Beginning in the eleventh year beginning after the date of enactment of this Act, 12 percent of the net revenues credited to the trust fund under seciton 401(b)(1) shall be allocated to this account. Funds credited to this account shall be transferred to the Medicare Hospital Insurance Trust Fund.

SEC. 452. GRANTS TO STATES.

(a) AMOUNTS.—From the amount made available under section 402(a) for each fiscal year, each State shall receive a grant on a quarterly basis according to a formula.

(b) USE OF FUNDS.—

(1) UNRESTRICTED FUNDS.—A State may use funds, not to exceed 50 percent of the amount received under this section in a fiscal year, for any activities determined appropriate by the State.

(2) RESTRICTED FUNDS.—A State shall use not less than 50 percent of the amount received under this section in a fiscal year to carry out additional activities or provide additional services under—

(A) the State program under the maternal and child health services block grant under title V of the Social Security Act (42 U.S.C. 701 et seq.);

(B) funding for child care under section 418 of the Social Security Act, notwithstanding subsection (b)(2) of that section;

(C) federally funded child welfare and abuse programs under title IV-B of the Social Security Act;

(D) programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title XIX, part B of the Public Health Service Act;

(E) Safe and Drug-Free Schools Program under title IV, part A, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.);

(F) the Department of Education's Dwight D. Eisenhower Professional Development program under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.); and

(G) The State Children's Health Insurance Program authorized under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), provided that the amount expended on this program does not exceed 6 percent of the total amount of restricted funds available to the State each fiscal year.

(c) NO SUBSTITUTION OF SPENDING.—Amounts referred to in subsection (b)(2) shall be used to supplement and not supplant other Federal, State, or local funds provided for any of the programs described in subparagraphs (A) through (G) of subsection (b)(2). Restricted funds, except as provided for in subsection (b)(2)(G), shall not be used as State matching funds. Amounts provided to the State under any of the provisions of law referred to in such subparagraph shall not be reduced solely as a result of the availability of funds under this section.

(d) FEDERAL-STATE MATCH RATES.—Current (1998) matching requirements apply to each program listed under subsection (b)(2), except for the program described under subsection (b)(2)(B). For the program described under subsection (b)(2)(B), after an individual State has expended resources sufficient to receive its full Federal amount under section 418(a)(2)(B) of the Social Security Act (subject to the matching requirements in section 418(a)(2)(C) of such Act), the Federal share of expenditures shall be 80 percent.

(e) MAINTENANCE OF EFFORT.—To receive funds under this subsection, States must demonstrate a maintenance of effort. This maintenance of effort is defined as the sum of—

(1) an amount equal to 95 percent of Federal fiscal year 1997 State spending on the programs under subsections (b)(2)(B), (c), and (d); and

(2) an amount equal to the product of the amount described in paragraph (1) and—

(A) for fiscal year 1999, the lower of—

(i) general inflation as measured by the consumer price index for the previous year; or

(ii) the annual growth in the Federal appropriation for the program in the previous fiscal year; and

(B) for subsequent fiscal years, the lower of—

(i) the cumulative general inflation as measured by the consumer price index for the period between 1997 and the previous year; or

(ii) the cumulative growth in the Federal appropriation for the program for the period between fiscal year 1997 and the previous fiscal year.

The 95-percent maintenance-of-effort requirement in paragraph (1), and the adjustments in paragraph (2), apply to each program identified in paragraph (1) on an individual basis.

(f) OPTIONS FOR CHILDREN'S HEALTH OUTREACH.—In addition to the options for the use of grants described in this section, the following are new options to be added to States' choices for conducting children's health outreach:

(1) EXPANSION OF PRESUMPTIVE ELIGIBILITY OPTION FOR CHILDREN.—

(A) IN GENERAL.—Section 1920A(b)(3)(A)(I) of the Social Security Act (42 U.S.C. 1396r-1a(b)(3)(A)(I)) is amended—

(i) by striking "described in subsection (a) or (II) is authorized" and inserting "described in subsection (a), (II) is authorized"; and

(ii) by inserting before the semicolon ", eligibility for benefits under part A of title IV, eligibility of a child to receive benefits under the State plan under this title or title XXI, (III) is a staff member of a public school, child care resource and referral center, or agency administering a plan under part D of title IV, or (IV) is so designated by the State".

(B) TECHNICAL AMENDMENTS.—Section 1920A of that Act (42 U.S.C. 1396r-1a) is amended—

(i) in subsection (b)(3)(A)(ii), by striking "paragraph (1)(A)" and inserting "paragraph (2)(A)"; and

(ii) in subsection (c)(2), in the matter preceding subparagraph (A), by striking "subsection (b)(1)(A)" and inserting "subsection (b)(2)(A)".

(2) REMOVAL OF REQUIREMENT THAT CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS BE REDUCED BY COSTS RELATED TO PRESUMPTIVE ELIGIBILITY DETERMINATIONS.—

(A) IN GENERAL.—Section 2104(d) of the Social Security Act (42 U.S.C. 1397dd(d)) is amended by striking "the sum of—" and all that follows through the paragraph designation "(2)" and merging all that remains of subsection (d) into a single sentence.

(B) EFFECTIVE DATE.—The amendment made by subsection (a) shall be deemed to have taken effect on August 5, 1997.

(3) INCREASED FUNDING FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—Section 1931(h) of the Social Security Act (42 U.S.C. 1396u-1(h)) is amended—

(A) by striking the subsection caption and inserting "(h) INCREASED FEDERAL MATCHING RATE FOR ADMINISTRATIVE COSTS RELATED TO OUTREACH AND ELIGIBILITY DETERMINATIONS FOR CHILDREN.—";

(B) in paragraph (2), by striking "eligibility determinations" and all that follows and inserting "determinations of the eligibility of children for benefits under the State plan under this title or title XXI, outreach to children likely to be eligible for such benefits, and such other outreach- and eligibility-related activities as the Secretary may approve.";

(C) in paragraph (3), by striking "and ending with fiscal year 2000 shall not exceed $500,000,000" and inserting "shall not exceed $525,000,000"; and

(D) by striking paragraph (4).

(g) PERIODIC REASSESSMENT OF SPENDING OPTIONS.—Spending options under subsection (b)(2) will be reassessed jointly by the States and Federal government every 5 years and be reported to the Secretary.

SEC. 453. INDIAN HEALTH SERVICE.

Amounts available under section 451(b)(2)(B) shall be provided to the Indian Health Service to be used for anti-tobacco-related consumption and cessation activities including—

(1) clinic and facility design, construction, repair, renovation, maintenance and improvement;

(2) provider services and equipment;

(3) domestic and community sanitation associated with clinic and facility construction and improvement; and

(4) other programs and service provided through the Indian Health Service or through tribal contracts, compacts, grants, or cooperative agreements with the Indian Health Service and which are deemed appropriate to raising the health status of Indians.

SEC. 454. RESEARCH AT THE NATIONAL SCIENCE FOUNDATION.

Amounts available under section 451(c)(2)(C) shall be made available for necessary expenses in carry out the National Science Foundation Act of 1950 (U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881).

SEC. 455. MEDICARE CANCER PATIENT DEMONSTRATION PROJECT; EVALUATION AND REPORT TO CONGRESS.

(a) ESTABLISHMENT.—The Secretary shall establish a 3-year demonstration project which provides for payment under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) which are provided to an individual diagnosed with cancer and enrolled in the Medicare program under such title as part of the individual's participation in an approved clinical trial program; and

(2) which are not otherwise eligible for payment under such title for individuals who are entitled to benefits under such title.

(b) APPLICATION.—The beneficiary cost sharing provisions under the Medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual in a demonstration project conducted under this section.

(c) APPROVED CLINICAL TRIAL PROGRAM.—

(1) IN GENERAL.—For purposes of this section, the term "approved clinical trial program" means a clinical trial program which is approved by—

(A) the National Institutes of Health;

(B) a National Institutes of Health cooperative group or a National Institutes of Health center; and

(C) the National Cancer Institute,

with respect to programs that oversee and coordinate extramural clinical cancer research, trials sponsored by such Institute and conducted at designated cancer centers, clinical trials, and Institute grants that support clinical investigators.

(2) MODIFICATIONS IN APPROVED TRIALS.—Beginning 1 year after the date of enactment of this Act, the Secretary, in consultation with the Cancer Policy Board of the Institute of Medicine, may modify or add to the requirements of paragraph (1) with respect to an approved clinical trial program.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—For purposes of this section, the term "routine patient care costs" include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the Medicare program if such items and services were not provided in connection with an approved clinical trial program; and

(B) are furnished according to the design of an approved clinical trial program.

(2) EXCLUSION.—For purposes of this section, the term "routine patient care costs" does not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

(B) any item or service supplied without charge by the sponsor of the approved clinical trial program.

(e) STUDY.—The Secretary shall study the impact on the Medicare program under title XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

(f) REPORT TO CONGRESS.—Not later than 30 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains a detailed description of the results of the study conducted under subsection (e) including recommendations regarding the extension and expansion of the demonstration project conducted under this section.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

SEC. 501. DEFINITIONS.

In this title:

(1) ASSISTANT SECRETARY.—The term "Assistant Secretary" means the Assistant Secretary of the Occupational Safety and Health Administration of the Department of Labor.

(2) PUBLIC FACILITY.—

(A) IN GENERAL.—The term "public facility" means any building used for purposes that affect interstate or foreign commerce that is regularly entered by 10 or more individuals at least 1 day per week including any building owned by or leased to an agency, independent establishment, department, or the executive, legislative, or judicial branch of the United States Government.

(B) EXCLUSIONS.—The term "public facility" does not include a building or portion thereof which is used for residential purposes or as a restaurant (other than a fast food restaurant), bar, private club, hotel guest room or common area, casino, bingo parlor, tobacconist's shop, or prison.

(C) FAST FOOD RESTAURANT DEFINED.—The term "fast food restaurant" means any restaurant or chain of restaurants that primarily distributes food through a customer pick-up (either at a counter or drive-through window). The Assistant Secretary may promulgate regulations to clarify this subparagraph to ensure that the intended inclusion of establishments catering to individuals under 18 years of age is achieved.

(3) RESPONSIBLE ENTITY.—The term "responsible entity" means, with respect to any public facility, the owner of such facility except that, in the case of any such facility or portion thereof which is leased, such term means the lessee if the lessee is actively engaged in supervising day-to-day activity in the leased space.

SEC. 502. SMOKE-FREE ENVIRONMENT POLICY.

(a) POLICY REQUIRED.—In order to protect children and adults from cancer, respiratory disease, heart disease, and other adverse health effects from breathing environmental tobacco smoke, the responsible entity for each public facility shall adopt and implement at such facility a smoke-free environment policy which meets the requirements of subsection (b).

(b) ELEMENTS OF POLICY.—

(1) IN GENERAL.—The responsible entity for a public facility shall—

(A) prohibit the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the facility and on facility property within the immediate vicinity of the entrance to the facility; and

(B) post a clear and prominent notice of the smoking prohibition in appropriate and visible locations at the public facility.

(2) EXCEPTION.—The responsible entity for a public facility may provide an exception to the prohibition specified in paragraph (1) for 1 or more specially designated smoking areas within a public facility if such area or areas meet the requirements of subsection (c).

(c) SPECIALLY DESIGNATED SMOKING AREAS.—A specially designated smoking area meets the requirements of this subsection if—

(1) the area is ventilated in accordance with specifications promulgated by the Assistant Secretary that ensure that air from the area is directly exhausted to the outside and does not recirculate or drift to other areas within the public facility;

(2) the area is maintained at negative pressure, as compared to adjoining nonsmoking areas, as determined under regulations promulgated by the Assistant Secretary;

(3) nonsmoking individuals do not have to enter the area for any purpose while smoking is occurring in such area; and

(4) cleaning and maintenance work are conducted in such area only when no smoking is occurring in the area.

SEC. 503. CITIZEN ACTIONS.

(a) IN GENERAL.—An action may be brought to enforce the requirements of this title by any aggrieved person, any State or local government agency, or the Assistant Secretary.

(b) VENUE.—Any action to enforce this title may be brought in any United States district court for the district in which the defendant resides or is doing business to enjoin any violation of this title or to impose a civil penalty for any such violation in the amount of not more than $5,000 per day of violation. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce this title and to impose civil penalties under this title.

(c) NOTICE.—An aggrieved person shall give any alleged violator notice at least 60 days prior to commencing an action under this section. No action may be commenced by an aggrieved person under this section if such alleged violator complies with the requirements of this title within such 60-day period and thereafter.

(d) COSTS.—The court, in issuing any final order in any action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing plaintiff, whenever the court determines such award is appropriate.

(e) PENALTIES.—The court, in any action under this section to apply civil penalties, shall have discretion to order that such civil penalties be used for projects which further the policies of this title. The court shall obtain the view of the Assistant Secretary in exercising such discretion and selecting any such projects.

(f) APPLICATION WITH OSHA.—Nothing in this section affects enforcement of the Occupational Safety and Health Act of 1970.

SEC. 504. PREEMPTION.

Nothing in this title shall preempt or otherwise affect any other Federal, State, or local law which provides greater protection from health hazards from environmental tobacco smoke.

SEC. 505. REGULATIONS.

The Assistant Secretary is authorized to promulgate such regulations, after consulting with the Administrator of the Environmental Protection Agency, as the Assistant Secretary deems necessary to carry out this title.

SEC. 506. EFFECTIVE DATE.

Except as provided in section 507, the provisions of this title shall take effect on the first day of January next following the next regularly scheduled meeting of the State legislature occurring after the date of enactment of this Act at which, under the procedural rules of that legislature, a measure under section 507 may be considered.

SEC. 507. STATE CHOICE.

Any State or local government may opt out of this title by promulgating a State or local law, subject to certification by the Assistant Secretary that the law is as or more protective of the public's health as this title, based on the best available science. Any State or local government may opt to enforce this title itself, subject to certification by the Assistant Secretary that the enforcement mechanism will effectively protect the public health.

TITLE VI—APPLICATION TO INDIAN TRIBES

SEC. 601. SHORT TITLE.

This title may be cited as the "Reduction in Tobacco Use and Regulation of Tobacco Products in Indian Country Act of 1998".

SEC. 602. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that Native Americans have used tobacco products for recreational, ceremonial, and traditional purposes for centuries.

(b) PURPOSE.—It is the purpose of this title to—

(1) provide for the implementation of this Act with respect to the regulation of tobacco products, and other tobacco-related activities on Indian lands;

(2) recognize the historic Native American traditional and ceremonial use of tobacco products, and to preserve and protect the cultural, religious, and ceremonial uses of tobacco by members of Indian tribes;

(3) recognize and respect Indian tribal sovereignty and tribal authority to make and enforce laws regarding the regulation of tobacco distributors and tobacco products on Indian lands; and

(4) ensure that the necessary funding is made available to tribal governments for licensing and enforcement of tobacco distributors and tobacco products on Indian lands.

SEC. 603. APPLICATION OF TITLE TO INDIAN LANDS AND TO NATIVE AMERICANS.

(a) IN GENERAL.—The provisions of this Act shall apply to the manufacture, distribution, and sale of tobacco or tobacco products on Indian lands, including such activities of an Indian tribe or member of such tribe.

(b) TRADITIONAL USE EXCEPTION.—

(1) IN GENERAL.—In recognition of the religious, ceremonial, and traditional uses of tobacco and tobacco products by Indian tribes and the members of such tribes, nothing in this Act shall be construed to permit an infringement upon upon the right of such tribes or members of such tribes to acquire, possess, use, or transfer any tobacco or tobacco product for such purposes, or to infringe upon the ability of minors to participate and use tobacco products for such religious, ceremonial, or traditional purposes.

(2) APPLICATION OF PROVISIONS.—Paragraph (1) shall apply only to those quantities of tobacco or tobacco products necessary to fulfill the religious, ceremonial, or traditional purposes of an Indian tribe or the members of such tribe, and shall not be construed to permit the general manufacture, distribution, sale or use of tobacco or tobacco products in a manner that is not in compliance with this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)

(c) LIMITATION.—Nothing in this Act shall be construed to permit an Indian tribe or member of such a tribe to acquire, possess, use, or transfer any tobacco or tobacco product in violation of section 2341 of title 18, United States Code, with respect to the transportation of contraband cigarettes.

(d) APPLICATION ON INDIAN LANDS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Interior, shall promulgate regulations to implement this section as necessary to apply this Act and the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to tobacco products manufactured, distributed, or sold on Indian lands.

(2) SCOPE.—This Act and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) shall apply to the manufacture, distribution and sale of tobacco products on Indian lands, including such activities by Indian tribes and members of such tribes.

(3) TRIBAL TOBACCO RETAILER LICENSING PROGRAM.—

(A) IN GENERAL.—The requirements of this Act with respect to the licensing of tobacco retailers shall apply to all retailers that sell tobacco or tobacco products on Indian lands, including Indian tribes, and members thereof.

(B) IMPLEMENTATION.—

(i) IN GENERAL.—An Indian tribe may implement and enforce a tobacco retailer licensing and enforcement program on its Indian lands consistent with the provisions of section 231 if the tribe is eligible under subparagraph (D). For purposes of this clause, section 231 shall be applied to an Indian tribe by substituting "Indian tribe" for "State" each place it appears, and an Indian tribe shall not be ineligible for grants under that section if the Secretary applies that section to the tribe by modifying it to address tribal population, land base, and jurisdictional factors.

(ii) COOPERATION.—An Indian tribe and State with tobacco retailer licensing programs within adjacent jurisdictions should consult and confer to ensure effective implementation of their respective programs.

(C) ENFORCEMENT.—The Secretary may vest the responsibility for implementation and enforcement of a tobacco retailer licensing program in—

(i) the Indian tribe involved;

(ii) the State within which the lands of the Indian tribe are located pursuant to a voluntary cooperative agreement entered into by the State and the Indian tribe; or

(iii) the Secretary pursuant to subparagraph (F).

(D) ELIGIBILITY.—To be eligible to implement and enforce a tobacco retailer licensing program under section 231, the Secretary, in consultation with the Secretary of Interior, must find that—

(i) the Indian tribe has a governing body that has powers and carries out duties that are similar to the powers and duties of State or local governments;

(ii) the functions to be exercised relate to activities conducted on its Indian lands; and

(iii) the Indian tribe is reasonably expected to be capable of carrying out the functions required by the Secretary.

(E) DETERMINATIONS.—Not later than 90 days after the date on which an Indian tribe submits an application for authority under subparagraph (D), the Secretary shall make a determination concerning the eligibility of such tribe for such authority. Each tribe found eligible under subparagraph (D) shall be eligible to enter into agreements for block grants under section 231, to conduct a licensing and enforcement program pursuant to section 231, and for bonuses under section 232.

(F) IMPLEMENTATION BY THE SECRETARY.—If the Secretary determines that the Indian tribe is not willing or not qualified to administer a retail licensing and enforcement program, the Secretary, in consultation with the Secretary of Interior, shall promulgate regulations for a program for such tribes in the same manner as for States which have not established a tobacco retailer licensing program under section 231(f).

(G) DEFICIENT APPLICATIONS; OPPORTUNITY TO CURE.—

(i) If the Secretary determines under subparagraph (F) that a Indian tribe is not eligible to establish a tobacco retailer licensing program, the Secretary shall—

(I) submit to such tribe, in writing, a statement of the reasons for such determination of ineligibility; and

(II) shall assist such tribe in overcoming any deficiencies that resulted in the determination of ineligibility.

(ii) After an opportunity to review and cure such deficiencies, the tribe may reapply to the Secretary for assistance under this subsection.

(H) SECRETARIAL REVIEW.—The Secretary may periodically review the tribal tobacco retailer licensing program of a tribe approved pursuant to subparagraph (E), including the effectiveness of the program, the tribe's enforcement thereof, and the compatibility of the tribe's program with the program of the State in which the tribe is located. The program shall be subject to all applicable requirements of section 231.

(e) ELIGIBILITY FOR PUBLIC HEATH FUNDS.—

(1) ELIGIBILITY FOR GRANTS.—

(A) For each fiscal year the Secretary may award grants to Indian tribes from the federal Account or other federal funds, except a tribe that is not a participating tobacco product manufacturer (as defined in section 1402(a), for the same purposes as States and local governments are eligible to receive grants from the Federal Account as provided for in this Act. Indian tribes shall have the flexibility to utilize such grants to meet the unique health care needs of their service populations consistent with the goals and purposes of Federal Indian health care law and policy.

(B) In promulgating regulations for the approval and funding of smoking cessation programs under section 221 the Secretary shall ensure that adequate funding is available to address the high rate of smoking among Native Americans.

(2) HEALTH CARE FUNDING.—

(A) INDIAN HEALTH SERVICE.—Each fiscal year the Secretary shall disburse to the Indian Health Service from the National Tobacco Settlement Trust Fund an amount determined by the Secretary in consultation with the Secretary of the Interior equal to the product of—

(i) the ratio of the total Indian health care service population relative to the total population of the United States; and

(ii) the amount allocated to the States each year from the State Litigation Trust Account.

(B) FUNDING.—The trustees of the Trust Fund shall for each fiscal year transfer to

the Secretary from the State Litigation Trust Account the amount determined pursuant to paragraph (A).

(C) USE OF HEALTH CARE TRUST FUNDS.—Amounts made available to the Indian Health Service under this paragraph shall be made available to Indian tribes pursuant to the provisions of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b et seq.), shall be used to reduce tobacco consumption, promote smoking cessation, and shall be used to fund health care activities including—

(i) clinic and facility design, construction, repair, renovation, maintenance, and improvement;

(ii) health care provider services and equipment;

(iii) domestic and community sanitation associated with clinic and facility construction and improvement;

(iv) inpatient and outpatient services; and

(v) other programs and services which have as their goal raising the health status of Indians.

(f) PREEMPTION.—

(1) IN GENERAL.—Except as otherwise provided in this section, nothing in this Act shall be construed to prohibit an Indian tribe from imposing requirements, prohibitions, penalties, or other measures to further the purposes of this Act that are in addition to the requirements, prohibitions, or penalties required by this Act.

(2) PUBLIC EXPOSURE TO SMOKE.—Nothing in this title shall be construed to preempt or otherwise affect any Indian tribe rule or practice that provides greater protections from the health hazard of environmental tobacco smoke.

(g) DISCLAIMER.—Nothing in this Act shall be construed to increase or diminish tribal or State jurisdiction on Indian lands with respect to tobacco-related activities.

TITLE VII—TOBACCO CLAIMS

SEC. 701. DEFINITIONS.

In this title:

(1) AFFILIATE.—The term "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and person means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(2) CIVIL ACTION.—The term "civil action" means any action, lawsuit, or proceeding that is not a criminal action.

(3) COURT.—The term "court" means any judicial or agency court, forum, or tribunal within the United States, including without limitation any Federal, State, or tribal court.

(4) FINAL JUDGMENT.—The term "final judgment" means a judgment on which all rights of appeal or discretionary review have been exhausted or waived or for which the time to appeal or seek such discretionary review has expired.

(5) FINAL SETTLEMENT.—The term "final settlement" means a settlement agreement that is executed and approved as necessary to be fully binding on all relevant parties.

(6) INDIVIDUAL.—The term "individual" means a human being and does not include a corporation, partnership, unincorporated association, trust, estate, or any other public or private entity, State or local government, or Indian tribe.

(7) TOBACCO CLAIM.—The term "tobacco claim" means a claim directly or indirectly arising out of, based on, or related to the health-related effects of tobacco products, including without limitation a claim arising out of, based on or related to allegations regarding any conduct, statement, or omission respecting the health-related effects of such products.

(8) TOBACCO PRODUCT MANUFACTURER.—The term "tobacco product manufacturer" means a person who—

(A) manufactures tobacco products for sale in the United States after the date of enactment of this Act, including tobacco products for sale in the United States through an importer;

(B) is, after the date of enactment of this Act, the first purchaser for resale in the United States of tobacco products manufactured for sale outside of the United States;

(C) engaged in activities described in subparagraph (A) or (B) prior to the date of enactment of this Act, has not engaged in such activities after the date of enactment of this Act, and was not as of June 20, 1997, an affiliate of a tobacco product manufacturer in which the tobacco product manufacturer or its other affiliates owned a 50 percent or greater interest;

(D) is a successor or assign of any of the foregoing;

(E) is an entity to which any of the foregoing directly or indirectly makes, after the date of enactment of this Act, a fraudulent conveyance or a transfer that would otherwise be voidable under part 5 of title 11 of the United States Code, but only to the extent of the interest or obligation transferred; or

(F) is an affiliate of a tobacco product manufacturer.

(9) CASTANO CIVIL ACTIONS.—The term "Castano Civil Actions" means the following civil actions: Gloria Wilkinson Lyons et al. v. American Tobacco Co., et al. (USDC Alabama 96-0881-BH; Agnes McGinty, et al. v. American Tobacco Co., et al. (USDC Arkansas LR-C-96-881); Willard R. Brown, et al. v. R.J. Reynolds Co., et al. (San Diego, California-00711400); Gray Davis & James Ellis, et al. R.J. Reynolds Tobacco Co., et al. (San Diego, California-00706458); Chester Lyons, et al. v. Brown & Williamson Tobacco Corp., et al. (Fulton County, Georgia-E-59346); Rosalyn Peterson, et al. v. American Tobacco Co., et al. (USDC Hawaii-97-00233-HG); Jean Clay, et al. v. American Tobacco Co., et al. (USDC Illinois Benton Division-97-4167-JPG); William J. Norton, et al. v. RJR Nabisco Holdings Corp., et al. (Madison County, Indiana 48D01-9605-CP-0271); Alga Emig, et al. v. American Tobacco Co., et al. (USDC Kansas-97-1121-MLB); Gloria Scott, et al. v. American Tobacco Co., et al. (Orleans Parish, Louisiana-97-1178); Vern Masepohl, et al. v. American Tobacco Co., et al. (USDC Minnesota-3-96-CV-888); Matthew Tepper, et al. v. Philip Morris Incorporated, et al (Bergen County, New Jersey-BER-L-4983-97-E); Carol A. Connor, et al. v. American Tobacco Co., et al. (Bernalillo County, New Mexico-CV96-8464); Edwin Paul Hoskins, et al. v. R.J. Reynolds Tobacco Co., et al.; Josephine Stewart-Lomantz v. Brown & Williamson Tobacco, et al.; Rose Frosina, et al. v. Philip Morris Incorporated, et al.; Catherine Zito, et al. v. American Tobacco Co., et al.; Kevin Mroczkowski, et al. v. Lorillard Tobacco Company, et al. (Supreme Court, New York County, New York-110949 thru 110953); Judith E. Chamberlain, et al. v. American Tobacco Co., et al. (USDC Ohio-1:96CV2005); Brian walls, et al. v. American Tobacco Co., et al. (USDC Oklahoma-97-CV-218-H); Steven R. Arch, et al. v. American Tobacco Co., et al. (USDC Pennsylvania-96-5903-CN); Barreras-Ruiz, et al. v. American Tobacco Co., et al. (USDC Puerto Rico-96-2300-JAF); Joanne Anderson, et al. v. American Tobacco Co., et al. (Know County, Tennessee); Carlis Cole, et al. v. The Tobacco institute, Inc., et al. (USDC Beaumont Texas Division-1:97CV0256); Carrol Jackson, et al. v. Philip Morris Incorporated, et al. (Salt Lake County, Utah-CV No. 98-0901634PI).

SEC. 702. APPLICATION; PREEMPTION.

(a) APPLICATION.—The provisions of this title govern any tobacco claim in any civil action brought in an State, Tribal, or Federal court, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act.

(b) PREEMPTION.—This title supersedes State law only to the extent that State law applies to a matter covered by this title. Any matter that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable State, Tribal, or Federal law.

(c) CRIMINAL LIABILITY UNTOUCHED.—Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors, or their officers, directors, employees, successors, or assigns.

SEC. 703. RULES GOVERNING TOBACCO CLAIMS.

(a) GENERAL CAUSATION PRESUMPTION.—In any civil action to which this title applies brought involving a tobacco claim, there shall be an evidentiary presumption that nicotine is addictive and that the diseases identified as being caused by use of tobacco products in the Center for Disease Control and Prevention Reducing the Health Consequences of Smoking: 25 Years of Progress: A Report of the Surgeon General (United States Public Health Service 1989), The Health Consequences of Smoking: Involuntary Smoking, (USPHS 1986); and The Health Consequences of Using Smokeless Tobacco, (USPHS 1986), are caused in whole or in part by the use of tobacco products, (hereinafter referred to as the "general causation presumption"), and a jury empaneled to hear a tobacco claim shall be so instructed. In all other respects, the burden of proof as to the issue of whether a plaintiff's specific disease or injury was caused by smoking shall be governed by the law of the State or Tribe in which the tobacco claim was brought. This general causation presumption shall in no way affect the ability of the defendant to introduce evidence or argument which the defendant would otherwise be entitled to present under the law of the State or Tribe in which the tobacco claim was brought to rebut the general causation presumption, or with respect to general causation, specific causation, or alternative causation, or to introduce any other evidence or argument which the defendant would otherwise be entitled to make.

(b) ACTIONS AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.—In any civil action brought involving a tobacco claim against participating tobacco product manufacturers, as that term is defined in title XIV, the provisions of title XIV apply in conjunction with the provisions of this title.

TITLE VIII—TOBACCO INDUSTRY ACCOUNTABILITY REQUIREMENTS AND EMPLOYEE PROTECTION FROM REPRISALS

SEC. 801. ACCOUNTABILITY REQUIREMENTS AND OVERSIGHT OF THE TOBACCO INDUSTRY.

(a) ACCOUNTABILITY.—The Secretary, following regular consultation with the Commissioner of Food and Drugs, the Surgeon

General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health shall annually issue a report as provided for in subsection (c).

(b) TOBACCO COMPANY PLAN.—Within a year after the date of enactment of this Act, each participating tobacco product manufacturer shall adopt and submit to the Secretary a plan to achieve the required percentage reductions in underage use of tobacco products set forth in section 201, and thereafter shall update its plan no less frequently than annually. The annual report of the Secretary may recommend amendment of any plan to incorporate additional measures to reduce underage tobacco use that are consistent with the provisions of this Act.

(c) ANNUAL REPORT.—The Secretary shall submit a report to the Congress by January 31 of each year, which shall be published in the Federal Register. The report shall—

(1) describe in detail each tobacco product manufacturer's compliance with the provisions of this Act and its plan submitted under subsection (b);

(2) report on whether each tobacco product manufacturer's efforts to reduce underage smoking are likely to result in attainment of smoking reduction targets under section 201;

(3) recommend, where necessary, additional measures individual tobacco companies should undertake to meet those targets; and

(4) include, where applicable, the extent to which prior panel recommendations have been adopted by each tobacco product manufacturer.

SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE PROTECTION.

(a) PROHIBITED ACTS.—No tobacco product manufacturer may discharge, demote, or otherwise discriminate against any employee with respect to compensation, terms, conditions, benefits, or privileges of employment because the employee (or any person acting under a request of the employee)—

(1) notified the manufacturer, the Commissioner of Food and Drugs, the Attorney General, or any Federal, State, or local public health or law enforcement authority of an alleged violation of this or any other Act;

(2) refused to engage in any practice made unlawful by such Acts, if the employee has identified the alleged illegality to the manufacturer;

(3) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Acts;

(4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under such Acts, or a proceeding for the administration or enforcement of any requirement imposed under such Acts;

(5) testified or is about to testify in any such proceeding; or

(6) assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of such Acts.

(b) EMPLOYEE COMPLAINT.—

(1) Any employee of a tobacco product manufacturer who believes that he or she has been discharged, demoted, or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 180 days after such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary alleging such discharge, demotion, or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of its filing.

(2)(A) Upon receipt of a complaint under paragraph (1) of this subsection, the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days after the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any such person acting in his or her behalf) and the person alleged to have committed such violation of the results of the investigation conducted under this paragraph. Within 90 days after the receipt of such complaint, the Secretary shall (unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation) issue an order either providing the relief prescribed in subparagraph (B) of this paragraph or denying the complaint. An order of the Secretary shall be made on the record after notice and the opportunity for a hearing in accordance with sections 554 and 556 of title 5, United States Code. Upon the conclusion of such a hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B) of this paragraph, but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint under paragraph (1) of this subsection, the Secretary determines that a violation of this paragraph has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his or her former position together with compensation (including back pay), terms, conditions, and privileges of his or her employment. The Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this subparagraph, the Secretary, at the request of the complainant, shall assess the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred (as determined by the Secretary), by the complainant for, or in connection with, the bringing of the complaint upon which the order is issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1) of this subsection, and shall not conduct the investigation required under paragraph (2) of this subsection, unless the complainant has made a *prima facie* showing that any behavior described in subsection (a) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A) of this paragraph, no investigation required under paragraph (2) of this subsection shall be conducted if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. Relief may not be ordered under paragraph (1) of this subsection if the manufacturer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any behavior described in subsection (a) of this section was a contributing factor in unfavorable personnel action alleged in the complaint.

(c) JUDICIAL REVIEW.—

(1) Any person adversely affected or aggrieved by an order issued under subsection (a) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days after the issuance of the Secretary's order. Judicial review shall be available as provided in chapter 7 of title 5, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any criminal or civil proceeding.

(d) NONCOMPLIANCE.—Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation occurred to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) ACTION TO ENSURE COMPLIANCE.—

(1) Any person on whose behalf an order was issued under subsection (b)(2) of this section may commence a civil action to require compliance with such order against the person to whom such order was issued. The appropriate United States district court shall have jurisdiction to enforce such order, without regard to the amount in controversy or the citizenship of the parties.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) ENFORCEMENT.—Any non-discretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(g) APPLICABILITY TO CERTAIN EMPLOYEES.—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the manufacturer (or the agent of the manufacturer) deliberately causes a violation of any requirement of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq), or any other law or regulation relating to tobacco products.

(h) EFFECT ON OTHER LAWS.—This section shall not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by a tobacco product manufacturer against the employee.

(i) POSTING.—The provisions of this section shall be prominently posted in any place of employment to which this section applies.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

SEC. 901. FINDINGS.

The Congress finds that—

(1) the American tobacco industry has made claims of attorney-client privilege, attorney work product, and trade secrets to

protect from public disclosure thousands of internal documents sought by civil litigants;

(2) a number of courts have found that these claims of privilege were not made in good faith; and

(3) a prompt and full exposition of tobacco documents will—

(A) promote understanding by the public of the tobacco industry's research and practices; and

(B) further the purposes of this Act.

SEC. 902. APPLICABILITY.

This title applies to all tobacco product manufacturers.

SEC. 903. DOCUMENT DISCLOSURE.

(a) DISCLOSURE TO THE FOOD AND DRUG ADMINISTRATION.—

(1) Within 60 days after the date of enactment of this Act, each tobacco product manufacturer shall submit to the Food and Drug Administration the documents identified in subsection (c), including documents for which trade secret protection is claimed, with the exception of any document for which privilege is claimed, and identified in accordance with subsection (b). Each such manufacturer shall provide the Administration with the privilege and trade secret logs identified under subsection (b).

(2) With respect to documents that are claimed to contain trade secret material, unless and until it is finally determined under this title, either through judicial review or because time for judicial review has expired, that such a document does not constitute or contain trade secret material, the Administration shall treat the document as a trade secret in accordance with section 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379) and the regulations promulgated thereunder. Nothing herein shall limit the authority of the Administration to obtain and use, in accordance with any provision of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder, any document constituting or containing trade secret material. Documents and materials received by the Administration under this provision shall not be obtainable by or releasable to the public through section 552 of title 5, United States Code, or any other provision of law, and the only recourse to obtain these documents shall be through the process established by section 905.

(3) If a document depository is not established under title XIV, the Secretary shall establish by regulation a procedure for making public all documents submitted under paragraph (1) except documents for which trade secret protection has been claimed and for which there has not been a final judicial determination that the document does not contain a trade secret.

(b) SEPARATE SUBMISSION OF DOCUMENTS.—

(1) PRIVILEGED TRADE SECRET DOCUMENTS.—Any document required to be submitted under subsection (c) or (d) that is subject to a claim by a tobacco product manufacturer of attorney-client privilege, attorney work product, or trade secret protection shall be so marked and shall be submitted to the panel under section 904 within 30 days after its appointment. Compliance with this subsection shall not be deemed to be a waiver of any applicable claim of privilege or trade secret protection.

(2) PRIVILEGE AND TRADE SECRET LOGS.—

(A) IN GENERAL.—Within 15 days after submitting documents under paragraph (1), each tobacco product manufacturer shall submit a comprehensive log which identifies on a document-by-document basis all documents produced for which the manufacturer asserts attorney-client privilege, attorney work-product, or trade secrecy. With respect to documents for which the manufacturer previously has asserted one or more of the aforementioned privileges or trade secret protection, the manufacturer shall conduct a good faith *de novo* review of such documents to determine whether such privilege or trade secret protection is appropriate.

(B) ORGANIZATION OF LOG.—The log shall be organized in numerical order based upon the document identifier assigned to each document. For each document, the log shall contain—

(i) a description of the document, including type of document, title of document, name and position or title of each author, addressee, and other recipient who was intended to receive a copy, document date, document purpose, and general subject matter;

(ii) an explanation why the document or a portion of the document is privileged or subject to trade secret protection; and

(iii) a statement whether any previous claim of privilege or trade secret was denied and, if so, in what proceeding.

(C) PUBLIC INSPECTION.—Within 5 days of receipt of such a log, the Depository shall make it available for public inspection and review.

(3) DECLARATION OF COMPLIANCE.—Each tobacco product manufacturer shall submit to the Depository a declaration, in accordance with the requirements of section 1746 of title 28, United States Code, by an individual with responsibility for the *de novo* review of documents, preparation of the privilege log, and knowledge of its contents. The declarant shall attest to the manufacturer's compliance with the requirements of this subsection pertaining to the review of documents and preparation of a privilege log.

(c) DOCUMENT CATEGORIES.—Each tobacco product manufacturer shall submit—

(1) every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

(D) any research involving safer or less hazardous tobacco products;

(E) tobacco use by minors; or

(F) the relationship between advertising or promotion and the use of tobacco products;

(2) all documents produced by any tobacco product manufacturer, the Center of Tobacco Research or Tobacco Institute to the Attorney General of any State during discovery in any action brought on behalf of any State and commenced after January 1, 1994;

(3) all documents produced by any tobacco product manufacturer, Center for Tobacco Research or Tobacco Institute to the Federal Trade Commission in connection with its investigation into the "Joe Camel" advertising campaign and any underage marketing of tobacco products to minors;

(4) all documents produced by any tobacco product manufacturers, the Center for Tobacco Research or the Tobacco Institute to litigation adversaries during discovery in any private litigation matters;

(5) all documents produced by any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute in any of the following private litigation matters:

(A) Philip Morris v. American Broadcasting Co., Law No. 7609CL94x00181-00 (Cir. Ct. Va. filed Mar. 26, 1994);

(B) Estate of Butler v. R.J. Reynolds Tobacco Co., Civ. A. No. 94-5-53 (Cir. Ct. Miss., filed May 12, 1994);

(C) Haines v. Liggett Group, No. 84-CV-678 (D.N.J., filed Feb. 22, 1984); and

(D) Cipollone v. Liggett Group, No. 83-CV-284 (D.N.J., filed Aug. 1, 1983);

(6) any document produced as evidence or potential evidence or submitted to the Depository by tobacco product manufacturers in any of the actions described in paragraph (5), including briefs and other pleadings, memoranda, interrogatories, transcripts of depositions, and expert witnesses and consultants materials, including correspondence, reports, and testimony;

(7) any additional documents that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute have agreed or been required by any court to produce to litigation adversaries as part of discovery in any action listed in paragraph (2), (3), (4), or (5) but have not yet completed producing as of the date of enactment of this Act;

(8) all indices of documents relating to tobacco products and health, with any such indices that are maintained in computerized form placed into the depository in both a computerized and hard-copy form;

(9) a privilege log describing each document or portion of a document otherwise subject to production in the actions enumerated in this subsection that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains, based upon a good faith *de novo* re-review conducted after the date of enactment of this Act is exempt from public disclosure under this title; and

(10) a trade secrecy log describing each document or portion of a document that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this title.

(d) FUTURE DOCUMENTS.—With respect to documents created after the date of enactment of this Act, the tobacco product manufacturers and their trade associations shall—

(1) place the documents in the depository; and

(2) provide a copy of the documents to the Food and Drug Administration (with the exception of documents subject to a claim of attorney-client privilege or attorney work product).

(1) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control relating, referring, or pertaining to—

(A) any studies, research, or analysis of any possible health or pharmacological effects in humans or animals, including addiction, associated with the use of tobacco products or components of tobacco products;

(B) the engineering, manipulation, or control of nicotine in tobacco products;

(C) the sale or marketing of tobacco products;

(D) any research involving safer or less hazardous tobacco products;

(E) tobacco use by minors; or

(F) the relationship between advertising or promotion and the use of tobacco products;

(2) Every existing document (including any document subject to a claim of attorney-client privilege, attorney work product, or trade secret protection) in the manufacturer's possession, custody, or control—

(A) produced, or ordered to be produced, by the tobacco product manufacturer in any health-related civil or criminal proceeding, judicial or administrative; and

(B) that the panel established under section 906 determines is appropriate for submission.

(3) All studies conducted or funded, directly or indirectly, by any tobacco product manufacturer, relating to tobacco product use by minors.

(4) All documents discussing or referring to the relationship, if any, between advertising and promotion and the use of tobacco products by minors.

(5) A privilege log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any tobacco product manufacturer maintains is exempt from public disclosure under this title.

(6) A trade secrecy log describing each document or each portion of a document otherwise subject to public disclosure under this subsection that any tobacco product manufacturer, the Center for Tobacco Research, or the Tobacco Institute maintains is exempt from public disclosure under this Act.

(e) DOCUMENT IDENTIFICATION AND INDEX.—Documents submitted under this section shall be sequentially numbered and marked to identify the tobacco product manufacturer. Within 15 days after submission of documents, each tobacco product manufacturer shall supply the panel with a comprehensive document index which references the applicable document categories contained in subsection (b).

SEC. 904. DOCUMENT REVIEW.

(a) AJUDICATION OF PRIVILEGE CLAIMS.—An claim of attorney-client privilege, trade secret protection, or other claim of privilege with respect to a document required to be submitted by this title shall be heard by a 3-judge panel of the United States District Court for the District of Columbia under section 2284 of title 28, United States Code. The panel may appoint special masters, employ such personnel, and establish such procedures as it deems necessary to carry out its functions under this title.

(b) PRIVILEGE.—The panel shall apply the attorney-client privilege, the attorney work-product doctrine, and the trade secret doctrine in a manner consistent with Federal law.

SEC. 905. RESOLUTION OF DISPUTED PRIVILEGE AND TRADE SECRET CLAIMS.

(a) IN GENERAL.—The panel shall determine whether to uphold or reject disputed claims of attorney client privilege, attorney work product, or trade secret protection with respect to documents submitted. Any person may petition the panel to resolve a claim that a document submitted may not be disclosed to the public. Such a determination shall be made by a majority of the panel, in writing, and shall be subject to judicial review as specified in this title. All such determinations shall be made solely on consideration of the subject document and written submissions from the person claiming that the document is privileged or protected by trade secrecy and from any person seeking disclosure of the document. The panel shall cause notice of the petition and the panel's decision to be published in the Federal Register.

(b) FINAL DECISION.—The panel may uphold a claim of privilege or protection in its entirety or, in its sole discretion, it may redact that portion of a document that it determines is protected from public disclosure under subsection (a). Any decision of the panel shall be final unless judicial review is sought under section 906. In the event that judicial review is so sought, the panel's decision shall be stayed pending a final judicial decision.

SEC. 906. APPEAL OF PANEL DECISION.

(a) PETITION; RIGHT OF APPEAL.—Any person may obtain judicial review of a final decision of the panel by filing a petition for review with the United States Court of Appeals for the Federal Circuit within 60 days after the publication of such decision in the Federal Register. A copy of the petition shall be transmitted by the Clerk of the Court to the panel. The panel shall file in the court the record of the proceedings on which the panel based its decision (including any documents reviewed by the panel in *camera*) as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the panel's decision, except that until the filing of the record the panel may modify or set aside its decision.

(b) ADDITIONAL EVIDENCE AND ARGUMENTS.—If the any party applies to the court for leave to adduce additional evidence respecting the decision being reviewed and shows to the satisfaction of the court that such additional evidence or arguments are material and that there were reasonable grounds for the failure to adduce such evidence or arguments in the proceedings before the panel, the court may order the panel to provide additional opportunity for the presentation of evidence or arguments in such manner and upon such terms as the court deems proper. The panel may modify its findings or make new findings by reason of the additional evidence or arguments and shall file with the court such modified or new findings, and its recommendation, if any, for the modification or setting aside of the decision being reviewed.

(c) STANDARD OF REVIEW; FINALITY OF JUDGMENTS.—The panel's findings of fact, if supported by substantial evidence on the record taken as a whole, shall be conclusive. The court shall review the panel's legal conclusions *de novo*. The judgment of the court affirming or setting aside the panel's decision shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) PUBLIC DISCLOSURE AFTER FINAL DECISION.—Within 30 days after a final decision that a document, as redacted by the panel or in its entirety, is not protected from disclosure by a claim of attorney-client privilege, attorney work product, or trade secret protection, the panel shall direct that the document be made available to the Commissioner of Food and Drugs under section 903(a). No Federal, Tribal, or State court shall have jurisdiction to review a claim of attorney-client privilege, attorney work product, or trade secret protection for a document that has lawfully been made available to the public under this subsection.

(e) EFFECT OF NON-DISCLOSURE DECISION ON JUDICIAL PROCEEDINGS.—The panel's decision that a document is protected by attorney-client privilege, attorney work product, or trade secret protection is binding only for the purpose of protecting the document from disclosure by the Depository. The decision by the panel shall not be construed to prevent a document from being disclosed in a judicial proceeding or interfere with the authority of a court to determine whether a document is admissible or whether its production may be compelled.

SEC. 907. MISCELLANEOUS.

The disclosure process in this title is not intended to affect the Federal Rules of Civil or Criminal Procedure or any Federal law which requires the disclosure of documents or which deals with attorney-client privilege, attorney work product, or trade secret protection.

SEC. 908. PENALTIES.

(a) GOOD FAITH REQUIREMENT.—Each tobacco product manufacturer shall act in good faith in asserting claims of privilege or trade secret protection based on fact and law. If the panel determines that a tobacco product manufacturer has not acted in good faith with full knowledge of the truth of the facts asserted and with a reasonable basis under existing law, the manufacturer shall be assessed costs, which shall include the full administrative costs of handling the claim of privilege, and all attorneys' fees incurred by the panel and any party contesting the privilege. The panel may also impose civil penalties of up to $50,000 per violation if it determines that the manufacturer acted in bad faith in asserting a privilege, or knowingly acted with the intent to delay, frustrate, defraud, or obstruct the panel's determination of privilege, attorney work product, or trade secret protection claims.

(b) FAILURE TO PRODUCE DOCUMENT.—A failure by a tobacco product manufacturer to produce indexes and documents in compliance with the schedule set forth in this title, or with such extension as may be granted by the panel, shall be punished by a civil penalty of up to $50,000 per violation. A separate violation occurs for each document the manufacturer has failed to produce in a timely manner. The maximum penalty under this subsection for a related series of violations is $5,000,000. In determining the amount of any civil penalty, the panel shall consider the number of documents, length of delay, any history of prior violations, the ability to pay, and such other matters as justice requires. Nothing in this title shall replace or supersede any criminal sanction under title 18, United States Code, or any other provision of law.

SEC. 909. DEFINITIONS.

For the purposes of this title—

(1) DOCUMENT.—The term "document" includes originals and drafts of any kind of written or graphic matter, regardless of the manner of production or reproduction, of any kind or description, whether sent or received or neither, and all copies thereof that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise) regardless of whether confidential, privileged, or otherwise, including any paper, book, account, photograph, blueprint, drawing, agreement, contract, memorandum, advertising material, letter, telegram, object, report, record, transcript, study, note, notation, working paper, intra-office communication, intra-department communication, chart, minute, index sheet, routing sheet, computer software, computer data, delivery ticket, flow sheet, price list, quotation, bulletin, circular, manual, summary, recording of telephone or other conversation or of interviews, or of conferences, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, regardless of the manner produced or reproduced. Such term also includes any tape, recording, videotape, computerization, or other electronic recording, whether digital or analog or a combination thereof.

(2) TRADE SECRET.—The term "trade secret" means any commercially valuable plan, formula, process, or device that is used for making, compounding, processing, or preparing trade commodities and that can be said to be the end-product of either innovation or substantial effort, for which there is a direct relationship between the plan, formula, process, or device and the productive process.

(3) CERTAIN ACTIONS DEEMED TO BE PROCEEDINGS.—Any action undertaken under this title, including the search, indexing, and production of documents, is deemed to be a "proceeding" before the executive branch of the United States.

(4) OTHER TERMS.—Any term used in this title that is defined in section 701 has the meaning given to it by that section.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Economic Assistance for Farmers Act" or the "LEAF Act".

SEC. 1002. DEFINITIONS.

In this title:

(1) PARTICIPATING TOBACCO PRODUCER.—The term "participating tobacco producer" means a quota holder, quota lessee, or quota tenant.

(2) QUOTA HOLDER.—The term "quota holder" means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(3) QUOTA LESSEE.—The term "quota lessee" means—

(A) a producer that owns a farm that produced tobacco pursuant to a lease and transfer to that farm of all or part of a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; or

(B) a producer that rented land from a farm operator to produce tobacco under a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years.

(4) QUOTA TENANT.—The term "quota tenant" means a producer that—

(A) is the principal producer, as determined by the Secretary, of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) for any of the 1995, 1996, or 1997 crop years; and

(B) is not a quota holder or quota lessee.

(5) SECRETARY.—The term "Secretary" means—

(A) in subtitles A and B, the Secretary of Agriculture; and

(B) in section 1031, the Secretary of Labor.

(6) TOBACCO PRODUCT IMPORTER.—The term "tobacco product importer" has the meaning given the term "importer" in section 5702 of the Internal Revenue Code of 1986.

(7) TOBACCO PRODUCT MANUFACTURER.—

(A) IN GENERAL.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(B) EXCLUSION.—The term "tobacco product manufacturer" does not include a person that manufactures cigars or pipe tobacco.

(8) TOBACCO WAREHOUSE OWNER.—The term "tobacco warehouse owner" means a warehouseman that participated in an auction market (as defined in the first section of the Tobacco Inspection Act (7 U.S.C. 511)) during the 1998 marketing year.

(9) FLUE-CURED TOBACCO.—The term "flue-cured tobacco" includes type 21 and type 37 tobacco.

Subtitle A—Tobacco Community Revitalization

SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.

There are appropriated and transferred to the Secretary for each fiscal year such amounts from the National Tobacco Trust Fund established by section 401, other than from amounts in the State Litigation Settlement Account, as may be necessary to carry out the provisions of this title.

SEC. 1012. EXPENDITURES.

The Secretary is authorized, subject to appropriations, to make payments under—

(1) section 1021 for payments for lost tobacco quota for each of fiscal years 1999 through 2023, but not to exceed $1,650,000,000 for any fiscal year except to the extent the payments are made in accordance with subsection (d)(12) or (e)(9) of section 1021;

(2) section 1022 for industry payments for all costs of the Department of Agriculture associated with the production of tobacco;

(3) section 1023 for tobacco community economic development grants, but not to exceed—

(A) $375,000,000 for each of fiscal years 1999 through 2008, less any amount required to be paid under section 1022 for the fiscal year; and

(B) $450,000,000 for each of fiscal year 2009 through 2023, less any amount required to be paid under section 1022 during the fiscal year;

(4) section 1031 for assistance provided under the tobacco worker transition program, but not to exceed $25,000,000 for any fiscal year; and

(5) subpart 9 of part A of title IV of the Higher Education Act of 1965 for farmer opportunity grants, but not to exceed—

(A) $42,500,000 for each of the academic years 1999–2000 through 2003–2004;

(B) $50,000,000 for each of the academic years 2004–2005 through 2008–2009;

(C) $57,500,000 for each of the academic years 2009–2010 through 2013–2014;

(D) $65,000,000 for each of the academic years 2014–2015 through 2018–2019; and

(E) $72,500,000 for each of the academic years 2019–2020 through 2023–2024.

SEC. 1013. BUDGETARY TREATMENT.

This subtitle constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide payments to States and eligible persons in accordance with this title.

Subtitle B—Tobacco Market Transition Assistance

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) IN GENERAL.—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota.

(b) ELIGIBILITY.—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm owned by the quota holder for the 1995 through 1997 marketing years.

(3) QUOTA LESSEES.—The base quota level for a quota lessee shall be equal to—

(A) 50 percent of the average number of pounds of tobacco quota established for the farm for the 1995 through 1997 marketing years—

(i) that was leased and transferred to a farm owned by the quota lessee; or

(ii) that was rented to the quota lessee for the right to produce the tobacco; less

(B) 25 percent of the average number of pounds of tobacco quota described in subparagraph (A) for which a quota tenant was the principal producer of the tobacco quota.

(4) QUOTA TENANTS.—The base quota level for a quota tenant shall be equal to the sum of—

(A) 50 percent of the average number of pounds of tobacco quota established for a farm for the 1995 through 1997 marketing years—

(i) that was owned by a quota holder; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm; and

(B) 25 percent of the average number of pounds of tobacco quota for the 1995 through 1997 marketing years—

(i)(I) that was leased and transferred to a farm owned by the quota lessee; or

(II) for which the rights to produce the tobacco were rented to the quota lessee; and

(ii) for which the quota tenant was the principal producer of the tobacco on the farm.

(5) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(A) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the base quota level for each quota holder, quota lessee, or quota tenant shall be determined in accordance with this subsection (based on a poundage conversion) by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average yield per acre for the farm for the type of tobacco for the marketing years.

(B) YIELDS NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the base quota for the quota holder, quota lessee, or quota tenant (based on a poundage conversion) by determining the amount equal to the product obtained by multiplying—

(i) the average tobacco farm marketing quota or allotment for the 1995 through 1997 marketing years; and

(ii) the average county yield per acre for the county in which the farm is located for the type of tobacco for the marketing years.

(d) PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for all types of tobacco other than flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) OPTION TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Each quota holder, for types of tobacco other than flue-cured tobacco, shall be given the option to relinquish the farm marketing quota or farm acreage allotment of the quota holder in exchange for a payment made under paragraph (3).

(B) NOTIFICATION.—A quota holder shall give notification of the intention of the quota holder to exercise the option at such time and in such manner as the Secretary may require, but not later than January 15, 1999.

(3) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS EXERCISING OPTIONS TO RELINQUISH QUOTA.—

(A) IN GENERAL.—Subject to subparagraph (E), for each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost tobacco quota to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under subparagraph (E).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) LIFETIME LIMITATION ON PAYMENTS.—The total amount of payments made under this paragraph to a quota holder shall not exceed the product obtained by multiplying the base quota level for the quota holder by $8 per pound.

(4) REISSUANCE OF QUOTA.—

(A) REALLOCATION TO LESSEE OR TENANT.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), a quota lessee or quota tenant that was the primary producer during the 1997 marketing year of tobacco pursuant to the farm marketing quota or farm acreage allotment, as determined by the Secretary, shall be given the option of having an allotment of the farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant.

(B) CONDITIONS FOR REALLOCATION.—

(i) TIMING.—A quota lessee or quota tenant that is given the option of having an allotment of a farm marketing quota or farm acreage allotment reallocated to a farm owned by the quota lessee or quota tenant under subparagraph (A) shall have 1 year from the date on which a farm marketing quota or farm acreage allotment is relinquished under paragraph (2) to exercise the option.

(ii) LIMITATION ON ACREAGE ALLOTMENT.—In the case of a farm acreage allotment, the acreage allotment determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(iii) LIMITATION ON MARKETING QUOTA.—In the case of a farm marketing quota, the marketing quota determined for any farm subsequent to any reallocation under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.—

(i) IN GENERAL.—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota tenant exercises an option of having an allotment of the farm marketing quota or farm acreage allotment for a type of tobacco reallocated, the Secretary shall reapportion the farm marketing quota or farm acreage allotment among the remaining quota holders for the type of tobacco within the same county.

(ii) CROSS-COUNTY LEASING.—In a State in which cross-county leasing is authorized pursuant to section 319(l) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(*l*)), the Secretary shall reapportion the farm marketing quota among the remaining quota holders for the type of tobacco within the same State.

(iii) ELIGIBILITY OF QUOTA HOLDER FOR PAYMENTS.—If a farm marketing quota is reapportioned to a quota holder under this subparagraph—

(I) the quota holder shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reapportionment; and

(II) the base quota level for the quota holder shall not be increased as a result of the reapportionment.

(E) SPECIAL RULE FOR TENANT OF LEASED TOBACCO.—If a quota holder exercises an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), the farm marketing quota or farm acreage allotment shall be divided evenly between, and the option of reallocating the farm marketing quota or farm acreage allotment shall be offered in equal portions to, the quota lessee and to the quota tenant, if—

(i) during the 1997 marketing year, the farm marketing quota or farm acreage allotment was leased and transferred to a farm owned by the quota lessee; and

(ii) the quota tenant was the primary producer, as determined by the Secretary, of tobacco pursuant to the farm marketing quota or farm acreage allotment.

(5) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA HOLDERS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) $4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

(ii) YIELD NOT AVAILABLE.—If the average yield per acre is not available for a farm, the Secretary shall calculate the poundage conversion for each quota holder during a marketing year by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average county yield per acre for the county in which the farm is located for the type of tobacco.

(6) PAYMENTS FOR LOST TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee and quota tenant, for types of tobacco other than flue-cured tobacco, that is eligible under subsection (b) in an amount that is equal to the product obtained by multiplying—

(A) the percentage by which the national marketing quota for the type of tobacco is less than the average national marketing quota for the type of tobacco for the 1995 through 1997 marketing years;

(B) the base quota level for the quota lessee or quota tenant; and

(C) $4 per pound.

(7) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(8) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount

payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost tobacco quota are made in accordance with paragraph (12).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraphs (5) and (6) to quota holders, quota lessees, and quota tenants under this subsection to ensure that the total amount of payments for lost tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (5), and (6) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders that have exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2) by increasing the amount payable to each such holder under paragraph (3).

(9) SUBSEQUENT SALE AND TRANSFER OF QUOTA.—Effective beginning with the 1999 marketing year, on the sale and transfer of a farm marketing quota or farm acreage allotment under section 316(g) or 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

(A) the person that sold and transferred the quota or allotment shall have—

(i) the base quota level attributable to the person reduced by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person reduced by the product obtained by multiplying—

(I) the base quota level attributable to the quota; and

(II) $8 per pound; and

(B) if the quota or allotment has never been relinquished by a previous quota holder under paragraph (2), the person that acquired the quota shall have—

(i) the base quota level attributable to the person increased by the base quota level attributable to the quota that is sold and transferred; and

(ii) the lifetime limitation on payments established under paragraph (7) attributable to the person—

(I) increased by the product obtained by multiplying—

(aa) the base quota level attributable to the quota; and

(bb) $8 per pound; but

(II) decreased by any payments under paragraph (5) for lost tobacco quota previously made that are attributable to the quota that is sold and transferred.

(10) SALE OR TRANSFER OF FARM.—On the sale or transfer of ownership of a farm that is owned by a quota holder, the base quota level established under subsection (c), the right to payments under paragraph (5), and the lifetime limitation on payments established under paragraph (7) shall transfer to the new owner of the farm to the same extent and in the same manner as those provisions applied to the previous quota holder.

(11) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—If a quota lessee or quota tenant that is entitled to payments under this subsection dies and is survived by a spouse or 1 or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving dependents in equal shares.

(12) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost tobacco quota as established under paragraphs (5) and (6) to each quota holder, quota lessee, and quota tenant for any affected type of tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for a type of tobacco is less than 50 percent of the national marketing quota or national acreage allotment for the type of tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (7); less

(ii) any payments for lost tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for any type of tobacco that results in the national marketing quota or national acreage allotment not being in effect for the type of tobacco shall not be considered a triggering event under this paragraph.

(13) BAN ON SUBSEQUENT SALE OR LEASING OF FARM MARKETING QUOTA OR FARM ACREAGE ALLOTMENT TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTA.—No quota holder that exercises the option to relinquish a farm marketing quota or farm acreage allotment for any type of tobacco under paragraph (2) shall be eligible to acquire a farm marketing quota or farm acreage allotment for the type of tobacco, or to obtain the lease or transfer of a farm marketing quota or farm acreage allotment for the type of tobacco, for a period of 25 crop years after the date on which the quota or allotment was relinquished.

(e) PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-CURED TOBACCO.—

(1) ALLOCATION OF FUNDS.—Of the amounts made available under section 1011(d)(1) for payments for lost tobacco quota, the Secretary shall make available for payments under this subsection an amount that bears the same ratio to the amounts made available as—

(A) the sum of all national marketing quotas for flue-cured tobacco during the 1995 through 1997 marketing years; bears to

(B) the sum of all national marketing quotas for all types of tobacco during the 1995 through 1997 marketing years.

(2) RELINQUISHMENT OF QUOTA.—

(A) IN GENERAL.—Each quota holder of flue-cured tobacco shall relinquish the farm marketing quota or farm acreage allotment in exchange for a payment made under paragraph (3) due to the transition from farm marketing quotas as provided under section 317 of the Agricultural Adjustment Act of 1938 for flue-cured tobacco to individual tobacco production permits as provided under section 317A of the Agricultural Adjustment Act of 1938 for flue-cured tobacco.

(B) NOTIFICATION.—The Secretary shall notify the quota holders of the relinquishment of their quota or allotment at such time and in such manner as the Secretary may require, but not later than November 15, 1998.

(3) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA HOLDERS THAT RELINQUISH QUOTA.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco to each quota holder that has relinquished the farm marketing quota or farm acreage allotment of the quota holder under paragraph (2).

(B) AMOUNT.—The amount of a payment made to a quota holder described in subparagraph (A) for a marketing year shall equal 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

(ii) has been issued an individual tobacco production permit under section 317A(b) of the Agricultural Adjustment Act of 1938; and

(iii) has not exercised an option to relinquish the permit.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to the product obtained by multiplying—

(i) the number of pounds by which the individual marketing limitation established for the permit is less than twice the base quota level for the quota lessee or quota tenant; and

(ii) $2 per pound.

(5) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE RELINQUISHED PERMITS.—

(A) IN GENERAL.—For each of fiscal years 1999 through 2008, the Secretary shall make annual payments for lost flue-cured tobacco quota to each quota lessee and quota tenant that has relinquished an individual tobacco production permit under section 317A(b)(5) of the Agricultural Adjustment Act of 1938.

(B) AMOUNT.—The amount of a payment made to a quota lessee or quota tenant described in subparagraph (A) for a marketing year shall be equal to 1/10 of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the individual tobacco production permit is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(E) PROHIBITION AGAINST PERMIT EXPANSION.—A quota lessee or quota tenant that receives a payment under this paragraph shall be ineligible to receive any new or increased tobacco production permit from the county production pool established under section 317A(b)(8) of the Agricultural Adjustment Act of 1938.

(6) LIFETIME LIMITATION ON PAYMENTS.—Except as otherwise provided in this subsection, the total amount of payments made under this subsection to a quota holder, quota lessee, or quota tenant during the lifetime of the quota holder, quota lessee, or quota tenant shall not exceed the product obtained by multiplying—

(A) the base quota level for the quota holder, quota lessee, or quota tenant; and

(B) $8 per pound.

(7) LIMITATIONS ON AGGREGATE ANNUAL PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the total amount payable under this subsection for any marketing year shall not exceed the amount made available under paragraph (1).

(B) ACCELERATED PAYMENTS.—Paragraph (1) shall not apply if accelerated payments for lost flue-cured tobacco quota are made in accordance with paragraph (9).

(C) REDUCTIONS.—If the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year exceeds the amount made available under paragraph (1), the Secretary shall make a pro rata reduction in the amounts payable under paragraph (4) to quota lessees and quota tenants under this subsection to ensure that the total amount of payments for lost flue-cured tobacco quota does not exceed the amount made available under paragraph (1).

(D) ROLLOVER OF PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA.—Subject to subparagraph (A), if the Secretary makes a reduction in accordance with subparagraph (C), the amount of the reduction shall be applied to the next marketing year and added to the payments for lost flue-cured tobacco quota for the marketing year.

(E) ADDITIONAL PAYMENTS TO QUOTA HOLDERS EXERCISING OPTION TO RELINQUISH QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR QUOTA TENANTS RELINQUISHING PERMITS.—If the amount made available under paragraph (1) exceeds the sum of the amounts determined under paragraphs (3), (4), and (5) for a marketing year, the Secretary shall distribute the amount of the excess pro rata to quota holders by increasing the amount payable to each such holder under paragraphs (3) and (5).

(8) DEATH OF QUOTA HOLDER, QUOTA LESSEE, OR QUOTA TENANT.—If a quota holder, quota lessee or quota tenant that is entitled to payments under paragraph (4) or (5) dies and is survived by a spouse or 1 or more descendants, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the surviving descendants in equal shares.

(9) ACCELERATION OF PAYMENTS.—

(A) IN GENERAL.—On the occurrence of any of the events described in subparagraph (B), the Secretary shall make an accelerated lump sum payment for lost flue-cured tobacco quota as established under paragraphs (3), (4), and (5) to each quota holder, quota lessee, and quota tenant for flue-cured tobacco in accordance with subparagraph (C).

(B) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under subparagraph (A) if after the date of enactment of this Act—

(i) subject to subparagraph (D), for 3 consecutive marketing years, the national marketing quota or national acreage allotment for flue-cured tobacco is less than 50 percent of the national marketing quota or national acreage allotment for flue-cured tobacco for the 1998 marketing year; or

(ii) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(I) section 316 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b);

(II) section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e);

(III) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(IV) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1);

(V) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2); or

(VI) section 317A of the Agricultural Adjustment Act of 1938.

(C) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee, and quota tenant under this subsection shall be equal to—

(i) the amount of the lifetime limitation established for the quota holder, quota lessee, or quota tenant under paragraph (6); less

(ii) any payments for lost flue-cured tobacco quota received by the quota holder, quota lessee, or quota tenant before the occurrence of any of the events described in subparagraph (B).

(D) REFERENDUM VOTE NOT A TRIGGERING EVENT.—A referendum vote of producers for flue-cured tobacco that results in the national marketing quota or national acreage allotment not being in effect for flue-cured tobacco shall not be considered a triggering event under this paragraph.

SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT COSTS ASSOCIATED WITH TOBACCO PRODUCTION.

(a) IN GENERAL.—The Secretary shall use such amounts remaining unspent and obligated at the end of each fiscal year to reimburse the Secretary for—

(1) costs associated with the administration of programs established under this title and amendments made by this title;

(2) costs associated with the administration of the tobacco quota and price support programs administered by the Secretary;

(3) costs to the Federal Government of carrying out crop insurance programs for tobacco;

(4) costs associated with all agricultural research, extension, or education activities associated with tobacco;

(5) costs associated with the administration of loan association and cooperative programs for tobacco producers, as approved by the Secretary; and

(6) any other costs incurred by the Department of Agriculture associated with the production of tobacco.

(b) LIMITATIONS.—Amounts made available under subsection (a) may not be used—

(1) to provide direct benefits to quota holders, quota lessees, or quota tenants; or

(2) in a manner that results in a decrease, or an increase relative to other crops, in the amount of the crop insurance premiums assessed to participating tobacco producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(c) DETERMINATIONS.—Not later than September 30, 1998, and each fiscal year thereafter, the Secretary shall determine—

(1) the amount of costs described in subsection (a); and

(2) the amount that will be provided under this section as reimbursement for the costs.

SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOPMENT GRANTS.

(a) AUTHORITY.—The Secretary shall make grants to tobacco-growing States in accordance with this section to enable the States to carry out economic development initiatives in tobacco-growing communities.

(b) APPLICATION.—To be eligible to receive payments under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the State will carry out using amounts received under the grant;

(2) a designation of an appropriate State agency to administer amounts received under the grant; and

(3) a description of the steps to be taken to ensure that the funds are distributed in accordance with subsection (e).

(c) AMOUNT OF GRANT.—

(1) IN GENERAL.—From the amounts available to carry out this section for a fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the amounts available as the total farm income of the State derived from the production of tobacco during the 1995 through 1997 marketing years (as determined under paragraph (2)) bears to the total farm income of all States derived from the production of tobacco during the 1995 through 1997 marketing years.

(2) TOBACCO INCOME.—For the 1995 through 1997 marketing years, the Secretary shall determine the amount of farm income derived from the production of tobacco in each State and in all States.

(d) PAYMENTS.—

(1) IN GENERAL.—A State that has an application approved by the Secretary under subsection (b) shall be entitled to a payment under this section in an amount that is equal to its allotment under subsection (c).

(2) FORM OF PAYMENTS.—The Secretary may make payments under this section to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) REALLOTMENTS.—Any portion of the allotment of a State under subsection (c) that the Secretary determines will not be used to carry out this section in accordance with an approved State application required under subsection (b), shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(e) USE AND DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Amounts received by a State under this section shall be used to

carry out economic development activities, including—

(A) rural business enterprise activities described in subsections (c) and (e) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932);

(B) down payment loan assistance programs that are similar to the program described in section 310E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1935);

(C) activities designed to help create productive farm or off-farm employment in rural areas to provide a more viable economic base and enhance opportunities for improved incomes, living standards, and contributions by rural individuals to the economic and social development of tobacco communities;

(D) activities that expand existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies in tobacco communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to participating tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities;

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343); and

(H) initiatives designed to partially compensate tobacco warehouse owners for lost revenues and assist the tobacco warehouse owners in establishing successful business enterprises.

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years. For purposes of this section, the term "tobacco-growing county" includes a political subdivision surrounded within a State by a county that has been determined by the Secretary to have in excess of $100,000 in income derived from the production of tobacco during 1 or more of the 1995 through 1997 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO WAREHOUSE OWNER INITIATIVES.—Not less than 6 percent of the amounts received by a State under this section during each of fiscal years 1999 through 2008 shall be used to carry out initiatives described in paragraph (1)(H).

(D) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of $100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production income in the county determined under paragraph (2) bears to the total tobacco production income for the State determined under subsection (c); and

(ii) 50 percent of the total amounts received by a State under this section during the 5-year period.

(f) PREFERENCES IN HIRING.—A State may require recipients of funds under this section to provide a preference in employment to—

(1) an individual who—

(A) during the 1998 calendar year, was employed in the manufacture, processing, or warehousing of tobacco or tobacco products, or resided, in a county described in subsection (e)(2); and

(B) is eligible for assistance under the tobacco worker transition program established under section 1031; or

(2) an individual who—

(A) during the 1998 marketing year, carried out tobacco quota or relevant tobacco production activities in a county described in subsection (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

(g) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subject to paragraph (2), a State shall provide an assurance to the Secretary that the amount of funds expended by the State and all counties in the State described in subsection (e)(2) for any activities funded under this section for a fiscal year is not less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year.

(2) REDUCTION OF GRANT AMOUNT.—If a State does not provide an assurance described in paragraph (1), the Secretary shall reduce the amount of the grant determined under subsection (c) by an amount equal to the amount by which the amount of funds expended by the State and counties for the activities is less than 90 percent of the amount of funds expended by the State and counties for the activities for the preceding fiscal year, as determined by the Secretary.

(3) FEDERAL FUNDS.—For purposes of this subsection, the amount of funds expended by a State or county shall not include any amounts made available by the Federal Government.

SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.

The Agricultural Adjustment Act of 1938 is amended by inserting after section 317 (7 U.S.C. 1314c) the following:

"SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.

"(a) DEFINITIONS.—In this section:

"(1) INDIVIDUAL ACREAGE LIMITATION.—The term 'individual acreage limitation' means the number of acres of flue-cured tobacco that may be planted by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual acreage limitations is equal to the national acreage allotment, less the reserve provided under subsection (h); and

"(ii) the individual acreage limitation for a marketing year bears the same ratio to the individual acreage limitation for the previous marketing year as the ratio that the national acreage allotment for the marketing year bears to the national acreage allotment for the previous marketing year, subject to adjustments by the Secretary to account for any reserve provided under subsection (h).

"(2) INDIVIDUAL MARKETING LIMITATION.—The term 'individual marketing limitation' means the number of pounds of flue-cured tobacco that may be marketed by the holder of a permit during a marketing year, calculated—

"(A) prior to—

"(i) any increase or decrease in the number due to undermarketings or overmarketings; and

"(ii) any reduction under subsection (i); and

"(B) in a manner that ensures that—

"(i) the total of all individual marketing limitations is equal to the national marketing quota, less the reserve provided under subsection (h); and

"(ii) the individual marketing limitation for a marketing year is obtained by multiplying the individual acreage limitation by the permit yield, prior to any adjustment for undermarketings or overmarketings.

"(3) INDIVIDUAL TOBACCO PRODUCTION PERMIT.—The term 'individual tobacco production permit' means a permit issued by the Secretary to a person authorizing the production of flue-cured tobacco for any marketing year during which this section is effective.

"(4) NATIONAL ACREAGE ALLOTMENT.—The term 'national acreage allotment' means the quantity determined by dividing—

"(A) the national marketing quota; by

"(B) the national average yield goal.

"(5) NATIONAL AVERAGE YIELD GOAL.—The term 'national average yield goal' means the national average yield for flue-cured tobacco during the 5 marketing years immediately preceding the marketing year for which the determination is being made.

"(6) NATIONAL MARKETING QUOTA.—For the 1999 and each subsequent crop of flue-cured tobacco, the term 'national marketing quota' for a marketing year means the quantity of flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(A) the aggregate of the quantities of flue-cured tobacco that domestic manufacturers of cigarettes estimate that the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(B) the average annual quantity of flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(C) the quantity, if any, of flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of flue-cured tobacco to establish or maintain the inventory at the reserve stock level for flue-cured tobacco.

"(7) PERMIT YIELD.—The term 'permit yield' means the yield of tobacco per acre for an individual tobacco production permit holder that is—

"(A) based on a preliminary permit yield that is equal to the average yield during the 5 marketing years immediately preceding the marketing year for which the determination is made in the county where the holder of the permit is authorized to plant flue-cured tobacco, as determined by the Secretary, on the basis of actual yields of farms in the county; and

"(B) adjusted by a weighted national yield factor calculated by—

"(i) multiplying each preliminary permit yield by the individual acreage limitation, prior to adjustments for overmarketings, undermarketings, or reductions required under subsection (i); and

"(ii) dividing the sum of the products under clause (i) for all flue-cured individual tobacco production permit holders by the national acreage allotment.

"(b) INITIAL ISSUANCE OF PERMITS.—

"(1) TERMINATION OF FLUE-CURED MARKETING QUOTAS.—On the date of enactment of the National Tobacco Policy and Youth Smoking Reduction Act, farm marketing quotas as provided under section 317 shall no longer be in effect for flue-cured tobacco.

"(2) ISSUANCE OF PERMITS TO QUOTA HOLDERS THAT WERE PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota holder under section 317 that was a principal producer of flue-cured tobacco during the 1998 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) NOTIFICATION.—The Secretary shall notify the holder of each permit of the individual acreage limitation and the individual marketing limitation applicable to the holder for each marketing year.

"(C) INDIVIDUAL ACREAGE LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(D) INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder for the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

"(3) QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

"(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

"(ii) the Secretary shall not issue any permit during the 25-year period beginning on the date of enactment of this Act to any person that was a quota holder and was not the principal producer of flue-cured tobacco during the 1997 marketing year.

"(B) MEDICAL HARDSHIPS AND CROP DISASTERS.—Subparagraph (A) shall not apply to a person that would have been the principal producer of flue-cured tobacco during the 1997 marketing year but for a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(C) ADMINISTRATION.—The Secretary shall issue regulations—

"(i) defining the term 'person' for the purpose of this paragraph; and

"(ii) prescribing such rules as the Secretary determines are necessary to ensure a fair and reasonable application of the prohibition established under this paragraph.

"(4) ISSUANCE OF PERMITS TO PRINCIPAL PRODUCERS OF FLUE-CURED TOBACCO.—

"(A) IN GENERAL.—By January 15, 1999, each individual quota lessee or quota tenant (as defined in section 1002 of the LEAF Act) that was the principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall be issued an individual tobacco production permit under this section.

"(B) INDIVIDUAL ACREAGE LIMITATIONS.—In establishing the individual acreage limitation for the 1999 marketing year under this section, the farm acreage allotment that was allotted to a farm owned by a quota holder for whom the quota lessee or quota tenant was the principal producer of flue-cured tobacco during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

"(C) INDIVIDUAL MARKETING LIMITATIONS.—In establishing the individual marketing limitation for the 1999 marketing year under this section, the individual marketing limitation for the previous year for an individual described in this paragraph shall be calculated by multiplying—

"(i) the farm marketing quota that was allotted to a farm owned by a quota holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

"(ii) the ratio that—

"(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

"(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

"(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between the quota lessee and quota tenant for purposes of issuing individual tobacco production permits under this paragraph.

"(5) OPTION OF QUOTA LESSEE OR QUOTA TENANT TO RELINQUISH PERMIT.—

"(A) IN GENERAL.—Each quota lessee or quota tenant that is issued an individual tobacco production permit under paragraph (4) shall be given the option of relinquishing the permit in exchange for payments made under section 1021(e)(5) of the LEAF Act.

"(B) NOTIFICATION.—A quota lessee or quota tenant that is issued an individual tobacco production permit shall give notification of the intention to exercise the option at such time and in such manner as the Secretary may require, but not later than 45 days after the permit is issued.

"(C) REALLOCATION OF PERMIT.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit relinquished under this paragraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(6) ACTIVE PRODUCER REQUIREMENT.—

"(A) REQUIREMENT FOR SHARING RISK.—No individual tobacco production permit shall be issued to, or maintained by, a person that does not fully share in the risk of producing a crop of flue-cured tobacco.

"(B) CRITERIA FOR SHARING RISK.—For purposes of this paragraph, a person shall be considered to have fully shared in the risk of production of a crop if—

"(i) the investment of the person in the production of the crop is not less than 100 percent of the costs of production associated with the crop;

"(ii) the amount of the person's return on the investment is dependent solely on the sale price of the crop; and

"(iii) the person may not receive any of the return before the sale of the crop.

"(C) PERSONS NOT SHARING RISK.—

"(i) FORFEITURE.—Any person that fails to fully share in the risks of production under this paragraph shall forfeit an individual tobacco production permit if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture exist.

"(ii) REALLOCATION.—The Secretary shall add the authority to produce flue-cured tobacco under the individual tobacco production permit forfeited under this subparagraph to the county production pool established under paragraph (8) for reallocation by the appropriate county committee.

"(D) NOTICE.—Notice of any determination made by a county committee under subparagraph (C) shall be mailed, as soon as practicable, to the person involved.

"(E) REVIEW.—If the person is dissatisfied with the determination, the person may request, not later than 15 days after notice of the determination is received, a review of the determination by a local review committee under the procedures established under section 363 for farm marketing quotas.

"(7) COUNTY OF ORIGIN REQUIREMENT.—For the 1999 and each subsequent crop of flue-cured tobacco, all tobacco produced pursuant to an individual tobacco production permit shall be produced in the same county in which was produced the tobacco produced during the 1997 marketing year pursuant to the farm marketing quota or farm acreage allotment on which the individual tobacco production permit is based.

"(8) COUNTY PRODUCTION POOL.—

"(A) IN GENERAL.—The authority to produce flue-cured tobacco under an individual tobacco production permit that is forfeited, relinquished, or surrendered within a county may be reallocated by the appropriate county committee to tobacco producers located in the same county that apply to the committee to produce flue-cured tobacco under the authority.

"(B) PRIORITY.—In reallocating individual tobacco production permits under this paragraph, a county committee shall provide a priority to—

"(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

"(ii) a new tobacco producer.

"(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

"(i) the experience of the producer;

"(ii) the availability of land, labor, and equipment for the production of tobacco;

"(iii) crop rotation practices; and

"(iv) the soil and other physical factors affecting the production of tobacco.

"(D) MEDICAL HARDSHIPS AND CROP DISASTERS.—Notwithstanding any other provision of this Act, the Secretary may issue an individual tobacco production permit under this paragraph to a producer that is otherwise ineligible for the permit due to a medical hardship or crop disaster that occurred during the 1997 marketing year.

"(c) REFERENDUM.—

"(1) ANNOUNCEMENT OF QUOTA AND ALLOTMENT.—Not later than December 15, 1998, the Secretary pursuant to subsection (b) shall determine and announce—

"(A) the quantity of the national marketing quota for flue-cured tobacco for the 1999 marketing year; and

"(B) the national acreage allotment and national average yield goal for the 1999 crop of flue-cured tobacco.

"(2) SPECIAL REFERENDUM.—Not later than 30 days after the announcement of the quantity of the national marketing quota in 2001, the Secretary shall conduct a special referendum of the tobacco production permit holders that were the principal producers of flue-cured tobacco of the 1997 crop to determine whether the producers approve or oppose the continuation of individual tobacco production permits on an acreage-poundage basis as provided in this section for the 2002 through 2004 marketing years.

"(3) APPROVAL OF PERMITS.—If the Secretary determines that more than 66⅔ percent of the producers voting in the special referendum approve the establishment of individual tobacco production permits on an acreage-poundage basis—

"(A) individual tobacco production permits on an acreage-poundage basis as provided in this section shall be in effect for the 2002 through 2004 marketing years; and

"(B) marketing quotas on an acreage-poundage basis shall cease to be in effect for the 2002 through 2004 marketing years.

"(4) DISAPPROVAL OF PERMITS.—If individual tobacco production permits on an acreage-poundage basis are not approved by more than 66⅔ percent of the producers voting in the referendum, no marketing quotas on an acreage-poundage basis shall continue in effect that were proclaimed under section 317 prior to the referendum.

"(5) APPLICABLE MARKETING YEARS.—If individual tobacco production permits have been made effective for flue-cured tobacco on an acreage-poundage basis pursuant to this subsection, the Secretary shall, not later than December 15 of any future marketing year, announce a national marketing quota for that type of tobacco for the next 3 succeeding marketing years if the marketing year is the last year of 3 consecutive years for which individual tobacco production permits previously proclaimed will be in effect.

"(d) ANNUAL ANNOUNCEMENT OF NATIONAL MARKETING QUOTA.—The Secretary shall determine and announce the national marketing quota, national acreage allotment, and national average yield goal for the second and third marketing years of any 3-year period for which individual tobacco production permits are in effect on or before the December 15 immediately preceding the beginning of the marketing year to which the quota, allotment, and goal apply.

"(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—If a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of individual tobacco production permits, individual acreage limitations, and individual marketing limitations under this section for the crop and marketing year covered by the determinations.

"(f) ASSIGNMENT OF TOBACCO PRODUCTION PERMITS.—

"(1) LIMITATION TO SAME COUNTY.—Each individual tobacco production permit holder shall assign the individual acreage limitation and individual marketing limitation to 1 or more farms located within the county of origin of the individual tobacco production permit.

"(2) FILING WITH COUNTY COMMITTEE.—The assignment of an individual acreage limitation and individual marketing limitation shall not be effective until evidence of the assignment, in such form as required by the Secretary, is filed with and determined by the county committee for the county in which the farm involved is located..

"(3) LIMITATION ON TILLABLE CROPLAND.—The total acreage assigned to any farm under this subsection shall not exceed the acreage of cropland on the farm.

"(g) PROHIBITION ON SALE OR LEASING OF INDIVIDUAL TOBACCO PRODUCTION PERMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall not permit the sale and transfer, or lease and transfer, of an individual tobacco production permit issued under this section.

"(2) TRANSFER TO DESCENDANTS.—

"(A) DEATH.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section, the permit shall transfer to the surviving spouse of the person or, if there is no surviving spouse, to surviving direct descendants of the person.

"(B) TEMPORARY INABILITY TO FARM.—In the case of the death of a person to whom an individual tobacco production permit has been issued under this section and whose descendants are temporarily unable to produce a crop of tobacco, the Secretary may hold the license in the name of the descendants for a period of not more than 18 months.

"(3) VOLUNTARY TRANSFERS.—A person that is eligible to obtain an individual tobacco production permit under this section may at any time transfer all or part of the permit to the person's spouse or direct descendants that are actively engaged in the production of tobacco.

"(h) RESERVE.—

"(1) IN GENERAL.—For each marketing year for which individual tobacco production permits are in effect under this section, the Secretary may establish a reserve from the national marketing quota in a quantity equal to not more than 1 percent of the national marketing quota to be available for—

"(A) making corrections of errors in individual acreage limitations and individual marketing limitations;

"(B) adjusting inequities; and

"(C) establishing individual tobacco production permits for new tobacco producers (except that not less than two-thirds of the reserve shall be for establishing such permits for new tobacco producers).

"(2) ELIGIBLE PERSONS.—To be eligible for a new individual tobacco production permit, a producer must not have been the principal producer of tobacco during the immediately preceding 5 years.

"(3) APPORTIONMENT FOR NEW PRODUCERS.—The part of the reserve held for apportionment to new individual tobacco producers shall be allotted on the basis of—

"(A) land, labor, and equipment available for the production of tobacco;

"(B) crop rotation practices;

"(C) soil and other physical factors affecting the production of tobacco; and

"(D) the past tobacco-producing experience of the producer.

"(4) PERMIT YIELD.—The permit yield for any producer for which a new individual tobacco production permit is established shall be determined on the basis of available productivity data for the land involved and yields for similar farms in the same county.

"(i) PENALTIES.—

"(1) PRODUCTION ON OTHER FARMS.—If any quantity of tobacco is marketed as having been produced under an individual acreage limitation or individual marketing limitation assigned to a farm but was produced on a different farm, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(2) FALSE REPORT.—If a person to which an individual tobacco production permit is issued files, or aids or acquiesces in the filing of, a false report with respect to the assignment of an individual acreage limitation or individual marketing limitation for a quantity of tobacco, the individual acreage limitation or individual marketing limitation for the following marketing year shall be forfeited.

"(j) MARKETING PENALTIES.—

"(1) IN GENERAL.—When individual tobacco production permits under this section are in effect, provisions with respect to penalties for the marketing of excess tobacco and the other provisions contained in section 314 shall apply in the same manner and to the same extent as they would apply under section 317(g) if farm marketing quotas were in effect.

"(2) PRODUCTION ON OTHER FARMS.—If a producer falsely identifies tobacco as having been produced on or marketed from a farm to which an individual acreage limitation or individual marketing limitation has been assigned, future individual acreage limitations and individual marketing limitations shall be forfeited.".

SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking "(c) Within thirty" and inserting the following:

"(c) REFERENDA ON QUOTAS.—

"(1) IN GENERAL.—Not later than 30"; and

(2) by adding at the end the following:

"(2) REFERENDA ON PROGRAM CHANGES.—

"(A) IN GENERAL.—In the case of any type of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that type of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

"(B) APPROVAL OF PROPOSALS.—If a majority of producers of the type of tobacco in the State approve a proposal in a referendum conducted under subparagraph (A), the Secretary shall implement the proposal in a manner that applies to all producers and quota holders of that type of tobacco in the State.".

(b) PURCHASE REQUIREMENTS.—Section 320B of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is amended—

(1) in subsection (c)—

(A) by striking "(c) The amount" and inserting "(c) AMOUNT OF PENALTY.—For the 1998 and subsequent marketing years, the amount"; and

(B) by striking paragraph (1) and inserting the following:

"(1) 105 percent of the average market price for the type of tobacco involved during the preceding marketing year; and".

(c) ELIMINATION OF TOBACCO MARKETING ASSESSMENT.—

(1) IN GENERAL.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsection (g).

(2) CONFORMING AMENDMENT.—Section 422(c) of the Uruguay Round Agreements Act (Public Law 103-465; 7 U.S.C. 1445 note) is amended by striking "section 106(g), 106A, or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445-1, or 1445-2)" and inserting "section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2)".

(d) ADJUSTMENT FOR LAND RENTAL COSTS.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following:

"(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For each of the 1999 and 2000 marketing years for flue-cured tobacco, after consultation with producers, State farm organizations and cooperative associations, the Secretary shall make an adjustment in the price support level for flue-cured tobacco equal to the annual change in the average cost per pound to flue-cured producers, as determined by the Secretary, under agreements through which producers rent land to produce flue-cured tobacco.".

(e) FIRE-CURED AND DARK AIR-CURED TOBACCO PROGRAMS.—

(1) LIMITATION ON TRANSFERS.—Section 318(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d(g)) is amended—

(A) by striking "ten" and inserting "30"; and

(B) by inserting "during any crop year" after "transferred to any farm".

(2) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Section 318 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314d) is amended by adding at the end the following:

"(k) LOSS OF ALLOTMENT OR QUOTA THROUGH UNDERPLANTING.—Effective for the 1999 and subsequent marketing years, no acreage allotment or acreage-poundage quota, other than a new marketing quota, shall be established for a farm on which no fire-cured or dark air-cured tobacco was planted or considered planted during at least 2 of the 3 crop years immediately preceding the crop year for which the acreage allotment or acreage-poundage quota would otherwise be established.".

(f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO NO NET COST ASSESSMENT.—

(1) NO NET COST TOBACCO FUND.—Section 106A(d)(1)(A) of the Agricultural Act of 1949 (7 U.S.C. 1445-1(d)(1)(A)) is amended—

(A) in clause (ii), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured quota tobacco"; and

(B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "Flue-cured or Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,"; and

(ii) by striking subclause (II) and inserting the following:

"(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and".

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445-2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after "Burley quota tobacco" the following: "and fire-cured and dark air-cured tobacco"; and

(B) in subparagraph (C), by striking "Flue-cured and Burley tobacco" and inserting "each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,".

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) shall be certified as eligible to apply for adjustment assistance under this section pursuant to a petition filed under subsection (b) if the Secretary of Labor determines that a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and—

(A) the sales or production, or both, of the firm or subdivision have decreased absolutely; and

(B) the implementation of the national tobacco settlement contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term "contributed importantly" means a cause that is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this section may be filed by a group of workers (including workers in any firm or subdivision of a firm involved in the manufacture, processing, or warehousing of tobacco or tobacco products) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which the workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—On receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1); and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons for the finding, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal laws are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b)(2)(B)(ii), shall determine whether the petition meets the criteria described in subsection (a)(1). On a determination that the petition meets the criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for the assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—On the denial of a certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of other applicable assistance programs to determine if the workers may be certified under the other programs.

(d) COMPREHENSIVE ASSISTANCE.—

(1) IN GENERAL.—Workers covered by a certification issued by the Secretary under subsection (c)(1) shall be provided with benefits and services described in paragraph (2) in the same manner and to the same extent as workers covered under a certification under subchapter A of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), except that the total amount of payments under this section for any fiscal year shall not exceed $25,000,000.

(2) BENEFITS AND SERVICES.—The benefits and services described in this paragraph are the following:

(A) Employment services of the type described in section 235 of the Trade Act of 1974 (19 U.S.C. 2295).

(B) Training described in section 236 of the Trade Act of 1974 (19 U.S.C. 2296), except that notwithstanding the provisions of section 236(a)(2)(A) of that Act, the total amount of payments for training under this section for any fiscal year shall not exceed $12,500,000.

(C) Tobacco worker readjustment allowances, which shall be provided in the same manner as trade readjustment allowances are provided under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2291 et seq.), except that—

(i) the provisions of sections 231(a)(5)(C) and 231(c) of that Act (19 U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances on a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of that Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of that Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of the worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering the worker.

In cases of extenuating circumstances relating to enrollment of a worker in a training program under this section, the Secretary may extend the time for enrollment for a period of not to exceed 30 days.

(D) Job search allowances of the type described in section 237 of the Trade Act of 1974 (19 U.S.C. 2297).

(E) Relocation allowances of the type described in section 238 of the Trade Act of 1974 (19 U.S.C. 2298).

(e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAYMENTS FOR LOST TOBACCO QUOTA.—No

benefits or services may be provided under this section to any individual who has received payments for lost tobacco quota under section 1021.

(f) FUNDING.—Of the amounts appropriated to carry out this title, the Secretary may use not to exceed $25,000,000 for each of fiscal years 1999 through 2008 to provide assistance under this section.

(g) EFFECTIVE DATE.—This section shall take effect on the date that is the later of—

(1) October 1, 1998; or

(2) the date of enactment of this Act.

(h) TERMINATION DATE.—No assistance, vouchers, allowances, or other payments may be provided under this section after the date that is the earlier of—

(1) the date that is 10 years after the effective date of this section under subsection (g); or

(2) the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by this section becomes effective.

SEC. 1032. FARMER OPPORTUNITY GRANTS.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

"Subpart 9—Farmer Opportunity Grants

"SEC. 420D. STATEMENT OF PURPOSE.

"It is the purpose of this subpart to assist in making available the benefits of postsecondary education to eligible students (determined in accordance with section 420F) in institutions of higher education by providing farmer opportunity grants to all eligible students.

"SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETERMINATIONS; APPLICATIONS.

"(a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—

"(1) PROGRAM AUTHORITY.—From amounts made available under section 1011(d)(5) of the LEAF Act, the Secretary, during the period beginning July 1, 1999, and ending September 30, 2024, shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (determined in accordance with section 420F) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a farmer opportunity grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of the sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based on an amount requested by the institution as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

"(3) DESIGNATION.—Grants made under this subpart shall be known as 'farmer opportunity grants'.

"(b) AMOUNT OF GRANTS.—

"(1) AMOUNTS.—

"(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

"(i) $1,700 for each of the academic years 1999–2000 through 2003–2004;

"(ii) $2,000 for each of the academic years 2004–2005 through 2008–2009;

"(iii) $2,300 for each of the academic years 2009–2010 through 2013–2014;

"(iv) $2,600 for each of the academic years 2014–2015 through 2018–2019; and

"(v) $2,900 for each of the academic years 2019–2020 through 2023–2024.

"(B) PART-TIME RULE.—In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. The schedule of reductions shall be established by regulation and published in the Federal Register.

"(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at the institution.

"(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance, except that any period during which the student is enrolled in a noncredit or remedial course of study as described in paragraph (2) shall not be counted for the purpose of this paragraph.

"(2) CONSTRUCTION.—Nothing in this section shall be construed to—

"(A) exclude from eligibility courses of study that are noncredit or remedial in nature and that are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills; and

"(B) exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

"(3) PROHIBITION.—No student is entitled to receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.

"(d) APPLICATIONS FOR GRANTS.—

"(1) IN GENERAL.—The Secretary shall from time to time set dates by which students shall file applications for grants under this subpart. The filing of applications under this subpart shall be coordinated with the filing of applications under section 401(c).

"(2) INFORMATION AND ASSURANCES.—Each student desiring a grant for any year shall file with the Secretary an application for the grant containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the Secretary's functions and responsibilities under this subpart.

"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

"(f) INSUFFICIENT FUNDING.—If, for any fiscal year, the funds made available to carry out this subpart are insufficient to satisfy fully all grants for students determined to be eligible under section 420F, the amount of the grant provided under subsection (b) shall be reduced on a pro rata basis among all eligible students.

"(g) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education that enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of the agreement, to be a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of farmer opportunity grants shall not be considered to be individual grantees for purposes of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

"SEC. 420F. STUDENT ELIGIBILITY.

"(a) IN GENERAL.—In order to receive any grant under this subpart, a student shall—

"(1) be a member of a tobacco farm family in accordance with subsection (b);

"(2) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which the student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with section 487, and not be enrolled in an elementary or secondary school;

"(3) if the student is presently enrolled at an institution of higher education, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with subsection (c);

"(4) not owe a refund on grants previously received at any institution of higher education under this title, or be in default on any loan from a student loan fund at any institution provided for in part D, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

"(5) file with the institution of higher education that the student intends to attend, or is attending, a document, that need not be notarized, but that shall include—

"(A) a statement of educational purpose stating that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution; and

"(B) the student's social security number; and

"(6) be a citizen of the United States.

"(b) TOBACCO FARM FAMILIES.—

"(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1998 the student was—

"(A) an individual who—

"(i) is a participating tobacco producer (as defined in section 1002 of the LEAF Act); or

"(ii) is otherwise actively engaged in the production of tobacco;

"(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

"(C) an individual—

"(i) who was a brother, sister, stepbrother, stepsister, son-in-law, or daughter-in-law of an individual described in subparagraph (A); and

"(ii) whose principal place of residence was the home of the individual described in subparagraph (A); or

"(D) an individual who was a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of an individual described in subparagraph (A).

"(2) ADMINISTRATION.—On request, the Secretary of Agriculture shall provide to the Secretary such information as is necessary to carry out this subsection.

"(c) SATISFACTORY PROGRESS.—

"(1) IN GENERAL.—For the purpose of subsection (a)(3), a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution; and

"(B) the student has at least a cumulative C average or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) SPECIAL RULE.—Whenever a student fails to meet the eligibility requirements of subsection (a)(3) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(3) for a grant under this subpart.

"(3) WAIVER.—Any institution of higher education at which the student is in attendance may waive paragraph (1) or (2) for undue hardship based on—

"(A) the death of a relative of the student;

"(B) the personal injury or illness of the student; or

"(C) special circumstances as determined by the institution.

"(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of the certificate, to be eligible for any assistance under this subpart, the student shall meet either 1 of the following standards:

"(1) EXAMINATION.—The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that the student can benefit from the education or training being offered. The examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

"(2) DETERMINATION.—The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves the process. In determining whether to approve or disapprove the process, the Secretary shall take into account the effectiveness of the process in enabling students without secondary school diplomas or the recognized equivalent to benefit from the instruction offered by institutions utilizing the process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

"(e) SPECIAL RULE FOR CORRESPONDENCE COURSES.—A student shall not be eligible to receive a grant under this subpart for a correspondence course unless the course is part of a program leading to an associate, bachelor, or graduate degree.

"(f) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

"(1) RELATION TO CORRESPONDENCE COURSES.—A student enrolled in a course of instruction at an eligible institution of higher education (other than an institute or school that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)(C))) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by the institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at the institution equals or exceeds 50 percent of the courses.

"(2) RESTRICTION OR REDUCTIONS OF FINANCIAL AID.—A student's eligibility to receive a grant under this subpart may be reduced if a financial aid officer determines under the discretionary authority provided in section 479A that telecommunications instruction results in a substantially reduced cost of attendance to the student.

"(3) DEFINITION.—For the purposes of this subsection, the term 'telecommunications' means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that the term does not include a course that is delivered using video cassette or disc recordings at the institution and that is not delivered in person to other students of that institution.

"(g) STUDY ABROAD.—Nothing in this subpart shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive a grant under this subpart, without regard to whether the study abroad program is required as part of the student's degree program.

"(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—The Secretary, in cooperation with the Commissioner of Social Security, shall verify any social security number provided by a student to an eligible institution under subsection (a)(5)(B) and shall enforce the following conditions:

"(1) PENDING VERIFICATION.—Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this subpart because social security number verification is pending.

"(2) DENIAL OR TERMINATION.—If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant under this subpart until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed to permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

"(A) any institution of higher education with respect to any error in a social security number, unless the error was a result of fraud on the part of the institution; or

"(B) any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student.".

Subtitle D—Immunity

SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND TOBACCO WAREHOUSE OWNERS.

Notwithstanding any other provision of this title, a participating tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with the National Tobacco Policy and Youth Smoking Reduction Act.

TITLE XI—MISCELLANEOUS PROVISIONS

Subtitle A—International Provisions

SEC. 1101. POLICY.

It shall be the policy of the United States government to pursue bilateral and multilateral agreements that include measures designed to—

(1) restrict or eliminate tobacco advertising and promotion aimed at children;

(2) require effective warning labels on packages and advertisements of tobacco products;

(3) require disclosure of tobacco ingredient information to the public;

(4) limit access to tobacco products by young people;

(5) reduce smuggling of tobacco and tobacco products;

(6) ensure public protection from environmental tobacco smoke; and

(7) promote tobacco product policy and program information sharing between or among the parties to those agreements.

SEC. 1102. TOBACCO CONTROL NEGOTIATIONS.

The President, in consultation with the Secretary of State, the Secretary of Health and Human Services, and the United States Trade Representative, shall—

(1) act as the lead negotiator for the United States in the area of international tobacco control;

(2) coordinate among U.S. foreign policy and trade negotiators in the area of effective international tobacco control policy;

(3) work closely with non-governmental groups, including public health groups; and

(4) report annually to the Congress on the progress of negotiations to achieve effective international tobacco control policy.

SEC. 1103. REPORT TO CONGRESS.

Not later than 150 days after the enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall transmit to the Congress a report identifying the international fora wherein international tobacco control efforts may be negotiated.

SEC. 1104. FUNDING.

There are authorized such sums as are necessary to carry out the provisions of this subtitle.

SEC. 1105. PROHIBITION OF FUNDS TO FACILITATE THE EXPORTATION OR PROMOTION OF TOBACCO.

(a) IN GENERAL.—No officer, employee, department, or agency of the United States may promote the sale or export of tobacco or tobacco products, or seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, unless such restrictions are not applied equally to all tobacco and tobacco products. The United States Trade Representative shall consult with the Secretary regarding inquiries, negotiations, and representations with respect to tobacco and tobacco products, including whether proposed restrictions are reasonable protections of public health.

(b) NOTIFICATION.—Whenever such inquiries, negotiations, or representations are made, the United States Trade Representative shall notify the Congress within 10 days afterwards regarding the nature of the inquiry, negotiation, or representation.

SEC. 1106. HEALTH LABELING OF TOBACCO PRODUCTS FOR EXPORT.

(a) IN GENERAL.—

(1) EXPORTS MUST BE LABELED.—It shall be unlawful for any United States person, directly or through approval or facilitation of a transaction by a foreign person, to make use of the United States mail or of any instrument of interstate commerce to authorize or contribute to the export from the United States any tobacco product unless the tobacco product packaging contains a warning label that—

(A) complies with Federal requirements for labeling of similar tobacco products manufactured, imported, or packaged for sale or distribution in the United States; or

(B) complies with the specific health hazard warning labeling requirements of the foreign country to which the product is exported.

(2) U.S. REQUIREMENTS APPLY IF THE DESTINATION COUNTRY DOES NOT REQUIRE SPECIFIC HEALTH HAZARD WARNING LABELS.—Subparagraph (B) of paragraph (1) does not apply to exports to a foreign country that does not have any specific health hazard warning label requirements for the tobacco product being exported.

(b) UNITED STATES PERSON DEFINED.—For purposes of this section, the term "United States person" means—

(1) an individual who is a citizen, national, or resident of the United States; and

(2) a corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States.

(c) REPORT TO CONGRESS ON ENFORCEMENT; FEASIBILITY REGULATIONS.—

(1) THE PRESIDENT.—The President shall—

(A) report to the Congress within 90 days after the date of enactment of this Act—

(i) regarding methods to ensure compliance with subsection (a); and

(ii) listing countries whose health warnings related to tobacco products are substantially similar to those in the United States; and

(B) promulgate regulations within 1 year after the date of enactment of this Act that will ensure compliance with subsection (a).

(2) THE SECRETARY.—The Secretary shall determine through regulation the feasibility and practicability of requiring health warning labeling in the language of the country of destination weighing the health and other benefits and economic and other costs. To the greatest extent practicable, the Secretary should design a system that requires the language of the country of destination while minimizing the dislocative effects of such a system.

SEC. 1107. INTERNATIONAL TOBACCO CONTROL AWARENESS.

(a) ESTABLISHMENT OF INTERNATIONAL TOBACCO CONTROL AWARENESS.—The Secretary is authorized to establish an international tobacco control awareness effort. The Secretary shall—

(1) promote efforts to share information and provide education internationally about the health, economic, social, and other costs of tobacco use, including scientific and epidemiological data related to tobacco and tobacco use and enhancing countries' capacity to collect, analyze, and disseminating such data;

(2) promote policies and support and coordinate international efforts, including international agreements or arrangements, that seek to enhance the awareness and understanding of the costs associated with tobacco use;

(3) support the development of appropriate governmental control activities in foreign countries, such as assisting countries to design, implement, and evaluate programs and policies used in the United States or other countries; including the training of United States diplomatic and commercial representatives outside the United States;

(4) undertake other activities as appropriate in foreign countries that help achieve a reduction of tobacco use;

(5) permit United States participation in annual meetings of government and non-government representatives concerning international tobacco use and efforts to reduce tobacco use;

(6) promote mass media campaigns, including paid counter-tobacco advertisements to reverse the image appeal of pro-tobacco messages, especially those that glamorize and "Westernize" tobacco use to young people; and

(7) create capacity and global commitment to reduce international tobacco use and prevent youth smoking, including the use of models of previous public health efforts to address global health problems.

(b) ACTIVITIES.—

(1) IN GENERAL.—The activities under subsection (a) shall include—

(A) public health and education programs;

(B) technical assistance;

(C) cooperative efforts and support for related activities of multilateral organization and international organizations;

(D) training; and

(E) such other activities that support the objectives of this section as may be appropriate.

(2) GRANTS AND CONTRACTS.—In carrying out this section, the Secretary shall make grants to, enter into and carry out agreements with, and enter into other transactions with any individual, corporation, or other entity, whether within or outside the United States, including governmental and nongovernmental organizations, international organizations, and multilateral organizations.

(3) TRANSFER OF FUNDS TO AGENCIES.—The Secretary may transfer to any agency of the United States any part of any funds appropriated for the purpose of carrying out this section. Funds authorized to be appropriated by this section shall be available for obligation and expenditure in accordance with the provisions of this section or in accordance with the authority governing the activities of the agency to which such funds are transferred.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from the National Tobacco Trust Fund, to carry out the provisions of this section, including the administrative costs incurred by any agency of the United States in carrying out this section, $350,000,000 for each of the fiscal years 1999 through 2004, and such sums as may be necessary for each fiscal year thereafter. A substantial amount of such funds shall be granted to non-governmental organizations. Any amount appropriated pursuant to this authorization shall remain available without fiscal year limitation until expended.

Subtitle B—Anti-smuggling Provisions

SEC. 1131. DEFINITIONS.

(a) INCORPORATION OF CERTAIN DEFINITIONS.—In this subtitle, the terms "cigar", "cigarette", "person", "pipe tobacco", "roll-your-own tobacco", "smokeless tobacco", "State", "tobacco product", and "United States ", shall have the meanings given such terms in sections 5702(a), 5702(b), 7701(a)(1), 5702(o), 5702(n)(1), 5702(p), 3306(j)(1), 5702(c), and 3306(j)(2) respectively of the Internal Revenue Code of 1986.

(b) OTHER DEFINITIONS.—In this subtitle:

(1) AFFILIATE.—The term "affiliate" means any one of 2 or more persons if 1 of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of other or others of such persons, and any 2 or more of such persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(2) INTERSTATE OR FOREIGN COMMERCE.—The term "interstate or foreign commerce" means any commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(4) PACKAGE.—The term "package" means the innermost sealed container irrespective of the material from which such container is made, in which a tobacco product is placed by the manufacturer and in which such tobacco product is offered for sale to a member of the general public.

(5) RETAILER.—The term "retailer" means any dealer who sells, or offers for sale, any tobacco product at retail. The term "retailer" includes any duty free store that sells, offers for sale, or otherwise distributes at retail in any single transaction 30 or less packages, or it equivalent for other tobacco products.

(6) EXPORTER.—The term "exporter" means any person engaged in the business of exporting tobacco products from the United States for purposes of sale or distribution; and the term "licensed exporter" means any such person licensed under the provisions of this subtitle. Any duty-free store that sells, offers for sale, or otherwise distributes to any person in any single transaction more than 30 packages of cigarettes, or its equivalent for other tobacco products as the Secretary shall by regulation prescribe, shall be deemed an "exporter" under this subtitle.

(7) IMPORTER.—The term "importer" means any person engaged in the business of importing tobacco products into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this subtitle.

(8) INTENTIONALLY.—The term "intentionally" means doing an act, or omitting to

do an act, deliberately, and not due to accident, inadvertence, or mistake. An intentional act does not require that a person knew that his act constituted an offense.

(9) MANUFACTURER.— The term "manufacturer" means any person engaged in the business of manufacturing a tobacco product for purposes of sale or distribution, except that such term shall not include a person who manufactures less than 30,000 cigarettes, or its equivalent as determined by regulations, in any twelve month period;; and the term "licensed manufacturer" means any such person licensed under the provisions of this subtitle, except that such term shall not include a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use.

(10) WHOLESALER.—The term "wholesaler" means any person engaged in the business of purchasing tobacco products for resale at wholesale, or any person acting as an agent or broker for any person engaged in the business of purchasing tobacco products for resale at wholesale, and the term "licensed wholesaler" means any such person licensed under the provisions of this subtitle.

SEC. 1132. TOBACCO PRODUCT LABELING REQUIREMENTS.

(a) IN GENERAL.—It is unlawful for any person to sell, or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from Customs custody for use, any tobacco product unless such product is packaged and labeled in conformity with this section.

(b) LABELING.—

(1) IDENTIFICATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations that require each manufacturer or importer of tobacco products to legibly print a unique serial number on all packages of tobacco products manufactured or imported for sale or distribution. The serial number shall be designed to enable the Secretary to identify the manufacturer or importer of the product, and the location and date of manufacture or importation. The Secretary shall determine the size and location of the serial number.

(2) MARKING REQUIREMENTS FOR EXPORTS.—Each package of a tobacco product that is exported shall be marked for export from the United States. The Secretary shall promulgate regulations to determine the size and location of the mark and under what circumstances a waiver of this paragraph shall be granted.

(c) PROHIBITION ON ALTERATION.—It is unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark or label required under this subtitle upon a tobacco product in or affecting commerce, except pursuant to regulations of the Secretary authorizing relabeling for purposes of compliance with the requirements of this section or of State law.

SEC. 1133. TOBACCO PRODUCT LICENSES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a program under which tobacco product licenses are issued to manufacturers, importers, exporters, and wholesalers of tobacco products.

(b)(1) ELIGIBILITY.—A person is entitled to a license unless the Secretary finds—

(A) that such person has been previously convicted of a Federal crime relating to tobacco, including the taxation thereof;

(B) that such person has, within 5 years prior to the date of application, been previously convicted of any felony under Federal or State law; or

(C) that such person is, by virtue of his business experience, financial standing, or trade connections, not likely to maintain such operations in conformity with Federal law.

(2) CONDITIONS.—The issuance of a license under this section shall be conditioned upon the compliance with the requirements of this subtitle, all Federal laws relating to the taxation of tobacco products, chapter 114 of title 18, United States Code, and any regulations issued pursuant to such statutes.

(c) REVOCATION, SUSPENSION, AND ANNULMENT.—The program established under subsection (a) shall permit the Secretary to revoke, suspend, or annul a license issued under this section if the Secretary determines that the terms or conditions of the license have not been complied with. Prior to any action under this subsection, the Secretary shall provide the licensee with due notice and the opportunity for a hearing.

(d) RECORDS AND AUDITS.—The Secretary shall, under the program established under subsection (a), require all license holders to keep records concerning the chain of custody of the tobacco products that are the subject of the license and make such records available to the Secretary for inspection and audit.

(e) RETAILERS.—This section does not apply to retailers of tobacco products, except that retailers shall maintain records of receipt, and such records shall be available to the Secretary for inspection and audit. An ordinary commercial record or invoice will satisfy this requirement provided such record shows the date of receipt, from whom such products were received and the quantity of tobacco products received.

SEC. 1134. PROHIBITIONS.

(a) IMPORTATION AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of importing tobacco products into the United States; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so imported.

(b) MANUFACTURE AND SALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of manufacturing, packaging or warehousing tobacco products; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so manufactured, packaged, or warehoused.

(c) WHOLESALE.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(1) to engage in the business of purchasing for resale at wholesale tobacco products, or, as a principal or agent, to sell, offer for sale, negotiate for, or hold out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, the purchase for resale at wholesale of tobacco products; or

(2) for any person so engaged to receive or sell, offer or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so purchased.

(d) EXPORTATION.—

(1) IN GENERAL.—It is unlawful, except pursuant to a license issued by the Secretary under this subtitle—

(A) to engage in the business of exporting tobacco products from the United States; or

(B) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products received for export.

(2) REPORT.—Prior to exportation of tobacco products from the United States, the exporter shall submit a report in such manner and form as the Secretary may by regulation prescribe to enable the Secretary to identify the shipment and assure that it reaches its intended destination.

(3) AGREEMENTS WITH FOREIGN GOVERNMENTS.—The Secretary is authorized to enter into agreements with foreign governments to exchange or share information contained in reports received from exporters of tobacco products if the Secretary believes that such an agreement will assist in—

(A) insuring compliance with any law or regulation enforced or administered by an agency of the United States; or

(B) preventing or detecting violation of the laws or regulations of a foreign government with which the Secretary has entered into an agreement.

Such information may be exchanged or shared with a foreign government only if the Secretary obtains assurances from such government that the information will be held in confidence and used only for the purpose of preventing or detecting violations of the laws or regulations of such government or the United States and, provided further that no information may be exchanged or shared with any government that has violated such assurances.

(e) UNLAWFUL ACTS.—

(1) UNLICENSED RECEIPT OR DELIVERY.—It is unlawful for any licensed importer, licensed manufacturer, or licensed wholesaler intentionally to ship, transport, deliver or receive any tobacco products from or to any person other than a person licensed under this chapter or a retailer licensed under the provisions of this Act, except a licensed importer may receive foreign tobacco products from a foreign manufacturer or a foreign distributor that have not previously entered the United States.

(2) RECEIPT OF RE-IMPORTED GOODS.—It is unlawful for any person, except a licensed manufacturer or a licensed exporter to receive any tobacco products that have previously been exported and returned to the United States.

(3) DELIVERY BY EXPORTER.—It is unlawful for any licensed exporter intentionally to ship, transport, sell or deliver for sale any tobacco products to any person other than a licensed manufacturer or foreign purchaser.

(4) SHIPMENT OF EXPORT-ONLY GOODS.—It is unlawful for any person other than a licensed exporter intentionally to ship, transport, receive or possess, for purposes of resale, any tobacco product in packages marked "FOR EXPORT FROM THE UNITED STATES," other than for direct return to the manufacturer or exporter for re-packing or for re-exportation.

(5) FALSE STATEMENTS.—It is unlawful for any licensed manufacturer, licensed exporter, licensed importer, or licensed wholesaler to make intentionally any false entry in, to fail willfully to make appropriate entry in, or to fail willfully to maintain properly any record or report that he is required to keep as required by this chapter or the regulations promulgated thereunder.

(h) EFFECTIVE DATE.—The provisions of this section shall become effective on the date that is 365 days after the date of enactment of this Act.

SEC. 1135. LABELING OF PRODUCTS SOLD BY NATIVE AMERICANS.

The Secretary, in consultation with the Secretary of the Interior, shall promulgate regulations that require that each package of a tobacco product that is sold on an Indian reservation (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9)) be labeled as such. Such regulations shall include requirements for the size and location of the label.

SEC. 1136. LIMITATION ON ACTIVITIES INVOLVING TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.

(a) MANUFACTURE OF TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.—No person shall manufacture a tobacco product in any foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.).

(b) EXPORTING OR IMPORTING FROM OR INTO A FOREIGN TRADE ZONE.—Any person exporting or importing tobacco products from or into a foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.), shall comply with the requirements provided in this subtitle. In any case where the person operating in a foreign trade zone is acting on behalf of a person licensed under this subtitle, qualification as an importer or exporter will not be required, if such person complies with the requirements set forth in section 1134(d)(2) and (3) of this subtitle.

SEC. 1137. JURISDICTION; PENALTIES; COMPROMISE OF LIABILITY.

(a) JURISDICTION.—The District Courts of the United States, and the United States Court for any Territory, of the District where the offense is committed or of which the offender is an inhabitant or has its principal place of business, are vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this subtitle.

(b) PENALTIES.—Any person violating any of the provisions of this subtitle shall, upon conviction, be fined as provided in section 3571 of title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) CIVIL PENALTIES.—The Secretary may, in lieu of referring violations of this subtitle for criminal prosecution, impose a civil penalty of not more than $10,000 for each offense.

(d) COMPROMISE OF LIABILITY.—The Secretary is authorized, with respect to any violation of this subtitle, to compromise the liability arising with respect to a violation of this subtitle—

(1) upon payment of a sum not in excess of $10,000 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts; and

(2) in the case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own motion upon 5 days notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

(e) FORFEITURE.—

(1) The Secretary may seize and forfeit any conveyance, tobacco products, or monetary instrument (as defined in section 5312 of title 31, United States Code) involved in a violation of this subtitle, or any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of this chapter. For purposes of this paragraph, the provisions of subsections (a)(2), (b)(2), and (c) through (j) of section 981 of title 18, United States Code, apply to seizures and forfeitures under this paragraph insofar as they are applicable and not inconsistent with the provisions of this subtitle.

(2) The court, in imposing sentence upon a person convicted of an offense under this subtitle, shall order that the person forfeit to the United States any property described in paragraph (1). The seizure and forfeiture of such property shall be governed by subsections (b), (c), and (e) through (p) of section 853 of title 21, United States Code, insofar as they are applicable and not inconsistent with the provisions of this subtitle.

SEC. 1138. AMENDMENTS TO THE CONTRABAND CIGARETTE TRAFFICKING ACT.

(a) DEFINITIONS.—Section 2341 of title 18, United States Code, is amended—

(1) by striking "60,000" and inserting "30,000" in paragraph (2);

(2) by inserting after "payment of cigarette taxes," in paragraph (2) the following: "or in the case of a State that does not require any such indication of tax payment, if the person in possession of the cigarettes is unable to provide any evidence that the cigarettes are moving legally in interstate commerce,";

(3) by striking "and" at the end of paragraph (4);

(4) by striking "Treasury." in paragraph (5) and inserting "Treasury;"; and

(5) by adding at the end thereof the following:

"(6) the term 'tobacco product' means cigars, cigarettes, smokeless tobacco, roll your own and pipe tobacco (as such terms are defined in section 5701 of the Internal Revenue Code of 1986); and

"(7) the term 'contraband tobacco product' means—

"(A) a quantity in excess of 30,000 of any tobacco product that is manufactured, sold, shipped, delivered, transferred, or possessed in violation of Federal laws relating to the distribution of tobacco products; and

"(B) a quantity of tobacco product that is equivalent to an excess of 30,000 cigarettes, as determined by regulation, which bears no evidence of the payment of applicable State tobacco taxes in the State where such tobacco products are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of product to evidence payment of tobacco taxes, or in the case of a State that does not require any such indication of tax payment, if the person in possession of the tobacco product is unable to provide any evidence that the tobacco products are moving legally in interstate commerce and which are in the possession of any person other than a person defined in paragraph (2) of this section.".

(b) UNLAWFUL ACTS.—Section 2342 of title 18, United States Code, is amended—

(1) by inserting "or contraband tobacco products" before the period in subsection (a); and

(2) by adding at the end thereof the following:

"(c) It is unlawful for any person—

"(1) knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records or reports of any person who ships, sells, or distributes any quantity of cigarettes in excess of 30,000 in a single transaction, or tobacco products in such equivalent quantities as shall be determined by regulation; or

"(2) knowingly to fail or knowingly to fail to maintain distribution records or reports, alter or obliterate required markings, or interfere with any inspection as required with respect to such quantity of cigarettes or other tobacco products.

"(d) It shall be unlawful for any person knowingly to transport cigarettes or other tobacco products under a false bill of lading or without any bill of lading.".

(d) RECORDKEEPING.—Section 2343 of title 18, United States Code, is amended—

(1) by striking "60,000" in subsection (a) and inserting "30,000";

(2) by inserting after "transaction" in subsection (a) the following: "or, in the case of other tobacco products an equivalent quantity as determined by regulation," ;

(3) by striking the last sentence of subsection (a) and inserting the following:

"Except as provided in subsection (c) of this section, nothing contained herein shall authorize the Secretary to require reporting under this section.";

(4) by striking "60,000" in subsection (b) and inserting "30,000";

(5) by inserting after "transaction" in subsection (b) the following: "or, in the case of other tobacco products an equivalent quantity as determined by regulation,"; and

(6) by adding at the end thereof the following:

"(c)(1) Any person who ships, sells, or distributes for resale tobacco products in interstate commerce, whereby such tobacco products are shipped into a State taxing the sale or use of such tobacco products or who advertises or offers tobacco products for such sale or transfer and shipment shall—

"(A) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated, a statement setting for the persons name, and trade name (if any), and the address of the persons principal place of business and of any other place of business; and

"(B) not later than the 10th day of each month, file with the tobacco tax administrator of the State into which such shipment is made a memorandum or a copy of the invoice covering each and every shipment of tobacco products made during the previous month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

"(2) The fact that any person ships or delivers for shipment any tobacco products shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under paragraph (1)(A) of this subsection, be presumptive evidence that such tobacco products were sold, shipped, or distributed for resale by such person.

"(3) For purposes of this subsection—

"(A) the term 'use' includes consumption, storage, handling, or disposal of tobacco products; and

"(B) the term 'tobacco tax administrator' means the State official authorized to administer tobacco tax laws of the State.".

(e) PENALTIES.—Section 2344 of title 18, United States Code, is amended—

(1) by inserting "or (c)" in subsection (b) after "section 2344(b)";

(2) by inserting "or contraband tobacco products" after "cigarettes" in subsection (c); and

(3) by adding at the end thereof the following:

"(d) Any proceeds from the unlawful distribution of tobacco shall be subject to seizure and forfeiture under section 981(a)(1)(C).".

(f) REPEAL OF FEDERAL LAW RELATING TO COLLECTION OF STATE CIGARETTE TAXES.—

The Act of October 19, 1949, (63 Stat. 884; 15 U.S.C. 375-378) is hereby repealed.

SEC. 1139. FUNDING.

(a) LICENSE FEES.—The Secretary may, in the Secretary's sole discretion, set the fees for licenses required by this chapter, in such amounts as are necessary to recover the costs of administering the provisions of this chapter, including preventing trafficking in contraband tobacco products.

(b) DISPOSITION OF FEES.—Fees collected by the Secretary under this chapter shall be deposited in an account with the Treasury of the United States that is specially designated for paying the costs associated with the administration or enforcement of this chapter or any other Federal law relating to the unlawful trafficking of tobacco products. The Secretary is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in administering and enforcing this chapter or any other Federal law relating to the unlawful trafficking in tobacco products (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.

SEC. 1140. RULES AND REGULATIONS.

The Secretary shall prescribe all needful rules and regulations for the enforcement of this chapter, including all rules and regulations that are necessary to ensure the lawful distribution of tobacco products in interstate or foreign commerce.

Subtitle C—Other Provisions

SEC. 1161. IMPROVING CHILD CARE AND EARLY CHILDHOOD DEVELOPMENT.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary from the National Tobacco Trust Fund such sums as may be necessary for each fiscal year to be used by the Secretary for the following purposes:

(1) Improving the affordability of child care through increased appropriations for child care under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(2) Enhancing the quality of child care and early childhood development through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(3) Expanding the availability and quality of school-age care through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.).

(4) Assisting young children by providing grants to local collaboratives under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9859 et seq.) for the purpose of improving parent education and supportive services, strengthening the quality of child care, improving health services, and improving services for children with disabilities.

(b) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a State under this section shall be used to supplement and not supplant other Federal, State, and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

SEC. 1162. BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.

(a) BAN OF SALE OF TOBACCO PRODUCTS THROUGH THE USE OF VENDING MACHINES.—Effective 12 months after the date of enactment of this Act, it shall be unlawful to sell tobacco products through the use of a vending machine.

(b) COMPENSATION FOR BANNED VENDING MACHINES.—

(1) IN GENERAL.—The owners and operators of tobacco vending machines shall be reimbursed, subject to the availability of appropriations under subsection (d), for the fair market value of their tobacco vending machines.

(2) TOBACCO VENDING REIMBURMENT CORPORATION.—

(A) CORPORATION.—Reimbursment shall be directed through a private, nonprofit corporation established in the District of Columbia, known as the Tobacco Vending Reimburment Corporation (in this section referred to as the "Corporation"). Except as otherwise provided in this section, the Corporation is subject to, and has all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(B) DUTIES.—The Corporation shall—

(i) disburse compensation funds to vending companies under this section;

(ii) verify operational machines; and

(iii) maintain complete records of machine verification and accountings of disbursements and administration of the compensation fund established under paragraph (4).

(3) MANAGEMENT OF CORPORATION.—

(A) BOARD OF DIRECTORS.—The Corporation shall be managed by a Board of Directors that—

(i) consists of distinguished Americans with experience in finance, public policy, or fund management;

(ii) includes at least 1 member of the United States tobacco vending machine industry;

(iii) shall be paid an annual salary in an amount determined by the President of the Corporation not to exceed $40,000 individually, out of amounts transferred to the Corporation under paragraph (4)(A);

(iv) shall appoint a President to manage the day-to-day activities of the Corporation;

(v) shall develop guidelines by which the President shall direct the Corporation;

(vi) shall retain a national accounting firm to verify the distribution of funds and audit the compensation fund established under paragraph (4);

(vii) shall retain such legal, management, or consulting assistance as is necessary and reasonable; and

(viii) shall periodically report to Congress regarding the activities of the Corporation.

(B) DUTIES OF THE PRESIDENT OF THE CORPORATION.—The President of the Corporation shall—

(i) hire appropriate staff;

(ii) prepare the report of the Board of Directors of the Corporation required under subparagraph (A)(viii); and

(iii) oversee Corporation functions, including verification of machines, administration and disbursement of funds, maintenance of complete records, operation of appeals procedures, and other directed functions.

(4) COMPENSATION FUND.—

(A) RULES FOR DISBURSEMENT OF FUNDS.—

(i) PAYMENTS TO OWNERS AND OPERATORS.—The Corporation shall disburse funds to compensate the owners and operators of tobacco vending machines in accordance with the following:

(I) The fair market value of each tobacco vending machine verified by the Corporation President in accordance with subparagraph (C), and proven to have been in operation before August 10, 1995, shall be disbursed to the owner of the machine seeking compensation.

(II) No compensation shall be made for a spiral glass front vending machine.

(ii) OTHER PAYMENTS.—Funds appropriated to the Corporation under subsection (d) may be used to pay the administrative costs of the Corporation that are necessary and proper or required by law. The total amount paid by the Corporation for administrative and overhead costs, including accounting fees, legal fees, consultant fees, and associated administrative costs shall not exceed 1 percent of the total amount appropriated to the Corporation under subsection (d).

(B) VERIFICATION OF VENDING MACHINES.—Verification of vending machines shall be based on copies of official State vending licenses, company computerized or handwritten sales records, or physical inspection by the Corporation President or by an inspection agent designated by the President. The Corporation President and the Board of Directors of the Corporation shall work vigorously to prevent and prosecute any fraudulent claims submitted for compensation.

(C) RETURN OF ACCOUNT FUNDS NOT DISTRIBUTED TO VENDORS.—The Corporation shall be dissolved on the date that is 4 years after the date of enactment of this Act. Any funds not dispersed or allocated to claims pending as of that date shall be transferred to a public anti-smoking trust, or used for such other purposes as Congress may designate.

(c) SETTLEMENT OF LEGAL CLAIMS PENDING AGAINST THE UNITED STATES.—Acceptance of a compensation payment from the Corporation by a vending machine owner or operator shall settle all pending and future claims of the owner or operator against the United States that are based on, or related to, the ban of the use of tobacco vending machines imposed under this section and any other laws or regulations that limit the use of tobacco vending machines.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Corporation from funds not otherwise obligated in the Treasury or out of the National Tobacco Trust Fund, such sums as may be necessary to carry out this section.

SEC. 1163. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

"SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMIES.

"(a) INPATIENT CARE.—

"(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the surgical treatment of breast cancer (including a mastectomy, lumpectomy, or lymph node dissection for the treatment of breast cancer) is provided for a period of time as is determined by the attending physician, in his or her professional judgment consistent with generally accepted medical standards, in consultation with the patient, and subject to subsection (d), to be medically appropriate.

"(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician in consultation with the patient determine that a shorter period of hospital stay is medically appropriate.

"(b) RECONSTRUCTIVE SURGERY.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall ensure that, in a case in which a mastectomy patient elects breast reconstruction, coverage is provided for—

"(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

"(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

"(3) the costs of prostheses and complications of mastectomy including lymphedemas;

in the manner determined by the attending physician and the patient to be appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

"(c) NOTICE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted—

"(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

"(2) as part of any yearly informational packet sent to the participant or beneficiary; or

"(3) not later than January 1, 1998;

whichever is earlier.

"(d) NO AUTHORIZATION REQUIRED.—

"(1) IN GENERAL.—An attending physician shall not be required to obtain authorization from the plan or issuer for prescribing any length of stay in connection with a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

"(2) PRENOTIFICATION.—Nothing in this section shall be construed as preventing a group health plan from requiring prenotification of an inpatient stay referred to in this section if such requirement is consistent with terms and conditions applicable to other inpatient benefits under the plan, except that the provision of such inpatient stay benefits shall not be contingent upon such notification.

"(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

"(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

"(2) provide monetary payments or rebates to individuals to encourage such individuals to accept less than the minimum protections available under this section;

"(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

"(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; and

"(5) subject to subsection (f)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

"(f) RULES OF CONSTRUCTION.—

"(1) IN GENERAL.—Nothing in this section shall be construed to require a patient who is a participant or beneficiary—

"(A) to undergo a mastectomy or lymph node dissection in a hospital; or

"(B) to stay in the hospital for a fixed period of time following a mastectomy or lymph node dissection.

"(2) LIMITATION.—This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer.

"(3) COST SHARING.—Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with a mastectomy or lymph node dissection for the treatment of breast cancer under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

"(4) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

"(g) PREEMPTION, RELATION TO STATE LAWS.—

"(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section with respect to health insurance coverage that—

"(A) such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a mastectomy performed for treatment of breast cancer and at least a 24-hour hospital length of stay following a lymph node dissection of breast cancer;

"(B) requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section; or

"(C) requires coverage for breast cancer treatments (including breast reconstruction) in accordance with scientific evidence-based practices or guidelines recommended by established medical associations.

"(2) APPLICATION OF SECTION.—With respect to a State law—

"(A) described in paragraph (1)(A), the provisions of this section relating to breast reconstruction shall apply in such State; and

"(B) described in paragraph (1)(B), the provisions of this section relating to length of stays for surgical breast treatment shall apply in such State.

"(3) ERISA.—Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) is amended by inserting after the item relating to section 712 the following new item:

"Sec. 713. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for reconstructive surgery following mastectomies.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date of enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

TITLE XII—ASBESTOS-RELATED TOBACCO CLAIMS

SEC. 1201. NATIONAL TOBACCO TRUST FUNDS AVAILABLE UNDER FUTURE LEGISLATION.

If the Congress enacts qualifying legislation after the date of enactment of this Act to provide for the payment of asbestos claims, then amounts in the National Tobacco Trust Fund established by title IV of this Act set aside for public health expenditures shall be available, as provided by appropriation Acts, to make those payments. For purposes of this section, the term "qualifying legislation" means a public law that amends this Act and changes the suballocations of funds set aside for public health expenditures under title IV of this Act to provide for the payment of those claims.

TITLE XIII—VETERANS' BENEFITS

SEC. 1301. RECOVERY BY SECRETARY OF VETERANS AFFAIRS.

Title 38, United States Code, is amended by adding after part VI the following:

"PART VII—RECOVERY OF COSTS FOR TOBACCO-RELATED DISABILITY OR DEATH

"CHAPTER 91—TORT LIABILITY FOR DISABILITY, INJURY, DISEASE, OR DEATH DUE TO TOBACCO USE

"Sec.

"9101. Recovery by Secretary of Veterans Affairs

"9102. Regulations

"9103. Limitation or repeal of other provisions for recovery of compensation

"9104. Exemption from annual limitation on damages

"§ 9101. Recovery by Secretary of Veterans Affairs

"(a) CONDITIONS; EXCEPTIONS; PERSONS LIABLE; AMOUNT OF RECOVERY; SUBROGATION.—In any case in which the Secretary is authorized or required by law to provide compensation and medical care services under this

title for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veteran's active military, naval, or air service under circumstances creating a tort liability upon a tobacco product manufacturer (other than or in addition to the United States) to pay damages therefor, the Secretary shall have a right to recover (independent of the rights of the injured or diseased veteran) from said tobacco product manufacturer the cost of the compensation paid or to be paid and the costs of medical care services provided, and shall, as to this right, be subrogated to any right or claim that the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the cost of the compensation paid or to be paid and the costs of medical services provided.

"(b) ENFORCEMENT PROCEDURE; INTERVENTION; JOINDER OF PARTIES; STATE OR FEDERAL COURT PROCEEDINGS.—The Secretary may, to enforce such right under subsection (a) of this section—

"(1) intervene or join in any action or proceeding brought by the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors, against the tobacco product manufacturer who is liable for the injury or disease; or

"(2) if such action or proceeding is not commenced within 6 months after the first day on which compensation is paid, or the medical care services are provided, by the Secretary in connection with the injury or disease involved, institute and prosecute legal proceedings against the tobacco product manufacturer who is liable for the injury or disease, in a State or Federal court, either alone (in its own name or in the name of the injured veteran, his or her guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased veteran, his or her guardian, personal representative, estate, dependents, or survivors.

"(c) CREDITS TO APPROPRIATIONS.—Any amount recovered or collected under this section for compensation paid, and medical care services provided, by the Secretary shall be credited to a revolving fund established in the Treasury of the United States known as the Department of Veterans Affairs Tobacco Recovery Fund (hereafter called the Fund). The Fund shall be available to the Secretary without fiscal year limitation for purposes of veterans programs, including administrative costs. The Secretary may transfer such funds as deemed necessary to the various Department of Veterans Affairs appropriations, which shall remain available until expended.

"§ 9102. Regulations

"(a) DETERMINATION AND ESTABLISHMENT OF PRESENT VALUE OF COMPENSATION AND MEDICAL CARE SERVICES TO BE PAID.—The Secretary may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the present value of compensation to be paid to an injured or diseased veteran or his or her surviving spouse, child, or parent, and medical care services provided to a veteran.

"(b) SETTLEMENT, RELEASE AND WAIVER OF CLAIMS.—To the extent prescribed by regulations under subsection (a) of this section, the Secretary may—

"(1) compromise, or settle and execute a release of, any claim which the Secretary has by virtue of the right established by section 9101 of this title; or

"(2) waive any such claim, in whole or in part, for the convenience of the Government, or if he or she determines that collection would result in undue hardship upon the veteran who suffered the injury or disease or his or her surviving spouse, child or parent resulting in payment of compensation, or receipt of medical care services.

"(c) DAMAGES RECOVERABLE FOR PERSONAL INJURY UNAFFECTED.—No action taken by the Secretary in connection with the rights afforded under this chapter shall operate to deny to the injured veteran or his or her surviving spouse, child or parent the recovery for that portion of his or her damage not covered hereunder.

"§ 9103. Limitation or repeal of other provisions for recovery of compensation and medical care services

"This chapter does not limit or repeal any other provision of law providing for recovery by the Secretary of the cost of compensation and medical care services described in section 9101 of this title.

"§ 9104. Exemption from annual limitation on damages

"Any amount recovered under section 9101 of this title for compensation paid or to be paid, and the cost of medical care services provided, by the Secretary for disability or death from injury or disease attributable in whole or in part to the use of tobacco products by a veteran during the veteran's active military, naval, or air service shall not be subject to the limitation on the annual amount of damages for which the tobacco product manufacturers may be found liable as provided in the National Tobacco Policy and Youth Smoking Reduction Act and shall not be counted in computing the annual amount of damages for purposes of that section.".

TITLE XIV—EXCHANGE OF BENEFITS FOR AGREEMENT TO TAKE ADDITIONAL MEASURES TO REDUCE YOUTH SMOKING

SEC. 1401. CONFERRAL OF BENEFITS ON PARTICIPATING TOBACCO PRODUCT MANUFACTURERS IN RETURN FOR THEIR ASSUMPTION OF SPECIFIC OBLIGATIONS.

Participating tobacco product manufacturers shall receive the benefits, and assume the obligations, set forth in this title.

SEC. 1402. PARTICIPATING TOBACCO PRODUCT MANUFACTURER.

(a) IN GENERAL.—Except as provided in subsection (b), a tobacco product manufacturer that—

(1) executes a protocol with the Secretary of Health and Human Services that meets the requirements of sections 1403, 1404, and 1405; and

(2) makes the payment required under section 402(a)(1),

is, for purposes of this title, a participating tobacco products manufacturer.

(b) DISQUALIFICATION.—

(1) INELIGIBILITY.—Notwithstanding subsection (a), a tobacco product manufacturer may not become a participating tobacco products manufacturer if—

(A) the tobacco product manufacturer or any of its principal officers (acting in that official's corporate capacity), is convicted of—

(i) manufacturing or distributing misbranded tobacco products in violation of the criminal prohibitions on such misbranding established under section 301 or 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331 or 333);

(ii) violating reporting requirements established under section 5762(a)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 5762(a)(4));

(iii) violating, or aiding and abetting the violation of chapter 114 of title 18, United States Code; or

(iv) violating Federal prohibitions on mail fraud, wire fraud, or the making of false statements to Federal officials in the course of making reports or disclosures required by this Act; or

(B) the tobacco product manufacturer, at the end of the 1-year period beginning on the date on which such manufacturer fails to make a required assessment payment under title IV of this Act, has not fully made such payment.

(2) DISQUALIFICATION.—A tobacco product manufacturer that has become a participating tobacco product manufacturer shall cease to be treated as a participating tobacco product manufacturer if—

(A) it, or any of its principal officers (acting in that official's corporate capacity) is convicted of an offense described in paragraph (1)(A); or

(B) it fails to make such a payment within the time period described in paragraph (1)(B).

(c) NON-PARTICIPATING TOBACCO MANUFACTURERS.—Any tobacco product manufacturer that—

(1) does not execute a protocol in accordance with subsection (a);

(2) fails to make the payment required by section 402(a)(1) (if applicable to that manufacturer);

(3) is not eligible, under subsection (b)(1), to become a participating tobacco product manufacturer; or

(4) ceases to be treated as a participating tobacco product manufacturer under subsection (b)(2),

is, for purposes of this title, a non-participating tobacco product manufacturer.

SEC. 1403. GENERAL PROVISIONS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it—

(1) contains the provisions described in subsection (b); and

(2) is enforceable at law.

(b) REQUIRED PROVISIONS.—The protocol shall include the following provisions:

(1) The tobacco product manufacturer executing the protocol will not engage in any conduct that was, either on the date of enactment of this Act, or at any time after the date of enactment of this Act—

(A) prohibited by this Act;

(B) prohibited by any regulation promulgated by the Food and Drug Administration that applies to tobacco products; or

(C) prohibited by any other statute.

(2) The tobacco product manufacturer executing the protocol will contract with only such distributors and retailers who have operated in compliance with the applicable provisions of Federal, State, or local law regarding the marketing and sale of tobacco products and who agree to comply with advertising and marketing provisions in paragraph (3).

(3) The tobacco product manufacturer executing the protocol will be bound in marketing tobacco products by the following provisions, whether or not these provisions have legal force and effect against manufacturers who are not signatories to the protocol—

(A) the advertising and marketing provisions of part 897 of title 21, Code of Federal Regulations, that were published in the Federal Register on August 28, 1996, and which shall be adopted and incorporated as independent terms of the protocol;

(B) the requirements of section 1404; and

(C) the requirements of section 1405.

(4) The tobacco product manufacturer executing the protocol will make any payments to the National Tobacco Trust Fund in title IV that are required to be made under that title or in any other title of this Act.

(5) The tobacco product manufacturer executing the protocol will be bound by the provisions of title IV, and any other title of this Act with respect to payments required under title IV, without regard to whether those provisions have legal force and effect against manufacturers who have not become signatories.

(6) The tobacco product manufacturer executing the protocol will make the industry-wide and manufacturer-specific look-back assessment payments that may be required under title II.

(7) The tobacco product manufacturer executing the protocol will be bound by the provisions of title II that require a manufacturer to make look-back assessments, and any other title of this Act with respect to such assessments, without regard to whether such terms have legal force and effect against manufacturers who have not become signatories.

(8) The tobacco product manufacturer executing the protocol will, within 180 days after the date of enactment of this Act and in conjunction with other participating tobacco product manufacturers, establish a National Tobacco Document Depository in the Washington, D.C. area—

(A) that is not affiliated with, or controlled by, any tobacco product manufacturer;

(B) the establishment and operational costs of which are allocated among participating tobacco product manufacturers; and

(C) that will make any document submitted to it under title IX of this Act and finally determined not to be subject to attorney-client privilege, attorney work product, or trade secret exclusions, available to the public using the Internet or other means within 30 days after receiving the document.

(c) PROVISIONS APPLICABLE TO DOCUMENTS.—The provisions of section 2116(a) and (b) of title 44, United States Code, apply to records and documents submitted to the Depository (or, to the alternative depository, if any, established by the Secretary by regulation under title IX of this Act) in the same manner and to the same extent as if they were records submitted to the National Archives of the United States required by statute to be retained indefinitely.

SEC. 1404. TOBACCO PRODUCT LABELING AND ADVERTISING REQUIREMENTS OF PROTOCOL.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it requires that—

(1) no tobacco product will be sold or distributed in the United States unless its advertising and labeling (including the package)—

(A) contain no human image, animal image, or cartoon character;

(B) are not outdoor advertising, including advertising in enclosed stadia and on mass transit vehicles, and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment;

(C) at the time the advertising or labeling is first used are submitted to the Secretary so that the Secretary may conduct regular review of the advertising and labeling;

(D) comply with any applicable requirement of the Federal Food, Drug, and Cosmetic Act, the Federal Cigarette Labeling and Advertising Act, and any regulation promulgated under either of those Acts;

(E) do not appear on the international computer network of both Federal and non-Federal interoperable packet switches data networks (the "Internet"), unless such advertising is designed to be inaccessible in or from the United States to all individuals under the age of 18 years;

(F) use only black text on white background, other than—

(i) those locations other than retail stores where no person under the age of 18 is permitted or present at any time, if the advertising is not visible from outside the establishment and is affixed to a wall or fixture in the establishment; and

(ii) advertisements appearing in any publication which the tobacco product manufacturer, distributor, or retailer demonstrates to the Secretary is a newspaper, magazine, periodical, or other publication whose readers under the age of 18 years constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence, and that is read by less than 2 million persons under the age of 18 years as measured by competent and reliable survey evidence;

(G) for video formats, use only static black text on a white background, and any accompanying audio uses only words without music or sound effects;

(8) for audio formats, use only words without music or sound effects;

(2) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of brand-name product identification of the tobacco product is contained in a movie, program, or video game for which a direct or indirect payment has been made to ensure its placement;

(3) if a direct or indirect payment has been made by any tobacco product manufacturer, distributor, or retailer to any entity for the purpose of promoting use of the tobacco product through print or film media that appeals to individuals under the age of 18 years or through a live performance by an entertainment artist that appeals to such individuals;

(4) if a logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia or product identification identical to, similar to, or identifiable with the tobacco product is used for any item (other than a tobacco product) or service marketed, licensed, distributed or sold or caused to be marketed, licensed, distributed, or sold by the tobacco product manufacturer or distributor of the tobacco product; and

(5)(A) except as provided in subparagraph (B), if advertising or labeling for such product that is otherwise in accordance with the requirements of this section bears a tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification and is disseminated in a medium other than newspapers, magazines, periodicals or other publications (whether periodic or limited distribution), nonpoint-of-sale promotional material (including direct mail), point-of-sale promotional material, or audio or video formats delivered at a point-of-sale; but

(B) notwithstanding subparagraph (A), advertising or labeling for cigarettes or smokeless tobacco may be disseminated in a medium that is not specified in paragraph (1) if the tobacco product manufacturer, distributor, or retailer notifies the Secretary not later than 30 days prior to the use of such medium, and the notice describes the medium and the extent to which the advertising or labeling may be seen by persons under the age of 18 years.

(b) COLOR PRINT ADS ON MAGAZINES.—The protocol shall also provide that no tobacco product may be sold or distributed in the United States if any advertising for that product on the outside back cover of a magazine appears in any color or combination of colors.

SEC. 1405. POINT-OF-SALE REQUIREMENTS.

(a) IN GENERAL.—For purposes of section 1402, a protocol meets the requirements of this section if it provides that, except as provided in subsection (b), point-of-sale advertising of any tobacco product in any retail establishment is prohibited.

(b) PERMITTED POS LOCATIONS.—

(1) PLACEMENT.—One point-of-sale advertisement may be placed in or at each retail establishment for its brand or the contracted house retailer or private label brand of its wholesaler.

(2) SIZE.—The display area of any such point-of-sale advertisement (either individually or in the aggregate) shall not be larger than 576 square inches and shall consist of black letters on white background or another recognized typography.

(3) PROXIMITY TO CANDY.—Any such point-of-sale advertisement shall not be attached to or located within 2 feet of any display fixture on which candy is displayed for sale.

(c) AUDIO OR VIDEO.—Any audio or video format permitted under regulations promulgated by the Secretary may be played or shown in, but not distributed, at any location where tobacco products are offered for sale.

(d) NO RESTRICTIVE COVENANTS.—No tobacco product manufacturer or distributor of tobacco products may enter into any arrangement with a retailer that limits the retailer's ability to display any form of advertising or promotional material originating with another supplier and permitted by law to be displayed in a retail establishment.

(e) DEFINITIONS.—As used in this section, the terms "point-of-sale advertisement" and "point-of-sale advertising" mean all printed or graphical materials (other than a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco is offered for sale, sold, or otherwise distributed to consumers) bearing the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco, which, when used for its intended purpose, can reasonably be anticipated to be seen by customers at a location where tobacco products are offered for sale.

SEC. 1406. APPLICATION OF TITLE.

(a) IN GENERAL.—The provisions of this title apply to any civil action involving a tobacco claim brought pursuant to title VII of this Act, including any such claim that has not reached final judgment or final settlement as of the date of enactment of this Act, only if such claim is brought or maintained against—

(1) a participating tobacco product manufacturer or its predecessors;

(2) an importer, distributor, wholesaler, or retailer of tobacco products—

(A) that, after the date of enactment of this Act, does not import, distribute, or sell tobacco products made or sold by a non-participating tobacco manufacturer;

(B) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

(C) that is not itself a non-participating tobacco product manufacturer;

(3) a supplier of component or constituent parts of tobacco products—

(A) whose business practices with respect to sales or operations occurring within the United States, conform to the applicable requirements of the protocol; and

(B) that is not itself a non-participating tobacco product manufacturer;

(4) a grower of tobacco products, unless such person is itself a non-participating tobacco product manufacturer; or

(5) an insurer of any person described in paragraph (1), (2), (3), or (4) based on, arising out of, or related to tobacco products manufactured, imported, distributed, or sold (or tobacco grown) by such person (other than an action brought by the insured person), unless such insurer is itself a non-participating tobacco product manufacturer.

(b) EXCEPTIONS.—The provisions of this title shall not apply to any tobacco claim—

(1) brought against any person other than those described in subsection (a) or to any tobacco claim that reached final judgment or final settlement prior to the date of enactment of this Act;

(2) against an employer under valid workers' compensation laws;

(3) arising under the securities laws of a State or the United State;

(4) brought by the United States;

(5) brought under this title by a State or a participating tobacco product manufacturer to enforce this Act;

(6) asserting damage to the environment from exposures other than environmental smoke or second-hand smoke; or

(7) brought against a supplier of a component or constituent part of a tobacco product, if the component or constituent part was sold after the date of enactment of this Act, and the supplier knew that the tobacco product giving rise to the claim would be manufactured in the United States by a non-participating tobacco product manufacturer.

SEC. 1407. GOVERNMENTAL CLAIMS.

(a) IN GENERAL.—Except as provided in subsection (b) and (c), no State, political subdivision of a State, municipal corporation, governmental entity or corporation, Indian tribe, or agency or subdivision thereof, or other entity acting in *parens patriae*, may file or maintain any civil action involving a tobacco claim against a participating tobacco product manufacturer.

(b) EFFECT ON EXISTING STATE SUITS OF SETTLEMENT AGREEMENT OR CONSENT DECREE.—Within 30 days after the date of enactment of this Act, any State that has filed a civil action involving a tobacco claim against a participating tobacco product manufacturer may elect to settle such action against said tobacco product manufacturer. If a State makes such an election to enter into a settlement or a consent decree, it may maintain a civil action involving a tobacco claim only to the extent necessary to permit continuing court jurisdiction over the settlement or consent decree. Nothing herein shall preclude any State from bringing suit or seeking a court order to enforce the terms of such settlement or decree.

(c) STATE OPTION FOR ONE-TIME OPT OUT.—Any State that does not make the election described in subsection (b) may continue its lawsuit, notwithstanding subsection (a) of this section. A State that does not make such an election shall not be eligible to receive payments from the trust fund in title IV.

(d) 30-DAY DELAY.—No settlement or consent decree entered into under subsection (b) may take effect until 30 days after the date of enactment of this Act.

(f) PRESERVATION OF INSURANCE CLAIMS.—

(1) IN GENERAL.—If all participating tobacco product manufacturers fail to make the payments required by title IV for any calendar year, then—

(A) beginning on the first day of the next calendar year, subsection (a) does not apply to any insurance claim (including a direct action claim) that is a tobacco claim, regardless of when that claim arose;

(B) any statute of limitations or doctrine of laches under applicable law shall be tolled for the period—

(i) beginning on the date of enactment of this Act; and

(ii) ending on the last day of that calendar year; and

(C) an insurance claim (including a direct action claim) that is a tobacco claim and that is pending on the date of enactment of this Act shall be preserved.

(2) APPLICATION OF TITLE 11, UNITED STATES CODE.—For purposes of this subsection, nothing in this Act shall be construed to modify, suspend, or otherwise affect the application of title 11, United States Code, to participating tobacco manufacturers that fail to make such payments.

(3) STATE LAW NOT AFFECTED.—Nothing in this subsection shall be construed to expand or abridge State law.

SEC. 1408. ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.

(a) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(b) CASTANO CIVIL ACTIONS.—

(1) The rights and benefits afforded in this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute the exclusive remedy for the purpose of determining civil liability as to those claims asserted in the Castano Civil Actions, and all bases for any such claim under the laws of any State are preempted (including State substantive, procedural, remedial, and evidentiary provisions) and settled. The Castano Civil Actions shall be dismissed with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions, as defined in section 1417(2), in accordance with this Act. For purposes of determining application of statutes of limitation or repose, individual actions filed within one year after the effective date of this Act by those who were included within a Castano Civil Action shall be considered to have been filed as of the date of the Castano Civil Action applicable to said individual.

(2) For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(3) The participating tobacco product manufacturers shall pay the arbitration award.

SEC. 1409. SUBSTANTIAL NON-ATTAINMENT OF REQUIRED REDUCTIONS.

(a) ACTION BY SECRETARY.—If the Secretary determines under title II that the non-attainment percentage for any year is greater than 20 percentage points for cigarettes or smokeless tobacco, then the Secretary shall determine, on a brand-by-brand basis, using data that reflects a 1999 baseline, which tobacco product manufacturers are responsible within the 2 categories of tobacco products for the excess. The Secretary may commence an action under this section against the tobacco product manufacturer or manufacturers of the brand or brands of cigarettes or smokeless tobacco products for which the non-attainment percentage exceeded 20 percentage points.

(b) PROCEDURES.—Any action under this section shall be commenced by the Secretary in the United States District Court for the District of Columbia within 90 days after publication in the Federal Register of the determination that the non-attainment percentage for the tobacco product in question is greater than 20 percentage points. Any such action shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code.

(c) DETERMINATION BY COURT.—In any action under this section, the court shall determine whether a tobacco product manufacturer has shown, by a preponderance of the evidence that it—

(1) has complied substantially with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, or of any Federal or State laws regarding underage tobacco use;

(2) has not taken any material action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(3) has used its best efforts to reduce underage tobacco use to a degree at least equal to the required percentage reductions.

(d) REMOVAL OF ANNUAL AGGREGATE PAYMENT LIMITATION.—Except as provided in subsections (e) and (g), if the court determines that a tobacco product manufacturer has failed to make the showing described in subsection (c) then sections 1411 and 1412 of this Act do not apply to the enforcement against, or the payment by, such tobacco product manufacturer of any judgment or settlement that becomes final after that determination is made.

(e) DEFENSE.—An action under this section shall be dismissed, and subsection (d) shall not apply, if the court finds that the Secretary's determination under subsection (a) was unlawful under subparagraph (A), (B), (C), or (D) of section 706(2) of title 5, United States Code. Any judgments paid under section 1412 of this Act prior to a final judgment determining that the Secretary's determination was erroneous shall be fully credited, with interest, under section 1412 of this Act.

(f) REVIEW.—Decisions of the court under this section are reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party. The applicability of subsection (d) shall be stayed during the pendency of any such petition or review.

(g) CONTINUING EFFECT.—Subsection (d) shall cease to apply to a tobacco product manufacturer found to have engaged in conduct described in subsection (c) upon the later of—

(1) a determination by the Secretary under section 201 after the commencement of action under subsection (a) that the non-attainment percentage for the tobacco product in question is 20 or fewer percentage points; or

(2) a finding by the court in an action filed against the Secretary by the manufacturer, not earlier than 2 years after the determination described in subsection (c) becomes final, that the manufacturer has shown by a preponderance of the evidence that, in the period since that determination, the manufacturer—

(A) has complied with the provisions of this Act regarding underage tobacco use, of any rules or regulations promulgated thereunder, and of any other applicable Federal, State, or local laws, rules, or regulations;

(B) has not taken any action to undermine the achievement of the required percentage reduction for the tobacco product in question; and

(C) has used its best efforts to attain the required percentage reduction for the tobacco product in question.

A judgment or settlement against the tobacco product manufacturer that becomes final after a determination or finding described in paragraph (1) or (2) of this subsection is not subject to subsection (d). An action under paragraph (2) of this subsection shall be commenced in the United States District Court for the District of Columbia, and shall be heard and determined by a 3-judge court under section 2284 of title 28, United States Code. A decision by the court under paragraph (2) of this subsection is reviewable only by the Supreme Court by writ of certiorari granted upon the petition of any party, and the decision shall be stayed during the pendency of the petition or review. A determination or finding described in paragraph (1) or (2) of this subsection does not limit the Secretary's authority to bring a subsequent action under this section against any tobacco product manufacturer or the applicability of subsection (d) with respect to any such subsequent action.

SEC. 1410. PUBLIC HEALTH EMERGENCY.

If the Secretary, in consultation with the Commissioner of Food and Drugs, the Surgeon General, the Director of the Center for Disease Control or the Director's delegate, and the Director of the Health and Human Services Office of Minority Health determines at any time that a tobacco product manufacturer's actions or inactions with respect to its compliance with the Act are of such a nature as to create a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the Secretary may bring an action under section 1409 seeking the immediate suspension of the tobacco product manufacturer's annual limitation cap on civil judgments. If the court determines that the Secretary has proved by clear and convincing evidence that the subject manufacturer's actions or inactions are of such a nature that they present a clear and present danger that the manufacturer will not attain the targets for underage smoking reduction, the court may suspend the subject manufacturer's annual limitation cap on civil judgments.

SEC. 1411. TOBACCO CLAIMS BROUGHT AGAINST PARTICIPATING TOBACCO PRODUCT MANUFACTURERS.

(a) PERMISSIBLE DEFENDANTS.—In any civil action to which this title applies, tobacco claims may be filed or maintained only against—

(1) a participating tobacco product manufacturer; or

(2) a surviving entity established by a participating tobacco product manufacturer.

(b) ACTIONS INVOLVING PARTICIPATING AND NON-PARTICIPATING MANUFACTURERS.—In any civil action involving both a tobacco claim against a participating tobacco product manufacturer based in whole or in part upon conduct occurring prior to the date of enactment of this Act and a claim against 1 or more non-participating tobacco product manufacturers, the court, upon application of a participating tobacco product manufacturer, shall require the jury to or shall itself apportion liability as between the participating tobacco product manufacturer and non-participating tobacco product manufacturers.

SEC. 1412. PAYMENT OF TOBACCO CLAIM SETTLEMENTS AND JUDGMENTS.

(a) IN GENERAL.—Except as provided in this section, any judgment or settlement in any civil action to which this subtitle applies shall be subject to the process for payment of judgments and settlements set forth in this section. No participating tobacco product manufacturer shall be obligated to pay a judgment or settlement on a tobacco claim in any civil action to which this title applies except in accordance with this section. This section shall not apply to the portion, if any, of a judgment that imposes punitive damages based on any conduct that—

(1) occurs after the date of enactment of this Act; and

(2) is other than the manufacture, development, advertising, marketing, or sale of tobacco products in compliance with this Act and any agreement incident thereto.

(b) REGISTRATION WITH THE SECRETARY OF THE TREASURY.—

(1) The Secretary shall maintain a record of settlements, judgments, and payments in civil actions to which this title applies.

(2) Any party claiming entitlement to a monetary payment under a final judgment or final settlement on a tobacco claim shall register such claim with the Secretary by filing a true and correct copy of the final judgment or final settlement agreement with the Secretary and providing a copy of such filing to all other parties to the judgment or settlement.

(3) Any participating tobacco product manufacturer making a payment on any final judgment or final settlement to which this section applies shall certify such payment to the Secretary by filing a true and correct copy of the proof of payment and a statement of the remaining unpaid portion, if any, of such final judgment or final settlement with the Secretary and shall provide a copy of such filing to all other parties to the judgment or settlement.

(c) LIABILITY CAP.—

(1) IN GENERAL.—The aggregate payments made by all participating tobacco product manufacturers in any calendar year may not exceed $8,000,000,000.

(2) IMPLEMENTATION.—The Secretary shall initiate a rulemaking within 30 days after the date of enactment of this Act to establish a mechanism for implementing this subsection in such a way to ensure the fair and equitable payment of final judgments or final settlements on tobacco claims under this title. Amounts not payable because of the application of this subsection, shall be carried forward and paid in the next year, subject to the provisions of this subsection.

(3) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—The amount in paragraph (1) shall be increased annually, beginning with the second calendar year beginning after the date of enactment of this Act, by the greater of 3 percent or the annual increase in the CPI.

(B) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(d) INJUNCTIVE RELIEF.—A participating tobacco product manufacturer may commence an action to enjoin any State court proceeding to enforce or execute any judgment or settlement where payment has not been authorized under this section. Such an action shall arise under the laws of the United States and may be commenced in the district court of the United States for the district in which the State court proceeding is pending.

(e) JOINT AND SEVERAL LIABILITY.—All participating tobacco product manufacturers shall be jointly and severally liable for, and shall enter into an agreement to apportion among them, any amounts payable under judgments and settlements governed by this section arising in whole or in part from conduct occurring prior to the date of enactment of this Act.

(f) BANKRUPTCY OF PARTICIPATING MANUFACTURER.—No participating tobacco product manufacturer shall cease operations without establishing a surviving entity against which a tobacco claim may be brought. Any obligation, interest, or debt of a participating, tobacco product manufacturer arising under such liability apportionment agreement shall be given priority and shall not be rejected, avoided, discharged, or otherwise modified or diminished in a proceeding, under title 11, United States Code, or in any liquidation, reorganization, receivership, or other insolvency proceeding under State law. A trustee or receiver in any proceeding under title 11, United States Code, or in liquidation, reorganization, receivership, or other insolvency proceeding under State law, may avoid any transfer of an interest of the participating tobacco product manufacturer, or any obligation incurred by such manufacturer, that was made or incurred on or within 2 years before the date of the filing of a bankruptcy petition, if such manufacturer made such transfer or incurred such obligation to hinder or defeat in any fashion the payment of any obligation, interest, or debt of the manufacturer arising under the liability apportionment agreement. Any property vesting in the participating tobacco product manufacturer following such a proceeding shall be subject to all claims and interest of creditors arising under the liability apportionment agreement.

(f) LIMITATION ON STATE COURTS.—No court of any State, Tribe, or political subdivision of a State may take any action to inhibit the effective operation of subsection (c).

SEC. 1413. ATTORNEYS' FEES AND EXPENSES.

(a) ARBITRATION PANEL.—

(1) RIGHT TO ESTABLISH.—For the purpose of awarding of attorneys' fees and expenses relating to litigation affected by, or legal services that, in whole or in part, resulted in or created a model for programs in, this Act, and with respect to which litigation or services the attorney involved is unable to agree with the plaintiff who employed that attorney with respect to any dispute that may arise between them regarding the fee agreement, the matter at issue shall be submitted to arbitration. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

(2) OPERATION.—Not later than 30 days after the date on which all members of an arbitration panel are appointed under paragraph (1), the panel shall establish the procedures under which the panel will operate which shall include—

(A) a requirement that any finding by the arbitration panel must be in writing and supported by written reasons;

(B) procedures for the exchanging of exhibits and witness lists by the various claimants for awards;

(C) to the maximum extent practicable, requirements that proceedings before the panel be based on affidavits rather than live testimony; and

(D) a requirement that all claims be submitted to an arbitration panel not later than 3 months after the date of this Act and a determination made by the panel with respect to such claims not later than 7 months after such date of enactment.

(3) RIGHT TO PETITION.—Any individual attorney or group of attorneys involved in litigation affected by this Act shall have the right to petition an arbitration panel for attorneys' fees and expenses.

(4) CRITERIA.—In making any award under this section, an arbitration panel shall consider the following criteria:

(A) The time and labor required by the claimant.

(B) The novelty and difficulty of the questions involved in the action for which the claimant is making a claim.

(C) The skill requisite to perform the legal service involved properly.

(D) The preclusion of other employment by the attorney due to acceptance of the action involved.

(E) Whether the fee is fixed or a percentage.

(F) Time limitations imposed by the client or the circumstances.

(G) The amount involved and the results obtained.

(H) The experience, reputation, and ability of the attorneys involved.

(I) The undesirability of the action.

(J) Such other factors as justice may require.

(5) APPEAL AND ENFORCEMENT.—The findings of an arbitration panel shall be final, binding, nonappealable, and payable within 30 days after the date on which the finding is made public, except that if an award is to be paid in installments, the first installment shall be payable within such 30 day period and succeeding installments shall be paid annually thereafter.

(b) VALIDITY AND ENFORCEABILITY OF PRIVATE AGREEMENTS.—Notwithstanding any other provision of this Act, nothing in this section shall be construed to abrogate or restrict in any way the rights of any parties to mediate, negotiate, or settle any fee or expense disputes or issues to which this section applies, or to enter into private agreements with respect to the allocation or division of fees among the attorneys party to any such agreement.

(c) OFFSET FOR AMOUNTS ALREADY PAID.—In making a determination under this section with regard to a dispute between a State that pursued independent civil action against tobacco product manufacturers and its attorney, the arbitration panel shall take into account any amounts already paid by the State under the agreement in dispute.

SEC. 1414. EFFECT OF COURT DECISIONS.

(a) SEVERABILITY.—If any provision of titles I through XIII, or the application thereof to any person, manufacturer or circumstance, is held invalid, the remainder of the provisions of those titles, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) NONSEVERABILITY.—If a court of competent jurisdiction enters a final decision substantially limiting or impairing the essential elements of title XIV, specifically the requirements of sections 1404 and 1405, then the provisions of section 1412 are null and void and of no effect.

SEC. 1415. CRIMINAL LAWS NOT AFFECTED.

Nothing in this title shall be construed to limit the criminal liability of tobacco product manufacturers, retailers, or distributors or their directors, officers, employees, successors, or assigns.

SEC. 1416. CONGRESS RESERVES THE RIGHT TO ENACT LAWS IN THE FUTURE.

The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress in accordance with the provisions of Article I of the Constitution of the United States and more than 200 years of history.

SEC. 1417. DEFINITIONS.

In this title:

(1) TERMS DEFINED IN TITLE VII.—Any term used in this title that is defined in title VII has the meaning given to it in title VII.

(2) ADDITIONAL DEFINITIONS.—

(A) ADDICTION CLAIM; DEPENDENCE CLAIM.—The term "addiction claim" or "dependence claim" refers only to any cause of action to the extent that the prayer for relief seeks a cessation program, or other public health program that is to be available to members of the general public and is designed to reduce or eliminate the users' addiction to, or dependence on, tobacco products, and as used herein is brought by those who claim the need for nicotine reduction assistance. Neither addiction or dependence claims include claims related to or involving manifestation of illness or tobacco-related diseases.

(B) COMPENSATORY DAMAGES.—The term "compensatory damages" refers to those damages necessary to reimburse an injured party, and includes actual, general, and special damages.

(C) PROTOCOL.—The term "protocol" means the agreement to be entered into by the Secretary of Health and Human Services with a participating tobacco product manufacturers under this title.

(D) PUNITIVE DAMAGES.—The term "punitive damages" means damages in addition to compensatory damages having the character of punishment or penalty.

(E) SECRETARY.—The term "Secretary" means the Secretary of the Treasury, except where the context otherwise requires.

TITLE XV—TOBACCO TRANSITION

SEC. 1501. SHORT TITLE.

This title may be cited as the "Tobacco Transition Act".

SEC. 1502. PURPOSES.

The purposes of this title are—

(1) to authorize the use of binding contracts between the United States and tobacco quota owners and tobacco producers to compensate them for the termination of Federal programs that support the production of tobacco in the United States;

(2) to make available to States funds for economic assistance initiatives in counties of States that are dependent on the production of tobacco; and

(3) to terminate Federal programs that support the production of tobacco in the United States.

SEC. 1503. DEFINITIONS.

In this title:

(1) ASSOCIATION.—The term "association" means a producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers.

(2) BUYOUT PAYMENT.—The term "buyout payment" means a payment made to a quota owner under section 1514 for each of the 1999 through 2001 marketing years.

(3) CONTRACT.—The term "contract" or "tobacco transition contract" means a contract entered into under section 1512.

(4) GOVERNOR.—The term "Governor" means the chief executive officer of a State.

(5) LEASE.—The term "lease" means—

(A) the rental of quota on either a cash rent or crop share basis;

(B) the rental of farmland to produce tobacco under a farm marketing quota; or

(C) the lease and transfer of quota for the marketing of tobacco produced on the farm of a lessor.

(6) MARKETING YEAR.—The term "marketing year" means—

(A) in the case of Flue-cured tobacco, the period beginning July 1 and ending the following June 30; and

(B) in the case of each other kind of tobacco, the period beginning October 1 and ending the following September 30.

(7) OWNER.—The term "owner" means a person that, at the time of entering into a tobacco transition contract, owns quota provided by the Secretary.

(8) PRICE SUPPORT.—The term "price support" means a nonrecourse loan provided by the Commodity Credit Corporation through an association for a kind of tobacco.

(9) PRODUCER.—The term "producer" means a person that for each of the 1995 through 1997 crops of tobacco (as determined by the Secretary) that were subject to quota—

(A) leased quota or farmland;

(B) shared in the risk of producing a crop of tobacco; and

(C) marketed the tobacco subject to quota.

(10) QUOTA.—The term "quota" means the right to market tobacco under a basic marketing quota or acreage allotment allotted to a person under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(11) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(12) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(13) TOBACCO.—The term "tobacco" means any kind of tobacco for which—

(A) a marketing quota is in effect;

(B) a marketing quota is not disapproved by producers; or

(C) price support is available.

(14) TOBACCO PRODUCT MANUFACTURER.—The term "tobacco product manufacturer" has the meaning given the term "manufacturer of tobacco products" in section 5702 of the Internal Revenue Code of 1986.

(15) TRANSITION PAYMENT.—The term "transition payment" means a payment made to a producer under section 1515 for each of the 1999 through 2001 marketing years.

(16) TRUST FUND.—The term "Trust Fund" means the Tobacco Community Revitalization Trust Fund established by section 1511.

(17) UNITED STATES.—The term "United States", when used in a geographical sense, means all of the States.

Subtitle A—Tobacco Production Transition

CHAPTER 1—TOBACCO TRANSITION CONTRACTS

SEC. 1511. TOBACCO COMMUNITY REVITALIZATION TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the "Tobacco Community Revitalization Trust Fund", consisting of amounts paid into the Trust Fund under subsection (d).

(b) ADMINISTRATION.—The Trust Fund shall be administered by the Secretary of the Treasury.

(c) USE.—Funds in the Trust Fund shall be available for making—

(1) buyout payments;

(2) transition payments; and

(3) rural economic assistance block grants under section 1521.

(d) TRANSFER FROM NATIONAL TOBACCO SETTLEMENT TRUST FUND.—The Secretary of the Treasury shall transfer from the National Tobacco Settlement Trust Fund to the Trust Fund such amounts as the Secretary of Agriculture determines are necessary to carry out this title.

(e) TERMINATION.—The Trust Fund shall terminate effective September 30, 2003.

SEC. 1512. OFFER AND TERMS OF TOBACCO TRANSITION CONTRACTS.

(a) OFFER.—The Secretary shall offer to enter into a tobacco transition contract with each owner and producer.

(b) TERMS.—

(1) OWNERS.—In exchange for a payment made under section 1514, an owner shall agree to relinquish the quota owned by the owner.

(2) PRODUCERS.—In exchange for a payment made under section 1515, a producer shall agree to relinquish the value of the quota leased by the producer.

(c) RIGHT TO GROW TOBACCO.—Each owner or producer that enters into a contract shall have the right to continue the production of tobacco for each of the 1999 and subsequent crops of tobacco.

SEC. 1513. ELEMENTS OF CONTRACTS.

(a) DEADLINES FOR CONTRACTING.—

(1) COMMENCEMENT.—To the maximum extent practicable, the Secretary shall commence entering into contracts under this chapter not later than 90 days after the date of enactment of this Act.

(2) DEADLINE.—The Secretary may not enter into a contract under this chapter after June 30, 1999.

(b) DURATION OF CONTRACT.—The term of a contract shall—

(1) begin on the date that is the beginning of the 1999 marketing year for a kind of tobacco; and

(2) terminate on the date that is the end of the 2001 marketing year for the kind of tobacco.

(c) TIME FOR PAYMENT.—A buyout payment or transition payment shall be made not later than the date that is the beginning of the marketing year for a kind of tobacco for each year of the term of a tobacco transition contract of an owner or producer.

SEC. 1514. BUYOUT PAYMENTS TO OWNERS.

(a) IN GENERAL.—The Secretary shall make buyout payments in 3 equal installments, 1 installment for each of the 1999 through 2001 marketing years for each kind of tobacco involved, to an owner that owns quota at the time of entering into a tobacco transition contract.

(b) COMPENSATION FOR LOST VALUE.—The payment shall constitute compensation for the lost value to the owner of the quota.

(c) PAYMENT CALCULATION.—Under this section, the total amount of the buyout payment made to an owner shall be determined by multiplying—

(1) $8.00; by

(2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

SEC. 1515. TRANSITION PAYMENTS TO PRODUCERS.

(a) IN GENERAL.—The Secretary shall make transition payments in 3 equal installments, 1 installment for each of the 1999 through 2001 marketing years for each kind of tobacco produced, to a producer that—

(1) produced the kind of tobacco for each of the 1995 through 1997 crops; and

(2) entered into a tobacco transition contract.

(b) TRANSITION PAYMENTS LIMITED TO LEASED QUOTA.—A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased (as defined in section 1503(5) of this Act) during the 3 crop years described in subsection (a)(1).

(c) COMPENSATION FOR LOST REVENUE.—The payments shall constitute compensation for the lost revenue incurred by a tobacco producer for a kind of tobacco.

(d) PRODUCTION HISTORY; PRODUCTION.—

(1) PRODUCTION HISTORY.—The Secretary shall base a transition payment made to a producer on the average quantity of tobacco subject to a marketing quota that is produced by the producer for each of the 1995 through 1997 crops.

(2) PRODUCTION.—The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each of the 1995 through 1997 crops.

(e) PAYMENT CALCULATION.—Under this section, the total amount of the transition payment made to a producer shall be determined by multiplying—

(1) $4.00; by

(2) the average quantity of the kind of tobacco produced by the producer for each of the 1995 through 1997 crops.

CHAPTER 2—RURAL ECONOMIC ASSISTANCE BLOCK GRANTS

SEC. 1521. RURAL ECONOMIC ASSISTANCE BLOCK GRANTS.

(a) IN GENERAL.—From funds transferred from the Trust Fund, the Secretary shall use $200,000,000 for each of fiscal years 1999 through 2003 to provide block grants to tobacco-growing States to assist areas of such a State that are economically dependent on the production of tobacco.

(b) PAYMENTS BY SECRETARY TO TOBACCO-GROWING STATES.—

(1) IN GENERAL.—The Secretary shall use the amount available for a fiscal year under subsection (a) to make block grant payments to the Governors of tobacco-growing States.

(2) AMOUNT.—The amount of a block grant paid to a tobacco-growing State shall be based on, as determined by the Secretary—

(A) the number of counties in the State in which tobacco production is a significant part of the county's economy; and

(B) the level of economic dependence of the counties on tobacco production.

(c) GRANTS BY STATES TO ASSIST TOBACCO-GROWING AREAS.—

(1) IN GENERAL.—A Governor of a tobacco-growing State shall use the amount of the block grant to the State under subsection (b) to make grants to counties or other public or private entities in the State to assist areas that are dependent on the production of tobacco, as determined by the Governor.

(2) AMOUNT.—The amount of a grant paid to a county or other entity to assist an area shall be based on—

(A) the ratio of gross tobacco sales receipts in the area to the total farm income in the area; and

(B) the ratio of all tobacco related receipts in the area to the total income in the area.

(3) USE OF GRANTS.—A county or other entity that receives a grant under this subsection may use the grant in a manner determined appropriate by the county or entity (with the approval of the State) to assist producers and other persons that are economically dependent on the production of tobacco, including use for—

(A) on-farm diversification, alternatives to the production of tobacco, and risk management;

(B) off-farm activities such as education, retraining, and development of non-tobacco related jobs; and

(C) assistance to tobacco warehouse owners or operators.

(d) TERMINATION OF AUTHORITY.—The authority provided by this section terminates September 30, 2003.

Subtitle B—Tobacco Price Support and Production Adjustment Programs

CHAPTER 1—TOBACCO PRICE SUPPORT PROGRAM

SEC. 1531. INTERIM REFORM OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PRICE SUPPORT RATES.—Section 106(f) of the Agricultural Act of 1949 (7 U.S.C. 1445(f)) is amended by adding at the end the following:

"(9) TOBACCO PRICE SUPPORT RATES.—Notwithstanding any other provision of this subsection, the price support rate for each kind of tobacco for which quotas were approved for the 1998 crop shall be reduced by—

"(A) for the 1999 crop, 25 percent from the 1998 support rate for a kind of tobacco;

"(B) for the 2000 crop, 10 percent from the 1999 support rate for a kind of tobacco; and

"(C) for the 2001 crop, 10 percent from the 2000 support rate for a kind of tobacco.".

(b) NO NET COST TOBACCO FUND.—Section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1) is amended—

(1) by striking "quota tobacco" each place it appears and inserting "tobacco";

(2) in subsection (a), by striking paragraph (7) and inserting the following:

"(7) the term 'tobacco' means any kind of tobacco for which—

"(A) a marketing quota is in effect;

"(B) a marketing quota is not disapproved by producers; or

"(C) price support is available.";

(3) in the second sentence of subsection (c), by striking "contributed by producer-members or";

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by striking clause (i);

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(III) in clause (ii) (as so redesignated), by striking subclause (II) and inserting the following:

"(II) the amount of per pound purchaser assessments that are payable by domestic purchasers of Flue-cured and Burley tobacco under clause (i); and"; and

(ii) in subparagraph (B)—

(I) by striking "that, upon" and all that follows through "In making" and inserting "in making"; and

(II) in the last sentence, by striking "contributions and";

(B) in paragraph (2)—

(i) by striking "producer contribution or"; and

(ii) by striking subparagraphs (A) and (B) and inserting the following:

"(A) from the person that acquired the tobacco involved from the producer;

"(B) if the tobacco involved is marketed by a producer through a warehouseman or agent, from the warehouseman or agent, who may add an amount equal to the purchaser assessment to the price paid by the purchaser;";

(C) in paragraph (3), by striking ", and use of" and all that follows through "of the Fund"; and

(D) in paragraph (7), by striking "contributions and"; and

(5) in subsection (h), by striking "contribution or" each place it appears.

(c) NO NET COST TOBACCO ACCOUNT.—Section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2) is amended—

(1) by striking "quota tobacco" each place it appears and inserting "tobacco";

(2) in subsection (a), by striking paragraph (5) and inserting the following:

"(5) the term 'tobacco' means any kind of tobacco for which—

"(A) a marketing quota is in effect;

"(B) a marketing quota is not disapproved by producers; or

"(C) price support is available;";

(3) in subsection (c)(1), by striking "producers, purchasers," and inserting "purchasers"; and

(4) in subsection (d)—

(A) in paragraph (1)—

(i) by striking subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (A) (as redesignated), by striking "also";

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the first sentence, by striking "the amount of the marketing assessment" through "association's area and"; and

(II) by striking the second sentence;

(ii) in subparagraph (C)(ii)—

(I) by striking "sum of the";

(II) by striking "producer and"; and

(III) by striking "producers and"; and

(C) in paragraph (3)—

(i) by striking "(3)(A)" and all that follows through the end of subparagraph (B) and inserting the following:

"(3) COLLECTION OF ASSESSMENTS.—

"(A) PURCHASERS.—Except as provided in subparagraphs (B) and (C), an assessment to be paid by a purchaser under paragraph (1) shall be collected from the person who acquired the tobacco involved from the producer.

"(B) WAREHOUSEMAN OR AGENT.—If tobacco of the kind for which an account is established is marketed by a producer through a warehouseman or agent, the purchaser assessment shall be collected from the warehouseman or agent, who may add an amount equal to the purchaser assessment to the price paid by the purchaser."; and

(ii) in subparagraph (C), by striking "both the producer and".

(d) ADMINISTRATIVE COSTS.—Section 1109 of the Agriculture and Food Act of 1981 (Public Law 97–98; 7 U.S.C. 1445 note) is repealed.

(e) CROPS.—This section and the amendments made by this section shall apply with respect to the 1999 through 2001 marketing years.

SEC. 1532. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking "tobacco (except as otherwise provided herein), corn," and inserting "corn";

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking ", except tobacco,"; and

(B) by striking "and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;"; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) TERMINATION OF TOBACCO PRICE SUPPORT.—Sections 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by striking subsections (a) through (f).

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking "tobacco,".

(d) REVIEW OF BURLEY TOBACCO IMPORTS.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(e) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting "(other than tobacco)" after "agricultural commodities" each place it appears.

(f) TRANSITION PROVISIONS.—

(1) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date of this section.

(2) TOBACCO INVENTORIES.—The Secretary shall issue regulations that require the orderly sale of tobacco inventories held by associations.

(3) NO NET COST TOBACCO FUND.—

(A) IN GENERAL.—Section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1) is amended by adding at the end the following:

"(i) ASSESSMENTS TO COVER NET LOSSES AFTER 2001 MARKETING YEAR.—

"(1) IN GENERAL.—Effective the day after the last day of the 2001 marketing year for the kind of tobacco involved, purchasers and importers of tobacco shall pay no net cost assessments as determined by an association, with the approval of Secretary, and as provided in this subsection.

"(2) BASIS.—The amount of the assessment shall be based on any unpaid past losses, and anticipated future losses, from sales of tobacco inventory.

"(3) COLLECTION.—Assessments shall be collected as provided in subsection (d)(2).

"(4) PENALTY FOR FAILURE TO PAY ASSESSMENT.—Penalties for failure to pay assessments shall be calculated as provided in subsection (h).

"(5) DURATION OF ASSESSMENTS.—Assessments required under this subsection shall be required until—

"(A) all tobacco price support loans, including interest, are repaid to the Commodity Credit Corporation; and

"(B) the Commodity Credit Corporation has been reimbursed for all net losses sustained as a result of price support loans provided through the 2001 crop of the kind of tobacco involved.".

(B) CONFORMING AMENDMENTS.—Section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1) (as amended by section 1531(b)) is amended—

(i) in subsection (a)—

(I) in paragraph (5), by inserting "and" after the semicolon;

(II) in paragraph (6), by striking "; and" and inserting a period; and

(III) by striking paragraph (7);

(ii) by striking subsection (b);

(iii) in subsection (d)—

(I) in the last sentence of paragraph (1), by striking "the amounts which the Corporation will lend to the association under such agreements and";

(II) by striking paragraph (2) and inserting the following:

"(2) collect the assessment due under paragraph (1) by directly notifying the purchaser or importer of the amount of the assessment and how payment should be made;"; and

(III) in paragraph (3), by striking ": *Provided*, That," and all that follows and inserting ", except that, notwithstanding any other provision of law, the association may use amounts in the Fund (including interest and other earnings) for the purposes of reducing the association's outstanding indebtedness to the Corporation associated with 1982 and subsequent crops of tobacco;";

(iv) in subsection (e)—

(I) in the first sentence, by striking "or provide" and all that follows through "the association"; and

(II) by striking the second sentence; and

(v) in subsection (h), by striking "(h)(1)(A)" and all that follows through the end of subparagraph (B) and inserting the following:

"(h) FAILURE TO PAY CONTRIBUTIONS OR ASSESSMENTS.—

"(1) IN GENERAL.—

"(A) PURCHASERS.—Each purchaser that fails to pay an assessment as required by subsection (d)(2) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the 2001 marketing year on the quantity of tobacco as to which the failure occurs.

"(B) IMPORTERS.—Each importer that fails to pay an assessment as required by subsection (d)(2) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, for a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of tobacco for the 2001 marketing year on the quantity of tobacco as to which the failure occurs.".

(4) NO NET COST TOBACCO ACCOUNT.—

(A) IN GENERAL.—Section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2) is amended by adding at the end the following:

"(k) ASSESSMENTS TO COVER NET LOSSES AFTER 2001 MARKETING YEAR.—

"(1) IN GENERAL.—Subject to subsection (b), effective the day after the last day of the 2001 marketing year for the kind of tobacco involved, purchasers and importers of tobacco shall pay no net cost assessments as determined by an association, with the approval of Secretary, and as provided in this subsection.

"(2) BASIS.—The amount of the assessment shall be based on any unpaid past losses, and anticipated future losses, from sales of tobacco inventory.

"(3) COLLECTION.—Assessments shall be collected as provided in subsection (d)(3).

"(4) PENALTY FOR FAILURE TO PAY ASSESSMENT.—Penalties for failure to pay assessments shall be calculated as provided in subsection (j).

"(5) DURATION OF ASSESSMENTS.—Assessments required under this subsection shall be required until—

"(A) all tobacco price support loans, including interest, are repaid to the Commodity Credit Corporation; and

"(B) the Commodity Credit Corporation has been reimbursed for all net losses sustained as a result of price support loans provided through the 2001 crop of the kind of tobacco involved.".

(B) CONFORMING AMENDMENTS.—Section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2) (as amended by section 1531(c)) is amended—

(i) in subsection (a)—

(I) by striking paragraph (5); and

(II) by redesignating paragraphs (6) through (8) as paragraphs (5) through (7), respectively;

(ii) by striking subsection (b) and inserting the following:

"(b) ESTABLISHMENT.—Notwithstanding section 106A, the Secretary shall, on the request of any association, and may, if the Secretary determines, after consultation with the association, that the accumulation of the No Net Cost Tobacco Fund for the association under section 106A is, and is likely to remain, inadequate to reimburse the Corporation for net losses that the Corporation sustains under its loan agreement with the association, establish and maintain in accordance with this section a No Net Cost Tobacco Account for the association in lieu of the No Net Cost Tobacco Fund established within the association under section 106A.";

(iii) in subsection (d)—

(I) in the third sentence of paragraph (2)(A), by striking "the amounts which the Corporation will lend to such association under such agreements and"; and

(II) by striking paragraph (3) and inserting the following:

"(3) COLLECTION.—Any assessment to be paid by a purchaser or importer under paragraph (1) shall be collected from the purchaser or importer by the Secretary."; and

(iv) in subsection (j), by striking "(j)(1)(A)" and all that follows through the end of subparagraph (B) and inserting the following:

"(j) FAILURE TO PAY CONTRIBUTIONS OR ASSESSMENTS.—

"(1) IN GENERAL.—

"(A) PURCHASERS.—Each purchaser that fails to pay to the Secretary an assessment as required by subsection (d)(3) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the 2001 marketing year on the quantity of tobacco as to which the failure occurs.

"(B) IMPORTERS.—Each importer that fails to pay to the Secretary an assessment as required by subsection (d)(3) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, for a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of tobacco for the 2001 marketing year on the quantity of tobacco as to which the failure occurs.".

(g) NET GAINS HELD BY COMMODITY CREDIT CORPORATION.—The Secretary shall ensure that the net gains in the No Net Cost Tobacco Account of the Commodity Credit Corporation as of September 30, 2002, equal or exceed the balance in the Account that existed on September 30, 1998.

(h) CROPS.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section and the amendments made by this section shall apply the day after the last day of the 2001 marketing year for the kind of tobacco involved.

(2) NET LOSSES TO THE COMMODITY CREDIT CORPORATION.—Sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) are repealed effective on the date on which the Secretary—

(A) determines that—

(i) all tobacco price support loans, plus interest, have been repaid by associations; and

(ii) the Commodity Credit Corporation has been reimbursed for all net losses sustained as a result of price support loans provided through the 2001 crop of the kind of tobacco involved; and

(B) publishes a notice of the determination in the Federal Register.

CHAPTER 2—TOBACCO PRODUCTION ADJUSTMENT PROGRAMS

SEC. 1541. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking "tobacco,".

(b) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking "tobacco,";

(3) in paragraph (7), by striking the following:

"tobacco (flue-cured), July 1—June 30;

"tobacco (other than flue-cured), October 1–September 30;";

(4) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(5) in paragraph (11)(B), by striking "and tobacco";

(6) in paragraph (12), by striking "tobacco,";

(7) in paragraph (14)—

(A) in subparagraph (A), by striking "(A)"; and

(B) by striking subparagraphs (B), (C), and (D);

(8) by striking paragraph (15);

(9) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B); and

(10) by redesignating paragraphs (16) and (17) as paragraphs (15) and (16), respectively.

(c) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking "rice, or tobacco," and inserting "or rice,".

(d) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(e) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking "tobacco,".

(f) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking "peanuts, or tobacco" and inserting "or peanuts"; and

(2) in the first sentence of subsection (b), by striking "peanuts or tobacco" and inserting "or peanuts".

(g) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking "peanuts, or tobacco" each place it appears in subsections (a) and (b) and inserting "or peanuts"; and

(2) in subsection (a)—

(A) in the first sentence, by striking "all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,"; and

(B) in the last sentence, by striking "$500;" and all that follows through the period at the end of the sentence and inserting "$500.".

(h) REGULATIONS.—Section 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is amended by striking "peanuts, or tobacco" and inserting "or peanuts".

(i) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking "cotton, tobacco, and peanuts" and inserting "cotton and peanuts"; and

(2) by striking subsections (d), (e), and (f).

(j) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking "(a)"; and

(B) in paragraph (6), by striking ", but this clause (6) shall not be applicable in the case of burley tobacco"; and

(2) by striking subsections (b) and (c).

(k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act entitled "An Act to amend the Agricultural Adjustment Act of 1938, as amended, to provide for acreage-poundage marketing quotas for tobacco, to amend the tobacco price support provisions of the Agricultural Act of 1949, as amended, and for other purposes", approved April 16, 1965 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act entitled "An Act relating to burley tobacco farm acreage allotments under the Agricultural Adjustment Act of 1938, as amended", approved July 12, 1952 (7 U.S.C. 1315), is repealed.

(m) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(n) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking "tobacco and".

(o) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) is amended by striking subsection (c).

(p) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date under subsection (q).

(q) CROPS.—This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

Subtitle C—Funding

SEC. 1551. TRUST FUND.

(a) REQUEST.—The Secretary of Agriculture shall request the Secretary of the Treasury to transfer from the Trust Fund amounts authorized under sections 1514, 1515, and 1521 to the account of the Commodity Credit Corporation.

(b) TRANSFER.—On receipt of such a request, the Secretary of the Treasury shall transfer amounts requested under subsection (a).

(c) USE.—The Secretary of Agriculture shall use the amounts transferred under subsection (b) to carry out the activities described in subsection (a).

(d) TERMINATION OF AUTHORITY.—The authority provided under this section shall expire on September 30, 2003.

SEC. 1552. TOBACCO RELATED ADMINISTRATIVE COSTS AND SUBSIDIES.

(a) IN GENERAL.—The Secretary shall provide, by regulation, for a nonrefundable marketing assessment paid by purchasers of tobacco during each of the 1999 through 2024 fiscal years.

(b) BASIS.—The assessment shall be—

(1) on a per pound basis, as determined by the Secretary; and

(2) based on estimated annual costs to the Federal Government of tobacco related administrative costs and subsidies in accordance with this section.

(c) AGGREGATE ASSESSMENT AMOUNT.—For each fiscal year, the Secretary shall estimate the costs to the Federal Government relating to tobacco that involve—

(1) agricultural extension;

(2) handling, sampling, grading, inspecting, and weighing;

(3) administering and providing subsidies for crop insurance; and

(4) administering the tobacco price support program for each of the 1999 through 2001 fiscal years.

(d) ASSESSMENT AMOUNT FOR EACH KIND OF TOBACCO.—For each fiscal year, the Secretary shall determine the amount of the total costs determined under subsection (c) that benefit each kind of tobacco.

(e) ESTIMATED MARKETINGS.—For each fiscal year, the Secretary shall estimate the pounds marketed during the fiscal year for each kind of tobacco.

(f) ASSESSMENT RATE.—For each kind of tobacco for each fiscal year, the Secretary shall calculate an assessment rate per pound by dividing—

(1) the amount determined under subsection (d); by

(2) the estimated pounds marketed as estimated under (e).

(g) REMITTANCE BY PURCHASER.—For each fiscal year, each purchaser of tobacco shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment equal to the amount obtained by multiplying—

(1) the assessment rate for the kind of tobacco purchased; by

(2) the number of pounds of the kind of tobacco purchased.

(h) PENALTIES.—If any purchaser fails to remit the assessment required by this section or fails to comply with such requirements for recordkeeping as are established by the Secretary to carry out this section, the purchaser shall be liable to the Secretary for a civil penalty in an amount determined by the Secretary that does not exceed the amount obtained by multiplying—

(1) the quantity of the kind of tobacco involved in the violation; by

(2) the assessment rate for the kind of tobacco.

(i) ENFORCEMENT.—The Secretary may enforce this section in the courts of the United States.

SEC. 1553. COMMODITY CREDIT CORPORATION.

The Secretary may use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this title and the amendments made by this title.

Subtitle D—Miscellaneous

SEC. 1561. LIABILITY FOR OBLIGATIONS OF TOBACCO PRODUCT MANUFACTURERS.

A person that owns or produces tobacco, or owns or operates a tobacco warehouse, shall not be liable for—

(1) any action or legal penalty or obligation of a manufacturer of a tobacco product under this Act; or

(2) any financial penalty or payment owed by a manufacturer of a tobacco product under this Act.

SEC. 1562. FDA REGULATION OF TOBACCO PRODUCTION AND FARMS.

Notwithstanding any other provision of law, an officer, employee, or agent of the Food and Drug Administration shall not—

(1) regulate the production of a crop of tobacco by a person; or

(2) enter the farm of a person that owns or produces tobacco without the consent of the person.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. 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. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I have reached an understanding with the Senator from South Carolina and the Senator from Kentucky and the Senator from Massachusetts that the Senator from Kentucky would like to speak for half an hour. Senator FAIRCLOTH will be recognized for his first-degree amendment following the statement by the Senator from Kentucky. Following that it is our understanding there will either be a second-degree amendment to the Faircloth amendment, or, if not, the Faircloth amendment will be disposed of, and following that it was our understanding that the other side of the aisle would have the next amendment, and go back and forth as is the tradition of this body, from one side to the other with amendments. All amendments which are in the first degree will be open, obviously, to second-degree amendments. As the Faircloth amendment would be open to second-degree amendment, so will the next Democrat amendment be open to second-degree amendments.

I expect shortly the Senator from Kentucky to come to speak for approximately half an hour. The Senator from North Carolina is agreeable. I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, if I could simply clarify that, also I think we would put it in the context of the unanimous consent request that first recognition be for the half hour to the Senator from Kentucky. But if I could clarify it, we would request that the second-degree amendments would be the right of the Democrat leader, and, likewise, the first-degree amendment placed on the Democrat side would be subject to a second-degree amendment by the Republican side. With that understanding, we ask unanimous consent the Senate accept that as the procedure for the first two amendments.

Mr. MCCAIN. Will the Senator yield? I am afraid at this time we just have to have an understanding because it has not been cleared on either side. I am confident that understanding would be honored. But I don't think we can lock it in as a unanimous consent agreement at this time. I would like to have the Senator from Kentucky, if it is agreeable to my friends from South Carolina and Massachusetts, to have the Senator from Kentucky recognized for his statement.

I yield the floor.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. Mr. President, we are going into probably what can be called a frustrating period. It is difficult for me to in 30 minutes say what is in my heart and on my mind as it relates to the tobacco legislation.

The PRESIDING OFFICER. If the Senator will suspend, we need order in the Senate please. If Senators and staff will take their audible conversations to the cloakroom, it would be appreciated. The Senator from Kentucky is recognized.

Mr. FORD. I thank the Chair for his courtesies. He is a gentleman and a scholar.

Mr. President, today the Senate begins what I hope is a productive debate on S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act. We have come a long way in this debate. But in the 15 weeks left in this session we also have a long way to go.

Nothing surprises me anymore concerning tobacco legislation. Yesterday afternoon they asked me if I was surprised. I said no. I was angry. So, therefore, I wasn't surprised. Last year, I would not have believed the tobacco manufacturers, attorneys general, and public health groups would have agreed on a comprehensive settlement. But on June 20, 1997, a national settlement was announced. I would not have believed that the Senate Commerce Committee could have reported a bill of this magnitude, and to do so in only one day of markup. But on April 1st, under the leadership of the Senator from Arizona, the Commerce Committee did just that by a vote of 19 to 1. Last Thursday, the Finance Committee modified the bill again in only one day.

But part of the explanation for the success of the chairman of the Commerce Committee was his ability to get Senators to wait to debate many issues. A lot of them were left to the Senate floor. This bill raises hundreds of billions of dollars. Estimates of the Commerce Committee product range from $516 billion to almost $1 trillion.

This is a tremendous amount of money by any standard. The Finance Committee increased the taxes raised by this bill even further.

But not surprisingly, there is no shortage of ideas around here on what to do with the money. Some want to use it to offset tax cuts. Some want to expand existing spending programs. Some want to fund new spending programs. The one thing nearly all of these ideas have in common is that they have nothing to do with youth smoking. We have taken our eye off the problem of youth smoking. It is how can we raise more money and spend it on other programs.

Somehow, almost miraculously, the two committee chairmen were able to get members of their committee to defer the debate on how to spend all of this money. But that debate cannot be deferred any longer, Mr. President—not if the Senate is actually going to pass a bill. With the confusion that was expressed here yesterday, there are some who are beginning to wonder if a bill can be passed.

How all of this money is used goes to the very heart of the bill, and until we answer these fundamental questions, it is impossible to say with any certainty what kind of bill we have. Mr. President, there is an equally important issue that goes to the heart of the bill as well. It will define what this legislation is really all about. There is no more important issue to me personally than how we treat tobacco farmers and rural and tobacco-growing communities under this bill.

In many ways, tobacco farmers and tobacco-growing communities are the innocent victims in this whole debate. They have not been sued. They have not been accused of withholding documents or information. They have not been accused of manipulating the tobacco grown on their farms.

Mr. President, tobacco farmers and tobacco-growing communities are scared about what is going on in Washington, DC. They are bewildered at the almost daily barrage of hostile comments coming from various sources in this city. Most tobacco farmers are engaged in the same livelihood as their fathers, their grandfathers, and in some cases their great grandfathers on the same farm and on the same ground.

Just like most Americans, tobacco farmers also don't want to see young people smoke. The poll in my State was something over 90 percent that opposed youth smoking. But they are having a hard time figuring out what some of the difficulties in Congress have to do with youth smoking. To most tobacco farmers much of the discussion in Congress sounds like an attempt to punish an industry with the youth smoking issue finishing a distant second. Tobacco farmers are being lumped in with tobacco manufacturers.

A recent Congressional Quarterly article about the plight of tobacco farmers quoted one farmer from King, NC, about the tobacco debate in Congress. He said, and I quote:

> They are making us feel like drug dealers. That just burns me up. They put us in the tobacco industry when all we are doing is growing a legal crop.

Tobacco farmers have been on a roller coaster ride for several years. But that ride has been almost out of control for the last year. Among the greatest disappointments was the June 20th settlement agreement itself. That agreement, which threatens to throw the lives of tobacco farmers into turmoil, did not provide one thin dime for tobacco farmers. Zero. Zip.

The tobacco companies, attorneys general, and public health groups who were huddled in hotel rooms putting the deal together did not even invite tobacco farmers to the table. They would not let them in the door. It is tough to find words to express how insulting I found this.

The June 20th tobacco settlement included money for event sponsors who would lose tobacco sponsorship under the settlement. The settlement had money for teams or entries in such events. They had money for NASCAR races. They had money for rodeos. Somehow, they found $750 million for these people. But there was nothing for tobacco farmers.

Mr. President, tobacco farmers in my state were at first shocked by news of the settlement. Then they became angry. I encouraged them not to get mad, but to get to work. I urged them to come up with a plan for themselves, to help tobacco farmers and tobacco growing communities deal with the settlement. And Mr. President, tobacco farmers did go to work. I pledged to them last summer that I would do everything in my power to represent their interests, and to see to it that a proposal drafted by tobacco farmers would be included in any legislation considered by Congress. I'm here today to keep my word.

Mr. President, there are 124,000 tobacco farm families producing the crop across 20 states in this country. That represents 6 percent of the farms in the United States. Most of these farms are in the southeast. On average, these tobacco farms are 126 acres—about one-third the size of the average U.S. farm. So we're talking about small, family farm operations.

In Kentucky, tobacco is produced in 119 of 120 counties. Two-thirds of the farmers in my state produce tobacco. They average about 4 acres of tobacco. It is less than 3 percent of their cropland, yet it brings about 25 percent of their farm income. Most tobacco farmers in my state have family incomes of less than $35,000—including non-farm income. Make no mistake, we're talking about middle- to low-income families.

The tobacco settlement will have a significant negative impact on the family farms in my state, and this impact must be considered in any tobacco legislation.

Tobacco farmers started meeting last summer to deal with the impact of the settlement. They came up with three general principles for tobacco settlement legislation: (1) the legislation must preserve the federal tobacco program; (2) fair compensation should be provided to tobacco farmers should their ability to produce the crop be diminished; and (3) the impact on tobacco farming communities should be taken into account.

Mr. President, farms in my State and other States are valued with the quota. If the quota under the so-called Lugar-McConnell bill is implemented, from $2 billion to $4 billion in reduction of farmland value will occur in the fourth year because we lose the quota. What does that do? It has a rippling effect on local taxes, the tax base, the income for the cities and the counties, our school systems, to say nothing of the business community of these small communities.

After countless meetings among tobacco farming groups from states like Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and Georgia, an outline of a tobacco farmer proposal came together. We worked hard to iron out details and put "meat on the bones."

I daresay, Mr. President, there are not many Senators who have sat on the porch of many grocery stores and talked to farmers. There are not many Senators in this body who have sat in the kitchen and had a cup of coffee with farm families, talking about what is about to happen to them and their future. I think I understand and feel what they say because I grew up on a farm and I raised tobacco until I was drafted into World War II.

Finally, last October, I introduced the Long-term Economic Assistance for Farmers Act, or one we refer to as the LEAF Act. It was cosponsored by 9 tobacco state Senators.

But our work didn't stop there. We continued to work through the winter and spring to improve the proposal. Finally, after nine months of work, a consensus proposal was developed to assist tobacco farmers and their communities.

We have provided direct payments to farmers in the event their ability to produce declines. This is the very heart of the LEAF Act. It is designed to make farmers whole as the value of their assets decline.

We also made changes to make tobacco companies pay for any possible administrative provisions associated with the tobacco program. Mr. President, I have been working for 16 years to eliminate any opportunity for critics to claim that there is a tobacco "subsidy." In 1982, we started requiring tobacco farmers to pay for the tobacco

loan program. I worked closely with Senator HELMS to achieve these changes. Senators THURMOND, HOLLINGS, and WARNER were all in the Senate at that time, and will remember these changes.

In 1986, we required tobacco companies to share in these costs. The tobacco loan program has operated at no net cost to taxpayers since that time. Still, there were criticisms. Salaries at USDA, crop insurance, and extension services all are partially attributable to tobacco. Mr. President, under the LEAF Act, all of these costs—and any other conceivable USDA cost associated with tobacco—will now be paid by tobacco companies. There will no longer be any basis, directly or indirectly, to allege that there is a tobacco subsidy. All possible taxpayer costs have been eliminated under the LEAF Act.

And you know something, Mr. President. Our tobacco farmers make an extra payment, a deficit reduction payment that is taken out of their check before they get it from the warehouse and it goes to the general fund. Last year, it was almost $32 million. And not another farmer in this country—maybe the peanuts—makes a payment out of their check called a budget reduction payment. It was over $32 million last year.

Mr. President, we have wanted to look beyond the tobacco farmer and the tobacco program. The LEAF Act attempts to take a broader view and deal with the entire impact on tobacco communities and the next generation.

Why is it so important? We had to have some financial underwriting of the 13 colonies—and that was tobacco through Virginia. They underwrote the debt of the colonies. It has been around a long time. "Mr. Jones came in to buy his spring planting and paid for it with some of the finest tobacco I have seen"—a quote from history. That was before we became colonies. The pages of Virginia history are splattered with tobacco juice. Just think about it. And they want to do away with it overnight. It cannot be done.

We've included economic development assistance. We've included grants for higher education for the children of tobacco farm families. And we have included assistance for displaced workers who have jobs in warehousing, processing, and manufacturing tobacco. We understand things are changing for tobacco and we want to prepare these communities.

Mr. President, I'm grateful to Senator MCCAIN for his leadership in including the LEAF Act as Title Ten of S. 1415. It's an essential part of the overall picture. It must be included in any tobacco settlement legislation. The LEAF Act has broad support among tobacco farming groups. It's supported by the public health community. President Clinton, who visited Kentucky in April, announced that the LEAF Act satisfies his fifth principle for tobacco legislation of providing assistance to tobacco farmers and tobacco growing communities.

But let me provide fair warning, Mr. President. I will keep my pledge to my tobacco farmers. I will do everything in my power to oppose attempts to undermine the LEAF Act, or attack the federal tobacco program, or threaten the ability of tobacco farmers in my state to deal with the impact of the national tobacco settlement.

How many farmers out there have 98 percent of their product controlled by four companies? There is no leverage. The tobacco farmers have no leverage if we don't have a tobacco program. We have four companies that handle 98 percent of all the product, so if we don't have that, we are at their mercy.

I don't know how many farmers around here have heard of "farm buy." They just go directly to the farm and buy it from big farmers, and the small farmer is gone, has no leverage whatsoever. And, as we see, people attack the farm program. A proposal has been made which is nothing short of a thinly veiled bribe to offer larger tobacco farmers a promised lump-sum payment in exchange for eliminating the tobacco program. We found out yesterday it is not a lump sum payment, it is 3 years. And if you look at the bill that was introduced, that is before the Senate, 50 percent of all the money goes to the States and 40 percent of that money will be taken up by the McConnell-Lugar bill. That leaves 10 percent for everybody else. But in the bill it says only 16 percent of the money can go to the farmer.

Where are we on this—40 percent we would have to take in order to pay for it, yet the bill says only 16 percent? We are going to try to correct that if we can, because it is talking out of both sides of the mouth, and you can't do that around here—only for awhile.

This is a classic example of Washington telling people, "We are smarter than you." But it simply won't work. Tobacco farmers want to keep a supply management program. For 3 years, every 3 years, farmers vote on whether to keep the tobacco program. Earlier this year, farmers of flue-cured and burley tobacco, the two largest types of tobacco, voted overwhelmingly to keep the program. In a referendum conducted by USDA for both types of tobacco, almost 98 percent of tobacco farmers voted to keep the program. But now some in Congress want to tell farmers that, "We are smarter than you." That is what is wrong with this place. That is why people don't like us. There are 98 percent of a group saying, "This is what we would like to have and what we would like to keep." And what do we say up here? "You don't know what you are talking about. This is what is good for you. This is what is good for you. So you don't know what you are talking about, and we are going to take care of it for you."

So, 98 percent of those down there who voted, it doesn't make any difference what you do. This is typical Washington, DC, arrogance. I have already discussed how my small, average tobacco farmer—there are 124,000 of those, but there are only 4 large manufacturers, controlling over 98 percent of the cigarette market. This disparity in bargaining power could not be greater. Unless tobacco farmers have some mechanism to bargain together jointly, they are helpless; they are helpless in dealing with the large tobacco manufacturers. The tobacco program provides that mechanism, and it must not be tampered with as a part of this legislation.

The focus of the bill should be, must be, youth smoking. I voted for smoke-free schools. I have voted, tried every way I can, to stop youth smoking. So I have no apologies to make, because I want to stop it. Over 90 percent of the people polled in my State want to stop it. But the focus of this bill must be on youth smoking, which is to focus on what will work to reduce youth smoking.

Youth smoking rates peaked in the 1970s. Starting in about 1979, youth smoking rates began to decline and continued to decline through the 1980s. Then, about 1991 or 1992, they started to climb again. No one knows exactly why. And guess what; youth alcohol use started to go up at the same time, binge drinking started to go up, marijuana use started to go back up. In fact, youth usage of marijuana has been increasing faster than cigarette smoking during the 1990s. So far, Congress has failed to look broadly at all these trends. Surely this is more than a coincidence. When we look at the causes of youth smoking increases, we should also look at drinking and illegal drug use.

The American people seem to have a better sense of that than Congress. They seem to realize that teenage behavioral changes are more complex than just tobacco, and the youth tobacco rates have been influenced by more than just slick advertising by the tobacco industry. In fact, one recent poll verified these opinions. A Tarrance Group/KRC research poll conducted earlier this month asked people why they thought youth smoking rates had been going up. Mr. President, 58 percent said the influence of peers and friends was the main reason; 18 percent said the parents' example was the main reason; 12 percent said Hollywood, television, and popular culture were the main reasons; and only 6 percent said the tobacco industry and advertising were the main reasons—only 6 percent. So we have a lot more to learn about

this issue, and I think, really, how little we do know should have an influence on how broad we make this legislation.

I have serious concerns about the size of the legislation. These concerns existed even before the Finance Committee took its action to increase the size of the bill. First, the bill as reported by the Commerce Committee appears to contain language never considered by the committee on April 1. I am specifically referring to the annual payments made by the industry. In the McCain committee amendment adopted by the committee, the annual payment starting in the sixth year was set at $21 billion, plus an adjustment up for inflation and down for volume. However, in the reported bill, the sixth-year payment is the "adjusted applicable base amount," which it defined as the amount of the preceding year, which appears to be $23.6 billion. I do not know where the language came from. I do not recall it ever being approved by the committee. However, it appears they add $2.6 billion per year for 20 years to the cost of the bill. In other words, it appears that $52 billion has been added to the cost of the bill. I hope we can clear up some of these things.

Mr. President, OMB proceeded to take a number of misleading steps to achieve competing objectives. They totally omitted the bill's revenue impact on prices in several respects. They ignored any costs from future legislation and attorneys' fees. They ignored additional regulatory costs of complying with the bill. They ignored price increases resulting from higher sales taxes, State excise taxes, wholesale and retail margin increases, manufacturers' future price increases, and they ignored the new licensing fee in title XI.

But perhaps the most offensive manipulation by OMB involved their conflicting projected volume declines. OMB projected youth smoking would decline by 60 percent when calculating the look-back penalties, but they projected youth smoking to decline by only 29 percent when calculating the price-per-pack increase.

As we say down in Kentucky, there is something about that that ain't right. But you need a small consumption decline to make the price-per-pack increase smaller. OMB just had it both ways. They changed the projections to say the bill costs $516 billion and raises the price by $1.10.

Mr. President, I have Wall Street Journal analyses, I have all these things I could read here this morning. I don't know how much time I have left. It is probably getting close to the time.

The PRESIDING OFFICER. The Senator has approximately 4 minutes remaining.

Mr. FORD. Good. I thank the Chair.

Let me also outline several other concerns I have with S. 1415 which I hope can be corrected or improved during the debate.

First, we have continuing concerns about the potential for a black market. We say we can stop that, but Mexico sells cigarettes that I smoke for 90 cents to $1 a pack at retail. Indian reservations are selling cigarettes at a retail of around $1.20. If these new estimates are correct, we are creating a disparity in price of up to $4 a pack. This is well above the level experts say will cause black market activity. In fact, we already have a considerable amount of smuggling in this country because of the large State excise tax increases in recent years. A disparity in price of only 50 to 60 cents per pack has already proven to be enough to create black market incentives, and they are going on right now within our own country. Canada fussed at us, you know, when they raised their prices. Now we have two borders.

We raised prices that come from Canada and from Mexico, the Caribbean and wherever. These fellows do pretty good out there. They are called cartels. We have had a hard time stopping drugs from coming in. What are we going to do when cigarettes are added to that? When you go down to the skid, "You want some cheap cigarettes or I have another menu on the other side over here starting with marijuana." It is interesting how we are going to provide for that and are playing into the hands of those people.

The international provisions of title XI sets dangerous precedents, Mr. President. If it were any other product, this would not even be tolerated. I hope title XI can be eliminated or substantially improved.

I have concerns that the bill gives the FDA excessive authority to do what I suspect they wanted to do for the last several years—ban the product. It is my hope that we can place reasonable limits on the unbridled authority.

Several serious constitutional concerns have been identified, particularly since the tobacco manufacturers are unlikely to sign on to this legislation. Late last month, four State attorneys general sent a letter to Senator HATCH outlining these concerns. Constitutional concerns throw into jeopardy the advertising and marketing restrictions, the upfront payment, the look-back provisions, the document disclosure section, and the so-called corporate culture language.

These are legitimate concerns. Each one will have a suit filed. It will be completed. They will file another suit. It will be completed, and we will be in court under these provisions for a long, long time. I hope these concerns can be addressed as well.

Mr. President, a recent Wall Street Journal poll showed that Americans have serious doubt about the motives behind this debate. By a nearly 2-to-1 margin, a majority of the people thought the current debate was more about raising taxes to pay for new programs than it was about reducing youth smoking. We have a chance to change some views with the way this debate on the bill is conducted and the final product.

I have two overriding tests for the final product produced on this floor: No. 1, does the bill adequately compensate and protect farmers and farming communities? And No. 2, is the bill more about reducing youth smoking or punishing an industry?

I look forward to the debate and the opportunity to find the answers to many of these problems. I say to the Chair and to my colleagues in the Senate that I am going to do whatever I can to be sure that the farming community is protected in this bill. With the procedure that occurred late yesterday, to undo all of the work for 10 long months that many of us have put into this legislation, to undo it in a motion is a serious thing. I think it rubbed some of us a little bit the wrong way, as we say. There will be some scorched-Earth approach as we develop this. If we can work out something, I would love to do it. But I will not work out anything that does not compensate and take care of the farmers who I am here to represent, and I intend to represent them as long as I can stand and as long as people will listen to me. I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. KERRY. Mr. President, if I can just inquire, it was my understanding—if I can just inquire——

Mr. GRAMM. I yield without losing my right to the floor, Mr. President.

Mr. KERRY. I understand. I ask the Senator from Texas how long he will be speaking, because I understood the Senator from North Carolina was going to offer an amendment.

Mr. GRAMM. Mr. President, I want to make an opening statement on the bill. I want to cover quite a few areas. I always try to be brief but it is going to take me a reasonable amount of time to complete my statement. What I would like to suggest is that I go ahead and make my opening statement—and I will try to do it as briefly as I can—and then I will yield the floor and allow the normal process to continue.

Mr. KERRY. I thank the Senator.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator is recognized.

Mr. GRAMM. Mr. President, I begin by congratulating our dear colleague, Senator MCCAIN, for the leadership he has provided on this bill. Senator MCCAIN was asked to report a bill out of the Commerce Committee. He didn't

get an opportunity to choose who was on the committee. He didn't get the opportunity to write the bill as he would have chosen to write it. But his mission, as assigned him by the majority leader, was to report a bill from the Commerce Committee.

Serving as a member of the Finance Committee which got sequential referral of this bill and, in the process, made the bill worse, I begin by saying that no matter where I end up on this bill, I congratulate Senator MCCAIN for the work he has done in bringing the best bill he could, given the committee he had to work with and the many interests competing against each other on this bill.

While we are not on the same side today, I hope that at the end of the process, after conference, perhaps we will be on the same side, but I want to make it clear that, in my opinion, it is unfortunate that when we debate a big issue—and this is a very big issue—often we stand on the floor of the Senate and talk about things that not only don't mean very much to the American public, but often don't mean very much to us.

Today we are debating a very big issue: hundreds of billions of dollars of taxes, hundreds of billions of dollars of spending, a high and noble purpose trying to prevent children from smoking and, in the process, affecting their health. So this is a big issue.

I simply lament that so much of the debate is tainted by trying to impugn the motives of people who are engaged in the debate. We have all seen ads run in the paper that refer to this as the McCain bill which is aimed at raising taxes and increasing spending. The bill does raise taxes, it does increase spending, but that is not the intent of the Senator from Arizona. There is no doubt in my mind that he has brought us the best bill that his committee was capable of writing.

Let me also say that anyone who opposes the bill knows that they are immediately going to be tarred as being the spokesman for the tobacco industry, which in this debate has become the embodiment of all evil on this Earth. I just lament, going into the debate, that we cannot simply debate the issues without getting into impugning the motives of the people who are involved in the debate.

While it may sound trite to many people who might watch this debate, let me say that I believe that for all practical purposes, everyone involved in this debate in the Senate is trying to do what they believe is right, and they are neither the servant, in their own minds, at least, of those who want a massive increase in taxes and spending, nor are they the servant of the tobacco industry.

It is a shame that when you debate a really important issue, that rather than being able to simply focus on the substance of the issue, you end up being pigeonholed, with the debate focused around whose interest you supposedly speak for.

Obviously, the first question we have to ask on this bill is, What is the primary effect of the bill? This bill, obviously, raises taxes by hundreds of billions of dollars. Depending on the estimates you look at—they vary greatly—there is as much as a $200 billion difference in the estimates as to how much money this bill raises. But once you get to $500 or $600 billion, arguing about another $100 or $200 billion does not really add much to the debate.

The bottom line is this bill is a huge tax bill by any definition of "tax bill." It is also a massive spending bill. In fact, we will have never passed a bill—let me state it as my opinion. In trying to look back and attempt to fit this bill into the broad range of legislation dealt with by Congress, it is hard for me to find an initiative that is this big in terms of its fiscal impact since Lyndon Johnson was President in the first year after the Kennedy assassination. So this is a big bill—big taxes, big spending, and a big and noble objective.

The first point I would like to comment on is, Is this about tax and spend, or is this about children smoking? We have ads in the newspapers every day arguing one point or another. We have ads running in many of the States urging our colleagues to not band together with the cigarette companies against our children. We have ads in the paper urging other colleagues to not participate in tax or spend. How can you ferret out what the truth is? Well, obviously, it is a very difficult task. But let me tell you what I think are some of the hallmarks we ought to look at in trying to ferret out the truth.

Let me try first to define the question more precisely. Are we raising tobacco taxes to prevent children from smoking or to fund new spending programs? It seems to me that is a fair question to begin with in this debate. And let me tell you what I think would be some of the hallmarks you would find if the tax increase were to deter smoking rather than to fund programs and the hallmarks you would find if it had instead become a piggy bank for massive new spending.

If the objective of the tax increase was simply to discourage smoking, then I think what we would find would be an effort to give the money back in tax cuts because the objective would be to affect the price of cigarettes, not—Mr. President, could we have order?

The PRESIDING OFFICER. The Senator is correct. If we could take audible conversations from the floor to the cloakroom.

Mr. FORD. I am glad it is audible.

The PRESIDING OFFICER. If we could take the less audible conversations to the cloakroom, it would be appreciated.

Mr. GRAMM. I thank the Chair.

The PRESIDING OFFICER. The distinguished Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I think if you were looking at a rational policy to deter the consumption of an item by raising its price, but your objective was not to collect a huge amount of money to spend and your objective was solely to get people to reduce their consumption of that product, it seems to me that one of the hallmarks of such a program, one of the outward and visible signs of that objective, would be the imposition of an excise tax to raise the price of that product. But you would try to offset the bulk of that with a tax cut that was more or less aimed at giving tax cuts to people in the same income groups as those who would be paying the higher taxes so that you would not be lowering their real income.

But in this case, I simply note, Mr. President, in looking at this bill we do not see that happening. In this bill, we are seeing hundreds of billions of dollars of new taxes, but we are seeing none of this money given back to the people who are paying these taxes. So I would think that is evidence that raising revenues to fund new spending plays a significant role in this bill and in the final outcome of the bill, whether or not that is the stated objective of the legislation.

I think a second hallmark of a bill that has turned into a giant piggy bank would be the kind of spending which occurs—have you ever noticed when you are spending your own money you tend to spend it pretty prudently, but when suddenly you have an opportunity, a financial bonanza to spend someone else's money, the spending becomes very, very careless?

Well, I would pose as a question, in trying to determine if this is about children or about money—what evidence is there in this bill of careless spending? I want to just present two pieces of evidence. The first has to do with payments to attorneys. I know many Members of this body are attorneys, and I am not going to get into all this business about "some of my best friends are attorneys," and I am not trying to bash attorneys, but I am trying to make a point about spending at a level that could only suggest this bill has become a piggy bank for massive new spending.

Let me begin by looking at the amount of money going to attorneys out of this bill.

By almost anybody's measure, this bill will, if adopted, set out a procedure where attorneys who have been involved in these cases will get a payment of at least $4 billion. Now, nobody knows what $1 billion is. Maybe Ross Perot does, but few others know what $1 billion is, so let me try to convert it down to English.

In the lawsuits which have been settled and where billings have been submitted lawyers are said to be seeking $5.7 billion.

Now, let me try to convert that into something which people can understand. If the lawyers who have worked on these cases were paid $1,000 an hour for an estimated total of 200,000 hours they have spent on the lawsuits which have occurred to date, they would be owed $200 million, but they are reported to be seeking $5.7 billion or close to an average of $30,000 an hour and the effective rate of compensation in this bill could be—let me swallow before I say the number—$100,000 an hour. Now, I ask my colleagues, what kind of legislation would we ever pass, in representing the 260 million people who live in this country, that would pay anybody $100,000 an hour to do anything? The plain answer, we all know, is that we would never, ever, pass an appropriations bill that compensated somebody at $100,000 an hour. In fact, we would be very much challenged and probably criticized—and probably justly—if we were compensating people $1,000 an hour.

Now, what does it suggest about this bill? Let me make it clear, we are going to have a debate about lawyers' fees, and I will have a lot to say when we have the debate, but my purpose here is not to mock the fact that we could be paying $100,000 an hour to lawyers under this bill. My point is a far more important point, and that is, how could you have a bill that paid $100,000 an hour? The only way you could have a bill that paid $100,000 an hour is if you had put together a bill that had massive amounts of money that are not viewed as money that has come from real taxpayers and, therefore, you have sort of a "slam it up against the wall" kind of approach to distribute the money. Only in a bill where the objective was to raise revenue and spend it without any regard for the priorities of spending it could you possibly end up with a bill that would compensate attorneys at $100,000 an hour—especially a bill that is sanctioned by the Federal Government and especially a bill where the money is coming not from tobacco companies but from people who are in families, 73 percent of them, that make less than $50,000.

A look at the lawyer fees in this bill is an important piece of evidence, it seems to me, that needs to be looked at in this debate as to whether this is about smoking or whether it is about money.

The next issue is equally controversial, and I am not going to debate it here. I will probably get into the debate when we have amendments about compensation to tobacco growers, but I want to make the same point about the tobacco settlement with farmers that I made about the lawyers. Let me give a little short course on the history of American tobacco policy. Again, my purpose is not to criticize the policy of the settlement but to make the point about how careless we have been in spending the hundreds of billions of dollars that are entailed in this bill.

The tobacco program started in 1938 as a way of trying to raise the price of tobacco. It was a program instituted by the Government to benefit the tobacco grower, and it was a program where we provided a production quota where the people who were growing tobacco in 1938 received quota based on the number of acres they were growing. The idea was to limit production, to keep people out of the tobacco-growing industry, and to make the price of tobacco products higher than they would be in a competitive market. Not singling out tobacco here, we did it for virtually every other crop, but that is how the program started. The program was an effort to use Government power to benefit tobacco farmers, something not uncommon. We use Government power all the time to promote the interests of many groups, generally at the expense of the consumer.

Now, what has happened over time is that more and more of the people who own these quotas have moved off to the big cities, and when we are talking about compensating tobacco farmers, you get the idea that we are talking about compensating people who are actually growing tobacco. The great bulk of every proposal that has been made—from the Ford proposal to the Lugar proposal, to the Kennedy proposal, to the Robb proposal—a lot of proposals, but virtually all of these proposals are focused fairly narrowly on compensating people who own the quotas, not the people who grow the tobacco.

Now, why is this important? It is important because 63 percent of the quotas that the Government gave away in the first place are owned by people who don't grow tobacco. So when we are going to compensate under this program in the name of helping tobacco farmers, the truth is that the great bulk of the money is going to people who don't grow tobacco but they have often become very wealthy people by owning a benefit which the Government gave them, and they then leased that quota to grow tobacco to farmers who actually get out and farm tobacco, which is a tough, backbreaking business.

Now, getting to my point. What do you think would be a reasonable compensation for us to give to the holders of these quotas to, in essence, end the program? Let me remind my colleagues that unless the bill has been changed and it has been rewritten—and I am eager to hear what the new provisions are—but unless they have been changed, we are not talking about taking the land when we pay people. We are not talking about barring them from growing tobacco. We are simply compensating them for an effect that we believe this bill will have on demand. And while we throw around numbers, the plain truth is, nobody knows what effect the bill will have on the demand for tobacco.

We are in the midst of a program where we are phasing out Government price supports in the broad base of American agriculture through a bill referred to as Freedom to Farm. Under this bill, we set up a 7-year program where we provide transition payments to farmers so that at the end of the 7 years they have the freedom to farm, the freedom to succeed, and the freedom to fail. Let me say, it is one of the most enlightened policies we have instituted.

Here is my point: We have evidence for seven crops as to how much we have paid people who grow those crops in return for phasing out the Government program. Let me just run through some of these costs. For wheat growers, we are paying them $125 an acre. That is to phase out the wheat program. We pay it over 7 years, $125 an acre. For corn, we pay $200 an acre, paid out over 7 years. For grain sorghum, we pay $131 an acre. For barley, we pay $70 an acre. For oats, we are paying $8.38 an acre. For upland cotton, we are paying $245.99 an acre. For rice, we are paying $714.09 an acre.

Now, how much do you think we are paying per acre in the least costly tobacco bill which has been proposed? Let me give you a hint. It is about $18,000 an acre. Let me repeat that number. If we paid tobacco quota owners—not tobacco farmers; we are paying the people that own the Government license; relatively little of the money is going to the farmer—if we paid them the total of the amount per acre that we paid all of the other seven crops combined—in other words, we paid them every penny we pay corn, wheat, grain sorghum, barley, oats, upland cotton, and rice combined—we would pay them $1,495.78 per acre. If we paid them the combined amount for all 7 crops, it would be that amount, but yet we are paying almost 18 times the amount we paid every other crop combined to buy out tobacco producers.

And the final incredible paradox is that we have a market for tobacco quotas. In other words, I could go out this afternoon—I do not know if I could do it this afternoon because this bill is on the floor and I guess people think it might pass. But last week, I could have bought a quota to grow tobacco for $3,784. That was the average cost of a quota, at least the only number I could find last week. If people have other numbers, I would be happy to be educated.

But we are getting ready to pay somebody who went out on Friday and bought that quota five times what they paid for the quota, and then we are still going to let them grow tobacco,

and we are still going to let them own the land.

I am not here today to criticize the tobacco program. I am here to raise the question, Is this bill about smoking or is it about money?

When we are paying lawyers $100,000 an hour and when we are paying tobacco growers, or at least the people who own the right to grow tobacco under a Federal licensing program, 18 times what we paid all 7 major crops combined to phase out their program, does it not suggest that this bill is about money, and not only the use of money, the vulgar use of money? How can we justify these kind of numbers?

Let me make it clear. I have many colleagues from tobacco-producing States. I don't have tobacco in my State. It is easy to pile on some State when you don't have the product grown in your State. I experienced that with sheep and goat raisers. I am willing to support a buy out of tobacco growers and the people who hold quotas. But I cannot justify the kind of figures we are talking about—18 times the combined buy out of all 7 other basic agricultural products when added together.

What does all of this suggest? It suggests that this bill is not only about money and quantities of money, the likes of which we have seldom seen here, but it is also about the perilous use of this money where we are taking money and collecting taxes and we are distributing it to various interest groups and the lack of care with which we are distributing it is clearly indicted by the amounts of money that we are giving people.

We are going to get a chance to vote on both of these issues. I do not want to enter into a debate about them here. I will debate both of them when we get to them.

But the point I want to make is this: This is evidence that this bill is about money and not about teenage smoking. It is clear evidence, it seems to me, that in distributing this money the totals are so big that there has not been great care taken with the distribution. Please recognize that if working people got to keep the money, they would spend it wisely. Even if it were in the appropriations process in Congress, much of it might be thrown away but some of it might be used for some good or objective effort.

I simply say this bill stands indicted in how careless we have spent hundreds of billions of dollars in dividing up this windfall, this winning of the lottery, by the designation of this industry as the enemy of the people and thereby creating a right and a public demand that we seize this money.

The next issue I want to talk about is the tax itself. On this issue, I think we have one of the greatest gulfs between the rhetoric of the bill and the reality of the bill that exists. The rhetoric of the bill is that we are taxing these tobacco companies. The rhetoric of the bill is these tobacco companies have conspired to deceive; these tobacco companies have conspired to induce children to smoke. I don't dispute that. I think it is true. I think there is increasing evidence that is true. But the rhetoric is that somehow we are penalizing the tobacco companies and the tobacco industry with this massive bone-crushing tax of hundreds of billions of dollars. That is the rhetoric.

But what is the cold, hard reality? The cold, hard reality is that virtually none of these taxes are being paid for by tobacco companies, and, in fact, we have an incredible provision in the committee bill to make it a crime if the tobacco company absorbs any of the tax and does not pass it through to the consumer. So not only does the tobacco company not pay these hundreds of billions of dollars of taxes, but we have in this bill a provision—almost unimaginable—that makes it a crime for the companies not to force the consumer to pay the tax. So not only do we not tax the tobacco companies but we protect them in case any of them would say, "Well, look, I do not want to pass the whole thing through but I would like more of the market."

Who pays this tax? I would like to suggest that my colleagues ought to go out in Washington, DC, and walk the streets and try to take a look at who is smoking. What they are going to find when they do that is that basically smoking in America, while there are exceptions to every rule, smoking today is basically a blue-collar phenomenon. When you look at the distribution of the tax burden, you see it as clearly as anything that is visible. The tax that this bill imposes, hundreds of billions of dollars of taxes, will be borne overwhelmingly by blue-collar workers.

According to the Joint Tax Committee, 74 percent of the taxes that will be collected under this bill will be paid for by Americans who are in families who have incomes of less than $50,000 a year.

So the rhetoric is we are taxing these big, evil, conspiring tobacco companies. But the cold reality is that not only are we not taxing these tobacco companies, but we have provisions in the bill that protect the tobacco companies from anyone not passing the tax through to the consumer.

So every penny, for all practical purposes, of hundreds of billions of dollars we are going to collect is coming from real honest to goodness people who are buying tobacco products, the very victims of the conspiracy that this bill is said to rectify. The very victims of the conspiracy that this bill is aimed at rectifying are the people who will pay these taxes. And 74 percent of them are members of families who earn less than $50,000 a year.

I don't have any intention, with all due respect, of hurrying up my statement. I intend to cover each of these issues, and I am not going to delay them. I am certainly not filibustering.

Mr. MCCAIN. Will the Senator from Texas yield for a comment?

Mr. GRAMM. I would be happy to yield without losing my right to the floor.

Mr. MCCAIN. The Senator from Texas was not on the floor but we did have an understanding that we would move forward with an amendment. I ask the Senator not to deprive us of any information or knowledge that we need from him. But we did have an understanding before the Senator came to the floor. I could have blocked the Senator from taking the floor. But I didn't choose to.

So I would appreciate it, if at least at some point we could move forward. I thank my dear friend from Texas.

Mr. GRAMM. Let me say, I understand the Senator from Arizona wanting to move the bill forward. There are some key points that need, I believe, to be made before we start voting on amendments. I am not going to be in any way dilatory. I have several other issues I want to cover. But I will move with all due speed in covering them.

But I do want to say that we have a bill that has come to the floor without objection. We are debating it and I want to make it clear that we are going to debate this bill. We are going to have a full airing of views. It is imperative that we all understand what is in the bill. I intend to object to the unanimous consent requests that would limit my right or the right of other Senators. This is the Senate.

I remind my colleagues that when Jefferson came back from France where he had been Minister to France when the Constitution was written and he asked Washington what the Senate was for—and many of you know the story—Washington, being a southerner, often cooled his tea in a saucer before he drank it. Jefferson asked him what the Senate was for. If you had the House, what did you need the Senate for? And Washington explained to Jefferson that in moments of heated public passion, the heat of public opinion would overwhelm the House but the Senate would be like this saucer, as he poured his tea into his saucer to cool, and it will cool passions before it acts.

So I do not intend to delay, but I do not intend to be hurried either, nor do I intend to have my rights limited even by my dearest of all friends, Senator MCCAIN.

Now, 74 percent of the taxes that are collected under this bill are collected from Americans who are in families that have incomes of less than $50,000 a year. Far from taxing the evil tobacco companies, the cold reality is, as much as we would like it to be otherwise, as much as we would like to convince ourselves and others that it is otherwise, this is a massive, regressive, crushing tax on blue-collar America.

Let me give you a figure which is astounding to me, and if it weren't from the Joint Tax Committee I would question its validity. But listen to this number. Of Americans who make $10,000 a year or less—very-low-income Americans—if we pass this bill, we will raise the percentage of their income coming to the Federal Government by 41.2 percent.

Let me give you that number again. For people in America who earn $10,000 or less, so substantial is the impact of this cigarette tax on the amount of their income coming to the Federal Government that the percentage of their income going in Federal taxes will increase by 41.2 percent from this cigarette tax increase alone.

Who is paying this tax? Americans who make less than $10,000 a year are seeing their Federal taxes rise by 40 percent as a result of this bill. Those who make between $10,000 and $20,000 will see their Federal taxes rise by 9.8 percent. Those who make between $20,000 and $30,000 will see their Federal taxes rise by 4.4 percent. Needless to say, by the time you get down to us, Members of the Senate, we see our Federal taxes—relatively few of us smoke, but on average people who make more than $100,000 will see their Federal taxes rise by only .1 percent.

So I think we are going to have to come to grips with one clear fact about taxes: We are not taxing tobacco companies. We are not taxing evildoers. We are not taxing conspirers. We are taxing victims.

I hate pulling my mama into the debate, but it is such a beautiful example, I can't resist. My mother is 85 years old. She smokes Marlboros. I have spent my 55 years of life trying to get her to quit smoking, and I have failed. And now the doctors tell me that one part of her that is still in relatively good shape is her lungs. So I have quit trying to get my mother to stop smoking. I still believe it would be good for her not to smoke, but I can't get her to stop.

But here is the point. The whole logic of this bill is saying to Florence Gramm, "Florence, you have been exploited. Joe Camel has made you smoke for 65 years. The tobacco companies, through their advertising, have forced you to smoke. And in doing so, they have affected your health. They have perpetrated a terrible evil, and we are going to do something about it."

So Florence asks, "Well, what are you going to do about it?" Well, what are we going to do about it? We are going to make my 85-year-old mother pay higher taxes. So we tell her she is exploited. We are outraged about it. The President is outraged about it. We are outraged about it. So what do we do to her to show her how outraged we are? We raise her taxes.

Now, please forgive me if I seem to be struck by the incredible paradox that under this bill the victim is penalized and the perpetrator of the fraud is not only not penalized, not taxed, but protected by an incredible provision that forces those who might not pass through all of the tax to my mother to do so.

One final point before I leave taxes in my effort to get on and finish my opening comment goes back to this evidence. What is the evidence that this is about getting people to quit smoking, and what is the evidence that this is about money? Well, let me give you a clear-cut piece of evidence. If the objective of the bill was to get people to quit smoking, you would put the tax on full tilt on day 1. When an amendment was offered in the Finance Committee to raise the tax to $1.50 a pack, the proponent of the amendment offered it phased in over a 10-year period so as to prevent a consumer backlash.

What is a consumer backlash? Why would you phase a tax in if the objective is to get people to respond to the tax? Well, we all know. Many of us have served on the Finance Committee. All of us have been involved in debates that entailed tax increases. The reason you phase a tax in is to try to hide it from the taxpayer and to try to reduce the backlash to it or the economic or political response to it, and the way you do it is, you start it out small and then each year you make it bigger, hoping nobody notices. But isn't it an incredible paradox that a tax which is supposed to be a tax to shock people into stopping smoking is phased in so as to minimize the "consumer backlash" to it? If the purpose of the tax was to get people to stop smoking, you would hit people with a tax at its highest level on day 1. Consumer backlash would be what you want. But if the purpose was to raise money, then you would phase in the tax.

I submit that the proposal before us, the amendment to raise the tax to $1.50, and every proposal save the one in Finance where I raised this point, each of these proposals phases in the tax, and you would never phase in the tax if the purpose of the tax was to get people to respond to it and stop smoking. You would phase in the tax only if you wanted to minimize their response to it and their awareness of it. I think that is additional evidence that the objective of this bill, or at least the likely result of it, is to raise hundreds of billions of dollars and spend the money. The bill is not structured in a way one would believe it would be if its sole objective was to get people to quit smoking.

I have three final issues I want to talk about. The first issue is one that weighs heavily on my mind. Maybe I am the only Member of the Senate who is concerned about this, but it is an issue that I am greatly concerned about. We are setting a precedent for America's future with this bill. There are many elements of the bill that I am sympathetic to, but there is one element I am very frightened about. Here is that element. It is stated in a clear form—maybe overstated, but I don't think so. What has happened in this bill is we have picked, in this case an industry, and it has been so vilified that it is popular to tax the product it produces, even though the tax is on blue collar workers and not the tobacco companies. And the logic of this is, because of the negative impact on people's health of consuming this product, that tobacco, nicotine, is addictive, and the people who sell the product know that and market it in such a way as to get people to consume the product. So as a result, we are getting ready to impose one of history's larger tax increases on the consumers of this product.

This is a view which basically says my mother is not to blame for having smoked for 65 years, it is not her fault; she was induced to smoke by an industry which conspired to attract her as a customer, and to hold her as a customer. Now, if we take that view in this bill, there is no way you can look at this bill without reaching the conclusion that we have decided my mother and the millions of other people who smoke are victims and they have, against their will, made a decision—if we divorce them from responsibility for their own decisions, where does this end? Does anybody here who has ever known an alcoholic not believe that spirits, whiskey, alcohol is addictive? Is there anyone listening to this debate anywhere, who has ever known someone who was an alcoholic, who doesn't believe you can get addicted to whiskey?

Next month, are we going to have this same—or next year—are we going to have the same process with regard to hard whiskey and beer and wine? Are we going to discover somewhere in the deep files of the liquor companies 10 years from now that they targeted their ads to today's 15 year olds?

Are we going to discover that the beer brewers have figured out what ads to run to get us to go to the refrigerator and get a cool one? And are we going to start this process next year on alcohol? I don't see how it can be otherwise. Does it end there?

When I go to McDonald's, attracted, as our President is attracted, against my will—I would like to be as thin as the Senator from South Carolina. But McDonald's and every other fast food producer in America conspire against me. They fill up the television with ads that attract me to go and to eat. They do studies to try to determine my weakness. Am I not victimized by McDonald's and Burger King? And, if I am victimized, are they not liable? If I am not responsible, are they not responsible?

Here is my point. I hope my colleagues will not take it as a trivial

point because I don't mean it as a trivial point. Where does this end? If we don't hold people accountable for decisions they make, does it end with tobacco? Does it end with alcohol? Does it end with fattening foods? Where does this debate end?

Let me submit the plain truth is everybody who has thought for a millisecond about this issue has thought about this and nobody knows the answer to it. And I submit this is a profound question we need to pray over for an extended period of time before we set a precedent which says people are not responsible for the decisions they make and, therefore, somebody else is responsible, and they can be made liable.

Two final points: Nobody is looking at black markets. We have a bunch of people who are talking as if they are economists and they know what they are talking about. You know, we have all seen—many have repeated the study—if you raise the price of tobacco by 10 percent, you are going to have a 6-percent decline in consumption. If you think about that, everybody knows that is nonsense. So you could, by doubling the price of cigarettes, eliminate smoking in America? Does anybody really believe that? But yet ads run every day with that figure in it. People repeat it. Somebody made it up. It makes no sense whatsoever.

Europe has imposed very, very high taxes on tobacco. Has it stopped teenage smoking? No. Has it stopped adult smoking? No. Will raising the price of cigarettes—other things being the same—have some marginal impact on tobacco use? Yes. But can we say for every 10 percent we raise prices, consumption will decline by 6 percent? Absolutely not. Any good freshman student in economics would laugh at such an assertion.

But even more laughable is the arrogance of government. Let me just give you some facts. Great Britain has imposed a very high price on tobacco. But have they been able to enforce the tax? The answer is no. Fifty percent of the British market for cigarettes today, according to an article by Bruce Bartlett in the Wall Street Journal, and a fairly comprehensive study he has done at the National Center for Policy Analysis and the De Tocqueville Institute—what he has found is that countries that have imposed high tobacco taxes have seen an explosion in black market sales of cigarettes and, as a result, the cigarettes sell at substantially below the price with the tax, and in some cases they sell at less than they sold for before the new tax.

When Britain has 50 percent of its cigarettes that are bought on the black market and smuggled into the country, or are produced illegally there, when Italy has 20 percent, when Spain has 23 percent, when even States in our country at the low level we now tax relative to the levels we are talking about here have experienced that, when there is more money in smuggling cigarettes in Great Britain than in smuggling 20 pounds of marijuana—should not we at least look and make some objective judgment as to whether or not we are taking an action which will fill our country up with illegal cigarettes, and so we will have some hood on the corner who is saying to our children: Look, I can sell you these cigarettes, these brands at this price; I can sell you marijuana for this price; a little crack cocaine for this price. But you know the response you get when you raise this issue? The response is that people who wouldn't know economics from ethnic studies say: There is nothing to this.

There is everything to this. It is a cold reality that in Europe black markets in cigarettes are now a way of life. I think in setting out a policy that is aimed at, at least nominally, getting our children not to smoke, we need some hard evidence about black markets. If we have black markets in Canada, if we have black markets all over Europe, if we have black markets in Asia, what is the reason to believe that we are not going to have black markets in the United States of America? I believe this is an issue which needs to be dealt with.

A final point and I will be through with my opening statement. I am loathe to do this because I know when I do it my telephones are going to ring off the wall, so people who work for me please forgive me. But you get the idea in reading the newspaper in Washington, DC and in working in the Senate that this issue is the all-consuming issue in America; that this is an issue the whole world, at least our part of it, our constituencies, are focused on and nothing else. One of the things I try to do is to find out what exists within the beltway and what exists in America, and try to determine what the public really thinks and what is it they want us to do.

So last month I got my office to keep pretty meticulous records about the amount of information we were getting in our office about this bill and the tobacco issue. And, as of that period, ads had been run in the Dallas Morning News and the Houston Chronicle—those are the two biggest papers in my State. Some television ads, I believe, had been run. So the question was, over a 30-day period, how many of the 19 million people in my State thought this was a big enough issue to pick up the telephone and call my office?

Let me give you the results. We had about 1,400 people call our Washington office and say, "Don't raise taxes on cigarettes." Every one of them was generated, as best we could tell—everyone called in on a WATS number and they had been triggered to do so.

Three hundred people called in and said, "Raise taxes on cigarettes; save our children." But as best we can determine, almost every one of them was triggered with the use of a WATS line and by an organized group.

Here is the most revealing and important thing. Last month, in my seven offices in the State, so far as I am aware, virtually no one called on this issue. It is the No. 1 issue in Washington, DC. Ads are being run here, there, and everywhere. And in 30 days, virtually nobody who actually had to pick up their phone and call, as they normally would call an office—not triggered by a special interest group—called my office on this issue.

Why is that relevant? Why it is relevant is, I think the Senate, as the greatest deliberative body in the world, needs to take a step back and not stop considering the bill—far from it. But we need to not let the special interests that are opposed to the bill or the special interests that are for the bill dominate our thinking on this bill.

We need a broader perspective, and the plain truth is, this is not the be all and end all of America. My view is, we need to be sure we know what we are doing, and we need to do the right thing, because the truth is, obviously we have all been told—every time I raise this issue in one of our closed meetings, people say, "Yeah, but they haven't run the TV commercial yet attacking you," or whomever. Let's not underestimate the American people. My urging here is that we take a long, hard look at this thing and we try to figure out what the right thing is and that we do it.

This is a very important issue. There is a lot of money involved here. A lot of hard-working, blue-collar people are going to suffer, as a result of this tax, a lower standard of living. A lot of people are going to get huge quantities of money.

Let me say that I don't have any doubt that the 1,400 people who called me against this bill on the WATS line were triggered by the tobacco companies, but I also don't have any doubt that almost all of the 300 people who called me for it were triggered by the groups that hope to get billions of dollars from this bill.

As I see this thing, the only two clearly defined constituencies here are people who have a direct interest in the bill. I think we ought to listen to them to see if they have anything to say, but I don't believe we should be frightened of them. I believe we should try to ferret out what are the facts. I think we need to look at each and every one of these issues: Who is paying the taxes? Who is hurt? Who is helped? How is the money being spent? Is the money being spent wisely? Are we going to affect teenage smoking? Is this the best way to do it? Is there a better way to do it? Do we do it without reallocating hundreds of billions of dollars from blue-collar workers to basically bureaucrats

and public interest advocates who—I don't know how they determine what the public interest is to advocate it, and I am always suspicious of anybody who advocates the public interest, other than myself.

These are the things that I urge my colleagues to look at. Let's not delay, but let's take the time to know what we are doing. Let's give some prayerful thought about where we are going to be next year if the same thing is happening to alcohol. Where are we going to be the next year if the same thing is happening to the fast food industry? Where does all this end once you start it? I don't know the answer to this, but I think we ought to know the answer before we start down this road.

Let me conclude by simply repeating the remark I made earlier, and that is, I congratulate Senator MCCAIN for his work in the Commerce Committee. Having had a little opportunity to try to have a positive impact in the Finance Committee, I have a greater appreciation of the difficulty he faced. I think it is clear the Finance Committee made the bill worse in every respect than if they had never touched it. The question is, Given that we now have the bill on the floor, what can we do to make it better?

I hope at the end of the process that I might be on the same side as the Senator from Arizona. I think the better we understand the bill, the better the chances are that we will serve the public interest and that that will happen.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Arizona.

Mr. MCCAIN. Mr. President, very briefly, I thank the Senator from Texas, as always, for his thoughtful and insightful views. Obviously, I am not in agreement on a number of the things he said, but his and my disagreements have always been very agreeable. I believe he has contributed an enormous amount. I do agree with him, I don't know what would have happened if we had given the Finance Committee another 24 hours, which I think is, as he mentioned, a cautionary lesson as to what we have had to go through and what we will go through on the floor and what might have happened if it had gone to other committees.

Just one other point I want to make for my friend from Texas. Yes, the attacks have started. Millions of dollars have been directed at me, so I do know what it is like. You say you don't know what it is like. I know what it is like. I am a big boy, and I can take it, but I have been rather interested at the ferocity of these attacks and how personal they have been. Obviously, I will not respond in kind. I would have liked to have seen the tobacco companies spend some of this money on trying to stop kids from smoking and other worthwhile efforts. But it is their right as corporate citizens to do so.

I mention to my colleagues, Senator HOLLINGS has remarks that he would like to make, and it is my understanding, after that, I say to Senator FAIRCLOTH, that we will propound a unanimous consent request which will make his amendment in order, with a motion to table at a time certain after that. That will be at the completion of Senator HOLLINGS' remarks, so we can move forward with the amending process.

I thank Senator FAIRCLOTH for his patience and good humor throughout this delay this morning. I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Texas reminds me of that youngster who went to the psychiatrist. The psychiatrist drew some circles on the blackboard and said, "Now what do you think of?"

He said, "Sex."

He drew lines up and down. The youngster said, "Sex."

He drew some crosses. He said, "Sex."

The psychiatrist said, "Young man, you're the most oversexed person."

The youngster said, "Doc, you're the one drawing the dirty pictures."

The Senator from Texas is the one drawing the dirty pictures. I have never heard so many extreme nonsensicals in my life. We want to keep his dear mother here. No one is victimizing her. What we are going to try to do is help the doctors to counsel her to stop smoking.

Let's get back to last June, almost a year ago, to show you how far out of kilter this thing has gotten.

What happened was, to the surprise of many—I did not know, and I do not know of any Congressman or Senator who participated. I do not think there was a Congressman at the table. I do not think there was a Senator at the table. But the tobacco companies, together with the States attorneys general and the White House and the health community, announced a dramatic settlement of $368 billion. That is without a Congressman or Senator even thinking in these terms.

I have been up here 30 years. And I have worked with the Cancer Institute, Dr. Koop and Dr. Kessler and others. Thirty-some years ago, yes, we put notification on a pack of cigarettes. And we have admonished—I have seen demonstrations by the Cancer Institute that stopped me from smoking. But we have not done near what was announced last June.

Last June, the communities got together on the basis of the companies stating, in essence, "Look, we're tired of winning these cases." As we speak on the floor of the Congress today, no one has won a jury verdict against a tobacco company, period. I think it is in the main, on account of the publicity and the health and the notification of the assumption of risk, that smoking is dangerous to your health. The companies themselves are engaged in advertising Miller High Life Beer, Kraft Foods; different other things of that kind, Ritz Crackers, what have you.

They are good businessmen. They are not a bunch of crooks, as they are trying to be depicted here once the politicians got this particular issue. They have run a touchdown in all the directions and in all extremes. But what happened was the companies said, "Look, rather than paying out all these costs to lawyers and winning every case after case, why don't we get together and continue in an orderly fashion."

We are not going to have prohibition. Even I heard Dr. Koop testify to that before our committee that no, he was not attesting to having prohibition. We are not going to have prohibition of tobacco. Tobacco was here. The Indians were smoking it when we arrived.

Just the other day we had a celebration with our role model, the former distinguished majority leader, Mike Mansfield, whom when you go to the Mansfield Room, he is very proud of that portrait of himself smoking that pipe. And he is 95 years of age.

So we live in the world of reality. Hopefully, this Congress will get back to reality and not the nonsense that we have just heard of about taxes and what the idea was and everything else of that kind.

The idea was to get an arrangement whereby the companies who could win every advertising case about Joe Camel and everything else of that kind says, "We'll stop advertising in this manner. We'll stop spending that money on advertising. We'll stop spending this money on lawyers. And we'll make an agreement with you to pay in so much of our profits. Necessarily, you say that you want to raise the price because that is the best control of tobacco consumption, so we'll go along with raising the price."

We live in the real world. I think it is $4 or $5 or something in downtown London. I was visiting with a friend not long ago from Canada. He picked out of his pocket and lit up a cigarette. And I said, "How much, by the way, was that pack?" He said, "This one is $7, but in Canada it is $6 to $10." You see, that shocks us who really have not paid that close attention.

I never heard of any $360 billion, and I have been working on the defense budget for years on end. That is only $245 billion. Here we come with an amount that they agreed to pay themselves with an increase in the cost. The politicians coming around hollering,

tax, tax, tax—tax and spend, tax and spend, and everything else, including the companies. Under the whole cloth, the tobacco companies are the ones who thought of the idea of taxing $368 billion. And this just carries it up to $500 billion.

So they are the ones who gave us the idea that let us go ahead and see how much, if you please, Mr. President, you could charge on cigarettes, as much as possible, to try to stop the smoking, pay for the advertising, pay the States back for their Medicaid costs, start some children's programs. Yes, they talk about it—tax and spend. The spending is on children, on helping to get children to stop smoking. The distinguished Senator from Texas knows that. We are doing that, and we are going to use that money to try to stop children from smoking.

And, you know, Mr. President, they went even further than I would have gone if I had been their lawyer or I had been the CEO, and that is take some kind of pledge and penalty for what they call "look back." It took me a long time—they said, "We're going to be responsible for stopping smoking in America."

Now, whoever heard of that? We have been trying to do it with notification on the packages. The health community has been trying it. Every doctor now will counsel you. So there is nothing new. But the tobacco companies are supposed to advertise in an adverse fashion and pay a penalty that goes up, up and away if, as a company, they do not comply or accomplish it.

Now, that was a pretty solid agreement that has been distorted in every fashion here which does not seem to get any understanding because the jackals have taken over now, cackling up here about tax and spend and everything else of that kind, going into $18,000 an acre, $100,000-an-hour lawyers' fees, and all these other things.

Mr. President, my distinguished colleague from North Carolina has an amendment that he wants to put in—and I want to yield to him just as promptly as I can—relative to legal fees. And we will debate that and the contribution made by trial lawyers.

Let me just state ahead of time, categorically—and I am looking over here at a chart that says "Minimal Ethics." Not at all, absolutely not at all. I have to say something about that chart. I cannot resist the temptation. I have been at the trial bar, and if they think it is anything unethical, we could go to the company lawyers who are now being investigated for conspiring with the company executives on how to avoid these charges and everything else of that kind.

Man, oh, man, talk about being unethical, after the abuse and the challenge they have been through. There is a little attorney general down there in Mississippi. I was just watching it the other night. I was not that familiar with him—Mike Moore. He literally was sued by his own Governor trying to bring tobacco to the bar of justice. But he stuck to his guns. Maybe they call that unethical bringing that case against the industry, or a contingent fee is unethical. But it goes for the "every mother's son" the best of counsel. And corporate America and the Chamber of Commerce does not like that.

Billable hours, good Lord have mercy, we are going to get into a good debate on billable hours. And there are 60,000 of them registered to practice in the District of Columbia, 60,000—oh, they got all lawyers in Japan right here in the District—59,000 will never see a courtroom or know anything about law. It's fixing me and fixing this one and that one. It's fixing the jury. Unethical? Unethical? I want to hear what is unethical about trial lawyers compared to the billable hour crowd.

But back to the Senator from Texas, and he was talking about the amount of money, the billions here, to buy out the farmers. At least we are paying the farmers who have been making a good living to get out of that, not for those who didn't make a living, went broke, and we came and gave them food stamps to the tune of 431 billion bucks, Resolution Trust Company. Half of it was in the State of Texas. We bought every swimming pool, every tennis court, every golf course, every country club that you could possibly imagine. It was improperly financed. You and I know it. Over $200 billion to one State. But they want to talk about honest, hard-working tobacco farmers out there at the sweat of their brow being bought out of this particular business, coming up here with all these fanciful figures; $18,000 an acre—that takes care of the warehouse, that takes care of the bank on the loan, that takes care of the equipment, that takes care of the community, that takes care of his children.

When he is out of the business, how do you send them to college? So you let them come in on Pell grants. Yes, it is a comprehensive approach. The LEAF Act is intended, because we saw last fall that the chairman of the Agriculture Committee wanted to just put them out of business, and not take care of the communities.

I have I don't know how many farmers in South Carolina, I think about 2,000 tobacco farms, over $200 million, a big cash crop. So when we saw that, we moved. I want to say this categorically and just dispassionately, how shocked and dismayed I am to get into this particular situation. The record ought to reflect it. When we saw the chairman of the Agriculture Committee who said he had seen polls and everybody in tobacco farming wanted to get out of it, which is out of the whole cloth. I have been traveling to tobacco farmers, campaigning, crisscrossing all over the State. I never saw the tobacco farmers trying to get out of the business, but that is what he said.

I said we are really in trouble. The distinguished Senator from Kentucky, Senator FORD, and I, we have the LEAF Act and, yes, we positioned it. We knew what we were doing because the distinguished chairman of the Commerce Committee came to me and said, "Evidently, they are going to have a tough time getting a bill out of any committee, and the majority leader asked if we can get one out of our committee. I would like to have it bipartisan," the chairman said. I said, "I would like to have it bipartisan, too, but we have to take care of the farmers."

He hesitated a few days and came back and said, "All right, we will take care of the farmers." And we went all the way down to Florence and said the LEAF Act was taken care of, taking care of the farmers. The President of the United States went out to Kentucky and said the LEAF Act is taking care of farmers. We had five conferences trying to get this bill finalized with the White House, with the Republican majority and with the Democratic minority to work out what we could, to get a comprehensive policy and get it over to the House side. Each time we checked, the LEAF Act was there, undisturbed.

Now, last night, out of the clear blue—which is one of the reasons I wanted the floor—we get Senator LUGAR's bill which had one hearing last fall, I think last September, according to the record, never a markup, and get this whining out here about equal treatment. Why we have to give him—the Agriculture Committee likes the bill, had been marked up and reported, like ours had been worked upon. No, we have been hedging against that nonsense of the Lugar approach since last fall and working around the clock, locking down everything, and they come and tell us that they couldn't avoid it. They had to get a majority of the Commerce Committee members. I am dismayed the chairman voted with that majority. After all our work trying to work together. That explains my statement yesterday about the bipartisanship.

Now, back to just exactly what we have here with respect to being victimized and everything else of that kind. I think that agreement, having been worked out within the Commerce Committee and all of these conferences and everything else, was a pretty judicious instrument in that you cannot have tobacco farmers, Senator, unless there are tobacco companies. You can put the companies out of business. We have a mob scene here, a lynch mob coming forward; get rid of the company.

Every time we agreed on something, Senator MCCAIN and I heard from different groups, "more, more, more, they

are liars," they are this, they are that. Let's agree on all of that, you can put them out of business. Then MCCAIN and HOLLINGS can start their own tobacco company or maybe it would be SESSIONS and HOLLINGS. It would be a pretty good business. All we have to do is get the tobacco from Turkey. We don't have any false records they can go and embarrass us with—juries and everything else of that kind. We can go back and get old Joe Camel and start advertising again. Ain't nothing wrong with that. They tried end on end before the courts to kick out their advertising, constitutional right, first amendment, and we can go make a living, and what has happened? Nothing for the children.

So that is a pretty good political charade to come out on the floor of the Senate and say, now, is it tax or is it for the children, and analyze it in this tricky mind as being just a tax. It is an increase in price. You don't have to pay it. It is voluntary. I quit smoking. They say more than half of the people could quit smoking. Yes, it is addictive to some, just like alcohol. We could say get rid of Ronald McDonald, advertising fat for the children. Go after that. With that, I can agree with the Senator from Texas.

When you come right down to it, it is a balancing act that we are engaged in, and nobody wants to acknowledge it. We can get rid of the tobacco companies, but that does nothing for us at all. It doesn't do anything for the health community. It doesn't do anything for the children. It doesn't do anything for the payments to be made. This is money going back to the States. It doesn't do anything for the programs. It doesn't do anything for the look back. It doesn't do anything to anything.

So these people that run around and want $1.50 and more and more and more, don't even understand the problem, don't even understand what we are trying to do on the floor of the Senate with the tobacco bill.

We are trying to go along with respectable companies—yes, they did stand up and falsely state that they didn't think it was addicting and everything, but those folks are gone. If you don't think they have exactly, just tell the truth. Go over to the Defense Department and get their civil and criminal docket and you will find true blue chip corporations of America trying to defraud the government at every turn. It is a sad thing.

Then I have to look up here at minimal ethics in the business crowd. I talked to my friend, Tom Donohue, yesterday and I worked with him. I have every chamber of commerce award that you could possibly get.

But to get up here and let this legalistic crowd take over and start controlling—here is the Republican movement that doesn't want to have price controls, wants to deregulate, wants to get rid of the Government, and now wants to fix prices, wants to fix fees. How can you tell when these lawyers have really made the case? It isn't an hourly thing. Until last June, there wasn't any case. Nobody has made any—they have gotten some settlements. I know the best of the best from my hometown tried one for ancillary smoke—what do you call it? Voluntary smoke? Involuntary smoke? Whatever it is—up in Indiana during the months of February and March, and even he lost that.

We are saying that you are not going to have any more immunity, or have a limit on the immunity. They can still bring individuals. They can still bring class actions. Everything is still in the commerce bill.

I would like to have given what they promised last June—the immunity. But we did put an $8 billion cap on it. But the reason for giving any immunity is that the juries of America have given them immunity, period. They know the assumption of risk and everything else of that kind. It has been out there 30 some years. By the time we get along with some petitions before the court and everything, it will be 40 to 50 years, and everybody will have known about it; you won't be able to get a verdict against the companies.

So we who are responsible for public policy are also at a crossroads. There is a pool of opportunity draining out on us. We ought to be acting this year. We ought to be acting this week. We ought to get with this thing on a realistic basis and how we brought this bill out, and not engage in trickery and come back in and take a bill that never was reported out of the committee, never onto the floor, never in debate, and say, "Stick it in, because we can fix the majority on the Commerce Committee." I am saddened to see that. I never have seen that happen before. I checked with the Parliamentarian. They said yes, it could happen. But I never have seen that and it was sad to see.

I have a lot of other things here that we could touch upon, but the distinguished Senator from North Carolina has been waiting. I hope when he does present his amendment, that he amends the words "minimal ethics." I don't know that any trial lawyer—they win some cases, but they lose a lot of cases.

As between the billable hour crowd and those working for the client rather than for themselves, because the clock keeps running, that is the most vicious thing that ever happened to my profession—this billable hour group. That is the worst thing I have ever seen occur, because I practiced law—never with billable hours; I got results for that client. Then he understood that was the charge, because we won. When we lost, we assumed all the costs. Everybody knows just that. What has been unethical, according to the testimony made to that attorney general down there, is the companies have been unethically engaged and the Chamber of Commerce has been supporting them.

I hope the Senator from North Carolina will amend the words there on "minimal ethics."

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask at this time unanimous consent that Senator FAIRCLOTH be recognized to offer an amendment.

Mr. President, we still have one Member on our side who needs to be contacted.

I seek at this time that Senator FAIRCLOTH be recognized to offer an amendment, and that we proceed under the understanding that no second-degree amendment be in order to the amendment until the motion to table is made at 4 p.m.; that, if the amendment is not tabled, the Senator from South Carolina, Senator HOLLINGS, be recognized to offer a relevant second-degree amendment; and the time between now and 4 be equally divided.

Mr. President, this body proceeds on comity. I would like to proceed under that understanding, and as soon as we contact one Member, then we will put this into a formal unanimous consent agreement.

At the moment, I would like to ask for my colleagues' indulgence so that Senator FAIRCLOTH can be recognized to offer his amendment.

Mr. HOLLINGS. If the distinguished leader will yield, I understand we are coming back at 2:15. I was trying to get an hour on our side.

Mr. MCCAIN. We will proceed under that understanding, and we will attempt to put it into a unanimous consent agreement between now and the next 5 or 10 minutes, and, if not, to try to have it between now and by 2:15 when we return.

I yield the floor.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. 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. FAIRCLOTH. 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. 2421 TO MODIFIED COMMITTEE AMENDMENT

(Purpose: To limit attorneys' fees)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. FAIRCLOTH), for himself, Mr. SESSIONS, and Mr. MCCONNELL, proposes an amendment numbered 2421 to the modified committee amendment.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

Sec. . Limit on Attorney's Fees.

(a) FEE ARRANGEMENTS.—Subsection (f) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

(1) court order;

(2) settlement agreement;

(3) contingency fee arrangement;

(4) arbitration procedure;

(5) alternative dispute resolution procedure (including mediation);

(6) retainer agreements; or

(7) other arrangement providing for the payment of attorneys' fees.

(b) REQUIREMENTS.—No award of attorneys' fees under any action to which this Act applies shall be made under this Act until the attorneys involved have—

(1) provided to the Congress a detailed time accounting with respect to the work performed in relation to the legal action involved; and

(2) made public disclosure of the time accounting under paragraph (1) and any fee arrangements entered into, or fee arrangements made, with respect to the legal action involved.

(c) APPLICATION.—This section shall apply to fees paid or to be paid to attorneys under any arrangement described in subsection (a)—

(1) who acted on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(2) who acted on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(3) who act at some future time on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(4) who act at some future time on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(5) who acted on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(6) who act at some future time on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(7) who acted on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(8) who act at some future time on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(9) who expended efforts that in whole or in part resulted in or created a model for programs in this Act;

(10) who acted on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection; or

(11) who act at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection.

(d) REPORT.—

(1) Each attorney whose fees for services already rendered are subject to subsection (a) shall, within 60 days of the date of the enactment of this Act, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

(2) Each attorney whose fees for services rendered in the future are subject to subsection (a) shall, within 60 days of the completion of the attorney's services, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

(e) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(f) GENERAL LIMITATION.—Notwithstanding any other provision of law, for each hour spent productively and at risk, separate from the reimbursement of actual out-of-pocket expenses as approved by the court in such action, any attorneys' fees or expenses paid to attorneys for matters described in subsection (c) shall not exceed $250 per hour.

Mr. FAIRCLOTH. Mr. President, I am offering this important amendment because we cannot allow this tobacco bill to turn into "Wheel of Fortune" for trial lawyers. That is why my amendment caps attorney fees at $250 per hour.

Under the current bill, trial lawyers will get some $4 billion per year. Billion—with a "b". And this is a conservative estimate—assuming a 15 percent contingent fee. The Medicaid cases will generate $1.2 billion per year. The tort cases will yield some $2.8 billion per year.

A Florida circuit court judge, Harold Cohen, estimated their fees at $185,186 per hour.

Let's see how this compares to regular Americans.

The average physician earns $96.15 per hour, the average lawyer makes $48.07 per hour, pharmacists make $25.98 per hour, police officers earn $16.65 per hour, carpenters make $13.03 per hour, automobile mechanics earn $12.35 per hour, barbers make $8.37 per hour, and bakers earn $7.65 per hour.

The PRESIDING OFFICER. Under the previous order, the Senate is to recess at 12:30. That hour having arrived——

Mr. HOLLINGS. Mr. President, I ask unanimous consent it be extended until 12:45.

The PRESIDING OFFICER. Is there objection?

Mr. FAIRCLOTH. I do not object.

The PRESIDING OFFICER. The Senator is recognized until 12:45.

Mr. FAIRCLOTH. So, Mr. President, who are these "superman" lawyers who deserve to be paid more than 20,000 times the salary of a working American?

Well, one of them is Hugh Rodham, the President's brother-in-law. He is on line to get $50 million as a Castano group lawyer. Let me tell you about the hard work that he has done to get this big fee. Let me tell you about his background that made him so important to this group of trial lawyers.

Well, actually, let me just read a couple of quotes from major newspapers to describe his work.

"And just for good measure, the state of Florida has hired Hugh Rodham (Hillary Clinton's brother) to be a part of their litigation team, despite his complete lack of experience in these types of cases." That's from the Knoxville News-Sentinel on July 20, 1997.

Here is another choice description of the fifty-million-dollar man and his invaluable work.

Hugh Rodham "spen[t] the last hours of the June 20th settlement talks in a corner reading a paperback by Jack Higgins, 'Drink with the Devil.'" That's from the Washington Post on June 23, 1997.

Mr. President, I don't believe that this amendment needs much more justification than that. Fifty million dollars to sit there reading a book.

But, if that isn't enough, let me talk about the Texas trial lawyers. These fine lawyers will get $88,000 per hour. This means $88 million per lawyer. What more can I say?

Well, here's something. The money will be paid from money that was supposed to go for Medicare. Who do we pay—the sick and elderly or the greedy lawyers?

Mr. President, there is a major political force at work behind the scenes in this tobacco legislative effort. I'm not talking about so-called "big tobacco." What I'm talking about is the trial lawyers.

They negotiate settlements in the millions of dollars, and they take fees in the millions of dollars, dwarfing what their clients get. They also stand to be the biggest winners if the tobacco settlement is enacted—a fact that appears to have become obscured in this debate.

Now, with this national tobacco litigation settlement before us, we're not just talking about millions of dollars, or tens of millions of dollars, or even hundreds of millions of dollars.

We are talking about tens of billions—with a "b"—of dollars that will

be transferred from the pockets of average smokers in this country into the coffers of a handful of trial lawyers.

I have read published reports that the trial lawyers are estimating that they will make upwards of $15 billion to $20 billion. That is hard to fathom.

To illustrate, in the two biggest individual State settlements that have taken place so far, take a wild guess at what the major issue of controversy has been?

For those of you who have not been paying attention, it has been attorneys' fees for the private plaintiffs' attorneys who were brought in to help the states sue the tobacco companies.

In the State of Texas, for example, their $15 billion settlement is tied up because the Texas trial lawyers demanded over $2.3 billion for their work. These demands are ridiculous, and if we approve the McCain bill, we will be approving such billion dollar deals for these trial lawyers.

Yes, the McCain bill provides the option for attorneys to use an arbitration panel to determine reasonable fees, but what attorney would be foolish enough to seek reasonable fees if they can get $2.8 billion. And, what is considered "reasonable" in this climate?

It is ironic that these trial lawyers were brought in by the various States to pursue claims on behalf of the taxpayers in those States.

That is, they have been brought in to stand in the shoes of our State governments and their taxpayers. But I ask you: who ultimately will be the greatest beneficiaries—the taxpayers or the lawyers? Experience has already provided us with an answer.

We should not forget how the deck has been stacked with respect to these State lawsuits. It was only when State governments decided to use their weight, leverage, and resources to go toe-to-toe with the tobacco companies that these companies decided to settle the cases.

States legislatures have even changed the laws mid-stream and retroactively to tilt the balance in their favor.

The most recent example of this was in April when the Maryland General Assembly voted to change the law to permit the State of Maryland to seek compensation for taxpayer money paid for smoking-related illnesses.

They first sued the companies, then realized winning the lawsuit perhaps was not going to be quite as easy as they first thought. They then went to the Maryland legislature and had the law changed retroactively so that their lawsuit against tobacco companies would be considerably easier.

You can be sure that the Maryland plaintiffs' attorneys who stand to have a huge pay day as a result of this lawsuit were closely involved in lobbying the legislature on changing the liability law.

I'm not saying that the attorneys' should not be reasonably compensated for the hours and energy they have spent in helping the States reach these settlements.

All I am saying is that it is outrageous to say that a group of plaintiffs' attorneys should be allowed to enrich themselves under the guise of claims on behalf of taxpayers. These are the same taxpayers on whose back the spending in the McCain bill will fall.

Let's also look at how this relates to our past debates over tort reform. The motivation behind national tort reform is that our system of justice has been distorted by a group of trial lawyers who caused the litigation explosion in this country.

At a minimum, it is highly ironic that we are now talking about passing a national tobacco settlement bill that will handsomely reward the very same trial lawyers who have so badly corrupted our justice system.

None of us should turn a blind eye to the fact that the debate on tobacco settlement legislation, under the guise of protecting youth, is really a debate about the pot of gold that potentially awaits the trial bar.

And that's not to mention the "tax and spenders" who want to fund a host of social programs unrelated to tobacco. Not only are we standing here debating a huge tax increase on working men and women, we are simultaneously opening a can of worms.

We're talking about sanctioning a handful of attorneys' attempts to enrich themselves at the expense of the clients—in this case, taxpayers—they purport to represent. I urge all my colleagues to give this serious thought.

This tobacco bill is not a lottery. This is not "jackpot justice" for trial lawyers. The trial lawyers are playing "Wheel of Fortune" with the taxpayers money and it must be stopped.

I urge you to support my amendment.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2:15.

Thereupon, at 12:47 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. 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. MCCAIN. 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. MCCAIN. Mr. President, I ask unanimous consent that no second-degree amendments be in order to amendment No. 2421 prior to a motion to table to be made at 5 p.m. I further ask unanimous consent that if the amendment is not tabled, Senator HOLLINGS be recognized to offer a relevant second-degree amendment and that the time between now and 5 p.m. be equally divided.

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

Mr. MCCAIN. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 2421

Mr. HOLLINGS. Mr. President, in response to my distinguished colleague from North Carolina, Senator FAIRCLOTH, as the saying goes around here—and it is genuine—I have the greatest respect and friendship for the distinguished Senator. He and I have known each other for a good 30, 40 years almost.

I really am a little dismayed and disappointed to see this assault on attorneys' fees in the context of what is ethical on behalf of trial lawyers. When they put a billboard up with respect to ethical practices and making millions—we will get the board, I guess, and have it displayed.

But let me say a word, Mr. President, about lawyers themselves. A lot has occurred over my few years of public service. In the early days, what we had in the State legislature was about 85 percent of the membership was practicing attorneys. Today, fewer than 15 percent are practicing attorneys. That has come about, in a sense, as a result of billable hours.

When we came out of the war and set up our practices, what really occurred was we had to do services for the client, whether it was in the field of real estate, whether it was in the field of a criminal charge, or whatever. It was an agreed-to fee or, in many instances, a contingent fee on winning the case. That is how I grew up as an attorney, which characterizes me now as a "trial lawyer"—I hope not an unethical one.

I was listening very closely to the Senator from North Carolina. The best I can tell is he used the expression "litigation explosion." We can get into that. We have debated that, and we found through various studies made by the Rand Corporation for corporate America that there is no litigation explosion.

"Corrupted our justice system." The nearest thing I could find out was the fee itself, and it was too large, as the distinguished Senator surmised, and that in itself was unethical.

We know that people make money. I understand that the fellow on Headline News today, William Gates, a very, very successful entrepreneur, never completed college, but he is a genius with a business worth some $39 billion. He makes, doing nothing, just $125,000. I know he has a modest salary, but it would only go to the tax folks. But he operates, and he operates very successfully. They have 21,000 employees there at that Microsoft entity. Every one of the 21,000 is a millionaire due to the leadership and accomplishment of Mr. Gates.

Now, that is what is to be considered when we talk about trial lawyers taking on a noncase and developing a case. That really nettles my corporate friends. Incidentally, I should say this, that the corporate friends have been mine over the many, many years, as they well know from my votes here in the U.S. Senate. And we are very proud of the industrial development we have in South Carolina and the efforts of our Chamber of Commerce there. They are highly regarded, highly respected. But they had not gotten into this limbo, so to speak, of being unethical when you win a case.

Specifically speaking, going to lawyers generally, it is the genius of America that fashioned this great Republic. Lawyers, if you please, you can go back, Mr. President, to the earliest days. "Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God. I know not what course others may take, but as for me, give me liberty or give me death!"—a lawyer, Patrick Henry.

Or otherwise that 30-some-year-old, with quill in hand, seated at that table, "We hold these truths self-evident, that all men are created equal."—Thomas Jefferson, the lawyer.

The most applicable one, Mr. President, to this present day, "But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the greatest difficulty lies in this: you must first enable the government to control the governed and in the next place oblige it to control itself."—that is our problem now—James Madison, a lawyer.

Or the Emancipation Proclamation—Abraham Lincoln, a lawyer. Or in the darkest days of the Depression, bringing about not only economic revival, but equal justice under law, "All we have to fear is fear itself."—Franklin Roosevelt, a lawyer. Or giving substance to equal justice under law—Thurgood Marshall.

I know the abhorrence some have for my friend, Morris Dees, down there with the Southern Poverty Law Center, or with Ralph Nader keeping the conscience clear with respect to consumer safety in America. But these are lawyers who are out leading the way.

There is no question, Mr. President, that there is no higher calling for a profession than to eliminate itself. If the ministers could eliminate all sin and the doctors all disease, we lawyers are burdened with the challenge of trying to eliminate injury in cases. When I first came to the Senate that was really what was at hand, what you might call class actions.

Up there in Buffalo, NY, Love Canal, toxic fumes, poisonous air. And as a result of the class actions there, the next thing you know what we had was the Environmental Protection Agency, which in and of itself, despite those who criticize the bureaucracy of it, has eliminated not only the injury and drinking their own sewage and breathing their own toxic fumes, but eliminated thousands and thousands of individual cases.

Then next, of course, we had the matter of the asbestos cases. We had the cases with respect to the Dalkon Shield, breast implants; we had the cases of the little children burning up in flammable blankets in their cribs. And we got the Consumer Product Safety Commission. I just talked the other day to the chairman there who is doing the outstanding job that she is doing at the Consumer Product Safety Commission looking at all of these particular instrumentalities.

And good corporate America does just that. The J.C. Penney Company—there is no more outstanding firm. I have visited their laboratories where they have instituted safety tests of all the articles to be sold, particularly in the field of children's toys, and what have you. So the trial lawyers brought that about.

And, Mr. President, just this past week I noticed a little squib in the Times. They had down there that Ford Motor Company had recalled an engine. They took the initiative of recalling 1,700,000 pickup trucks because the link bolt on the wheel was loose. The wheel threatened to come off and cause an injury.

Now, Ford Motor Company was not particularly enthused about safety, we know, because back in 1978 Mark Robinson had to bring that Pinto case. And they got a verdict of $3.5 million actual damages and a verdict of $125 million punitive damages. No, they never collected a dime, I don't believe, for those punitive damages.

But I say to the Senator from North Carolina, I can tell you now, that saved a lot of injury and a lot of cases, because Chrysler has just had a recall that I saw in the news. And you can go right on down. That brought about attention to safety and people not burning up and having the wheels lock on them, and those kinds of things, and coming off and causing that injury.

That brings us, Mr. President, to the present case at hand, which, in essence, was not a case at all. I never heard of bringing in, in a class action, the tobacco companies and getting them to agree not to sell their product, but rather to advertise adversely not to sell, not to attract; on the other hand, agreeing, if you please, to a look-back provision whereby they would be burdened with the beauty of diminishing business for themselves, tobacco consumption, particularly in the field for little children, and raising the price of their product whereby the moneys would go then to the attorneys general and the U.S. Government to help pay these expenses, and so forth. That was not a case that was just filed and tried a few weeks later, and they got a verdict.

On the contrary, it was a long, hard, contingency struggle with a guarantee not only to get nothing had it not succeeded—and none have succeeded so far. I repeat, no one has sued a tobacco company and gotten a jury verdict as of this minute, period. But they said, we think we can do it if you let us try; and we will take it on a contingent basis. I do not know what the percentage is down in Florida or Texas or Mississippi where they have settled—somewhere around 10, 15 percent or whatever.

The States, the health community, the U.S. Government had nothing to lose. The lawyers bringing this pioneering, if you please, health care for all of America, they had everything to lose. In fact, a fine attorney general down there, Mike Moore, had to really withstand being sued by his own Governor of his own State of Mississippi trying to prevent him from bringing the case.

Don't give me this billable hours or $180,000 an hour or $5 an hour or whatever it is. This isn't any hourly thing. This is a no-case situation whereby you turn around and have to pay legal fees to defend yourself in order to bring the case, and he withstood that for a year in the courts with his reputation relatively ruined, but holding on. Then after they won that, they literally had to hide the witness and secure his safety because they had a whistleblower in one of the companies who was willing to bring forth the records and say here they are, here is the actual fact within the company records, here is what they stated, here is what their research found, here are their plans on advertising and here are the ingredients they also included in order to bring about addiction. They had to hide the witness.

Don't give me billable hours. I don't know how much hog farmers make. I am waiting for my friend to come back, but I know the lawyers make nothing unless they succeed in bringing this

case. Now, of course, having done that, and getting these other lawyers in, his friend, Dickey Scruggs, and Ron Motley from my State of South Carolina, they had an expert approach. If a painter paints a $10 million painting, I don't know how much he gets an hour for painting it, but you have to have expertise.

The ingenuity of using the RICO provision of the distinguished Senator from Utah, that is what they did. They said we can use the RICO provision and really go after them. And that was a wonderful, ingenious approach to the actual trial of this particular class action. You have to understand all along nobody over the 3-year period is paying anybody a red cent when they talk about billable hours. So they brought their case, they struggled along, and they got right to the point where it was going to be exposed, that particular record of the unethical.

My distinguished friend on the other side of the aisle has a sign up there about ethical; it is the unethical conduct of the corporate lawyers, not the trial lawyers. They have not mentioned one thing unethical other than they won the case and they will get a good fee. They deserve every dime of it and more. They ought to get some kind of award from the health community because this will save us billions and billions of dollars in cost, in health care, hundreds and thousands and perhaps millions of lives from cancer deaths.

Not Dr. Kessler, not Dr. Koop, but Mike Moore, Dickey Scruggs, Ron Motley have done more to save people from cancer than Koop and Kessler combined, and Koop and Kessler have tried their best, but there is more than one way to skin a cat. No one in Congress was at that table. There wasn't any Senator—"I introduced the bill." There wasn't any Congressman, "I sponsored, I cosponsored," all of this "I" stuff. Now they have a lynch mob going on because the polls show that lawyers are unpopular, particularly trial lawyers.

I have a friend in town here, sends me a thank-you note at Christmas, Victor Schwartz. We have been in this routine 20 years. Victor represents the business round table and the Chamber of Commerce, and he gets the conference board and he gets all these retainers so long as he doesn't win the case. It reminds me of Sam Ervin's famous story about the doctor who practiced there in Monroe, NC, for some 32 years all by himself. Finally, he had a young son who graduated from medical school and he turned to him and said, "Son, I haven't had a vacation in 32 years. I am taking off with your mother for a couple of weeks." He comes back and the son walks up to him and he says, "You know Ms. Smith, Daddy?" "What about her?" He said, "There is really no arthritis in her back, I got that thing cured." He said, "Oh, my heavens. That is the patient that sent you through med school. Why did you do that?"

You can solve cases, but that is our problem with most lawyers now. As long as they can get a continuance, as long as they can make a motion, as long as they can delay, as long as they bureaucratize the judicial system—and that is the corporate defendant crowd. The plaintiff doesn't win until he concludes a case. He has no time; he has about five or six cases waiting, a lot of time out there, a lot of money, a lot of time investigating everything else. What happens is that he finally scores, but he not only scores for himself, he scores here in this particular case for all of America, because they met last June and they had the sensibility not to be greedy. The inference is that you have a greedy bunch that is unethical; they are getting too much. Not at all.

The fact is, they had the sensibility to say, like Kansas City, there is only so far that we can go. There has to be balance. If we put them out of business, if we continue to pressure and take legitimate companies out of business, then what will happen is that newcomers without these records that are really bringing about the settlements for us, they won't have any records of any kind of additives. They won't have any records of any kind of lies to Members of Congress or anything of that kind. They won't have any records of agreeing not to advertise or agreeing to advertise adversely to children, or agreeing to a look-back provision. What we will do, like Samson, is pull down the temple walls and ruin us all and we will have gotten nowhere.

Now, we understand here this week we can get nowhere. We can start with lawyer fees. We can start with $1.50, $2 a pack, up, up and away. We can have impossible look-back penalties and everything else of that kind, but this isn't the end of Congress. We will be back and we can always amend what we never have tried before, like look-back and nonadvertising agreements.

But my counsel is let's move on with the provision of the commerce bill which says simply as to the agreements made within the States, we don't disturb them—all of them, as best I can tell, are under arbitration. But as to the new agreements made for lawyers, they are subject to arbitration for both sides and approved by the court itself. Now, there is nothing unethical or untoward or whatever it is. The beginning lawyers who made the case are deserving. The others who are piling on deserve a heck of a lot less. We all know that.

So we are not just setting an example here of $185,000 for nothing but trial lawyers as the thing is depicted at the present time.

I can see we have some others that would like to be heard at this particular time. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. I yield time to the distinguished Senator from Utah.

Mr. HATCH. I am very concerned about this and a whole raft of other amendments as well.

First of all, I think we need to examine the context in which this amendment is being debated.

If the Members of this body succumb to the temptation to "pile on," to "out-tobacco" Big Tobacco—and that is surely where we are headed—we will guarantee that the tobacco companies are not part of the equation.

Why should we care about this? Tobacco causes cancer and a panoply of other serious diseases. The companies have known this for literally decades; they have known nicotine makes their products addictive. They have continued to market their products, and to target their marketing plans and their advertising to children.

That being said, I implore my colleagues to recognize that if the tobacco companies are not part of the equation, then we will not have a meaningful bill that can work. It is as simple as that.

Last June 20, the tobacco companies agreed voluntarily to make payments which will range up to $368.5 billion over the next 25 years. They freely chose to make those payments, payments which will help Congress fund a new War on Tobacco, in exchange for certain changes in the law, such as a more predictable litigation environment.

In order to devise a bill which is workable and which will not be litigated for years, we have to respect the legal boundaries imposed by our Constitution, that great document upon which our Country was founded. Constitutional scholars have examined the provisions incorporated in the Commerce bill, and have found them to be lacking.

For example, public health experts have testified before our Committee that advertising restrictions are an important weapon in any new War on Tobacco. But legal scholars have also cautioned that those restrictions must be drafted in a manner which is constitutionally permissible—which, by the way, this bill is not.

As chairman of the Judiciary Committee and as someone who has been concerned about constitutional principles during my tenure in office, I must caution that unless this bill is changed in some very fundamental aspects, we will wind up in 10 years of litigation over a variety of issues, not the least of which will be constitutional issues that will literally cause more problems than anyone ever envisioned.

During each of those years, one million more kids will become addicted to tobacco and will die prematurely because the Congress is pursuing a constitutional collision course which could ultimately render substantial parts of the Commerce bill null.

It is important to note that, while the tobacco companies voluntarily agreed to the $368.5 billion amount, they have refused to agree to the Commerce bill's $516 billion price tag.

We have all seen estimates that the Commerce bill will add $1.10 to the price of a pack of cigarettes in the next five years. What that Treasury estimate does not take into account are any increases due to State excise taxes, wholesaler or retailer markups, attorneys fees, reductions in volume due to increases in black market sales, or imposition of "look-back" penalties.

Let us be real. The manufacturers, for instance, added 5 cents per pack solely because of just one State settlement, the Minnesota settlement.

The $1.10 figure is a myth.

During the course of 10 hearings on the tobacco issue, the Judiciary Committee heard an abundance of evidence on this issue.

We had three financial analysts testify at our hearings, each of whom did independent analyses, using very detailed economic models, and none of them concurred with an estimate as low as $1.10. Their estimates ranged as high as $2.50 to $3.00, for a total cost of about $5.00 per pack.

If that happens, there will be a raging black market. It will be even worse than it is now. We have received testimony that one out of five cigarette packs sold in California today is contraband. Can you imagine what is going to happen if this bill forces tobacco prices up to between $4.50 and $5.00 per pack?

There is an additional implication that, with the exception of our colleague from Texas, Senator GRAMM, and our colleague from Illinois, Senator MOSELEY-BRAUN, no one is focusing on.

Who will bear the brunt of these increased costs, of these new payments intended to curb youth smoking? It is adults at the lower end of the economic spectrum. For example, almost one-third of people with incomes below $10,000 per year are smokers.

It would be better to bring this agreement into some perspective where we can get the tobacco companies on board, however reluctantly.

I would like nothing more than for them to pay $1 trillion per year. But the practical reality is that that will not happen. They will either move offshore or go bankrupt first, and they will be totally beyond our control.

If we design a program which does not have their open opposition, which is modeled on their voluntary agreement of June 20, 1997, we will have effective accountability, because we will have look-back provisions that are constitutional. We will have an effective ban on advertising provisions, because without their compliance Congress cannot enact stringent advertising restrictions. In short, without the reluctant agreement of the tobacco companies, we will not have the comprehensive program that many of us want.

Having said that, I have listened carefully to my colleague from South Carolina.

It is well known that I have been an advocate for legal reforms.

It is well known that I am supportive of product liability reform.

It is well known that I have not been someone who just is a rubber stamp for the trial lawyers of America, even though I have been one myself.

It is well known that I think there are excesses in the law.

But I think we go a long way toward being excessive as a Congress if we start setting fees for professionals in our society, professionals who are not directly participating in a government program.

If we allow ourselves to start dictating what fees have to be paid to certain professions in our society, however tempting, then I think we are starting down a dangerous road.

How can conservatives support setting fees in a free market system? That is as bad as setting prices.

I have extensively examined the tobacco issue. One thing has become evident. We would not be here today debating this legislation were it not for the Castano attorneys.

The distinguished Senator from South Carolina has made some very telling points. Yes, there are excesses. Yes, there are things we can criticize. Yes, we know that many of the trial lawyers have been associated with one political party.

That irritates some people, and rightly so. But the fact of the matter is that he is right. It has been the contingent fee system that has allowed people who do not have any money to be able to defend themselves, to assert their rights, and to obtain verdicts in their best interests. And without the attorneys being willing to take cases on a contingent fee basis, many of the wrongs in our society would not be righted.

Frankly, I have been on both sides. I started out as an insurance defense lawyer. I tried medical liability defense cases. I know what it is like to have people, plaintiffs lawyers, bringing lawsuits, some of which are trumped up.

But I have also been on the other side where people who were humble, without money, had no recourse other than to hope they could find an attorney who would take their case on a contingent fee.

This meant that if I didn't win the case, I didn't get paid. If I won the case, then I got somewhere between 25 and 40 percent of the verdict. I never had a case where my client got less as a result of the contingent fee paid to me than they would have gotten by a settlement before a verdict—never, at least not to my recollection.

On this particular issue, Senator MCCAIN and those who have written this bill—basically the White House, if you will—inserted a reasonable provision. That provision says that, for the purposes of awarding attorneys' fees and expenses for those actions, the matters of issue shall be submitted to arbitration before a panel of arbitrators.

In other words, they are not going to give the trial lawyers a free ride here. They are going to require them to submit their fees to arbitration. They are going to have to come in and justify those fees.

In any such arbitration, the panel shall consist of three attorneys, one of whom will be chosen by the Castano plaintiffs' litigation committee, that is, the plaintiffs' attorneys who were signatories to the June 20, 1997, settlement agreement.

It seems to me that our distinguished Senator from Arizona did a good job in putting this provision in. A similar provision is in the legislation I filed on November 13.

This represents a reasonable approach to the problem.

The fact of the matter is that I have devoted a lot of study to the Castano group.

And, yes, most of them are Democrats. Most of them are liberal Democrats at that. But there are a number of them who are Republicans, a very small percentage of them.

The fact of the matter is that politics should not play a part in this. Without the Castano group, we would not be debating this issue; we would not have been able to bring national debate to the point of considering a bill which penalizes the tobacco industry anywhere between $368.5 billion and estimates as high as $800 billion over 25 years.

I believe that members of the Castano group alone have spent somewhere between $20 million and $40 million in basic time alone. That is a lot of money. Some have argued that this figure could approach $100 million.

This has been going on for years, in State after State. It has been going on at the expense of the attorneys, without whom we would not be having this opportunity to start a whole new national War on Tobacco.

I have to admit, at times my angst over the trial lawyers' support for one side or another shows at times. That is true for most Senators. And the trial bar has brought a lot of this criticism upon itself, to be fair. They seem to be looking out only for their interests sometimes, which is not unusual in the business community.

But we should not allow that to cloud the facts on this issue. We should think twice before we move toward having the Congress of the United States set attorneys' fees.

What is it going to be next? Accounting fees? What is it going to be? Private doctors' fees? Our public attempts

at rate setting already have proven how government interference can distort the marketplace.

But I agree with the Senator from South Carolina—this is the last bastion of freedom there is.

Whether you like the trial lawyers or not, they take cases that nobody else will take. They do it at their own expense many times. Yes, they make a lot of money, if they are good enough. But the fact of the matter is they play a very significant and important role in our society. It is just that simple.

I agree with many of my colleagues on the other side. Large hourly legal fees are a concern. That is why the bill sets up an arbitration panel which will examine fees based on set criteria such as the time spent and the complexity of the case. Attorneys should have to justify their fees; I don t disagree with that position.

I cannot condone legal fees which approach $1,000 per hour. But that is not the real issue. When we start setting attorneys' fees, whether they are $100, $250, $500, or $1,000, it is a very serious matter.

PRIVILEGE OF THE FLOOR

I ask unanimous consent that Bruce Artim and Marlon Priest of my staff be permitted privileges of the floor throughout this session.

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

Mr. HATCH. Let me close with this.

I am very sympathetic to the motivation of this amendment and to the arguments that the Senator from North Carolina has made.

However, there are a number of reasons that I have given here that this amendment is flawed and, in fact, is unlawful.

As much as I dislike this Commerce Committee bill, and as much as I think it is a piling on, the approach it uses to resolve the attorneys' fees issue is far more preferable than an arbitrary price cap.

For Congress to interfere retroactively with private contracts would be, in my opinion, unconstitutional. Congress should not break private contracts.

The June 20, 1997, settlement recognized that a private agreement between a plaintiff and his or her attorney is a legally enforceable contract with which we should not unilaterally interfere, however well-intentioned our motives are.

Such interference by capping a contractual fee might very well constitute a taking under the Fifth Amendment to the Constitution. The Supreme Court cases clearly say that the Federal Government cannot confiscate money or interfere with a lawful contract.

Under any view of federalism, there is no justification whatsoever for Congress, entering the field of pure State activity to alter the rights and remedies of private parties and then dispensing, with no due process, protections guaranteed by the Constitution.

Regulation of attorneys' fees properly belongs in the domain of the States. Such usurpation of State prerogatives may very well violate the Tenth Amendment. Recent court opinions such as New York v. United States and Prinz v. United States have made the Tenth Amendment a shield against Federal imposition on the sovereign authority of the States.

State courts have already shown a willingness to step in and prevent unreasonable and excessive fees in tobacco settlements. For example, in the Florida case, the Court threw out a contingency fee arrangement where it was found to be clearly excessive. This shows that the State courts will be best equipped to address this issue by utilizing the arbitration clause of the Commerce Committee bill.

I think we must also examine the precedent we are setting here in having the U.S. Congress consider singling out any profession for a cap on their earnings. We do not do this for corporate CEOs, although we have tried in the past. We don't do it for sports figures or entertainers, for that matter. Should we consider capping Jerry Seinfeld's pay because he makes tens of millions of dollars a year, or my dear friend Karl Malone because he makes millions of dollars every year as one of the greatest basketball players who ever lived?

No, we don't do that, and we should not be doing it here, even though I do have some sympathy for what motivates the distinguished Senators on the other side of this issue.

I compliment my friend from South Carolina in his statements here today. They are fair statements for the most part, arguing that, without the trial lawyers being able to take contingent fee cases and to be able to uphold the rights of the downtrodden and those who don't have any money and those who can't afford any attorneys, we would not have nearly the justice ideal we have today.

I also compliment my colleagues from Alabama and North Carolina, who have argued very forcefully and potently for this amendment. They make a number of compelling arguments.

I know I have taken too long and I apologize to my colleagues. I feel deeply about this.

I recognize I have irritated just about everybody in the debate. I haven't meant to. It isn't my desire.

I feel very deeply we need to pass a strong anti-tobacco bill which is constitutionally sound and which will not be litigated for years. The best way to do this is to model it after the agreement reached last year between all the parties.

That, I believe, would be in the best interests of our children.

I cannot tolerate the fact we are going to have 10 years of litigation because we are considering faulty legislation. We should be pulling the companies in, albeit kicking and screaming, and making them be active participants. I want them to be part of the solution. Some may view that as naive, but I am optimistic.

The fact that we are considering legislation with such obvious flaws bothers me terribly. I am also bothered by the fact that we will go so far as to start setting professional fees here in the Congress of the United States.

Having said that, I yield the floor.

Mr. HOLLINGS. Mr. President, I think the distinguished Senator from Utah has made a very, very powerful statement. We are most grateful.

I yield to the distinguished Senator from Illinois 10 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, let me say to my friend, the Senator from Utah, I appreciated his oration and his irritation. He plays a valuable role in the Senate, and he raises issues that are important to all of us regardless of which side of the aisle we fall.

This amendment, sponsored by the Senator from North Carolina, Mr. FAIRCLOTH, is one which we should understand what it stands for. This is an amendment to limit the attorneys' fees that will be payable to plaintiffs' attorneys who joined with all the States' attorneys general to bring the lawsuits against tobacco companies.

Now, to paraphrase my friend, the Senator from Arkansas, Mr. BUMPERS, the tobacco companies hate these attorneys like the Devil hates holy water. Were it not for these attorneys, there would be no McCain bill in the Chamber this week. Were it not for these attorneys, there would have been no State lawsuits. Were it not for these attorneys, these tobacco companies would continue to make billions of dollars, would continue to exploit our children, would continue to be the source of the No. 1 preventable cause of death in America month after month, year after year, and decade after decade.

So it is no wonder that the Senator from North Carolina wants to get even with these attorneys. They have upset the apple cart for Tobacco Row. These attorneys have joined with States' attorneys general, 42 of them, to bring lawsuits which have successfully brought the tobacco companies to their knees. And if this Senate has the courage this week that I hope it does, we will pass the most comprehensive historic legislation this Nation has ever seen to protect our children from continued exploitation by these tobacco companies.

So here comes the Senator from North Carolina, and he says, well, I think it is only reasonable that we

limit these attorneys to fees of no more than $250 an hour. At least I think that is what his amendment says; it has been written over a couple times. But I think that is what he ended up concluding. For most people in America, $250 an hour is an amazing amount of money. To anybody who would think about making $10,000 a week, that is an amazing amount of money. But, ladies and gentlemen, we are talking about attorneys who are playing in the big leagues here.

Isn't it interesting that all of his rancor and all of his anger about attorneys' fees only affect the fees that are being paid to attorneys who are fighting tobacco companies. I have searched this amendment, line for line and page for page, to find some limitation on the amount of money paid to the attorneys for the tobacco companies. No, not a single word of limitation. Pay them what you will. But the plaintiffs' attorneys, representing the children who are being exploited by these companies, the plaintiffs' attorneys who come in here representing flight attendants to try to make sure in a courtroom that they are protected from the kind of secondhand smoke that is damaging, those are the targets of the Senator from North Carolina.

Isn't it an amazing thing that these tobacco companies, when they put their enemies list together, put at the very top these attorneys. Well, why did these State attorneys general bring in these private attorneys as part of the lawsuits? For one simple reason: They didn't have the resources in many States to really go after these tobacco giants, so they brought in the trial attorneys and they said, "If you are going to sue the tobacco firms, do it on a contingent basis. If you win the lawsuit, which has never been done—never been done—if you win the lawsuit, you will win a substantial fee. If you lose, you go home emptyhanded." These attorneys said, "We will take it on; on a contingent fee basis, we will take it on." And guess what. They are about to win. If we do the right thing, they will win. In at least four States, they have won. It just angers the tobacco companies to think that they are going to have to pay the fees of the attorneys who sued them.

Why did we need these attorneys? Because, honestly, ladies and gentlemen, when it came to Congress, when it came to State legislatures, when it came to many Governors' offices, and, yes, even when it came to the White House year after year and time after time, the tobacco companies had a cozy relationship. They knew no one was going to go in and challenge them.

Mr. FAIRCLOTH. Will the Senator yield?

Mr. DURBIN. But in a courtroom, it is a different story. In a courtroom—I will when I finish; I will be happy to yield when I finish. In a courtroom, it is one attorney against another. It is a jury of peers, 12 Americans sitting in judgment, and that is when the tobacco companies are being brought to their knees. They could not buy it through lobbyists. They could not buy it through political contributions. They had to walk into a courtroom. And when it happened in 42 different States, they said, "It is time to settle. The game is over." So naturally they are angry with these attorneys, these trial lawyers who have brought them to their knees.

And think about the limitation of $250 an hour. Not a word about limiting the amount of money paid to the tobacco company attorneys, and certainly not one word about limiting the money paid to the tobacco company executives. Four years ago, do you remember that shameful scene when seven tobacco company executives, under oath, in the House of Representatives swore to God on a stack of Bibles that tobacco was not addictive? Tobacco is not addictive. Imagine they would say that. And these men, who were being paid millions of dollars a year by exploiting our children and selling their products, are not even mentioned in this amendment.

Now, if we are going to work out some moral outrage about how much money we are going to pay people, then let us include not just trial lawyers. Let's include the attorneys for the tobacco companies. Let's include the tobacco company executives. Or let's call this amendment for what it is. This is an effort to get rid of the element that has brought the tobacco companies finally to this Senate floor and brought us finally to comprehensive legislation.

I yield to the Senator from North Carolina.

Mr. KERRY. Not on your time.

Mr. FAIRCLOTH. Does the Senator have a copy of the amendment?

Mr. KERRY. Mr. President, I would ask the Senator to yield on the time of the Senator from North Carolina.

Mr. FAIRCLOTH. I am satisfied.

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

Mr. FAIRCLOTH. Does the Senator have a copy of the amendment?

Mr. DURBIN. I have the amendment 2421.

Mr. FAIRCLOTH. Look at the top of page 2 and line 10 at the bottom. What does it say?

Mr. DURBIN. I am sorry. Page 2?

Mr. FAIRCLOTH. Page 2. Read the top line.

Mr. DURBIN. "* * * made public disclosure of the time accounting under paragraph (1) and any fee * * *"

Mr. FAIRCLOTH. Now read the bottom, line 10. It clearly includes the attorneys for the tobacco companies.

Mr. DURBIN. I am sorry, Senator. I do not see that reference in here in the copy I have.

Mr. FAIRCLOTH. If the Senator will read, at the top, it clearly says—in the English language it is pretty clear—that it includes all matters, defendant or otherwise.

Mr. DURBIN. I am sorry, but I do not see that reference, unless this is another copy of the amendment.

Mr. FAIRCLOTH. "* * * who acted at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection."

Mr. DURBIN. Will the Senator clarify then, is he saying that any of the attorneys hired by the tobacco companies and paid by the tobacco companies relative to this litigation will be limited to how much they will be paid——

Mr. FAIRCLOTH. Yes.

Mr. DURBIN. By the tobacco companies?

Mr. FAIRCLOTH. That is exactly what I am saying.

Mr. DURBIN. Whether that money comes through this agreement or not?

Mr. FAIRCLOTH. That is exactly right.

Mr. DURBIN. How will the Senator possibly monitor that and police that in terms of the banks and hordes of attorneys who represent these tobacco companies? In the issue of the plaintiffs, we clearly have a case with an attorney general and we have a law firm that has reached an agreement and contract with them. Is the Senator from North Carolina saying, then, that as to all the activities of attorneys for tobacco companies that he is going to limit their fees to $250 an hour?

Mr. FAIRCLOTH. If they submit a record, they will have to submit a record to the Congress. And of course it would be perjury to lie about it. They have to submit the record. Yes, I am saying they are going to be held responsible. And to the same fees that we are paying the plaintiffs' attorneys.

Mr. DURBIN. What if they have already been paid?

Mr. FAIRCLOTH. Then it will be up to the tobacco companies to make an adjustment.

Mr. DURBIN. The tobacco companies will have to call their attorneys in and make an adjustment under your act?

Mr. FAIRCLOTH. Yes.

Mr. DURBIN. I say to the Senator, I believe that is a very difficult thing to accomplish. I don't think it is going to happen. What the Senator is asking——

Mr. FAIRCLOTH. It is difficult to see $185,000 an hour paid to plaintiffs' attorneys that come out of the working people of this country, too. And that bothers me considerably.

Mr. DURBIN. Mr. President, I say to the Senator the money that comes into this comes from tobacco companies which have made a profit at the expense of children and Americans for a long period of time.

Mr. FAIRCLOTH. I beg to correct you. It comes from the taxpayers of

this country. The tax is on cigarettes and cigarettes are smoked by generally people with incomes of less than $40,000 to $50,000 a year. They are going to pay 70 percent of this tax. We are going to buy Lear jets for attorneys out of the working people of this country because 70 percent of this money we are going to pay to these attorneys comes from people making less than $40,000 a year. And how anybody can justify paying an attorney $100,000-plus an hour, and taking it out of the pockets of people making less than $40,000 a year, I don't know.

Mr. DURBIN. Let me say to the Senator from North Carolina, what I understand this bill to include is an arbitration proceeding, if there is any question about the fees to be paid to attorneys, and in the case of the State of Florida, that in fact occurred. The attorneys' fees were reduced. But let's not lose site of the bottom line here. Were it not for these attorneys bringing these lawsuits, we wouldn't be here today. We would not be discussing that legislation.

Mr. FAIRCLOTH. I don't know that that is true. But they arbitrated it in Florida down to $180,000 an hour. But I would like to yield the floor now to Senator SESSIONS.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Illinois controls the floor—has the floor.

Mr. DURBIN. How much time do I have?

Mr. KERRY. Mr. President, I believe the time agreement was the time would come from the Senator from North Carolina.

The PRESIDING OFFICER. That is correct.

Mr. FAIRCLOTH. The time was yielded to me, Mr. President. Our debate was on my time.

The PRESIDING OFFICER. Right. The Senator from Illinois does control the floor. The time was charged to the Senator from North Carolina. So the Senator from Illinois still has the floor.

Mr. DURBIN. I believe the Senator from South Carolina recognized me for 10 minutes. Do I have any time remaining on that?

The PRESIDING OFFICER. The Senator has 4½ minutes.

Mr. DURBIN. Mr. President, 4½ minutes? I yield that back to the Senator from Massachusetts, who has been kind enough to wait.

Mr. KERRY. I thank the Chair. I understand the Senator wants to yield some time now. I think we can go back and forth.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. Thank you. I yield the time, I yield whatever time is desired by the Senator from Alabama, Mr. SESSIONS.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. KERRY. Mr. President, point of inquiry?

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. If I could ask the Senator from Alabama how much time he might use so other colleagues can plan, so we can proceed down?

Mr. SESSIONS. Mr. President, 15 minutes.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, this is, indeed, an important issue. We have heard a lot today about validity of contingent fees. Historically, contingent fees have not been favored by the law. They have been scrutinized. Lawyers ethically were supposed to take fees on a paying basis unless the person could not afford to hire a lawyer—but we have always affirmed a contingency fee basis. I am not here to criticize that. I am not. This legislation in no way would stop private attorneys from going forward with contingent fee arrangements with their clients. As an attorney, I have filed cases on an hourly fee basis and on a contingency fee basis. I don't think there is anything wrong with that and I don't mean to suggest there is.

But in the history of litigation, in the history of America, in the history of law, in the history of the world there have never been fees equivalent to the ones we are talking about today. They go beyond anything we can imagine. These fees are beyond any payments that have ever been known in the world of law. I call them the mother of all attorney's fees. This is a serious matter.

The attorneys general of the United States have come to this Congress, this Senate, and they have asked us to approve a settlement, to add things to it, to review it and comprehensively deal with this matter. So one of the things that we have to deal with is attorneys' fees.

Under the Constitution, the Congress is empowered to regulate. We do it when we enact a minimum wage. A person has a contract with somebody at $4 an hour, and we say the wage ought to be $5 an hour; that contract is vitiated. We have a lot of containment of attorney's fees in America.

Indeed, with regard to Social Security cases, there is a limitation on attorney's fees. With regard to the Criminal Justice Act, the limit is $75 an hour. Under the Equal Access to Justice Act, attorney's fees are limited to $125 an hour. Limitation of attorney's fees is common. We have had a number of research papers written on fee limitations. A professor from Cardozo School of Law has written comprehensively on this legislation and says it is, indeed, constitutional.

To illustrate the amount of money at issue in these cases, I would like the people of this country and the Members of this body to think about this: The yearly general fund budget for the State of Alabama is less than $1 billion. In Texas, a judge has approved payment of $2.3 billion to a handful of lawyers for this litigation. They approved that kind of fee.

In Florida, attorneys are still battling to obtain $2.8 billion in fees—that is two thousand eight hundred million dollars—two thousand eight hundred million dollars. That is absolutely unconscionable, as a judge in Florida said, and as anyone who has any sense of decency ought to understand. We have been asked to pass legislation dealing with this health care problem and try to do something about teenagers and smoking? We have a right to pass legislation dealing with attorney's fees.

Let me share something with you. People may not understand exactly how all of this has occurred. I have a transcript of a recent 20/20 program about the Florida attorney's fees debate. Let me share some of what was said in that program. The segment is entitled, "What A Deal."

HUGH DOWNS. What is your time worth? How does $7,000 an hour sound? That's what some lawyers want to be paid for their work on Florida's suit against the tobacco industry. Each and every one of them could become a millionaire many times over, just from this one case.

So, did they really earn their fee? Well, John Stossel tells us how the lawyers came to demand a king's ransom for their work.

JOHN STOSSEL. The children are supposed to benefit from the new money for anti-smoking programs. And later the governor invited in some children and dummied up a check to celebrate the first $750 million payment. But now it turns out that Florida's taxpayers may not get as much of that money as they thought because Florida lawyers are in a legal battle over how much money they should get.

Montgomery, the plaintiff's lawyer in the case, says they deserve $2.8 billion. That's right—billion, says Stossel.

He (referring to Mr. Montgomery) doesn't exactly need the money.

This is his multimillion-dollar house in luxurious Palm Beach right next to the ocean.

The house is so huge, it looks more like a palace. Even his Rolls Royce and his Bentley live in a garage that's bigger than many houses. Montgomery got this rich suing carmakers and hospitals and insurance companies.

BOB MONTGOMERY. So this is my putting green, and this is my sand trap. And what I do is I have these balls, and this is where I drive them.

JOHN STOSSEL. Out into the water?

BOB MONTGOMERY. Out into the water.

He has so much money, he doesn't worry about his golf balls. He hits them out into the ocean.

JOHN STOSSEL. The inside of the house is even more grand. Montgomery has a vast art collection.

Another attorney, Mr. Fred Levin, defends the fees.

FRED LEVIN. It was contracted.

JOHN STOSSEL. So who made this contract?

FRED LEVIN. Well, the State did. It was a valid, legitimate contract.

JOHN STOSSEL. Fred Levin helped the governor put the deal together.

You're a private lawyer? (Asked of Mr. Levin.)

FRED LEVIN. Right.

JOHN STOSSELL. What are you doing there? Just giving advice?

FRED LEVIN. Well, yes.

JOHN STOSSEL. Friendly advice?

FRED LEVIN. Yes, I was a—I'm a good friend of the governor's.

JOHN STOSSEL. Friendship starts to explain how some of these private lawyers were selected and ended up with a contract that says each now is entitled to hundreds of millions of dollars. It began 4 years ago, when Levin came up with a scheme to use Florida's legislature to make it easier to win a suit against big tobacco.

FRED LEVIN. I took a little-known statute called a Florida Medicaid recovery statute, changed a few words here and a few words there, which allowed the state of Florida to sue tobacco companies without ever mentioning the word "tobacco" or cigarettes. The statute passed in both the house and the senate. No one voted against it.

JOHN STOSSEL. Well, did the people know what they were voting for?

FRED LEVIN. No. And if I told them, they'd have stood up and made a—you know, they'd have been able to keep—keep me from passing the bill.

JOHN STOSSEL. This made the suit much more winnable?

FRED LEVIN. Oh, God. It meant it was a slam dunk.

JOHN STOSSEL. And who would get to be the lead lawyer on this slam-dunk offense?

FRED LEVIN. Initially, I was assuming that I would be bringing the case. But then they said, "Fred Levin's going to make all the money."

JOHN STOSSEL. Fred Levin's doing a scam here. He's changing the law so he can get rich.

FRED LEVIN. So I went to the governor and I said, "Listen, let me help you get a group of lawyers together, our dream team, and I'll get out."

Mr. Montgomery suggests that if he lost the case, he would have been out $500,000. He probably has that much invested in all of his automobiles in this mansion he has. He suggested his cost was $500,000.

JOHN STOSSEL. Am I missing something here? The controversy has become, should the dream team get billions from the 25-percent deal they have with the State or from arbitration? My question is, why do private lawyers get so much of the State's money in the first place? When this construction company got the contract to replace this Florida bridge, they had to compete against other construction companies. There was competitive bidding. To win the job, they had to show they were qualified and submit the lowest bid. All States have such rules to prevent politicians from funneling projects to their friends. But that's not what happened with the lawyers. Here, Fred Levin called some friends. You picked the dream team.

Then Mr. Stossel discussed how the deal was negotiated and the fact that Mr. Levin and the Governor were close, riding in the same car together.

Then Mr. Stossel asked Mr. Levin why the Governor was spending the night at this trial lawyer Montgomery's house.

FRED LEVIN. Well, when he's in Pensacola, he sleeps at my house, so——

JOHN STOSSEL. That week, Levin threw a big party. His estate's so big he buses the guests in from where they've parked their cars. The Governor came, of course.

And they talked about how the Governor's guests had raised a lot of money for him.

As Professor Lester Brickman of Cardozo Law School said:

It's an outrage. It's more than greed, it's a scam.

JOHN STOSSEL. Law professor Lester Brickman, who's an expert on legal fees, says it's not right to hand such a lucrative-fee case to a friend.

This is the issue we are talking about today. I was attorney general of Alabama when this litigation was being suggested. I had groups of trial lawyers come to me and ask me to file the litigation. We had meetings and we discussed it. They wanted a contingent fee, as I recall, 25 percent of the recovery.

I remember saying, "Well, some of the States are moving along fine in this litigation. If they win, I assume Alabama will be able to win with our own staff. I don't believe we need you to represent us."

They said, "Well, you don't just hire us, you can hire some of your law firm friends, too. You can cut them in on the deal." That was one of the things they suggested to me.

I said, "We're not hiring lawyers for friendship. We're not hiring lawyers to pass out funds to people we want to give money to. If we need a lawyer, we'll hire a lawyer." I didn't do so.

Basically, what I had predicted came true. When the end came, the tobacco companies settled all over America. Some States had hired lawyers on a contingent-fee basis, lawyers that may have only worked a few weeks or months, and then began to come in and claim 25 percent of $2 billion, $3 billion, $15 billion. This is supposed to be fair and just? I submit that it is not.

My good friend and chairman of the Judiciary Committee, on which I serve, expressed real concern that we ought not attack contingency-fee contracts, as these contracts benefit people who cannot afford to hire lawyers on an hourly basis. I don't intend to undermine normal contingent-fee contracts, and nothing in our amendment does that.

I think everyone needs to know that this McCain bill that the administration has approved and signed off on, and the trial lawyers, I suppose, have signed off on, calls for a panel of arbitrators. It consists of three people: The Castano plaintiffs; I understand one of them may get $50 million out of this litigation. Plaintiffs would have one member on the arbitration panel. The other members of the group would be the manufacturers and the attorney general. They get to pick the second one.

But you see, there is a problem there, because the accord really is between the manufacturers and the attorneys general and the plaintiffs' lawyers. I submit that they are not defending the best interests of the people—they signed those contracts together.

In this situation, the plaintiff lawyers have placed themselves in—and I don't know any other way to say it—a conflict-of-interest position. When the tobacco companies agreed to settle, they went to the lawyers on the other side and said, "Now, let's talk about your fee. We won't pay all the money to the State and let you be paid by the State, because that would look bad. We'll just have a little side agreement, and we'll pay your fee, and it won't come out of the State's money."

The attorneys general agreed to that. So the attorneys general are in on the agreement. And the plaintiff lawyers are in on the agreement. And the tobacco companies are in on the agreement. Anybody who knows anything about economics and thinks realistically about this matter will know there are not two separate pots of money.

The attorneys' fees and the recovery by the States are all payments by the tobacco companies to get these people off their backs. The tobacco companies do not care whether lawyers get the money or whether the children of the State or the children of the United States get the money. They are not concerned about that. They want this litigation over.

So this is what we have. The more you pay the lawyers, the more likely they may be to compromise the interests of the State and the children. Every dollar that goes to them is a dollar that would not go to the children.

The third member of this arbitration panel is picked by the plaintiffs and the manufacturers and the Attorney General. So you have more of the same. This is not an effective arbitration panel. It is a stacked deck. I am not sure some of the people who defended this panel have fully thought that through. We will need to talk to them about that. But this is not an acceptable panel.

Some people say, "Well, Congress can't undermine contracts." We limit the minimum wage. And Florida has limited attorney's fees—at least so far they have tried to. People on the other side say, "Well, it's not so bad. Florida limited their attorney's fees contracts. So if Florida can limit that contract, why can't we limit their fee?" But in Texas they did not. In Texas a judge has approved $2.3 billion in attorneys' fees.

I will point this out to you: I have a recent article about the owner of the

Baltimore Orioles making over $1 billion from these attorneys' fees, $1 billion—B-I-L-L-I-O-N—$1 billion. I suspect he probably is making more off the lawsuit than he has made on all of his other investments.

Do you know how many billionaires there are in the United States according to Forbes? I had my staff check. There are about 60. I wonder how many new billionaires these attorneys' fees will make? Who will pay for this wealth transfer? Who will be making more Montgomerys with multimillion-dollar mansions on the beach, who hit their golf balls out into the water because they have so many they don't care, and have world-renowned painting collections?

I am not weeping at all over the poor state of these attorneys. I think it is time for us to have a clear policy about what we ought to pay. This body voted last year that $250 was a fair wage for them to be paid per hour, and I think it is, too. I support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. How much time do I have left?

The PRESIDING OFFICER. The proponents have 58 minutes 30 seconds.

Mr. SESSIONS. The 15 minutes?

The PRESIDING OFFICER. The 15 minutes have expired.

Who yields time?

Mr. KERRY. I presume the Senator can yield himself more time if he wants to.

Mr. SESSIONS. I will reserve the time on this side.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, I yield myself such time as I use. I will not use that much time.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is time we really talked about what is really happening here. And it is time that we face reality with respect to this amendment.

I am just astounded listening to the Senator from North Carolina and the Senator from Alabama suggest they know better than their own attorneys general, who are elected, after all, who are accountable to the people of their States, just as we are as Senators, and who suddenly, representing the Republican Party, are attacking people because they have made some money and they do not like the way they have made some money.

This is an unprecedented situation as far as I know. The Senator from Utah, the distinguished chairman of the Judiciary Committee, could not have put it more strongly or directly. He asked the question, What is our party coming to if this is what we stand for?

Now, I ask my colleagues just to read this amendment. This amendment says:

> No award of attorneys' fees under any action to which this Act applies shall be made * * * until * * * [they] have provided to the Congress a detailed time accounting with respect to the work performed.

They want to turn the U.S. Congress into an accounting committee for attorneys, private attorneys who have contracted privately with the attorneys general of their States.

But after that, if ever there was a violation of what I thought the Republican Party stood for, here it is. "This section shall apply to fees paid or to be paid to attorneys under any arrangement * * *" i.e., retroactively. They are going to go back and say, no matter how many hours attorneys may have worked, no matter how much their firm may have put in, they are going to have to live by a certain fee that may be well below what they have already invested in a case.

But even more importantly, they do this for any attorney "who acted on behalf of a State or a political subdivision of a State in connection with any past litigation," "who acted on behalf of a State or [any] political subdivision of a State in connection with any future litigation," "who acted at some future time on behalf of a State or a political subdivision of a State in connection with any past litigation," "who act at some future time on behalf of a State or a political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies * * *"

Here is the most extraordinary long-arm reach of the Federal Government into the affairs of States from the very people who are most consistently on the floor of the U.S. Senate saying, "Keep the Federal Government out of our business. Keep the Federal Government away from intruding. Don't put mandates on the State. Don't preempt State action." And here we are with the greatest single preemption, intrusion, and nit-picking, micromanaging that I have ever seen.

That said, they are not even dealing with reality, Mr. President. They are coming in here and talking about $180,000 fees. That is not what they got in Florida. In point of fact, that is what the attorneys may have asked for because that was their agreement, but that is not—they are subject to arbitration.

Every single State is subject to arbitration. This bill honors the notion that there will be arbitration. No one expects attorneys to be paid the kind of money that is being thrown around on the floor of the U.S. Senate. That is not going to happen. And they cannot point to an instance where it actually has happened.

In Minnesota, they settled for 7.5 percent. The Attorney General settled, all of the parties settled. And what is really fascinating is my friend from Alabama says there are not two pots of money. Well, that is not true. In Minnesota there are two pots of money, because they came to an agreement that one pot would pay the people what they get by virtue of a settlement, and the companies, the tobacco companies will wind up paying the attorney fees outside of it. That can happen in each and every other State subject to the determination of the arbitration process, subject to the courts, subject to the attorneys general and others.

Who is the Senator from North Carolina, who is the Senator from Alabama to say that the attorney general of a State does not know what he is doing, that the attorney general of a State is incompetent to decide that he wants to run for reelection based on what he thought was a fair approach to arriving at a settlement?

Why is it fair? It is fair, Mr. President, because no one wanted to take these cases. No one wanted to take these cases. I stand with my friend from South Carolina as somebody who has tried a case and who has taken a contingency case.

When I first got out of school I started a law firm. We did not have the money to carry the case. We did not have anybody supporting us. But about six or seven people who had hairs implanted in their head from rug fibers came to us. It turned out that the hairs were cancer, carcinogenic, and they got extraordinary blisters and reactions to this and spent days in hospitals and being treated.

But how were they going to get redress? Well, they got a couple of young lawyers who took the cases on a contingency. And we took those cases based on the notion that we invested our money in the depositions. We invested our money and the time put into it. And we worked for 2 long years, Mr. President, in order to be able to finally take that case to court, win the case in court, and ultimately force the rest of the cases to settlement. There are countless examples like that.

America is going to have an opportunity to see a movie soon in which John Travolta will play Jan Schlichtmann, a young attorney up in Massachusetts who took a case of people in the City of Woburn, who had been poisoned by toxics put into the well system and their kids were dying of leukemia. This was a case that nobody wanted to take. This was a case that took years to prove, and they brought experts from all over the country. They invested in it themselves to the point, Mr. President, they were floating their own credit cards to the point of bankruptcy. They mortgaged their home to the point of bankruptcy. This lawyer lost his automobile. It was repossessed because he was going to win on behalf of these people. Ultimately, he was able to pay off all the bills and he barely made any money at all.

That is a case you win. Most cases in America are stacked against the plaintiffs. In most cases in America, corporations have all the money. That we have seen from the tobacco industry over the last years. And that is why, as the Senator from South Carolina pointed out, in all the years of litigation, not one single penny has been paid out in the court as a result of a victory won in the court at this point in time.

Who will bring those cases? This isn't the only example of that. There is the most extraordinary misunderstanding in America about contingency fees and what happens for the cases that are won that create a big stir. There are dozens of cases that are lost. There are dozens of cases litigated where people make an effort and they don't win. And that is our system of jurisprudence in America. That is how we provide the average citizen, the person who doesn't have the bucks, access to the courthouse. And here we are with a system that we have worked out in this bill which sets up arbitration which says, in section 1407, that in any case where the State and their litigation counsel failed to agree on attorney fees and related expenses, the matter of attorney fees and extensions shall be submitted to arbitration.

There is no automatic payout in this bill. No attorney walks away with fees that any attorney general or any State thinks are wrong. That is not going to happen. And there are people accountable at the State level if it did happen. It is not the business of the U.S. Senate to step in and suggest that, because the Senator from Alabama finds the lifestyle of a particular individual who may not even have made the money through that case, other cases—finds it onerous, to say we will limit it.

I bet any one of us could find any number of corporate executives, chieftains, in this country who have their airplanes, who have their nice cars, who may or may not choose to hit a golf ball in the ocean. I am sure you could say they have a lifestyle that somehow people find a little bit objectionable or they are jealous of, but since when in this country do we say we will limit their capacity for earnings and step in and become the accounting agency for those kinds of transactions?

I hope my colleagues will measure carefully the capacity in this bill. This would interfere with private contracts. The amendment is not necessary, because a bill has a means of resolving these. The courts have already shown an unwillingness to prevent any unreasonable fee, and these contingency fees preserve the rights of our citizens to be able to have access to the court.

Let me share why that is so important. It was the result of a suit brought on contingency that helped make automatic teller machine operators responsible to put those machines in a way that people weren't attacked or somehow there was a sense of responsibility about the locations. That is one of those victories that you win because people took a case.

Another case, where a $10 million punitive damage award against Playtex removed from the market tampons linked to toxic shock syndrome—those problems had been deliberately overlooked by the company. It was only because of the suit that people were protected.

In St. Louis, a jury returns a $79 million award against Domino's Pizza because of its fast delivery policy. We had a woman, Jean Kinder, who suffered head and spinal injuries when a delivery driver ran a red light and hit her, because the policy was, you have to push delivery. They changed their policy because a lawyer brought that concept to court, and it was rectified.

An 81-year-old died from a fatal kidney ailment after taking an arthritis pain relief drug called Oraflex for about 2 months. The manufacturer had known of the serious problems associated with the drug but failed to warn the doctors, and, in fact, Eli Lilly removed the drug, as a result of that suit, from the world market after it had been available in the United States for less than a year.

Eight punitive damages awards were required before the A.H. Robins Company recalled the Dalkon Shield, the IUD, and we all know what happened with respect to that.

All of these were instances, Mr. President, where American citizens were protected by virtue of the capacity of a lawyer to take a case. I can tell you, if you limit these fees to the level they want, what you are really doing is limiting the access of the average American to the courtroom, because you will make it impossible for lawyers to take those fees under those circumstances—not to mention the unconstitutionality and questionable practice of how you regulate defendants' fees in totally private contractual relationships outside of anything to do with State action, outside of anything to do with a compelling straight interest, with no appropriate rational nexus that the court requires for that kind of test.

This doesn't work. It is not needed. It is wrong. It is an exaggerated problem seeking some kind of solution. This is not the solution.

I reserve the remainder of my time.

Mr. FAIRCLOTH. I yield whatever time is desired to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I will share a few thoughts as we discuss this thing. I think the feelings are strong on both sides.

I suggest that Federal action is appropriate here because the States have asked for a comprehensive settlement of this matter. The legislation that we have proposed is a comprehensive piece of legislation. It involves where the money goes. We don't agree with the States on everything that they say, and we will be doing things differently in a number of ways. It will represent the consensus of the House and the Senate and the President, if he signs it.

I think it is perfectly appropriate for us to deal with the problem of just how much these litigators make. When you have a young lawyer taking on a big company and winning a contingent fee verdict and making some money off of it—we are not trying to undo that. We are talking about a massive effort, nationwide, that has resulted in incredibly huge profits or windfall attorney fees that ought to be contained by the very nature of this. We have a right to legislate that.

Whereas at this stage Florida has reduced the attorney's fees that were to be awarded of $2.8 million, one of the lawyers, I think, is still contesting that, and they may not prevail. Or if they do, it is just proof of the fact that courts and legislative bodies have the power to deal with excessive fees in this kind of circumstance.

Finally, they say, well, there is an arbitration panel in this agreement. I must tell you, the configuration of that panel is unacceptable. It is unacceptable for two different reasons, really. It is unacceptable, No. 1, because it doesn't even come into play unless the attorney involved is unavailable to agree with the plaintiff. The plaintiff is the attorney general or, I guess, representing the State, of the people. I am on page 438 of the agreement. It says you can't have arbitration unless the attorney involved—that is, the private plaintiff lawyer—is unable to agree with the plaintiff—that is, the attorney general who employed that attorney—the attorney general, with respect to any dispute that may arise between them regarding their fee agreement.

Why, this is the fox guarding the hen house. These are the same people that agreed to the fees. We don't have a good thing there.

Then, when it talks about submitting it to arbitration, the makeup of the panel shall consist of three persons, one of them chosen by the plaintiff—that is, the attorney general—one of them chosen by the attorney—that is, the plaintiff's attorney—and one of them chosen jointly by the two of them. That is who is making the decision—the same people that got us into this fix. I submit that is not an effective arbitration panel and it is not something that at all deals with the seriousness of the problem.

Lester Brickman, when he was interviewed on "20/20," the professor from Cardozo Law School, made these statements: "These are politicians involved

who are stroking the backs of lawyers because lawyers have stroked their backs before and may yet stroke their backs again. So I think the public perception here, which is probably pretty accurate, is that it smells."

I want to make one more point. I think this is really important. I can see how that could be of confusion. The Senator from Massachusetts says there really are two pots. This is fundamental when you think about it. It is not two pots. There is one pot of money; that is the tobacco companies; and they will pay it over to get rid of this lawsuit. And they are willing to pay as much to the lawyers to get them to agree to the settlement. It is not a healthy relationship. It is not a healthy relationship. And the suggestion that the tobacco company can go over here to the side and enter into a side deal with the lawyers who are supposed to be representing the State and the people to pay their fee, and that is not going to affect the overall settlement, is not sound thinking. It is the same money, and every dollar they agree to give is one dollar less that goes to the people and victims of smoking.

I believe the present proposal is not effective at all. I object to it. I believe the Senator from North Carolina has a proposal that will fix this matter. It will be a generous fee for these attorneys. They worked on it for 4 years, and they have 10,000 hours. They get paid $250 for every one of those hours. That is perfectly generous.

I yield the floor.

Mr. HOLLINGS. I yield to the distinguished Senator from New Jersey 5 minutes.

Mr. TORRICELLI. Although I have not been in this institution long, I have already discovered one thing about the Senate. Things are not often as they appear. This discussion has been almost entirely about money, what fees are paid, and who pays them.

But in truth, this amendment is not about money, it is about power. It is about whether or not the individual American who has little or no money, cannot afford expert testimony, cannot afford to pay the fees with extensive and complex litigation, can stand in a courtroom face to face with the largest and richest, most powerful corporations in the world and get justice.

Through almost all of the history of this Republic, we have assured that right to every American. But today, this Congress is at a point of judgment about the tobacco industry because those individual lawyers, on contingency fees, representing individual American citizens, have brought us to this point of decision.

Make no mistake about it, Americans are dealing with the reality of health care and tobacco and the financing of our future health care as a result of a potential tobacco settlement, not because of this Congress, not because of the good graces of American industry, not because the leadership of the President, but because of the threat in courts of law that individual attorneys, on contingency fees, have found justice for individual American citizens.

This fight is not about money. There are ample resources in any tobacco settlement. The fees would be paid. It is about whether or not this door to American justice is to be closed. And that is the decision.

The great irony of it is, on the other side of the aisle, the party which has always claimed to represent the rights of the individual, the founding wisdom of our constitutional system, and the prerogatives of individual State governments, would be bringing this amendment at all. If it were to succeed, the Senate of the United States would be setting professional fees, a judgment that not only does not belong here but demeans the institution. The Senate of the United States would be taking prerogatives away from State governments and State attorneys general which have negotiated these decisions or made these judgments.

The McCain legislation deals with this, in what I believe is a proper fashion, in setting arbitration panels where arbitrators can pay what expenses the lawyers had, what they had to pay, the risk they took, the time involved, and then, on a professional, informed basis, decide on proper compensation.

Alternatively, that judgment will be made here, and on what basis? Who here knows the risks involved, what expenses were incurred, what professional judgments were required? Never in my limited experience in this institution would we be making a less informed decision.

Mr. President, I strongly urge the defeat of this amendment. The attorneys general of this country have availed themselves of a right that individual Americans have used for generations. They made a judgment to the taxpayers of this country who could not afford to pay private attorneys the enormous fees, the enormous costs through recent years, to avail themselves of contingency fees to protect the taxpayers just as individual Americans have done for years. Now it is time to ensure that system worked—that freedom to remain with the individual States to reach their own final judgments.

Finally, Mr. President, let me suggest to you this legislation is not only inappropriate for the institution, it is not only denying Americans a power of equal justice against the strong and the powerful, which they have enjoyed for generations, it is also, finally, if nothing else, patently, clearly, unequivocally unconstitutional. On what basis will the Federal Government take this judgment away from the States under the 10th amendment? And on what basis would this Congress decide to take this compensation away from individual Americans in what is clearly an unconstitutional seizure of property without compensation?

Mr. President, this amendment is bad on a variety of bases. Collectively, it is almost unthinkable. I am very pleased that Senator HOLLINGS and Senator KERRY have led us in the debate, and am more than a little proud that the chairman of the Judiciary Committee, on which I am proud to serve, Senator HATCH, once again, as has been his tradition, has come to the floor of this institution in the protection of the prerogative of the institution and the Constitution of the United States.

I thank the Senator from South Carolina for yielding the time.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I do. I yield 15 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 15 minutes.

Mr. McCONNELL. Thank you, Mr. President.

I thank my friend from North Carolina.

The Faircloth cap is an attempt to insert a bit of sanity into a world of attorney-fee madness. The national tobacco settlement has turned into the "national lawyer enrichment deal." Let me tell you a little about the current "national lawyer enrichment deal."

Under the current bill, conservative estimates say that we are about to hand over approximately $4 billion a year to lawyers —$4 billion a year—every year—for at least the next 25 years. This, Mr. President, is absolutely outrageous.

I am sure the friends of the trial bar will stand up and say I am exaggerating. They will say we are stretching this one. Lawyers aren't really asking for that much money, it will be said. They aren't that greedy, some will claim. They just want to be paid a fair wage for a good day's work. Well, let's see if I am exaggerating. Let's see if the trial lawyers just want a fair wage for a good day's work. Let's take a little tour of the "national lawyer enrichment deal."

In Minnesota, where a few lawyers are reportedly seeking to rake in approximately $450 million, the lawyers in Minnesota actually took the case to trial, so it is reasonable to assume that they employed more attorneys and put in more hours than some lawyers in other States. So let's assume that 50 lawyers worked a total of 100,000 hours. These 50 lawyers would each take home $9 million for his or her labor—$9 million. And what is the hourly fee for the hard-working plaintiffs' lawyers in Minnesota? It is $4,500 an hour, Mr. President, $4,500 an hour for the plaintiffs' lawyers in Minnesota.

Well, let's take a look at Mississippi. We will stop off in Mississippi on our national tour. The latest reports out of Mississippi are that the lawyers are seeking $250 million. Assuming that 25 lawyers worked on these cases for 25,000 hours, the Congress would be authorizing each lawyer to receive $10 million a piece.

Let's break that down on an hourly basis. If each of these lawyers worked 1,000 hours exclusively on the tobacco litigation, that would enable them to earn $10,000 an hour. Pretty good day's pay, I would say—$10,000 an hour.

Now let's stop off in Florida, and this is better than Disney World. A handful of trial lawyers in Florida are trying to take us for a ride, the ride of our lives. These fellows are looking to receive as much as $2.8 billion. One lawyer has already sued for his $750 million share of the pot. And we don't even have to make assumptions in Florida because the judge has already done the math for us. The judge looked at the greedy grab by the lawyers and concluded that the demands for attorneys' fees—and this is quoting the judge—"Simply shock[ed] the conscience of the court." The judge concluded that even if the lawyers worked 24 hours a day, 7 days a week, including holidays, for over 3 years, they would earn over $7,000 an hour—$7,000 an hour. In fact, we know the actual hourly rate for the Florida attorneys is immensely higher because no one can seriously contend that any lawyer, much less every lawyer, worked 24 hours a day, 7 days a week, on tobacco litigation for 3½ years.

But it gets better. The final stop on our lawyer enrichment tour is Texas. There a handful of lawyers are going after $2.2 billion. Well, let's see what kind of hourly fee the lawyers want in Texas. Texas did not go to trial so it is reasonable to assume Texas put in far less time than Minnesota.

Again, assuming that 25 lawyers worked a total of 25,000 hours, then each of these lawyers could earn $88 million. And what kind of hourly fee is that for our Texas trial lawyers? That is $88,000 an hour—$88,000 an hour for the plaintiffs' lawyers in Texas. And if that is not outrageous enough, the $2.2 billion for attorneys in Texas have to be paid out of the Medicare money. So who do we pay, the sick and the elderly or the greedy and the lawyerly?

Let's compare the tobacco trial lawyers to the rest of the world. Let's see how $88,000 an hour compares to the average wage of others in our booming national economy.

First, we know that minimum wage mandates that workers be paid $5.15 an hour. We certainly know that the tobacco trial lawyers are making a heck of a lot more than the minimum wage earner. Senator KENNEDY will have to pass an awful lot of minimum wage hikes this year to keep up with the plaintiffs' lawyers. In fact, we are going to authorize the trial lawyers to earn nearly 50 times the minimum wage under the Faircloth amendment.

Simply put, the tobacco trial lawyer is also making a heck of a lot more money than every other wage earner in our country—everybody. As Senator FAIRCLOTH has pointed out, the baker earns $7.65 an hour; the barber, $8.37 an hour; the auto mechanic, $12.35 an hour; the carpenter, $13.03 an hour; the police officer, $16.65 an hour; the pharmacist, $25.98 an hour; all the rest of the lawyers, $48.07 an hour; and the doctors, $96.15 an hour. That is what everybody else is making. The Faircloth cap would bring the trial lawyers' stake back to the edge of reason. The cap would allow lawyers to recover their costs as well as a reasonable hourly rate as high as $250 an hour.

I might say even the $250-an-hour rate sort of makes me cringe. I suspect if the Senator from North Carolina had his way about it, it would be lower than that. But that is what the amendment states.

I know that amount is not exactly $88,000 an hour. I would not argue that $250 an hour is as good as $88,000 an hour. But it is not exactly chicken feed, and it is way the heck more than anybody else in America is making on an hourly basis. I would say there are a lot of us in the Senate who would like to have that kind of take-home pay. I know there are a lot of folks in America who would be more than happy for $250 an hour.

This cap is extremely generous and eminently reasonable. In fact, the Federal Government has established numerous attorney fee caps over the years that prove the point. Under the Equal Access to Justice Act, the fee cap is $125 an hour; under the Criminal Justice Act, $75 an hour; under the Internal Revenue Code, $110 an hour.

We ought to pass the Faircloth cap. It is fair and it is constitutional. A sweeping Federal regulatory bill cannot leave out the matter of lawyers' fees, especially when omitting the issue would allow for such abuse.

Let me spell this out.

The tobacco bill is an all-encompassing Federal regulatory scheme. The scheme will expand the Federal jurisdiction over tobacco products, regulate the manufacture, advertising, and sale of tobacco products, fundamentally affect and alter past, present, and future litigation over tobacco products, and facilitate the implementation of the settlement reached between 40-some-odd States and the cigarette manufacturers.

It would defy all logic and reason to pass this type of sweeping Federal regulation without including some type of minimal regulation for the payment of attorneys' fees for civil actions affected by the bill. Basic fairness requires that we not neglect this critical issue.

Throughout the debate over the tobacco settlement, we have constantly heard assertions that the tobacco companies have gone after women, children, and the elderly. If we don't pass this sensible fee cap, then we will not only be creating an exclusive club of trial lawyer billionaires—that is with a "b," Mr. President, billionaires—but we will be unleashing a legion of lawyers to prey upon these very same persons in future tobacco cases affected by this bill. Surely, nobody in the Senate would want such a result.

No one is trying to deny any lawyer a fair wage. Surely, $250 an hour, which is in the Faircloth amendment, is more than a fair wage by the standard of anybody else living in our country.

A vote for the Faircloth amendment is a vote for reason and sanity. Let's stop the National Lawyer Enrichment Tour before it starts.

Mr. President, just a couple of other observations that I would like to make before relinquishing the floor.

Neither the Contracts Clause nor the Due Process clause prohibit regulation of attorney fees as part of a broad, comprehensive regulatory bill.

The Court has pointed out that a "party complaining of unconstitutionality . . . must overcome a presumption of constitutionality and 'establish that the legislature acted in an arbitrary and irrational way.'"

It is neither arbitrary nor irrational to regulate attorney fees as part of a comprehensive federal effort to expand federal jurisdiction over tobacco products, regulate the manufacture, advertising and sale of tobacco products, fundamentally affect and alter past, present, and future litigation over tobacco products, and facilitate the implementation of the settlement reached between forty-some-odd states and cigarette manufacturers. In fact, it would defy all logic and reason to pass this type of sweeping federal regulation without including some type of minimal regulation for the payment of attorney fees for civil actions affected by this bill.

Even CRS—when looking at a standalone fee cap last October—determined that "it seems very likely that the proposal in question would not violate due process."

Federal courts have routinely upheld laws that abrogate past contracts, so long as those laws have a rational basis. It is certainly a rational basis to regulate fees as part of a broad regulatory package. Moreover, it is rational to ensure that an equitable amount of finite resources will be available to protect the national public health and welfare and to compensate those who suffer from tobacco-related diseases.

In fact, the Supreme Court has declared that "Congress may set minimum wages, control prices, or create causes of action that did not previously exist."

In one classic Supreme Court case, the Court held that Congress could retroactively cancel a "free rail pass for life" given as part of a settlement of litigation. Moreover, to accept the trial lawyers' takings argument, one would also have to consider it a constitutional violation for Congress to require States to abrogate contracts with state employees in order to increase the minimum wage.

Professor Brickman has explained that "[i]f individual parties could insulate themselves from congressional legislation by entering into private contracts before such legislation were enacted, then:

the result would be that individuals and corporations could, by contracts between themselves, in anticipation of legislation, render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of its power to regulate commerce. No power of Congress can be thus restricted. The mischiefs that would result from a different interpretation of the Constitution will be readily perceived.

Finally, the "constitutionality of the amendment under a Taking Clause analysis is further buttressed by the fact that attorneys affected by the regulation are receiving substantial financial benefits from [the Tobacco Bill]." (Brickman Letter at 2.) These *substantial benefits for attorneys*, financial and otherwise, include the fact that the federal government is: (1) ratifying the national tobacco settlement, (2) establishing a national trust fund to provide States with Medicaid reimbursements and attorneys with a basis for recovery, (3) removing limits on tort liability in future cases, (4) making it easier for plaintiffs to recover by changing the burden of proof and establishing a presumption that certain diseases are caused by use of tobacco products, and (5) creating a national public database with incriminating documents to use against tobacco companies in present and future litigation.

No court would view these substantial benefits for plaintiffs' attorneys and conclude that they have suffered an unconstitutional taking. Even the CRS document referenced by the opponents of this amendment clearly spells out that "indeed, the Supreme Court has never found a taking based on federal legislative alteration of existing private contracts."

Mr. President, I commend the distinguished Senator from North Carolina for an outstanding and important amendment. There should be no tobacco bill at all—at all—unless this unjust enrichment of this select group of lawyers is curbed. The Faircloth amendment would do that. I commend the distinguished Senator from North Carolina for his good work, and I am happy to be a cosponsor of his amendment, and I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). Who yields time?

Mr. HOLLINGS. I yield 5 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. WELLSTONE. I thank Senator HOLLINGS.

Mr. President, here we go again. Now we find out that this bill covers not only prospective actions but it also has been expanded to cover, and thereby affect, four State settlements that have already been finalized in Mississippi, Florida, Texas, and Minnesota.

We have been through this before in Minnesota. The tobacco industry challenged the State entering into a contingent fee with attorneys. They took this challenge to the trial court, to appellate court, and the Minnesota Supreme Court, and they lost every time. This amendment is another tobacco company amendment, and I believe they will lose again on the floor of the U.S. Senate.

Mr. President, I have to respond to some of what I have heard my colleagues on the other side say about how these attorneys have done so little. That is a bitter irony, from the point of view of a Senator from the State of Minnesota. Minnesota, for instance, from August 1994, when the case commenced, until January 1998—we had numerous, unprecedented pretrial and discovery proceedings. Over 34 million pages of documents were reviewed. The majority of them had never been disclosed. The tobacco companies fought this over and over and over again on privilege claims. They lost.

And the irony, I say to my colleague from South Carolina, is that much of what we know about all of the tobacco companies' tactics of misinformation and deceit come from those documents—from the State of Minnesota, from that case, from that settlement. It has a lot to do with the fact that people in the country want us to pass tough legislation. It has a lot to do with the fact that Minnesota led the way.

What we are really talking about here is something very historic. These States went on a contingent fee basis with lawyers, took on the tobacco companies, and these settlements were historic because these were the first time that this tobacco industry had ever lost in court. Despite the long odds, Attorney General Humphrey and other attorneys general took on the industry, went with contingent fee, and the tobacco industry tried to stop it. They lost in Minnesota. And because of this work, with 34 million documents, additional information, a record of deceit and misinformation by this industry—that is what this debate is all about.

This is not about anything other than making sure that when consumers want to take on a powerful industry like the tobacco industry, or the State of Minnesota wants to take on a powerful industry like the tobacco industry, they won't be able to do so. As a matter of fundamental fairness, this amendment should be defeated. I just have to simply say, I don't know where my colleague from Kentucky gets all of his arithmetic from—I am talking about Senator MCCONNELL from Kentucky——

Mr. FORD. Thank you. Thank you.

Mr. WELLSTONE. Not Senator FORD—dividing up how many lawyers worked on this and how much they got paid and all the rest of it. I never heard any of that before.

Here is what I do know. It is true the State of Minnesota took on this industry. It is true the tobacco industry, just like some of my colleagues, don't want that to happen. It is true they challenged the contingency fee, just like my colleagues are trying to do here today on the floor of the Senate. But the tobacco industry lost in Minnesota in a case that went to the Supreme Court. Minnesota, working with lawyers and working with consumers, unearthed—what is it again; let me make sure I have the exact figure—34 million pages of documents.

Mr. President, this amendment should be defeated. If it is adopted, it would be great for the tobacco industry, but it would not be great for the consumers and people we represent, and I think Minnesota is living proof of that.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Will my colleague be kind enough to give me 10 seconds?

Mr. HOLLINGS. I yield 3 or 4 more minutes.

Mr. WELLSTONE. I thank my colleague. I won't need that much time.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Joe Goodwin, who is an intern, be allowed the privilege of the floor for the duration of this debate.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. FAIRCLOTH. Mr. President, I yield myself 3 minutes.

We have had a lot of conversation today about limiting attorneys' fees, that this would be a new thing, that the Federal Government should never get into limiting the fees that these magnificent saviors of society, the trial lawyers, have done for us.

We limit attorneys' fees to every other attorney under the Equal Access to Justice Act. We limit to $125 attorney fees against the Federal Government in civil rights cases. Now, maybe they are less important than the tobacco case, but they only get $125 an hour.

The Criminal Justice Act has a cap in most criminal cases of $75 an hour, and the Internal Revenue Code limits to $110 an hour a cap for winning parties in tax cases. And here we are talking about $88,000 an hour in Texas, and this is a fixed, done deal. This is not a guess—$88,000 an hour.

I just had to think what that meant. A trial lawyer makes more in an hour and a half than a U.S. Senator makes in a year. Now, maybe he is worth more, according to the testimony we have heard, but in an hour and a half, a Texas trial lawyer makes almost exactly the same amount of money that we pay a U.S. Senator for a full year's work. And they are saying, "No, you cannot cap these great people, they have saved society." Time after time we hear what they have done to save mankind. Well, I don't think they are saving mankind. They are saving their own kind, and that is exactly what they are working on.

We go back to what they are worth. I don't see how anybody can justify this. They say we are setting fees. We set fees on doctors of all types—anesthesiologists. For all doctors, we set fees. We set hospital rates. We set lawyer's fees. But yet, when it comes to these exorbitant, ridiculous fees that the American taxpayers are paying—and I repeat that 70 percent of this tax that is being collected and given to these attorneys is coming from people making less than $40,000 a year. Extrapolated, that is about 26 minutes' work for a Texas trial lawyer.

The PRESIDING OFFICER. The Senator has used the 3 minutes he has yielded himself.

Mr. FAIRCLOTH. I thank the Chair. Does Senator SESSIONS wish to speak?

Mr. FORD. Mr. President, are we swapping sides now?

Mr. HOLLINGS. I yield such time as necessary to the distinguished Senator from Kentucky.

The PRESIDING OFFICER. The Senator from South Carolina has less than 15 minutes.

Mr. FORD. About 4 minutes.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. I thank the Chair, and I thank my friend from South Carolina. I am not a lawyer, and I don't understand all the work that lawyers do. When I was growing up, my dad said a little knowledge of the law is dangerous. Get yourself a good lawyer and stay with him or her. That is what I have tried to do.

I have been in the insurance business, and I understand that very well. How many times has an independent agent down in some small community—and I have done it on many occasions—been asked to make bids on a piece of property or on a fleet of trucks or liability, or whatever it might be, and the staff in that little agency work for hours, day and night, putting together a comprehensive bid. Lo and behold, we lose. That is part of the game.

Then we get another bid. It may be on a county or on a city, and we work for days and into the nights putting together a comprehensive bid. And we lose.

But lo and behold, one time we submit a comprehensive bid and what happens? We win. It makes us feel good. But then somebody comes along and says, "Ford, you've made too much money." Well, I have lost 100 times and finally win one and they say, "Ford, you've made too much money, you just can't do that." So they limit the amount of money I can make as an insurance agent.

It is the same thing that happened yesterday. Ninety-eight percent of the farmers who have tobacco quotas voted to keep the farm program. But in here, on the Senate floor yesterday afternoon, they said that 98 percent didn't know what they were talking about—"We're going to wipe out the quotas because we know more than you do." That is why they don't like politicians in Washington. They don't want to do what their constituents want them to do.

Here we are saying after 98 percent of the people voted one way, "You don't know what you want, and we're going to take care of you." It is the same way with the attorneys general. Over 40 of them took on the tobacco industry. It was a pretty awesome cause, and they have won. They worked out a deal.

Now we say, "After you have done all that, you can't charge that much." You sign a contingency fee. What is a contract for? Are we the "big brothers" that vitiate contracts? I don't think so. You talk about protecting little fellows. As I understand the tobacco deal, it came from a little fellow whose secretary lost her mother, and he figured out that the States could sue. A little fellow made it, and he came along and others joined with him.

We are now saying to these 40-some-odd attorneys general, "You don't know what you're doing, you paid too much." We weren't even in on it. We didn't even help. But now in the end, we say, "No, you can't have that, that's too much."

They took the chance. How much did it cost? How much did they pay? Everything they have paid comes out of this hourly cap. I am sure that some lawyers do better than others. Lord, when I was in the insurance business, I would have loved to have had a boat. I had a johnboat I fished in, and I was proud of it. I had a decent automobile—I didn't have a jet to fly around in—but I was proud of it. I made it by being competitive. I went to the people who had an opportunity to give me a chance, and I asked them, "Can I bid?" We worked it that way.

The PRESIDING OFFICER. The 4 minutes yielded has expired.

Mr. FORD. I ask for 1 more minute.

Now we are saying you can't just do it. If there ever was an intrusion in private practice, private business—I am surprised at the Republican side. Ninety-eight percent of the farmers say we want it one way, and they say, "You can't have it because you don't know what you're talking about."

Lawyers go out and win a case, and they say, "You've got too much by winning, we're going to take it away from you."

I don't understand what this body is trying to do. I don't want you to take anything out of my pocket, but that is the name of the game, as I see it, and when you win, you win; when you lose, you lose. When you lose, you pay it all. When you win, you get to pay off what it cost you. You don't put all that in your pocket.

So I go back to the insurance business. We spent hours and hours trying to be competitive and win one. But we did not win them all. We lost a lot of them. But when we did win one, I would not want somebody coming along saying, "You have made too much."

It is like gambling. You have to pay—they had an amendment around here saying, "If you win, you have to pay tax on it; but if you lose, you can't deduct it."

Oh, we are doing pretty good around here, Mr. President. I hope that someday we can come down and have a little common sense and we can try to work this to the advantage of everybody in this country under the basis that we are competitive. It is a free system. And if you come out ahead, Lord, let's don't say, "You made too much." Let us praise them for being good. The prize is being good. You made it work.

So we are saying, "If you are good, you are going to be handicapped." That sounds like a horse race to me. I come from Kentucky. We race thoroughbreds. If you have one that is way out front, you better put 126 pounds on him. If you have one that is light, you put 112 or 114.

So that is what we are trying to do here. If you are a thoroughbred doing a good job, we are trying to handicap you from running a race.

Well, Mr. President, I hope this amendment is not approved. I hope my friend from South Carolina wins on this one. Then we can get on to other things and help the farmers that have a tobacco quota. Let them win a little something in the days to come.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I would like to make a——

The PRESIDING OFFICER. Does the Senator from Alabama ask unanimous consent to use time from the Senator from North Carolina?

Mr. SESSIONS. I did not hear the President.

The PRESIDING OFFICER. The Senator from North Carolina controls time.

Does the Senator ask unanimous consent that he be allowed the use that time?

Mr. SESSIONS. Yes. I ask unanimous consent that I be allowed to use time from the Senator from North Carolina.

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

Mr. SESSIONS. Mr. President, I would like to mention a few things.

First of all, attorneys' fees do affect the settlement because it is money otherwise available to be paid by the tobacco companies that could be used for health of the children and the good things this bill seeks to do, for that money is directly usable for good things, and it ought not to be given away in unprecedented windfalls for attorneys, many of whom did little work.

I know the distinguished Senator from Minnesota said that his lawyers did a lot of work. And I think that is probably true. Perhaps the Minnesota attorneys have done more work than any other group of attorneys in the country. And they were paid, I believe, $450 million. That is not $2.8 billion. That is 5, 10 times what they made. So they did a lot of work in Minnesota, and they are going to get fees far less than this settlement would call for.

People say we should not mess with the contracts. But the other arguments from the people opposing the Faircloth amendment are: Don't worry about it. Florida reduced their fees. Although Texas hasn't yet, they may yet. And there are arbitration policies to reduce fees.

So they are already admitting it is appropriate to reduce these fees. And as was noted, we contain fees for doctors and lawyers and every other kind of litigation—on many other kinds of litigation in the country. And we are comprehensively dealing with a health problem that is significant.

Now, we are here setting about to pass legislation to control abuses by tobacco. And I submit we can control abuses by attorneys.

Let me make one more important point. With regard to this litigation, States have the right to opt out. They are not required to be bound by this and, therefore, the 10th amendment, in my opinion, would not be implicated. They could opt out and not be bound by this agreement.

But they have sought our legislation to comprehensively deal with this in a fair way. And that would call upon us, I submit, to contain the abuses of the attorneys fees.

Mr. President, I conclude my remarks at this time and recognize Senator ENZI from Wyoming, who I understand wishes to make remarks, unless our time has expired and you want to go back to your side, which you should be entitled to.

Mr. HOLLINGS. We only have about 7 minutes left. So you have a half-hour or more.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Does the Senator from Wyoming ask unanimous consent to take time from the Senator from North Carolina?

Mr. ENZI. I ask unanimous consent.

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

Mr. ENZI. Thank you, Mr. President. And I say thank you to the Senator from North Carolina.

Mr. President, I do rise to support the amendment numbered 2421 which is offered by the Senator from North Carolina, Senator FAIRCLOTH. I am very much in support of this amendment. And part of it is as a protection to the attorneys. I know they are very sensitive to the kind of reputation they get in a lot of instances, and this is one of those "save the reputation of the lawyers" amendments. I am sure a lot of people out there are not used to making $88,000 an hour, and as a result they are probably a little upset with the attorneys who might get that in some of these tobacco cases.

One of the things that people are seeing in this country is a new lottery. And this new lottery is one that requires you have an attorney to scratch your card for you. The tobacco situation is probably one of the new easy targets. In fact, I am predicting that the courts are soon going to be clogged with lawsuits, and part of that is because there are attorneys out there who can see this as a retirement bill as well as an easy target. It has been adjudicated, it has been worked, and it is easy to see that the tobacco companies have been hiding documents and doing a number of other things.

Along with these remarks, I want to state I am probably one of the few who has not received any money from the tobacco lobby. I have been very concerned about these issues. I grew up in a house where both of my parents smoked, and my dad paid probably the ultimate price for that, even though he quit before he passed away.

The amendment would only require lawyers to provide an accounting of their legal work to the Congress in relation to the legal actions that are covered by the underlying bill, including any fee arrangements entered into, and it would limit the payments of attorneys' fees to $250 an hour. That is not $250 an hour total for the firm; that is for the lawyers that are involved in this, and there may be more than one lawyer involved in it. So it isn't a complete limitation.

I have heard some comments that this may just be the start of limiting other kinds of occupations. Perhaps it is, and perhaps it ought to be. Again, I think the people would be appalled to find out that people might make up to $88,000 an hour. And that might not even be the highest case in it.

I do have to give some reference to the accountants who were mentioned. In accounting ethics, the amount that you charge cannot be based on what you find or the amount that you are working with. It is based on hours worked. We already have that kind of a limitation.

I don't know of any other occupation where you get to find a pot of money and then, without being injured or damaged in the case, be able to share in that pot of money. Usually you have to have some separate arrangement for it, some kind of a limitation. Part of that is to discourage greed.

What is happening with the tobacco bill is that there are some wealthy and connected trial lawyers that are lining their pockets from the settlement supposedly made on behalf of the American public. This bill would impose one of the most regressive taxes in American history with outrageous legal fees charged by insider lawyers, some of whom become billionaires as a result of their reputation for the States and class actions.

A document here mentions that the attorney general of Mississippi, Mike Moore, got to pick the No. 1 campaign contributor, Richard Scruggs, who received $2.4 million in fees for the State's asbestos litigation. Then he got to lead the Medicaid recovery suit.

Minnesota lawyers might want to know why Attorney General Humphrey chose Robins, Kaplan, with a 25 percent fee arrangement when Texas, Illinois, Indiana, and West Virginia all had lower percentages than that. They were the ones that had to do the harder work, the initial action.

The Wall Street Journal reported last fall that four lawyers who helped to settle Florida's billion-dollar windfall were now demanding 25 percent of the settlement, or $1.4 billion. Florida Attorney General Bob Butterworth has called that enough to choke a horse.

In Texas, Governor Bush has filed a legal challenge to the $2.3 billion contingency fee, part of the recent Texas settlement. He did that in the interests of the taxpayers who may end up paying for that.

This is not a defense of tobacco or the executives who run the industry. It is quite the opposite. In fact, I am getting a lot of comments from folks in my State. One lady said, "Let's see now, the tobacco companies have been abusing my body for all of these years while I have been smoking, and now you are going to punish them, and the way you are going to punish them is to tax me?"

They are figuring that out all over this country. It isn't the companies that are going to be paying the tab. In these lawsuits, it isn't the companies that are going to be paying the tab on that either. Sometimes it is the taxpayers.

In a lot of these lawsuits, it comes directly out of the amount of money that the individuals might have gotten. They don't have control over how much those lawsuits are going to be. If that amount of money holds for the State of Texas, those attorneys will earn $88,000 per hour for their legal representation. The American taxpayers are going to be left holding the tab for a number of outrageous fees.

I think it is proper for us, again, in defense of the legal institution, to limit those fees so people aren't seeing these as a lottery for attorneys where everybody else gets the pain and the attorneys get the dollars.

I ask that you support the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, I yield 4 minutes to the distinguished Senator from Tennessee.

Mr. THOMPSON. Thank you, Mr. President.

Mr. President, I rise in opposition to this amendment, not because I favor the underlying bill. I do not favor the underlying bill.

I want to specifically address this amendment and what is going on with regard to this amendment. We need to get back to the basic question of what we are all doing here, why we came here, and what we ought to be doing as U.S. Senators. We who pretend to call ourselves conservatives ought to really ask the question, whether or not we want to get into lawsuits that have already been decided pursuant to contracts that have already been executed between private practitioners of the law and sovereign States, and to go in and say that we are going to abrogate what you have done to private citizens agreeing to cases that have already been decided and say we will undo all of that. We, the Federal Government, we, the U.S. Senate, are going to get right into the middle of that and we are going to require you to send billing records to the Judiciary Committee that I sit on.

I did not come to the U.S. Senate to review billing records from lawyers in private lawsuits.

Now, we need to get away from deciding who the good guys are and the bad guys are and just jumping on the bad guys. Nobody likes trial lawyers. You heard a defense already about how great contingent fees are and they are necessary, and all that is true, and so forth. It is beside the point with regard to this. The point is really us. This particular amendment has nothing to do with the tobacco deal. This applies whether or not a company is making a deal with the government or not. It applies to Federal lawsuits. It applies to State lawsuits. This has nothing to do with the tax money we are going to be raising if this bill passes, which I will oppose. It is dipping into a completely different area that has nothing to do with the tobacco legislation because we feel like trial lawyers are getting fees that are too great.

Mr. President, I don't care what the trial lawyers get, if it is something that is agreed to by the parties and is something that is supervised by the courts. It has been pointed out that in one case in Florida the courts found that the fee was outrageous. That is the very point. If a court determines that a fee is outrageous, they can set it aside. It is regulated by the courts. It is regulated by the States. Every State in this Union regulates attorneys' fees. If it is outrageous, if it is not justified, people can take a claim to the States.

Should the Federal Government and should we on our side of the aisle, of all people, be urging the Federal Government to get into the middle of private lawsuits and deciding what fees ought to be in cases where there is a Federal court or a State court that has already decided, and has nothing to do with Federal legislation otherwise? I think that is tremendously bad policy.

I think this whole tobacco approach, quite frankly, is bad policy. I think this idea of taxing waitresses and cab drivers in order to give these same lawyers attorneys' fees of any kind is a bad idea. But the tobacco companies are bad guys, the trial lawyers are bad guys, and we are forgetting the principles that we came up here and are supposed to be supporting; that is, let the Federal Government do what they are supposed to be doing, let individuals have individual responsibility, let sovereign States make the laws, if they want to, and let private litigants go to court and fight it out before a jury of their peers.

Therefore, I oppose the amendment.

I thank the Chair.

Mr. GORTON. Mr. President, I do not approve of the Faircloth amendment that seeks to limit attorneys fees in tobacco cases to $250 an hour. In addition to being impracticable—it makes the United States Congress bookkeepers charged with tabulating every lawyer hour in tobacco cases—the amendment simply is unfair. While $250 per hour may be just compensation in some cases, I do not agree that this arbitrary cap is appropriate in all instances.

Attorneys who took tremendous risks and initiated cases on novel theories deserve, I believe, to be compensated for more than those who filed the just-add-water complaints. Even late-coming attorneys in these groundbreaking cases deserve to be paid at least as much as the tobacco company lawyers. This amendment would not allow this, however, because, while the plaintiff lawyers who have not yet been paid would be subject to the cap, many tobacco company lawyers have already been paid an hourly rate that is significantly higher than $250 per hour.

While I strongly disagree with this one-size-fits-all approach, I share Senator FAIRCLOTH's concern with excessive attorneys fees. I suggest, however, that there are other methods and other limits that are far less burdensome on Congress, and will provide a more equitable outcome. I urge my colleagues to join me in opposing this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I yield 15 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator has just under 20 minutes. Does he yield 15 minutes?

Mr. FAIRCLOTH. I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me first say that I always enjoy hearing our colleague from Tennessee speak. I find myself agreeing with everything he said. But it really has no application to the bill which is before the Senate and the amendment which is submitted to that bill. I agree with the Senator from Tennessee. We ought not to be involved in these things. But that is what has brought us to the floor of the Senate today because we are involved in that. We are getting ready, as he said—his words are better than any words I could come up with—we are getting ready to tax waitresses and taxi drivers to collect $500 billion to $700 billion, which will be used, among other things, to pay lawyers.

So to lament that we are in this debate, I think, is something that I agree with but it is not relevant to the debate that is before us, which I want to be engaged in.

I spoke at some length this morning, so I don't need to repeat a speech I have already given. But, in watching this debate unfold, there are several issues that have been raised that I want to answer.

The first issue is we should not be setting fees. I want to ask the Senator from North Carolina a couple of questions, if I could have his attention. Are we not setting the equivalent of excise taxes to be paid by blue-collar workers all over America in this bill?

Mr. FAIRCLOTH. Absolutely, we are.

Mr. GRAMM. Are we, in this bill, not setting out in detail, in fact in 753 pages of detail, how we are going to spend every penny of this $500 billion to $700 billion?

Mr. FAIRCLOTH. We have detailed every dime of the expenditure and now we have opposition to detailing the attorney fees.

Mr. GRAMM. Mr. President, the point I make is that we have set out in detail how we are going to take $500 billion to $700 billion out of the pockets of blue-collar workers.

Let me remind my colleagues that 73 percent of this money will be collected from people and families who earn less than $50,000 a year, and people who make less than $10,000 a year will see

their Federal taxes rise by 41 percent as a result of this cigarette tax. That is set out in detail in the 753 pages of this bill. The 753 pages of this bill set out in detail how we are going to undertake the largest expenditure of taxpayer money since we initiated in the Great Society the year Lyndon Johnson became President, and each and every part is set out in here.

My answer to the question is we shouldn't. We shouldn't be setting these fees. The assertion is we are setting everything else. We are setting an excise tax equivalent. We are setting the expenditure in minute detail for everything else. The legal fees will arise from this settlement, which will be adopted by Congress and signed by the President.

So, if we are doing all of those things, why shouldn't we set fees? Obviously, we should.

Mr. FAIRCLOTH. Will the Senator from Texas yield for a question?

Mr. GRAMM. I would be happy to yield.

Mr. FAIRCLOTH. There is great conversation that we are going into these attorney settlements with tobacco companies; that that is wrong; that we shouldn't do that; we are interfering in a private contract. Yet, we are telling the tobacco companies, without any question, cancel your contracts in advertising, whether it is television, billboards, newspapers, racetracks. All those you cancel. You go back and retroactively do it. And because we are trying to set caps on attorneys' fees, they say we are interfering in the private sector. What is the other part of the bill?

Mr. GRAMM. I would say the argument is even stronger than that. The whole purpose of this 753 pages is to abrogate all of those court settlements. The whole purpose of this bill, the whole purpose of this 753 pages, is to interfere with each and every one of those court decisions. That is the whole purpose.

So if we are going to set out how we are going to collect the money, if we are going to set out how we are going to spend the money, should we not set out how we are going to spend the money that relates to the portion of the settlement that will go to attorneys' fees?

The second statement is we are abrogating contracts. Do we not have in this bill an arbitration panel that is supposed to set these legal fees? The answer is yes. We do. In fact, this bill sets out in some detail an arbitration panel that is going to set legal fees.

So the argument that by setting out in law what the maximum legal fee is we are abrogating the contract, that is a house we passed 15 miles down the road in this bill, because this bill sets up an arbitration panel to set the fees.

All the Senator from North Carolina is doing is saying, having decided that we are going to have fees set, let's let Members of the Senate stand up and cast a vote on this issue. Let's not hide behind some arbitration panel, which will be made up exclusively, I assume, of lawyers to make this decision.

What is really the issue here? The issue here boils down to this: We understand that when we are looking at a payment, which has been estimated—and I think correctly—at roughly $4 billion to attorneys, given the billing records on the cases that have been tried, that comes—there are about 45,454 hours—what this really comes down to is about $88,000 an hour as a potential payment.

Does anybody believe we would pass an appropriation bill paying some $88,000 an hour? Well, maybe some believe it. Maybe we would. But I think that you would be kind of embarrassed if you went back home and it became known that you were going to pay somebody more for working 3 hours than we pay the President of the United States for the entire year. I don't think so. Why do we have this kind of money in this bill? Because we are spending somebody else's money. Because as a prominent Democrat politician in my State said of this whole tobacco issue, "We won the lottery. We won the lottery."

All the Senator from North Carolina is doing is saying we are going to set the fee at five times the normal fee that is set. It seems to me that is imminently reasonable. As a matter of principle, if we were debating what our rules should be in this debate, my view is the States have settled these lawsuits and those settlements ought to stand. I believe that the Federal Government ought to be looking at Federal interests and letting the States settle these issues.

If that were the case, then I think setting this arbitrary cap would make no sense. But the point is that is not what we are debating. We are debating this great big, thick bill that goes back in and changes the settlement which sets out the amount of money that is going to be paid, which pays a payment to the States that is not directly related to what they settled for, which sets out in detail how we are going to spend this almost unbelievable amount of money, even for Washington, DC. The idea that we would do all these things and then we would suddenly get squeamish when it comes down to guaranteeing that we are not going to pay plaintiffs' attorneys $88,000 an hour, I think if we are suddenly going to become immodest about what we are doing in this bill, if shame is suddenly going to enter into our thinking, it is a little bit late at this point.

So I agree that this whole exercise has us doing things we ought not to be doing. But this is not my bill. I perfectly well understand this is not the bill of the Senator from Tennessee. His sentiments on the bill are the same as mine. I hope we can improve it. I hope we can find something we can all be for.

But I wanted to make my point, that to say we shouldn't be setting this fee when we are setting everything else doesn't make any sense. To say we shouldn't be abrogating contracts when the bill specifically abrogates contracts, it just does it through this arbitration board, which we shouldn't hide behind.

I think the choice is clear, and I am for the amendment.

Mr. THOMPSON. Will the Senator yield for a question?

Mr. GRAMM. If I have the time, I would.

Mr. FAIRCLOTH. I yield whatever time the Senator needs.

Mr. THOMPSON. I have a question. It seems to me that we both agree that we have a bill that we do not like and that we have an arbitration provision in that bill that we do not like. That legislation has not passed yet. The Senator says we are doing all of these things—we might; we might not; that has not passed.

Would it not be better for the Senator from Texas and me to join in trying to defeat that arbitration provision and trying to defeat that bill instead of adding to a bad provision an even worse provision that goes against our principles, that gets us involved in private litigation, and that causes people to have to send billing records up to the Judiciary Committee where we go through and try to justify some kind of an hourly rate?

Mr. GRAMM. Let me respond to the Senator's question. Generally, the case goes directly to the heart of the matter. If I thought that we could correct every problem with the bill, then I don't think there would be a need for this amendment. But my concern is that, given that anyone who opposes the bill is immediately tarred as being the lackey of the tobacco industry, given the head of steam, at least outside the beltway that the bill has, I am not confident we can correct it, and if the bill ends up passing so that my 85-year-old mother has to pay more for her cigarettes, which I wish she would quit smoking, I would at least be able to say that we guaranteed that no plaintiff's attorney is buying a Lear jet with that money.

So this amendment will make the plaintiffs' attorneys millionaires but it will not make them billionaires.

Now, should we have the power to stop them from being billionaires? If this were a State matter and we were not involved in it, my answer would be no. But this bill is a preemption of all those State settlements, so how can we do all those other things, set out in detail where the money is coming from and how it is going to be spent, and then leave the potential that we are

going to be reading in the newspaper next month that a plaintiff's attorney got $88,000 an hour from the tax imposed on blue-collar workers? I don't want to risk that happening. That is why I am for the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I yield 5 minutes to the Senator from Kansas, Mr. BROWNBACK.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I thank the Senator from North Carolina for yielding me 5 minutes. I want to stand up and speak on behalf of Grandma Gramm, that her money not go to lawyers as well.

Mr. President, I have been following this debate back in the office. I followed it for some period of time. I serve on the Commerce Committee. I initiated this debate in the Commerce Committee and discussed it there. It seems as if the points have been pretty well made, pretty significantly made and repeated in the true tradition of the Senate about five times, so we all get it pretty clearly.

One thing that I want to point out, though, at this juncture, because the debate has been engaging, is whether or not the Senate should set legal fees, whether we should get involved in this. And I generally, as a principle, would say no, we should not, but the fact is, in this bill we already are setting legal fees. We are setting them in this bill. And so to the extent that we are going to set them, I think the only question for us to ask ourselves is how much.

Should it be nearly $100,000 an hour or should it be $250 an hour? As to the question of whether or not we are setting legal fees, they are being set in this bill. In this bill, we are providing the money. We are setting in place the mechanism to give this money to the trial lawyers.

That is happening. I don't care how you cut it. That is what happens if this bill passes. If this bill doesn't pass, that doesn't happen. We are setting the amount the lawyers are going to get. The only question that remains is how much per hour is good compensation.

Now, I understand the good Senator from South Carolina. He and I debated this in the Commerce Committee. He thinks they are entitled to whatever they can get because they were the ones willing to put forward this litigation. They were the ones willing to put themselves on the line. They were the ones willing to say, I am going to go out here, and I may not get a dime or I may hit the jackpot. I hit the jackpot.

So they are entitled to get that. I understand that. But I can't vote for that. I can't in the Senate say I am going to tax the people so that we can transfer $100,000 per hour in legal fees.

I think Grandma Gramm would say $250 an hour is too much, too, but it is a lot closer and a lot better than $100,000 per hour. And this bill sets those legal fees. No matter how you cut it, it puts the money in place to set those legal fees. Without this bill, that money doesn't go. With this bill, that money does go to lawyers. So it is only a question of how much. I just ask my colleagues to look at it. Which is the more appropriate figure, $100,000 an hour or $250 an hour?

With that, everything having been said four or five times, I yield back the remainder of my time to the manager of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. How much time do I have remaining?

The PRESIDING OFFICER. Three minutes 45 seconds.

Mr. HOLLINGS. Mr. President, if there was any real sincerity or concern about money—and, incidentally, I never have seen my Republican friends ever worry about people making money. You all really are worried about people making money? Come on. You know and I know they would come in here and say, here is the head of Philip Morris—and I got all these things, billable hours—$85,779,000 with stock options there. That is his pay, according to the Wall Street Journal.

But I can play that game of so much an hour. Let's talk about the 5 years with nothing an hour. "He either fears his fate too much or his dessert is small," we say in the practice, "to fail to put it to the touch and win or lose it all."

And the lawyers in Florida, in Texas, in Minnesota—nothing an hour as of now. Instead of a jackpot, they are hitting a hijacking on the floor of the Senate by a crowd that is trying to make TV shorts that HOLLINGS is in the pocket of the trial lawyers. The truth of it is, I am trying to get into their pocket. I can tell you that right now. And I might succeed. I got some names here from the different Senators around that seem to know them better than I do.

But in any event, the comeuppance is that blood, sweat, and tears. There isn't any question about it, by gosh, when you take the little lady who came in, and they decided to bring the case, and he got his friends in and they worked it. And I asked them. I said, "I saw one account they had $5 million invested in the Mississippi case." They said, "Well, they got that from the asbestos cases and everything else." Maybe that is what it is; the Chamber of Commerce just doesn't like class actions. But that is cleaning up bad medical devices, the implants, the asbestosis, and now cleaning up tobacco.

This is not a billable hours thing. They haven't got billable hours. Zero hours, 1993; zero hours, 1994, 1995, 1996, 1997, 1998. They haven't gotten a dime. And you all are trying to hijack them on what has been agreed to by the attorneys general, by the Governors, by the clients and everything else, preying around like vultures on agreements made. Ex post facto now, they want to come in and show how concerned they are. If you had been concerned, you would have done something about it. I have been up here 30 years, and they haven't done anything other than put the ad on a packet of cigarettes.

Now we have somebody who has brought tobacco to the bar of justice, and they haven't gotten anything yet—zero hours. And yet you all want to come in here and play this game about you are all worried about who is getting the money.

Mr. President, it is absolutely ludicrous for this group to come in. It is another design. It is just that you take a poll. They don't like lawyers in the poll, so they make the little TV short in the campaign this fall and they say so-and-so is in the pocket of the trial lawyers, yak, yak, yak, and everything else of that kind. But I will show where the attorneys general and the Governors and the parties all agreed and the work did it. And we didn't do it up here in Washington. Now is no time to come in here and start preying on people on an agreement that has already been made.

The PRESIDING OFFICER. All time yielded to the Senator from South Carolina has expired.

The Senator from North Carolina.

Mr. FAIRCLOTH. How much time do I have?

The PRESIDING OFFICER. Three minutes 9 seconds.

Mr. FAIRCLOTH. I yield 2 of those minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we are looking at a situation that is literally intolerable. It is not acceptable to have these kinds of fees. I know contracts were entered into, but nobody expected it to break the way it did. We have law firms in States that literally did only a few weeks' worth of work; States are going to recover billions of dollars, and they are going to get 15, 20, 25 percent of that recovery. We already have provisions in this bill, agreed to by the President and the trial lawyers and the members of the other party, to contain some of these fees in a poor and ineffective way. I say if we can do it that way, let's do it straight up. Let's have a fair fee per hour: The more hours you work, the more money you get paid. We have evolving all sorts of contracts in this case and abrogating them, and we can certainly make a rational agreement on attorneys' fees.

I yield the floor.

Mr. FAIRCLOTH. I thank the Senator.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. We have been on this now for several hours, and we have come down to two things: Should we abrogate contracts or not? They say they are contracts with these attorneys, they have made these contracts. Well, maybe they have. But we are writing 750 pages of law abrogating contracts that the tobacco companies have written with advertising agencies, every condition conceivable. It is 750 pages of abrogating contracts.

Now, if anyone can sit here and tell me that they believe that $88,000 an hour, which is the established fee on the Texas attorneys, is a reasonable fee, now, this is being paid by taxpayers' dollars; we are collecting this money from the working people. Seventy percent, as has been said by Senator GRAMM and many others, 70 percent of it is coming from people making less than $40,000 a year. This is Federal tax dollars. It might not have started out to have been Federal tax dollars, but that is what it has become when we tax cigarettes and put the tax on these people.

When I look at the reality, as I believe was mentioned by Senator GRAMM, when a Texas lawyer makes in 3 hours more than the President makes in a year, and a Texas lawyer makes more in an hour and a half than a U.S. Senator makes in a year, there is something wrong with the system. We might not be that good, but we aren't that bad.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator's time has expired.

Mr. HOLLINGS. Mr. President, under the agreement I move to table the amendment. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion by the Senator from South Carolina to lay on the table the Faircloth amendment, No. 2421.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mrs. BOXER (when her name was called). Present.

Mr. LOTT (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. SMITH) is necessarily absent.

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 142 Leg.]

YEAS—58

Akaka	Bumpers	DeWine
Baucus	Cleland	Dodd
Bennett	Cochran	Domenici
Biden	Collins	Dorgan
Bingaman	Conrad	Durbin
Breaux	D'Amato	Feingold
Bryan	Daschle	Feinstein
Ford	Kohl	Rockefeller
Glenn	Landrieu	Roth
Gorton	Lautenberg	Sarbanes
Graham	Leahy	Shelby
Harkin	Levin	Smith (OR)
Hatch	Lieberman	Specter
Hollings	Mikulski	Stevens
Inouye	Moseley-Braun	Thompson
Jeffords	Moynihan	Torricelli
Johnson	Murray	Wellstone
Kennedy	Reed	Wyden
Kerrey	Reid	
Kerry	Robb	

NAYS—39

Abraham	Faircloth	Lugar
Allard	Frist	Mack
Ashcroft	Gramm	McCain
Bond	Grams	McConnell
Brownback	Grassley	Murkowski
Burns	Gregg	Nickles
Byrd	Hagel	Roberts
Campbell	Helms	Santorum
Chafee	Hutchinson	Sessions
Coats	Hutchison	Snowe
Coverdell	Inhofe	Thomas
Craig	Kempthorne	Thurmond
Enzi	Kyl	Warner

ANSWERED "PRESENT"—2

Boxer Lott

NOT VOTING—1

Smith (NH)

The motion to lay on the table the amendment (No. 2421) was agreed to.

Mr. HOLLINGS. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, it is now our intention——

Mr. FORD. I apologize to the Chairman. Could we have order? The Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mr. McCAIN. Mr. President, I have several comments to make.

First of all, it is time we started getting a list of the amendments. So we would appreciate it if on both sides we could have Members get their amendments so that we could start in the process, as we always do, of narrowing down the amendments and seeing which can be agreed to and start looking at time agreements.

Mr. President, the second thing I mention is that we will now be going, as we have agreed amongst us to go, to the other side for an amendment. It is my understanding that amendment will be the issue of raising from $1.10 to $1.50 a pack. We would like to work on a unanimous consent agreement so that it would read that there would be the amendment relative to $1.50, and no second-degree amendments be in order to the amendment prior to the motion to table. Further, we would ask if the amendment is not tabled, it be open to relevant second-degree amendments, and the time between now and that time to be determined be equally divided, with a vote occurring on or in relation to the amendment.

The Senator from New Hampshire wants assurance as to when his amendment will be considered. We are trying to work that out with the majority leader. I know there are people on the other side who also want assurances for their amendments. I believe the Senator from Missouri, Senator ASHCROFT, is also looking for the same. But it would be our intention at this time, after the usual formalities, to move to the amendment on that side.

Mr. NICKLES. Will the Senator yield?

Mr. McCAIN. I am glad to yield to the Senator from Oklahoma.

Mr. NICKLES. Just for the Senators' information, now the Senate just had a vote on limiting legal fees. That probably is not the only vote that we are going to have on that issue. And the Senator managing the bill, I compliment him for doing a very good job.

I might mention, some of us also have statements we would like to make on the bill. We have been on the bill now for a day. This is a very extensive, expensive bill. Some of us wish to speak on the bill. We wish to tell our constituents what is in this bill, maybe why we have some concerns, maybe so we might be able to influence people on how various amendments might go.

But I just tell my friend and colleague from Arizona, certainly the idea of going back and forth on amendments is acceptable, I think, for all Senators certainly on this side. But in all likelihood, there will be additional amendments dealing with the issue we just debated.

Mr. McCAIN. I say to my friend from Oklahoma, I greatly fear there are lots of amendments right now that are being contemplated on both sides. That is why I think we have to start through this process.

I ask Members on this side to provide us with their amendments—so we can start through this process.

Mr. HOLLINGS. We are prepared on this side with the Kennedy amendment.

Mr. McCAIN. It is still our desire to finish this bill before the weekend.

I yield the floor.

Mr. GREGG. Reserving the right to object. Is the unanimous consent request propounded?

Mr. McCAIN. No.

The PRESIDING OFFICER. There is no unanimous consent request.

Mr. GREGG. Mr. President, do I now have the floor?

The PRESIDING OFFICER. Yes.

Mr. GREGG. Mr. President, since I have the floor, I understand there is some comity here on amendments back and forth. But what I would like is to get an understanding, as we move through this process, that those of us who have amendments which have some impact on this bill and which need some time to be debated are going to get a commitment for time and a place when they will be brought up.

I can offer my amendment at this time. It is not my inclination to do that, if I can get an understanding without losing the floor that I am going to get a time to bring up my amendment.

I ask the leader of the bill if he would be willing to agree—and opposing side—if they would be willing to agree that the amendment on immunities, which I think everybody is familiar with and is sponsored by myself and Senator LEAHY, would be available to be brought up at a time specific on Thursday so that there will be a reasonable lead time here, and that time would be at 10 o'clock, assuming that is agreeable to everybody and we have 3 hours on that amendment and no second-degrees be in order and we proceed to vote on it.

Without that sort of an assurance, I am going to offer my amendment at this time.

Mr. DOMENICI. Will the Senator yield?

Mr. GREGG. I will not yield the floor, but I yield for a question. I yield to the Senator from New Mexico for a question.

Mr. DOMENICI. Senator GREGG, doesn't it seem like this is a very important bill? I gather that it is probably, in one fell swoop, adding more money to government than anything we have ever done in any single bill in modern history. Don't you think we have rules and we ought to take our time and do this in a normal manner that befits the Senate for one of the most important spending bills that we have had in decades?

Mr. GREGG. I think that is probably true. The Senator from New Mexico is accurate. The normal manner is to offer my amendment at this time, since I have the floor.

I am willing to wait until Thursday to do that if I get assurance——

Mr. MCCAIN. Will the Senator yield?

Mr. GREGG. I yield.

Mr. MCCAIN. Let me mention, the Senator and I just had a conversation where I said he would achieve his goal of a date certain for his amendment and he said he would agree to a time agreement.

Mr. GREGG. If I have the representation of the Senator from Arizona that sometime on Thursday, hopefully early in the day, we will get this amendment up, it will have a reasonable amount of time and will not be subject to second-degrees, to the extent if that is in the capacity of the Senator from Arizona, and the representation from the other side that that is possible, I am perfectly happy to go forward.

Mr. GRAMM. Will the Senator yield?

Mr. MCCAIN. May I say in response to the Senator from New Hampshire that it has been the custom in this body to go from one side to the other with amendments to start with. We just finished with an amendment from this side and would like to move to that side.

I, again, assure the Senator from New Hampshire that the only reason I cannot assure him right now is the majority leader is making these decisions, but I can assure him that the amendment will be considered. I will work on having it done sometime in the next 48 hours, with a reasonable time agreement, if that is reasonable to the Senator from New Hampshire.

Mr. GREGG. I think that is probably a reasonable statement from the Senator from Arizona, who has a fine reputation in this institution, and I will yield the floor.

Mr. MCCAIN. Mr. President, we need to move forward. I would like to move forward with an amendment, and I hope my colleagues would show that comity. It is the other side's turn.

I ask that after my friend from Texas makes any comment, if we could move forward. I yield for a question.

Mr. GRAMM. Mr. President, first of all, going back from one side to the other is the practice when we have a unanimous consent agreement. The Senate procedure is recognizing people who, in a timely fashion, ask to be recognized, and they are the first on their feet and they are recognized.

I went to great effort to try to see that no one objected to bringing the bill up, because I think the bill needs to be debated and I think we all need to be educated. But I am not going to agree to a time limit on an amendment that I have not seen, nor am I going to agree to not having a second-degree amendment on an amendment that I have not read, nor am I in any way going to limit my ability as one Member of the Senate to have a full debate. So I would be happy to have the Senator be recognized to offer his amendment tonight if we want a gentleman's agreement. It is a major amendment. If the Senator wants to require some debate, we will want to look at it and see if we want to second degree. We may or may not agree tomorrow to having a time limit on it.

Not having seen the amendment and not knowing exactly where we are, I just say to the Senator from Arizona, I am ready to move ahead. I would be happy to have the Senator recognized but I am not ready to waive my right and the right of every other Senator to a full debate to offer second-degree amendments. I want to put people on notice of that.

Mr. MCCAIN. Let me say—I believe I have the floor—that is exactly what we are doing. I just wanted to allow the other side to propose an amendment and then we will work on making sure everybody has their views and this amendment is debated and discussed thoroughly, and then we would look forward, obviously, to a time where we could vote on the issue.

Mr. KERRY. Mr. President, if I could say to my colleagues, there has been a request for some colleagues to be able to speak on the bill. Last night, we were here for a period of time and there weren't many Senators here. Again, tonight, depending on the time that Senator KENNEDY is engaged in debate, there will be time, I am confident, for people to be able to speak on the bill. So I hope that Senators who have that desire will take advantage of that.

Second, I think there has been no effort whatever to try to limit the debate at this point. It is rather an effort to try to gather all the amendments, find out what the second-degree amendments are, share them with everybody on both sides, and have a sense of how we can proceed in an orderly fashion.

But as colleagues know, the manager of the bill could have come to the floor, filled a tree, held the floor, gone through an alternative process. We are trying to avoid that, trying to do this in a cooperative, bipartisan way, moving from side to side, recognizing the needs of a lot of Senators to be heard. So we hope Senators will take advantage of that.

The Senator from Massachusetts wants to be recognized now as the next Senator to propose an amendment.

Mr. NICKLES. Mr. President, I will be very brief. I am not trying to delay my colleague from Massachusetts.

I am telling my colleague from Arizona—and actually I told him in private what my colleague from Texas just said—I am not going to agree to a unanimous consent. This proposal was to vote on a $1.50 tax increase, and vote on or in relation to the amendment at 10 a.m. tomorrow morning. I am not going to. That is one of the largest tax increases in history. It says no second-degree amendments. Some of us aren't quite ready to go quite that fast.

This idea of saying submit all your amendments—I am working on a bunch of amendments, but I will tell you we just got the bill last night. We were being pretty collegial saying we are not going to object to going to the bill. We could have tied the Senate up for 3 days and had more time to study the bill. Some of us need time to study the bill. Some of us are reading the bill and there are interesting things to find.

On the first day the bill is on the floor to say we will have an amendment introduced at 6 p.m. and we will vote tomorrow morning at 10 a.m. on the largest tax increase, without giving us a chance to offset it, without giving us a chance to amend it, I think is a serious mistake.

Now, we are not going to be railroaded. It takes unanimous consent to pass this kind of amendment or get this kind of agreement. I told my good friend from Arizona he is not going to get it. So we can have the debate. We need to have the debate. We need to talk about whether this is a tax increase or price increase. I think we

need to study this thing a little bit further and not try to railroad it through the Senate.

I am happy to yield to my friend from Utah.

Mr. HATCH. This is not some ittybitty bill. This involves as much as $860 billion, according to some.

Is the Senator aware of that?

Mr. NICKLES. Yes, I am.

Mr. HATCH. Is the Senator aware that there are all kinds of viewpoints about this bill?

Mr. NICKLES. Absolutely.

Mr. HATCH. On both sides of the floor.

Is the Senator aware that, frankly, there is no way of getting voluntary protocols under this bill that would resolve the constitutional issues involved in this bill, especially with regard to the look-back provisions, the ban on advertising, and other issues?

Mr. NICKLES. I appreciate my colleague's remarks, the chairman of the Judiciary Committee. I know he has had hearings on at least tobacco legislation. I don't know that anybody has had hearings on this bill.

Right now we are being asked to vote on some of the most significant amendments of this bill and we really have had very little time to even debate the general provisions of the bill, to maybe ask the sponsor of the bill and the proponents of the bill to explain some sections.

Just to give you an example, there is a look-back provision. The Senator from Utah said maybe it is unconstitutional. There was a look-back provision that was added that wasn't passed out of the Commerce Committee and that wasn't passed out of the Finance Committee. It was just added. It was introduced last night. The look-back provision says we are going to do sampling and find out. If we don't meet the target for teenage consumption, as specified, there will be a penalty of $1,000 per teenager who smokes specific brands.

It looks very bureaucratic and, frankly, unworkable to this Senator.

Mr. HATCH. Will the Senator yield?

Mr. NICKLES. Yes.

Mr. HATCH. I have to tell the distinguished Senator from Oklahoma that we had constitutional experts come in and say there is no way that look-back provision is constitutional. They are also saying that, of course, they tried to cure the advertising restrictions by adopting the FDA regulation. But we have top-flight, from the left to the right, constitutional experts saying that is unconstitutional.

Then, last but not least, we have a section 14 on here that basically talks about the other advertising restrictions that almost everybody agrees are essential if we want to do something about teen smoking, and, by gosh, those other advertising provisions have got to have a voluntary protocol, have to have the tobacco companies on board in order to be effective, or they are unconstitutional. What are we going to do? Vote for an unconstitutional bill, or work on it, and work, as the Senate should, on a bill that could amount to as much as close to $900 billion?

Mr. NICKLES. I appreciate the Senator's comments. I will yield the floor in just a moment. I just make the comment to my good friend and colleague, I stand willing to work with him. I have no intention of unduly delaying. I know my colleague from Massachusetts has an amendment to increase—I don't know if it is taxes or fees of $1.50. I know there are other amendments dealing with the taxes, or the fees, and we need to address those. We can do so. I just do not think we can do it in that short of a timeframe that was proposed.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. McCAIN. Mr. President, I believe I have the right of first recognition.

The PRESIDING OFFICER. The Senator from Massachusetts has been recognized.

Mr. KENNEDY. The Senator from Arizona, as I remember, had the floor.

Mr. McCAIN. Mr. President, I seek recognition. I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Just a brief comment: I thank the Senator from Oklahoma for his concerns, and the Senator from Texas, the Senator from Utah as well. We would like to get amendments together so we can move forward. I understand the concerns. They have been made to me, and on this floor. We look forward to a vigorous debate.

I thank the Senator for his willingness to work, all of us together. I thank the Senator from Massachusetts for his indulgence.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

AMENDMENT NO. 2422 TO MODIFIED COMMITTEE SUBSTITUTE

(Purpose: To modify provisions relating to industry payments)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, and Mr. LAUTENBERG, Mr. CONRAD, and Mr. GRAHAM proposes an amendment numbered 2422 to the modified committee substitute.

The text of the amendment reads as follows:

Beginning in section 402, strike subsection (b) and all that follows through section 403(2) and insert the following:

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in paragraph (4) and section 403:

(1) For year 1—$14,400,000,000;

(2) For year 2, an amount equal to the product of $1.00 and the total number of units of tobacco products that were sold in the United States in the previous year.

(3) For year 3, an amount equal to the product of $1.50 and the total number of units of tobacco products that were sold in the United States in the previous year.

(4) For year 4, and each subsequent year, an amount equal to the amount paid in the prior year, multiplied by a ratio in which the numerator is the number of units of tobacco products sold in the prior year and the denominator is the number of units of tobacco products sold in the year before the prior year, adjusted in accordance with section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product

manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION.—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(4) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI.

(2) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

Mr. KENNEDY. Mr. President, I want to express my appreciation to the Senator from Arizona, who, as I understand, was trying to work out a decent process so that we might debate this during the course of the evening, and then at least work out some process where we could have a fair allocation of balance in terms of time as we debated it tomorrow. I hope those who support that position would, if we don't get a formal agreement, at least follow that process tonight and also in the morning. Then the leaders and those who are interested in either extending debate, or amendment, or whatever they want to, will proceed and will obviously have the right to do it.

I want to thank the Senator from Arizona, who was trying in his conversations with us to work out a process so there could be an adequate time for debate and discussion, and also balance in terms of time between those who favor this position and those who are opposed to it.

I want to express our appreciation to all of our Members for the opportunity of raising this issue with my friend and colleague from New Jersey, Senator LAUTENBERG, who has been one of the really important leaders here in the Senate on the tobacco issues; also, our friend and colleague, Senator CONRAD, who has been the chair of a task force on the tobacco-related issues, and has been really tireless in terms of developing a command of this issue, and has also been tireless in trying to work out bipartisan support, not just on this issue but on other issues as well; our friend, Senator DURBIN, who has been so involved in this issue, in particular on the price, as well as a number of my other colleagues; my colleague from Massachusetts; Senator REED; and so many others. I am grateful to all of them.

We look forward over the period of these next several hours and hopefully at a time during tomorrow morning to be able to present this issue to the U.S. Senate.

We are very mindful that only a few hours ago, just a few yards from where we gathered this evening, we had the good opportunity to be with Dr. Koop, who is really the foremost public health official in this country and who has been such a leader in protecting the children in this Nation on this issue, as well as many others. I think that all of us who were gathered there were impressed that Dr. Koop was speaking on behalf of all of the public health community. It was really a singular voice in which he spoke for all of the public health communities. We can spell out the reasons why as we get into the debate and discussion on this issue. He was speaking not as a partisan, not as a Republican, not as a Democrat, but for all Americans, because that is what his service has been to this country as our Surgeon General. He has been the defender of the public health, and also as one who is a keen analyst as to what has been the real strategy of the tobacco industry over the period of these past years, who recognized what their strategy was in order to meet their financial requirements, that it was going to have to make a particular appeal to the children in this country.

He spelled that strategy out long before it became evident as a result of the various publications of various documents that have been made available to the American people during the process of the various State suits. He is really one of the great giants.

I took the opportunity at that time to thank him for his strong support of an amendment that was going to raise the price of a package of cigarettes to $1.50, because this would mean anywhere from 750,000 to 900,000 young people who would not be engaged in smoking and anywhere from 250,000 to about 300,000 young people children who would not die a premature death.

I thanked Dr. Koop on that occasion for the families. I thanked him for the children who would not have the addiction. I thanked him for their parents because their children would not be addicted. I thanked him, for all Americans, for his willingness to take a stand on this issue.

Mr. President, the amendment we are bringing here this evening is not an issue which is strange to the Members of this body over the period of these past weeks and months. I think all Americans have probably had the opportunity to listen to the public health community, represented, as I said, by Dr. Koop, and Dr. Kessler, and the representatives of many of those that have been afflicted with the kinds of illnesses and diseases that have been caused by addiction.

We have heard the uniform appeal—the uniform appeal of all of those who have really studied this issue in any detail—that if we are going to have a significant impact on reducing the addiction of children in our country, the best way to do this is by having an increase in the cost per pack of cigarettes, and to do it in a timely way.

By "in a timely way," we mean doing it rapidly. We have devised this amendment to be a stepped-up process over a period of 3 years. There are others who have favored a $1.50 increase a pack in a 2-year period. We have accepted that particular challenge and followed their guidance. This amendment, more than any other proposal or amendment that is going to come in this Chamber, is motivated by protecting the children of this country. That is the reason behind this amendment, clear and simple. If you are interested in public health, you support this amendment. If you are interested in protecting children, you support this amendment. If you are interested in doing something about the problems of addiction and children, you support this amendment. If you are interested in trying to provide some limitation on children being involved in gateway drugs, you support this amendment.

For all of these reasons and many more, this is a compelling amendment, and it is supported overwhelmingly by the American people, by families all over this Nation, Republican and Democrat, North and South alike. We will have the charts available that will indicate what the various data reflect. That is important and useful perhaps for some.

But what we are motivated by and why we are offering this amendment is because of public health. Those who have studied this issue in terms of children believe that this is the first and most important step we can take to reduce the smoking addiction of children.

This chart, Mr. President, points out very quickly and easily for the benefit of the Members the number of children who will be deterred from smoking by an increase of $1.10, 3 million; $1.50, 3,750,000. The difference of the proposal that is in this Chamber will be 750,000. That is what we are talking about by accepting this particular amendment. We will come back to elaborate on that in a while. We are talking about the number of children whose lives will be saved by the cigarette price increase. We are talking about 125,000 who will have an early death.

I think one of the questions we are going to be asked sometime during this debate is, well, this is fine and well that you talk about increasing the cost per pack to $1.50, but how do we know this is really going to have the impact that you are stating here this evening?

We will have a chance again either later tonight or tomorrow to go through a number of the public health reviews and the studies and the testimony that has been taken by a number of the committees over the period of these past weeks. We have had a number of committee hearings on this very issue. But perhaps one of the most impressive factors has been what happened with the significant price increase in our neighboring country of Canada that moved up to a $5 per pack price increase in 1991 and what happened to youth smoking over that period of time. You see the dramatic reduction of youth smoking as a result of the significant increase in the price of cigarettes.

I hope we will not have to take a great deal of time to review that particular phenomenon. It is irrefutable. It is absolutely irrefutable. The public health information is irrefutable; that with a dramatic and significant increase in the price we see a significant reduction in youth smoking. This is one of the clearest examples to demonstrate what we hope will be achieved.

We have set a goal of a 60-percent reduction in youth smoking over 5 years by increasing the price per pack of cigarettes. That is a national goal, and that has been one that has been stated and reaffirmed by many, even those who do not support this particular proposal. The only way we will get the 60-percent reduction over the 5-year period is by going to $1.50 per pack. That is basic and that is fundamental. But I just mention here that after a period of time we saw there was a growth in terms of the black market in Canada.

Mr. President, 85 percent of the Canadian people live proximate to the United States. There was an increase in smuggling, and there was a decision that was made by the Government of Canada to basically leave it up to the Provinces as to whether they were going to maintain their increase in the higher cost per pack. So they left it up to the particular Provinces, and the result from leaving it up to the Provinces is in the Provinces that maintained the higher cost, we saw the continuation of a significant reduction in youth smoking—a significant reduction.

We will have a chance perhaps, if necessary, to go Province by Province, but, nonetheless, that was the result. We cannot make the case any clearer than has been made, that this particular amendment is the amendment that deals with children; this particular amendment is the amendment that deals with addiction. If you are interested in trying to do something in the interest of public health, this is the amendment, with all due respect to the other amendments. We understand the relationship that they have to each other, and I am a strong supporter of the other provisions of the legislation. With the dramatic proposals that we are making here on the increase in the cost, when you have the other programs that are built in to deter individuals from beginning smoking and the other reductions in advertising, all of it has a symbiotic effect that will have an important impact on children. We are doing everything we can.

The basic support for the proposal we are advocating today is a culmination of everything that has been recommended to us by the public health community. We have taken their recommendations and now are bringing them to the Senate. We know the American people are for it. The question is going to be, are we going to have the support of the Members or is the power of the cigarette and tobacco industry, which has been reflected in so many ways over the period of recent months and in recent years, going to be again demonstrated in this Chamber in terms of resisting these issues.

Senator CONRAD, who has held hearings with regard to the issues of smuggling and what will the impact of this be on the tobacco industry. All of these issues are important, but make no mistake about it, Mr. President, those of us who are advocating this amendment are advocating it for a very fundamental reason, and that is to protect children in our country and in our society, and we believe that the kinds of protections we are offering here are the kinds of protections that are going to have the most important impact for our country.

We offer this amendment which is really one we believe the Senate should move towards and be willing to accept. We can go back in terms of the time and understand what is really happening out there in America, the impact that tobacco has on the young people of this country.

I see my colleagues from New Jersey and North Dakota are here and ready to address this issue, but let me just take a few moments to go through the way children become involved in the addiction of tobacco.

Smoking begins early, Mr. President. 16 percent of adults who are daily smokers began smoking—and these are the cumulative figures—by age 12. Just think about it. By the age of 12, 16 percent; by the age of 14, 37 percent. By 16 or under, we are talking about 62 percent. These are the children who become addicted. These are the children who do not have the benefit of being able to make a balanced and informed judgment about going ahead and involving themselves in the use of tobacco.

We are talking about very young children who begin the utilization of tobacco and move on through. By the age of 16, 62 percent of those who eventually are going to become addicted have already started down that path, and they are the ones who have been targeted by the tobacco industry for marketing—for addiction. It is for these children that the studies demonstrate that the increase in the costs of tobacco, because of the limitations in their purchasing power, will be a very, very powerful and important disincentive to these young people. Added to the other features of the program, it will be a serious disincentive for them to get started smoking.

Mr. President, I will wind up now to let my colleagues speak. I hear often: Isn't this really a disservice to those families who may be involved in smoking, that they will have to pay, really, a disproportionate share because we will have an increase in the costs of these cigarettes? I must say, that is an argument that you hear out here occasionally on the floor of the U.S. Senate, but the fact is I don't hear that back home in my State of Massachusetts. People, even in blue-collar areas, who perhaps smoke more than others in a community, are saying we are not less concerned about our children than those who may come from a different socioeconomic background. Those working families are concerned about their children. Time in and time out, when you ask working families, "Do you want to do something about reducing the opportunity for your children to start smoking," their answer is yes, and overwhelmingly yes. Because they understand, as all of us understand, that these children, once they get started down the path towards addiction, find it extremely difficult if not impossible, to begin to get control.

Mr. President, I will yield the floor now. I look forward to our continued discussion of this.

I ask unanimous consent to add the names of Senators HARKIN and WELLSTONE as cosponsors of the amendment.

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

The Senator from Arizona.

Mr. MCCAIN. Mr. President, I do not support this amendment. I don't doubt that the goals of the Senator from Massachusetts and those who support this amendment are the same as those who support the underlying bill, which is $1.10. I reject the notion that more is automatically better. There is a point at which we have gone too far. Some believe strongly we have already passed that threshold. We just had a little discussion while we were waiting, while the Senator from Massachusetts was waiting to propose his amendment, that amplified the concerns of many who believe this legislation has gone too far. On the other side, there are some, including the sponsor of this amendment, who believe we have not gone far enough. I don't want us to engage in a bidding war. If $1.50 is acceptable, then why not $2 or $3 or $5, et cetera?

I point out to my colleagues a very important point here. The bill already has a mechanism for increasing the price of tobacco if other methods fail. That is what we call the look-back provisions. The look-back provisions are penalties that are both company specific and industry wide, if there is not a decrease in teenage smoking.

If our goal is to reduce teenage smoking, which it is, then these look-back provisions achieve what the amendment of the Senator from Massachusetts seeks. I have not been around as long as some, but too often our fidelity to a cause is measured only by how high a price we can extract and how much we are willing to bid up.

It was back in March when the Commerce Committee began work on this issue. We worked for a long time and we came out with a package by a 19 to 1 vote. As part of that package, it was determined that $1.10 was the appropriate cost—the price of a pack of cigarettes. I might add that was also the position of the White House, the administration, that $1.10 was the appropriate number.

Since then, we have toughened the look-back provisions. We have raised the cap on how much liability the tobacco companies would have on an annual basis. We have toughened up this bill to the point where it has been of great concern on the other side of the aisle. The $1.10 was part of a carefully negotiated package. In and of itself it was not a magic number. The $1.10 was a tradeoff in return for a cap on liability, in return for the look-back provisions, in return for a number of other things—the language concerning the authority of the FDA. So, this was all put together in a package.

I say to the Senator from Massachusetts that he was not part of those negotiations because he is not part of the committee. That is very understandable, although I noted during the time we were doing those negotiations the Senator from Massachusetts was very vociferous in his opposition to almost anything that we did. In fact, he was quoted in the newspaper, much to my surprise, as criticizing the committee, which I chair. I was somewhat intrigued by that, but that certainly is the right of the Senator from Massachusetts to question the credibility of the Commerce, Science, and Transportation Committee.

I respect the commitment of the Senator from Massachusetts to the children of America. I respect his belief that $1.50 will do more than will $1.10. But I urge my colleagues to understand that the $1.10 was not plucked out of the air. The $1.10 was the best expert advice we could get and with the concurrence of the administration. There are those in the public health community who agree with the Senator from Massachusetts that it is not high enough. There are others in the public health community who say that $1.50 is not enough. There are those on both sides of the aisle who think we should have no protections of any kind nor anything for the tobacco industry. Frankly, I believe that would just kill the tobacco industry.

We are not in the business of trying to kill the tobacco industry. Let's keep that in mind. Because, if 40 million Americans are going to smoke, they are going to continue to smoke, and we are not going to be able to prohibit that. We tried that with alcohol many years ago. But if we are trying to attack the issue of kids smoking, we do have a problem with too high a cost for a pack of cigarettes. That has been highlighted by the Senator from Utah concerning the possibility of contraband. There is a problem, obviously, with too high a cost for a pack of cigarettes, that there would be a black market that would spring up in America. We used the best advice that we could get from throughout the administration, from the public health community, and from many others, which allowed us to come up with $1.10 as the cost of a pack of cigarettes to achieve the goal of reducing teenage smoking, along with the other aspects of this comprehensive settlement.

I point out again to my colleague from Massachusetts, we have a look-back provision in the bill. For every child over the quota in the percentage that is not reduced by the tobacco companies, there is a $1,000-per-child penalty provision in this bill. That effectively achieves the goal which I believe this amendment seeks.

Mr. President, I know there are many other speakers. We will probably discuss this some more between now and final passage.

Several Senators addressed the Chair.

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

AMENDMENT NO. 2427 TO AMENDMENT NO. 2422

(Purpose: To strike provisions relating to consumer taxes)

Mr. ASHCROFT. Mr. President, I rise today to offer an amendment. My amendment addresses this massive tax that is to be imposed on the people of this country, particularly on hard-working, poor people in America. My amendment strips this legislation of the provisions which will impose $755 billion in new taxes on the American people.

More precisely, my amendment strikes the upfront payment of $10 billion. Tobacco companies won't bear the cost of this payment; consumers will.

This bill, which purports to vilify the tobacco companies—and I am certainly not here to defend them. As a nonsmoker, and having watched a number of my friends die as a result of smoking, I am not here to defend the tobacco companies. But the bill specifically provides that tobacco companies will not bear the cost of these payments, consumers will. This bill requires and would make law the fact that tobacco companies can't bear this cost of $755 billion. This bill requires that consumers bear this cost. They will bear the cost in the form of higher prices, and there are actually penalties in this proposed law for the companies if they do not transfer to the consumers any of these costs.

"Section 405. Payments to be passed through to consumers." Here is the text of the law itself:

Target price. Each participating tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such participating tobacco product manufacturer under this Act and the Master Settlement agreement for the year in which the sale occurs.

The specific law of the statute requires that these so-called penalties are really not penalties on the tobacco companies at all—that these so-called penalties penalize the consumers. It is strange, indeed, to say to individuals, "The tobacco companies have been misbehaving. For years, they have been targeting you unduly, they have been providing you with a product which is deleterious to your health, and what we are going to do to them is nothing, basically, except to protect their markets, make sure their market shares are locked in, and give them protection from civil prosecution. But because you have been the recipient of the disease and the difficulty you have from smoking, we are going to pass through the payments to you."

This is adding insult to injury in the most classic of all ways. Remember, these are not penalties on tobacco companies, they are taxes levied on the users of tobacco products.

Tobacco companies will still pay hefty penalties if teenage smoking targets are not met, but consumers will be safe from hundreds of billions of dollars in new taxes if my amendment is adopted.

The so-called look-back provisions of this proposed law say that tobacco companies are going to have stiff penalties to pay if teenage smoking doesn't decline, and those stiff penalties are left in place by the amendment which I am offering.

It is only the consumer, who is being asked to pay substantially higher prices by way of what really amounts to a tax, who will be saved the $755 billion which will otherwise be occasioned on those consumers in the event my amendment is not adopted.

Americans today are working longer and harder than ever to pay their taxes. The Federal budget is in surplus. Congress should be debating how to return money to the taxpayer, not how to siphon more out of the pockets of working Americans.

This is nothing more, nor less, than a massive tax increase on the American people—$755 billion, which the law requires to be passed through to consumers. Not that they receive $755 billion; the law requires that consumers end up paying $755 billion more as a means of punishing the tobacco companies—three-quarters of a trillion dollars in penalties to consumers whom we are trying to protect.

As currently drafted, the proposed tobacco bill is nothing more than an excuse for Washington to raise taxes and spend money. It seems strange that, in this town, virtually anything will be an adequate excuse for raising taxes. Bad decisions by free people become excuses for massive tax increases in this country.

This is the largest proposed increase in Government since President Clinton proposed his health care scheme. Oddly enough, his health care scheme was greeted initially with a relatively high level of support. But as the public learned more about the health care scheme, they understood that it was more scheme than health care, and, frankly, as the public learns more about this so-called tobacco settlement, they will realize that it is far more tax and Government than it is anything else—17 boards, commissions, and agencies.

This huge tax increase will be levied against those who will be least capable of paying. According to the Congressional Research Service, right now we know that tobacco taxes are perhaps the most regressive tax levied in America. Tobacco taxes are perhaps the most regressive taxes levied in America. About 60 percent—60 percent, 59.4 percent I think is the number; yes—59.4 percent of the new $755 billion tax will land on people who make less than $30,000 a year.

These are young families. They are working families. To take a three-pack-a-day figure from those families, some $1,600 a year, is to take their capacity to provide for their families and require it to be spent in Government on something else, something that the bureaucrats in Washington will consume, something that will not go to benefit their families.

Sixty percent of the tax will fall on families earning $30,000 a year or less. Households earning $10,000 will feel the bite of this tax increase most of all.

Listen to this: The Joint Committee on Taxation estimates that these households will see their Federal taxes rise by 44.6 percent. As currently drafted, this legislation will cause someone who smokes two packs daily to pay the Government an annual additional fee of $803—an additional $803. Smoking is already an expensive habit, and the collection of this money is predicated upon the fact that people will not quit, not that people will quit. You can't get these kinds of numbers, $755 billion, from people who quit. You are going to get this amount of money because you know people won't quit and can't quit, and the reason by those who come forward with this tax is, it is necessary, they say, because this is addictive.

They say people can't quit. That is what is wrong with tobacco. And yet they say that people will choose to pay this because they choose to continue to smoke. Whether they choose to or not, someone who earns $10,000 a year, already spending a couple hundred, maybe $1,000 of that $10,000 on cigarettes, now has to pay the Government of the United States an additional $803 annually. Frankly, my amendment would prevent that from happening.

As currently drafted, this legislation allows tobacco companies to deduct the mandatory payments ultimately paid by consumers as a regular business expense. So what we have here is really an implied subsidy of the tobacco industry, tobacco companies being able to pass through costs to the consumer which the tobacco company then gets to deduct.

Again, we find ourselves, here in this setting, subsidizing tobacco companies, megatobacco companies, the cash cows of American industry, we are subsidizing these companies by placing on ordinary human beings, working families—we are subsidizing them by placing this $755 billion tax on working families. Over 5 years, that write-off would be worth about $36 billion to the tobacco industry. I cannot imagine anything more inappropriate than to take money from the hard-working families of America and then to use that money which we have taken from the hard-working families of America to provide a $36 billion subsidy through special write-off provisions for the tobacco industry.

By eliminating the annual payments, my amendment would prevent the tobacco companies from claiming the deduction. I think we should stop the subsidy for tobacco, in particular for tobacco companies, especially providing a subsidy for them by allowing them to deduct payments that are not really going to be made by them—payments that are going to be passed through to consumers, hard-working families with children to feed and clothe, families with payments to make, families of individuals who might want to quit smoking but cannot. This bill is predicated upon the fact that these families will continue.

This massive Government bureaucracy that is planned and the massive amounts of spending that are projected are all based on this willingness expressed in this bill to tax ordinary working families—ordinary working families—massive amounts. And 59.4 percent of the money will be paid by families under $30,000; 3.7 percent by families making $115,000 or more. This is the most regressive graph of taxation that I have seen since I have had the opportunity to serve in the U.S. Senate.

Before we consider passing a massive tax increase like this, it would behoove us to review the Government's record thus far with respect to taxes, spending, and Government employment. In Washington, DC, taxes and spending are more addictive than nicotine.

In the 15 years prior to 1995, Congress passed 13 major tax increases. Let me refer to the chart which has just been set up here. The Crude Oil Windfall Profit Act of 1980; the Omnibus Reconciliation Act of 1980; the Tax Equity and Fiscal Responsibility Act of 1982; the Social Security Amendments of 1983; the Deficit Reduction Act of 1984; the Consolidated Omnibus Budget Reconciliation Act of 1985; the Omnibus Reconciliation Act of 1986; the Omnibus Budget Reconciliation Act of 1987; the Technical and Miscellaneous Revenue Act of 1988; the Omnibus Budget Reconciliation Act of 1989; the Omnibus Reconciliation Act of 1990; the Energy Policy Act of 1992; the Omnibus Budget Reconciliation Act of 1993—15 years, 13 major tax increases.

Mr. KERRY. Mr. President, will the Senator yield for a question?

Mr. ASHCROFT. I will yield for a question.

Mr. KERRY. Didn't most of those also have tax cuts in them?

Mr. ASHCROFT. I think it is pretty clear that the amount of money being taken from the American family is going up and up. This year, for example, the average American family had to work until the 10th day of May—we just passed it—for Government. That was the time it took for people to satisfy the obligation to Government. That time has been extending into the year very rapidly through this entire time period.

It is true that very frequently the Congress gives a little bit here and takes a lot here, so that there are in this time setting different changes in the taxes. But if you want to look over the period of time—and I think it would be a fair thing to do; and I will be happy to do that; and I will bring information about that to the floor—that over time—over time—the Congress of the United States has taken a bigger and bigger and bigger bite of the income of workers in the United States. And, as a matter of fact, this would be another huge bite it would take out of the workers, especially of low-income families.

Mr. KERRY. Mr. President, I appreciate the Senator being willing to yield. And I just wanted to make it clear that the record was clear in his answer that there were tax cuts of significance. You can make adjustments as to who might have benefited and who did not, but those were not just tax increases. I think that is an important point.

I thank the Senator.

Mr. ASHCROFT. I thank the Senator from Massachusetts.

These items, which I have listed here, are times when the taxes were raised on American families and American industry. I think over time most of us understand that we are paying more in taxes now than ever before. As a matter of fact, right now Americans work harder and longer in peace and prosperity than we have worked at any time in history to pay our taxes.

So whether or not there were a few things in this list where someone was given a tax break while someone else had a tax increase, that may have been the case, but the truth of the matter is, we have been taking two steps backwards at least for every step forward. Government has been taking a bigger and bigger and bigger share. And now Americans work further and further into the year every year in order just to satisfy the appetite of Government rather than to provide for themselves.

Last year's Taxpayer Relief Act was the first meaningful tax cut since—well, since about 1981. And the tobacco tax increase would more than erase every bit of what we did last year in terms of taking more from the American people. It seems to me that what we need to do is not go back on what we did last year; we need to extend what we did last year. We do not need to increase taxes. Taxes are at an all-time high.

Tax freedom day, as I mentioned, was May 10 this year. Federal, State, and local taxes claimed 37.6 percent of the income of a median two-income family in 1997. Now, these taxes were more than the couple spent on food, shelter, clothing, and transportation—more than they spent on their cars, their houses, their food, and their clothing.

It seems to me that we ought to be wondering about how we could reduce taxes. During Bill Clinton's first 5 years in office, the Federal Government collected 29 cents in taxes for every dollar increase in the gross domestic product. According to the Joint Economic Committee, "The federal government is now taking a higher share of economic growth than under any president in recent history."

The Joint Economic Committee continues: "The average rate during the entire era before President Clinton—from Presidents Eisenhower to Bush—was 19%." We are now taking 29 cents of each dollar increase in domestic product.

Obviously, the Federal Government has yet to reject the sentiment expressed by King Henry IV nearly 600 years ago. He put it this way: "You have gold. I want gold. Where is it?"

Well, I think we have a bill here that says, "You have gold. We want gold. And we don't care how poor you are. We don't care how you're struggling to make ends meet." As a matter of fact, we will make a very repressive tax, but we want to spend. Tax-and-spend as tax-and-spend—it does not matter which party sponsors it, who does it. Tax-and-spend is the invasion of Government in the province of the lives of individuals, and we have every reason to want to reject it.

To collect this bounty, the Federal Government has developed a complex system. A recent report by the Heritage Foundation reveals just how complex.

Mr. President, 136,000 employees at IRS and elsewhere in the Government who are responsible for the tax laws; $13.7 billion is the amount of tax money spent by the IRS and other agencies to enforce and oversee the code; 17,000 is the number of pages of IRS laws and regulations, 12,000 not including Tax Court decisions and IRS letter rulings—12,000.

And 5.5 million is the number of words in the income tax laws and regulations; 820, the number of pages added to the Tax Code by the 1997 Budget Act; 250 is the number of pages needed to explain just one paragraph in the Internal Revenue Code; 271 is the number of new regulations issued by the IRS in 1997; 261 is the number of pages of regulations needed to clarify the Tax Code's "arms-length standard" for international intercompany transactions, and on and on and on.

Incidentally, 293,760 is the number of trees it takes each year to supply the 8 billion pages of paper used to file income taxes in the United States.

Many years ago, Senator Everett Dirksen quipped, "a billion dollars here, a billion dollars there, and pretty soon you're talking about real money."

Unfortunately, because of Washington's profligate ways, what was once real money has become little more than a rounding error. The budget resolution passed by the Senate last month recommended the Federal Government spend $9.15 trillion over the next 5 years. That is a 17.3-percent increase from the previous 5 years.

According to a recent Cato report, the Government's fiscal record is nothing to brag about. Over the past 10 years, the Federal domestic expenditures have soared by 79 percent. After adjusting for inflation, this is an enormous 34-percent increase. Over that same period, family income adjusted for inflation has grown by 9 percent. There is the contrast. There is the problem: a 34-percent increase in Government, Federal domestic expenditures; a 9-percent increase in the income of the average family.

So today I provide an opportunity for this body, the Senate of the United States, I provide an opportunity for the Senate to say to the American people, "Enough is enough." Even if you make a bad decision as a free person to smoke, we are not going to decide that we are going to take from you the capacity to spend money and resources on your own family. We are not going to say that the tobacco companies are bad operators and bad companies, and as a result of their problems and their poor conduct, we are going to punish you, the individuals who smoke.

We are not going to provide that 59.4 percent of all the $755 billion to be collected by individuals trapped in the

habit of smoking is to be provided by individuals who make less than $30,000. We are not going to continue to inflict that kind of harm on individuals who are low income and compound the problem. Now Government will come in and sweep from them their capacity to provide for their own families.

That is not something that we are interested in doing. We are interested instead of saying we don't really agree with this bill, in saying that everything has to be passed on to the consumer, that as a way of punishing tobacco companies we will take money from consumers. We are going to try to make it very difficult. If a guy smokes a couple of packs a day, we are going to make sure that he spends 800 bucks more a year just for the Government, not to be able to address the needs of his family, not to provide for his family, not to provide for himself. But we are going to just say because tobacco companies have done things that are improper, we are going to punish hard-working American citizens.

My own view is that is a misplaced effort. If we really want to try to make sure that we curtail teen smoking, there are a lot of things we could do. I don't even think this bill makes it illegal for teens to possess tobacco. I don't think it even makes it illegal to possess tobacco in the District of Columbia. This bill doesn't even curtail, in my understanding, doesn't curtail smoking in the Capitol. We criticize Joe Camel, a cartoon character. We criticize a cartoon character for being a role model for young people who want to emulate and smoke. But we don't curtail, I don't believe—and I would be glad to be corrected—I don't think we stop smoking in the U.S. Capitol. In the District of Columbia, we don't make it illegal for teens to possess tobacco. Now, it is virtually uniform around the country that it is illegal to sell tobacco to teens, but there are things we can and ought to do to curtail tobacco use among teens.

And I leave with this amendment, I leave in the bill the penalties on tobacco companies for failure to meet the targets. I simply, with this amendment, take the penalties against consumers out of the bill. I simply do not provide for the punishment of poor American families, working families. I do not provide for their punishment for what the tobacco companies have done. I think it is inappropriate.

So 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 Missouri [Mr. ASHCROFT] proposes an amendment numbered 2427 to amendment numbered 2422.

Mr. ASHCROFT. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the language proposed to be inserted, insert the following:

(1) Amounts equivalent to penalties paid under section 202, including interest thereon.

(c) REPAYABLE ADVANCES.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the trust fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures authorized by this Act.

(2) REPAYMENT WITH INTEREST.—Repayable advances made to the trust fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the trust fund for such purposes.

(3) RATE OF INTEREST.—Interest on advances made under this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

(d) EXPENDITURES FROM TRUST FUND.—Amounts in the trust fund shall be available in each calendar year, as provided by appropriations Acts, except that distributions to the States from amounts credited to the State Litigation Settlement Account shall not require further authorization or appropriation and shall be as provided in the Master Settlement Agreement and this Act, and not less than 15 percent of the amounts shall be expended, without further appropriation, notwithstanding any other provision of this Act, from the trust fund for each fiscal year, in the aggregate, for activities under this Act related to—

(1) the prevention of smoking;

(2) education;

(3) State, local, and private control of tobacco product use; and

(4) smoking cessation.

(e) BUDGETARY TREATMENT OF TRUST FUND OPERATIONS.—The receipts and disbursements of the National Tobacco Settlement Trust Fund shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 95 of such Code.

SEC. 402. STATE LITIGATION SETTLEMENT ACCOUNT.

(a) IN GENERAL.—There is established within the trust fund a separate account, to be known as the State Litigation Settlement Account.

(b) TRANSFERS TO ACCOUNT.—From amounts received by the trust fund under section 403, the State Litigation Settlement Account shall be credited with all settlement payments designated for allocation, without further appropriation, among the several States.

(c) REIMBURSEMENT FOR STATE EXPENDITURES.—

(1) PAYMENT.—Amounts credited to the account are available, without further appropriation, in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

(2) AMOUNT.—The amount for which a State is eligible for under subparagraph (A) for a fiscal year shall be based on the Master Settlement Agreement and its ancillary documents in accordance with such agreements thereunder as may be entered into after the date of enactment of this Act by the governors of the several States.

(3) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate.

(4) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(d) PAYMENTS TO BE TRANSFERRED PROMPTLY TO STATES.—The Secretary of the Treasury shall transfer amounts available under subsection (c) to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

( ) PROVISIONS RELATING TO AMOUNTS IN TRUST FUND.—

(1) CERTAIN PROVISIONS NULL AND VOID.—Notwithstanding any other provision of law, the following provisions of this Act shall be null and void and not given effect:

(B) Sections 402 through 406.

Mr. MCCAIN. Mr. President, for the information of all Senators, I have been authorized by the majority leader to announce there will be no further votes this evening. The Senate will remain in session for those Members interested in debating this important issue.

By mid to late morning tomorrow, I intend to move to table the pending Ashcroft amendment and the Kennedy amendment, all in an effort to move this bill along. Again, the next vote should occur around 11 a.m. on Wednesday.

While I have the floor, Mr. President, I make one comment. I am the father of four children. I come from a high-income bracket. I love my children. I believe that low-income Americans love their children, as well. And I have talked to many low-income Americans, both in person and by mail and on talk shows, who have said, "Senator MCCAIN, I smoke. I wish I didn't smoke. My children are beginning to smoke. Please do everything you can to stop it."

Mr. President, to believe somehow that low-income families aren't as concerned about their children and whether they are going to smoke or not, frankly, is not something that I agree with, nor I believe is it fair to low-income families all over America. Low-income families in America love their children as I love my children.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 2421

Mr. LAUTENBERG. Mr. President, this obviously is going to be a fairly long debate. We are going to hear

about everything from tax policy to love of country to how we deal with our budgets. We are going to hear all kinds of things.

Mr. President, I join with my distinguished friend and colleague from Massachusetts in proposing the $1.50 amendment, if I can call it that, that both he and I have had a longtime interest in. I want to make some comments on the entire bill before I go into the specifics of the $1.50.

Senator KENNEDY has been the leader in all matters of health and concern for young people, always out in the front, helping to defend what is right in our country. I have great respect for him and I am pleased to share this particular interest in reducing teen smoking.

Today we begin consideration of legislation that is long overdue. It tackles one of the most important health issues of our time, because today we begin the questions to finally reform the way tobacco products are sold in this country and the way the tobacco industry operates.

Getting to this point has not been an easy journey. Despite the fact that the tobacco industry has for decades engaged in shameless corporate conduct, the Congress has never acted in a comprehensive way to get this industry under control. However, we have now reached a point where the American people no longer tolerate inaction on this issue.

I have been fighting to protect Americans from the dangers of smoking for over a decade in the U.S. Senate, along with the distinguished Senator from Illinois, Senator DURBIN. We authored the first ban on smoking in airplanes in 1987. Just a few weeks ago, we celebrated the tenth anniversary of the implementation of that legislation.

Frankly, I believe that ban, that opportunity for people to fly and to travel in that close space free of tobacco smoke, was a catalyst for further antitobacco activity. They saw how pleasant it was. When people rode on airplanes, they saw how nice it was to have smoke-free travel, freedom from other people's tobacco smoke. Many who suffered from allergies, or had respiratory problems, or just couldn't endure being trapped in a smoking airplane cabin finally felt free to travel by airplane in what they considered a personally safer environment.

But, despite the wishes of the American people, we had a tough time getting that legislation in place. It was a long, tough battle. We argued. We negotiated. We finally settled for a 2-hour ban, with the promise that we would wait 18 months for studies to come in. But the interest of the public was so overwhelming that we didn't have to wait 18 months. It began to become a cry across the country: Please, if you are going to ban smoking in airplane flights for 2 hours, for goodness sake, if it is a 6-hour flight, give us a break. And we immediately changed what had been a 2-hour ban to a 6-hour ban and now all flights across this country and many across the ocean.

But despite the wishes of the American people, the tobacco industry has been able to use its power and its influence to stop real reform of tobacco industry behavior until this week.

Now, we are poised to finally act in a comprehensive way to tackle the major problems this industry has caused our Nation. First and foremost is the issue of teen tobacco use.

Mr. President, newly released industry documents show how the tobacco industry specifically and deliberately targeted our kids for addiction. They knew what they were doing. They put up fancy drawings and beautiful pictures of healthy people riding horseback and playing sports. They knew what was happening. They knew very well they were creating addiction for the children. They were seducing them into picking up the smoking habit.

In addition, the industry's very own documents talk about ways to further entrap young smokers into a lifetime of addiction by manipulating the quality of nicotine in these cigarettes. The documents recently revealed also contain strategies on how to spread fake science to confuse their customers about the health effects of tobacco products.

Mr. President, not only did the industry commit these acts but it came before the Congress and lied about it. Now these very same companies have decided that they are going to fight back against the popular will. They are going to fight back against the Congress' final awakening to the evils of smoking and to do something about it. They have decided that they are going to take a chance and spend $50 million or more for deceit with a misleading advertising campaign to stop the Senate action this week. You have seen it on TV. You hear it on the radio. You see it in print: After all, we were willing to pay $500 million. After all, we want to be proper citizens. But the Senate and the House want to take away our right. They want to invade people's lives.

It is for that very reason that we have to act now and pass strong comprehensive tobacco legislation. The Senate must prove to the American people this week that we have broken from the past; we will no longer trade the future of our children for cold, hard tobacco industry campaign cash. This is effectively our Bastille Day. The reign of the tobacco industry on Capitol Hill must end today, now. We have an opportunity to prove to the American people that big tobacco's free ride is over.

Mr. President, there are going to be lots of votes for us this week to prove our good faith.

The chairman of the Commerce Committee, Senator MCCAIN, and the committee itself have given us a foundation to build on. I congratulate them and thank them for this and commend them for all of their hard work.

But we have more heavy lifting to do, because what we see in front of us has to be amended and has to be expanded in order to do the job that we want to see done. Our Nation's leading health experts tell us that we have a way to go this week before this bill should be approved by the U.S. Senate. Names that Americans trust, like Dr. C. Everett Koop, Dr. David Kessler, tell us that this bill needs improvement.

That is why it is imperative that the Senate adopt amendments that will be offered to put some more teeth into this bill. We will have votes this week on the Kennedy-Lautenberg amendment that would call for a $1.50 price increase on a pack of cigarettes to really discourage youth smoking.

We will also vote on whether Congress should provide this industry with special protections on legal liability. Additionally, we will likely vote on look-back surcharges to see whether or not the companies will use all of their skills and knowledge to reduce teen smoking. And we will likely vote on preemption of local laws and on advertising restrictions. These will all be key votes, and the American people will be watching.

I will not make my final decision on this legislation until I see the outcome of these votes and see what difference the amendments make in the quality and the extent of this bill. I hope, Mr. President, we can head into the Memorial Day weekend proud of what we did this week.

As we remember our brave men and women who sacrificed their lives fighting for our country, I ask my colleagues to join the fight to protect our people from premature death and sickness as we would have if a foreign invader was to declare war on us and in 1 year killed more than 400,000 Americans—400,000 Americans. It is more deaths in 1 year than all of the combat deaths in all of the wars fought by Americans in the 20th century. We are looking at World War I, World War II, Korea, Vietnam, and other wars fought in this century. Once again, more Americans die each and every year from tobacco-caused disease than died in combat in all of the wars that I have just mentioned.

So we want to fight back against the attackers, as we should. What if we were invaded by a foreign enemy? Now is the time to respond to a call to arms.

Mr. President, this $1.50 amendment will test whether or not we are serious about cutting teen smoking or whether we are going to once again appease the industry. If we are serious about cutting teen smoking, then we must raise

the price of cigarettes by at least $1.50 a pack. We have to get to that level quickly, within 3 years.

I want to point out on this chart what we understand. The source of this is the Department of the Treasury. It says the number of children who will be deterred from smoking based on these prices: A $1.10 increase will stop 3 million kids from picking up the smoking habit; a $1.50 increase will stop 3.75 million children from picking up the smoking habit. We know that once they start—we have seen it on the chart displayed by the Senator from Massachusetts about when people start smoking at a very young age. I know I did. It took me some 25 years to recognize what a foolish thing I was doing. I didn't recognize it until my youngest daughter said one day, "Daddy, we learned in school today that if you smoke, you will get a black box in your throat, and I love you, and I do not want you to have a black box in your throat. Daddy, please stop smoking." Within 3 days I stopped smoking, after numerous attempts.

The number of children whose lives will be saved by the cigarette price increases is 1 million at $1.10; $1.50, 1.25 million people—1.25 million children whose lives will be saved by responding to that pressure from the price increase.

We have heard everything here today about tax increases and how we are taxing those unfortunate people of modest income.

The Senator from Arizona said everybody loves their children just as much regardless of their income class. The fact is we would like, all of us, to see the cessation of smoking or the reduction of smoking among children.

One of the things that happens as we discuss this $1.50-a-pack possibility is that we would then be extracting from those whose use costs us more because of their habit to pay for some of the costs that they incur. If someone wants to use their car more often, they buy more gasoline. They pay a higher price. If they want a bigger house, they pay a higher price. If they want to use more fuel to warm or cool their house, they pay a bigger price. If they use more of the health care system, they should pay a bigger price. It is an unfortunate reality, but smoking costs this country $50 billion a year in increased health costs—$50 billion a year. And we are talking about something that is considerably less of a tax, less of a cost on those companies and the individuals who pick up the smoking habit.

We want to stop people from smoking. Just think about it. We heard talk about the fact that this is a tax increase on hard-working families. Well, hard-working families ought to be interested in the money that they save. Imagine if we stopped people from smoking. Here we say a million and a quarter people. It will cost them over $2,000 a year, or they will save $2,000 a year as a result of dropping the smoking habit. Two packs of cigarettes a day, estimated at the lowest, perhaps $4 a pack, if the $1.50 increase goes into effect. But let's say it is $3 a pack. Three dollars a pack, twice a day; $6 times 7, $42 a week, times 52 weeks a year; over $2,000 a year that poor, hard-working families could very well use to buy other things they need far more than cigarettes.

Smoking among children and teens has reached epidemic proportions. Three thousand children begin smoking each and every day, and a third of them, 1,000, will die prematurely as a result of the smoking habit. Every year we lose over 400,000 Americans to tobacco-related illness and over 90 percent of them started as kids.

The managers' amendment claims to raise the price of a pack of cigarettes $1.10 in 5 years, but the public health community tells us that $1.10 just won't do the job. The goal we have set in Congress is to cut teen smoking in half, and if you examine the $1.10 proposal, it is clear that it doesn't cut it. Independent economists tell us that a $1.10 increase will only result in a 33-percent reduction in teen smoking over 5 years.

Hallelujah, I would love to see that happen—even that. But on the other hand, these same economists say a $1.50 price increase will result in the 50-percent reduction target in 5 years. What an accomplishment that would be. Imagine that in a few years when those kids who would have started smoking are not smoking. More than 200,000 Americans who would have otherwise died would be alive. Families would not be grief stricken at the loss of someone they care about because of the smoking habit, or watch someone who was a good athlete unable to function, unable to run, unable to breathe without lots of labor because we were in this early stage able to stop teen smoking.

The reason we are not focused on adults so much in this as teen smoking is because it doesn't have the same impact on adult smokers. We have over 40 million people who are addicted to tobacco. I never met anybody who is a smoker who will not tell me about the number of times they stopped and how long. They remember those as key moments in their life: I once stopped for 2 weeks, for 2 solid weeks I didn't have a cigarette. What do you think? And then I was watching the ball game or my friend Charlie at the office had a problem and got sick and I started smoking again. And I will be darned; I just haven't been able to stop. But one of these days I am going to do it, I promise you that. I wish I could.

Talk to people who stand outside buildings all over America who are prohibited by the rules from smoking in the building and you see them puffing away. I was one. I don't make fun of them, I promise you that. See them standing out there in the cold weather freezing to finally get that puff on the cigarette.

The other day I took the train from Philadelphia to Newark, and I watched a fellow get off the train, light up quickly on the platform, take two or three drags on the cigarette and chuck it and get back in the train. He is not happy with his habit. He may have been happy to have a puff on that cigarette, but I assure you, when that man thinks about what he is doing, he is not happy that he is an addict. No addict, whether illegal drugs or tobacco, is happy with the condition, but they are committed to it.

And so our mission is to stop them before they start, because it is unrealistic to say stop after they have been doing it for a long time. You can never get to it. So what we will do is make an investment now that will start to pay off 5 years from now, 10 years from now, 20 years from now, when we will see our costs for health care and our costs for lost productivity will diminish considerably, and maybe even end, and we will be looking at a Nation that is considerably healthier.

Why should the Senate stand for half measures? Public health organizations and Drs. Koop and Kessler agree that the price of tobacco products must be increased by at least $1.50 in 3 years, and be continuously indexed, by the way, for inflation. Otherwise, we will fall short of meeting our goals of cutting teen smoking in half.

A variety of factors contribute to a teenager's decision to try that first cigarette or chew that first bit of spit tobacco, as we call it. But the price of tobacco is a critical factor. The higher the price, the less likely the child will be to continue to use tobacco.

Again, the U.S. Department of the Treasury says it—the number of children who will be deterred from smoking if we adjust the prices, according to this chart.

I would also like to ask my colleagues not to be fooled by the industry's deceptions that this price increase will bankrupt them. I remind my colleagues that these are the same folks who testified before Congress under oath that nicotine is not addictive. The tobacco industry made $7.2 billion in profit in 1997. And according to an MIT analysis, a $1.50 price increase would not bankrupt the industry by any stretch of the truth or imagination. In fact, the MIT analysis shows an industry profit of $5.2 billion with a $1.50 price increase.

And further, the industry claims that this price increase will create a black market. Well, this black market looks like a red herring to me, I must tell you. We can pass tough antismuggling laws that will prevent a black market. It doesn't, unfortunately, hurt the tobacco companies if their product is

sold in a black market. I want everybody to keep that in mind. If company X sells its products and it gets by without the $1.50 user fee imposed on it, they still get the same profit back in Winston Salem, NC, or wherever they are based. So that black market, so to speak, is not something that, frankly, I see making the tobacco companies very unhappy. In fact, the managers' amendment includes antismuggling language that I coauthored. This language is tough. It will go a long way towards cracking down on smuggling—the same way we have cracked down on alcohol smuggling in recent years.

This $1.50 proposal has bipartisan support. I offered it as a sense of the Senate in the Budget Committee, and it passed overwhelmingly. It passed in the Budget Committee. A similar proposal passed with a bipartisan vote last week in the Finance Committee. There is a bipartisan Hansen-Meehan bill in the House that also increased the price by $1.50 over 3 years.

Mr. President, this amendment has bipartisan support because the American people strongly support it. A recent poll by the American Cancer Society showed that 59 percent of the American people support a $1.50 price increase—people who are going to be affected by it.

I think it is time for the full Senate to pass a $1.50 price increase and protect our children once and for all. We are going to see it in the voting. That voting is a public document that everyone can see, a public action that everyone can see.

I am going to close in just a couple of minutes here. I listened to the debate. I listened to the cries that this is just another scheme, a scheme to tax the public so those of us who are responsible for legislation and operation of Government can spend the money. That is the biggest hoax in the world.

Nobody, this Senator or any other Senator, on the right, on the left, in the Republican Party or the Democrats, enjoys spending the public's money. That is pure baloney, as we say in polite circles. We don't like taxing anybody. But people who smoke cause this society to spend $100 billion a year as a result of their smoking. We have the unfortunate experience of seeing a loved one die, or with a tracheotomy, as we saw last week at a hearing here. We heard a woman who was induced to represent a tobacco company as a model when she was 17 years old, and she said her employer said unless you smoke also, actually smoke, you don't quite have the real action that shows the satisfaction a smoker gets. And now she smokes through a tracheotomy in her throat. She was barely able to utter the sounds. It was pathetic, Mr. President, to see that happen.

I also had the benefit of a hearing where we had a famous male model for one of the tobacco companies who said he is dying. He said he was so ashamed of himself, when he went into the doctors office, went in for surgery, and the doctor said to him, "For goodness sake, don't smoke for a couple of weeks before you get to the hospital, whatever you do," and his doctor caught him smoking in the waiting room, waiting to be admitted to the hospital so he could have a lung taken out. That is how addicting tobacco is.

We ought not feel sorry for the people who run the tobacco companies. They ought to be ashamed. They ought to pay the price. It is time for them to come clean with the American public and say, "OK, we have done it wrong. We have made a mistake. We want to cooperate." Instead, they are mounting all kinds of spurious campaigns to try to deceive the public that the Senate, that the Congress, is trying to hurt them or hurt their families. It is not true. We ought not let them get away with it. So when I hear the stories, oh, we are going to just tax the American public, and a recitation of when these tax increases go through—I would like to recite just a few numbers in response.

There has never been a time in the history of this country when the economy is better than it is these very days, and it is better because we took some specific actions. It is better because we had a balanced budget on our agenda, and we approved one last year. I am a member of the Budget Committee and we saw it happen. We decided we were going to control our expenses. And the economy is booming. Look at the stock market. Look at interest rates—low; stock market, high. Interest rates, low; mortgage rates, low; home ownership high—we have not ever seen that kind of affluence in this society.

Everybody is not participating. I am not saying that at all. But to suggest that we have done things wrong in this country, in the management of this economy, and that what we have done is just picked people's pockets and taken the money and thrown it away is nonsense and the public will see through it. They are not going to believe that stuff. They have heard it before. They have seen it before. They know their children have a chance at a good job, they have a chance to get an education, that health care for their grandparents is going to be more assured, Social Security has moved up in its solvency— 2032 is the prospect. It is incredible. People can feel a lot better about their lives.

And longevity? Mr. President, I hate to admit how old I am, but I can tell you if you want to run or jog or go skiing or do all the other things, I am there, because there is an opportunity in this country to have a full life as one ages. I was a soldier in World War II. I served 3 years in the Army. I count my blessings every day for the good health I have seen and the five—and sixth grandchild, maybe today or maybe tomorrow that child will arrive. I can't wait for my daughter to say, "Hey, Dad, we have a new one in the family." I can assure you that child will never smoke if the parents or the grandparents have anything to say about it.

We want our children to be healthy. That is the purpose of this. It is to bring health to the younger part of our society so that, as they age they, too, can enjoy their grandchildren, enjoy their life, be in good health, do whatever they want to do—run, dance, whatever, and feel good about the life they have led. That is the kind of America we have today. That is the kind of America that developed because it had leadership and a willingness to pay the price with some tough votes, some which I didn't make that I wish I had.

So I want to see us pass this to tell the American people we are finished fooling around. We mean it when we say we want to stop teen smoking. We mean it when we say we are going to eliminate this scourge from our society. And we mean it when we stand up here and we vote and we say: OK, let the public see how we are doing it.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleagues, Senator KENNEDY and Senator LAUTENBERG, for offering this important amendment. I would like to start by answering some of what our colleague from Missouri, Senator ASHCROFT, was referring to in terms of tax increases. The Senator from Missouri, Senator ASHCROFT, was referring to tax increases that have occurred. He was discussing what he termed the very high tax rates we currently face.

I wanted to bring some historical perspective to that question. This chart shows the outlays of the Federal Government in blue, the receipts of the Federal Government in red, over the last 20 years. As one can see, the spending of the Federal Government as a percentage of our national income has been coming down since President Clinton came into office. Spending has been coming down. Yes, revenue has been going up. And the result has been balanced budgets. That is how you balance a budget. We had $290 billion deficits, and it required cutting spending and, yes, revenue coming up to balance the budget.

We heard a lot of talk about balancing the budget before the 1993 budget deal was passed that, in fact, cut spending and, yes, raised revenue to balance the budget. But what happened? All we got was rhetoric. Let's just look at the record here. If we want to start talking about budgets and deficits, if that is what this debate is going

to be about, let's have the debate. Here is what happened under President Reagan. The deficit skyrocketed. We had a lot of rhetoric about balancing the budget, but what we got were a lot of deficits, a lot of red ink, tripling the national debt. What we got under President Bush was even worse. The deficit nearly doubled from already high levels.

Now, what happened when President Clinton and the Democrats passed a budget plan to reduce the deficit? Yes, we did cut spending. Yes, we did raise revenue from the wealthiest 1.5 percent of the people in this country to balance the budget. And that is what has triggered this economic resurgence in this country—that is what I believe. I think the record is absolutely clear. Here are the facts. The deficit each and every year came down after we passed that 1993 budget plan, and now they are actually talking about budget surpluses this year.

That is the record. Those are the facts. But it doesn't tell the full story. Because while revenues went up, overall revenues went up, what happened to the individual tax burden—the individual tax burden? This shows, in 1984, the tax burden for a family of four with a median income level of $54,900 in 1999.

This is income plus payroll tax burden. These are the Federal taxes people are paying. In 1984, that burden on a family of four was 17 percent of their income. In 1999, it will be 15.1 percent. The tax burden on a family of four at the median income in this country has gone down. It has gone down, because while revenues are up, we have changed the distribution by giving targeted tax relief to moderate-income people.

That was our plan. That is what passed. That is what has made that difference in the lives of American families. Their tax burden has gone down, looking at the income and payroll taxes that they pay.

By the way, these are not KENT CONRAD's figures, these are the figures of the U.S. Treasury Department. That is for a family of four earning about $55,000 next year. That is what their tax burden is going to be.

For a family of four at half the median income, at $27,450, their tax burden will have been cut in half. These are facts. In 1984, a family of four earning $27,450 paid 13.2 percent. In 1999, they are going to pay 6.5 percent. Their tax burden, income and payroll taxes combined, has been cut in half. Now, those are facts.

Let's start talking about the issue that is in front of us.

The tobacco industry has a history of making statements that, frankly, are false. I don't know how else to say it. I don't know how to say it diplomatically when somebody is saying something that just "ain't" so. Let's look at the record.

I talk about these as the top 10 tobacco tall tales and the truths.

Tall tale No. 1: They came before Congress and they said tobacco has no ill health effects.

The truth: This is from their own documents. This is a 1950s Hill and Knowlton memo quoting an unnamed tobacco company research director. And he said:

> Boy, wouldn't it be wonderful if our company was first to produce a cancer-free cigarette. What we could do to the competition.

This is the industry that says their products cause no ill health effects.

Tall tale No. 2: Tobacco has no ill health effects.

Truth: From a 1978 Brown and Williamson document:

> Very few customers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison.

These are the industry's own words. This is why this industry has no credibility anymore, when they come up with all this scare talk about black markets and bankruptcy and all the rest. And we will get to those issues one by one. This is their record for credibility.

Tall tale No. 3: Nicotine is not addictive, they told the American people.

The truth: From their own document, a 1972 research planning memo by R.J. Reynolds Tobacco Company researcher Claude Teague:

> Happily for the tobacco industry, nicotine is both habituating—

Addictive—

> and unique in its variety of physiological actions.

That is tall tale No. 3.

Tall tale No. 4: Again, the industry says nicotine is not addictive.

This is from a 1992 memo from Barbara Reuter, director of portfolio management for Philip Morris' domestic tobacco business:

> Different people smoke cigarettes for different reasons. But, the primary reason is to deliver nicotine into their bodies. Similar organic chemicals include nicotine, quinine, cocaine, atropine and morphine.

I don't know how these guys can run around the country saying their products aren't addictive, which their own documents—which we only received through the disclosure of the lawsuit in Minnesota—reveal that they know perfectly well they are addictive. They have known it a long time, and they have run around the country saying things that just aren't so. That is tall tale No. 4.

Tall tale No. 5: Tobacco companies did not manipulate nicotine levels.

The truth, from a 1991 R.J. Reynolds report:

> We are basically in the nicotine business. . . . Effective control of nicotine in our products should equate to a significant product performance and cost advantage.

They are in the nicotine business, and nicotine is addictive. Their previous document, it is like cocaine, it is like morphine—who are they kidding? We know better. We have read their documents. That is the problem with the credibility of this industry. We have now actually had a chance to read their documents that they had hidden away for so long.

This is tall tale No. 6: Tobacco companies did not manipulate nicotine levels.

The truth can be found in a 1984 British-American Tobacco memo:

> Irrespective of the ethics involved—

That is an interesting way to begin a memo—

> Irrespective of the ethics involved, we should develop alternative designs (that do not invite obvious criticism)—

You've got to love these guys—

> which will allow the smoker to obtain significant enhanced deliveries of [nicotine] should he so wish.

"Yeah, let's go out and give them double doses of nicotine so we hook them even further."

Tall tale No. 7: Tobacco companies don't market to children.

They came up to Congress, and they said, "We don't target children. We wouldn't do that."

Here is a 1978 memo from a Lorillard tobacco executive:

> The base of our businesses are high school students.

They don't target kids? What is that? That is their own words in their own documents. Of course, they were hidden away a long time, but now that we have them, we know what these folks have been up to. We know what these companies have been up to.

Tall tale No. 8: Again, their claim tobacco companies don't market to children.

Let's just look at their own words again. A 1976 R.J. Reynolds research department forecast:

> Evidence is now available to indicate that the 14- to 18-year-old age group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.

I don't know what could be more clear than the industry's own words.

Tall tale No. 9: Again, their claim they don't market to children.

This is from a 1975 report from Philip Morris researcher Myron Johnston:

> Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers, 15- to 19-years-old. My own data shows even higher Marlboro market penetration among 15- to 17-year-olds."

These are the industry's words. These are their words. This is their credibility that they have shredded. I don't know how many more examples we need to understand that this industry comes before us and they don't have clean hands. They don't come here with credibility, because they have undermined their own credibility with their statements of the past.

Tall tale No. 10: Again, their claim tobacco companies don't market to children.

This is from a Brown and Williamson document.

The truth:

The studies reported on youngsters' motivation for starting their brand preferences, as well as the starting behavior of children as young as 5 years old—

Five years old—

the studies examined young smokers' attitudes toward "addiction" and contain multiple references to how very young smokers at first believe they cannot become addicted, only to later discover, to their regret, that they are.

Well, it seems to me the record on the credibility of this industry is quite clear.

So that brings us to the question of this amendment. And the importance of this amendment has everything to do with reducing youth smoking. That really is the reason for this amendment, because we have held over 24 hearings in our task force and we have heard repeatedly from the experts. And we have looked at the evidence.

The evidence shows, first of all, that the percentage of teens who smoked in the past month is going up. It has gone from 28 percent of 12th graders in 1991 to this year, 36 percent. The pattern is the same for 10th graders and 8th graders. Smoking among high school seniors is at unprecedented levels. The percentage of seniors who smoked in the last month: in 1991, it was 28.3 percent; 1997, 36.5 percent. Teenage smoking is going up. Eighth graders, 10th graders, 12th graders, the pattern is the same.

The question before the body is, well, is there any indication that a price increase will change that? And the evidence is overwhelming. Our own Congressional Research Service tells us for every 10-percent increase in price, you will get about a 7-percent reduction in teen smoking; a 10-percent increase in price, a 7-percent reduction in youth smoking.

It is not just the Congressional Research Service. The studies that have been done on the econometrics of demand versus price show the same thing. Dr. Chaloupka did the breakthrough study. He concluded much the same thing as the Congressional Research Service: for every 10-percent increase in price, about a 7-percent reduction in youth usage.

But we do not have to rely on studies. We do not have to look at econometrics analysis and we do not have to listen to the Congressional Research Service. We do not have to listen to Drs. Koop and Kessler. All we have to do is look to our neighbors to the north. Here is what happened there. Youth smoking declined sharply when they saw a significant price increase. This isn't some academic study. This is what happened in the real world.

Well, the experts, as I have said, have all testified to precisely that fact. And here is what two of the noted experts tell us about different levels of pricing and what it will mean to reductions in youth smoking.

The Treasury Department tells us over 5 years that under the proposed settlement we would get an 18-percent reduction in youth smoking. Under the legislation before us, by Senator McCAIN, we get a 32-percent reduction. Under the amendment before us, we would get a 40-percent reduction. Now that is the Treasury Department.

Dr. Chaloupka, who is perhaps the most widely recognized expert because he has studied all the studies, has concluded that the proposed settlement would reduce teen smoking 20 percent, the work by Senator McCAIN and the bill before us would reduce youth smoking over 5 years by 33 percent, but the amendment before us would reduce youth smoking by 51 percent. These are what the experts are telling us.

I ask unanimous consent to have printed in the RECORD a letter I have just received from Dr. Koop and Dr. Kessler. It is addressed to me.

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

THE ADVISORY COMMITTEE ON TOBACCO POLICY AND PUBLIC HEALTH,
May 19, 1998.

Hon. KENT CONRAD,
U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: I am writing to urge that you and your colleagues support an amendment to the Commerce Committee bill to raise and accelerate the price increase on tobacco products. I do so because I believe that such an increase will be one of the most effective means available to the Senate to reduce the number of children who start smoking or using spit tobacco.

The Advisory Committee on Tobacco and Public Health Policy that we chaired last summer recommended that the price per pack increase by at least $1.50. This in itself was moderate and realistic: Other studies have recommended that the price increase by $2.00 or more. But the message is clear: Raising prices reduces youth smoking.

It is as simple as this: Price affects demand, and price affects demand steeply among children. Study after study has demonstrated that when prices go up, fewer children start to smoke. This is important because children are not yet addicted and they can refrain from tobacco use. Moreover, there is good evidence that if people do not start smoking by the age of 18, they do not start at all.

And the size of the price hike matters. The most prominent experts on tobacco sales, estimate that a price increase of $1.10 will result in a 34% decline in children smoking, while an increase of $1.50 will result in a 56% decline. The amendment would result in a 22% further decline in children smoking.

So we urge you to move decisively and to act on the behalf of the Nation's children. Increase the price. Lower the demand. Save children from this addictive and deadly product.

Sincerely,

C. EVERETT KOOP, M.D.
DAVID A. KESSLER, M.D.

Mr. CONRAD. The letter says:

[We are] writing to urge that you and your colleagues support an amendment . . . to raise and accelerate the price increase on tobacco products. [We] do so because [we] believe such an increase will be one of the most effective means available to the Senate to reduce the number of children who start smoking or use spit tobacco.

They go on to point out:

It is as simple as this: Price affects demand, and price affects demand steeply among children. Study after study has demonstrated that when prices go up, fewer children start to smoke. This is important because children are not yet addicted and they can refrain from tobacco use. Moreover, there is good evidence that if people do not start smoking by the age of 18, they do not start at all.

This is Dr. Koop, the former Surgeon General of the United States, and Dr. Kessler, the former head of the Food and Drug Administration. They go on to say:

And the size of the price hike matters. The most prominent experts on tobacco sales, estimate that a price increase of $1.10 will result in a 34% decline in children smoking, while an increase of $1.50 will result in a 56% decline. The amendment would result in a 22% further decline in children smoking.

That is from Dr. Koop and Dr. Kessler, men who have served both Republican administrations and Democratic administrations, telling us to support this amendment.

Now, what does it mean when we talk about more teenagers not smoking? What does it mean in terms of lives? Well, here is what it means: A $1.50 price means 2.7 million additional teenagers not smoking, that is over the bill before us. And it means 800,000 children over time not dying because of the use of tobacco products.

What we are talking about in this amendment is not just dollars and cents. It is much more important than that. It is children's lives. We are talking about a vote that means 800,000 more people will live if we pass it. So the choice before this body is really very simple: Do you want 800,000 more people to live or do you want them to die?

This is going to be an important vote and an important question before every Member of this Senate. I hope it is on everybody's conscience tonight: What are we going to do? How are we going to vote? What difference are we going to make? What are we going to say? Are we going to save 800,000 people—800,000 children—or are we going to condemn them to death by using the only legal product in America, when used as intended by the manufacturer, that addicts and kills its customers?

Mr. President, 400,000 people are going to die this year because of tobacco-related illnesses. It is by far and away the biggest health threat that is controllable. So this vote tomorrow is going to be a vote on 800,000 American lives. Are we going to save them? Or are we going to condemn them to death? And it is an awful death.

At hearing after hearing we have heard the stories of those who have

been through the agonizing experience of being told they are dying of cancer. The last hearing we had we had a man who had been a Winston model. Now he has lung cancer. We had a woman who had been a Lucky Strike spokesperson, and by the terms of her contract was required to start smoking. Now she speaks through a voice box.

Over and over, we had the testimony of people, the devastation of using tobacco products, what it has meant to their families and to themselves.

I can remember very well being in New Jersey at a hearing Senator LAUTENBERG organized. We had a young woman there named Gina Seagraves. And she testified telling of the effect on her family of the loss of her mother at an early age, how it devastated their family. She broke down and cried. And she said, "Please have the courage to stand up to the tobacco companies and do what you can to keep kids from getting hooked."

Well, that is what this debate is about. That is what this vote is about.

And when the industry says, "Well, you're going to bankrupt us," here is what the experts at the Treasury—the secretary for Financial Markets testified before our task force. And I quote, "We do not believe that the proposed legislation will materially affect the industry's risk of insolvency."

He went on and said in the very next sentence, "Even under conservative assumptions with respect to price, domestic sales volume, and operating margins, the tobacco industry will remain very profitable." They are not going bankrupt. They are going to have their profits nicked a little bit. They are not going bankrupt.

In fact, here is what is going to happen to them. When you do a financial analysis of these companies—this was done by the U.S. Treasury Department—under a $1.10 increase, their profits in the year 2003 will be $5 billion. If, instead, we raise the price to $1.50, their profits will be $4.3 billion in the year 2003. They are not going bankrupt.

That is flawed. They run around the country saying they will be bankrupted. Every objective analyst has said they are not going bankrupt. Their profits will be somewhat reduced, but they will still enjoy massive profits. If fact, this industry is three times as profitable as the average consumer goods industry in America today. Their profit margins are 30 percent. The average consumer goods company has a 10 percent margin.

Let's not cry any crocodile tears for this industry. When they come before us and say they will be bankrupted by $1.10 under the McCain bill or $1.50 under the Kennedy-Lautenberg amendment, they are not telling the truth, just like they didn't tell the truth when they said their products didn't cause health problems, just like they didn't tell the truth when they said their products weren't addictive, just like they didn't tell the truth when they said they didn't market to kids, just like they didn't tell the truth when they said these products were not manipulated to further addict young people.

Look, the record is clear on every issue: They are not telling the American people the full truth.

When we investigate this question further, they say it will bankrupt them. They say it will create this massive black market. Let's look. Let's look at where we fit in terms of tax and prices and where the rest of the industrialized world fits in.

This chart came out of the Washington Post last Saturday. These are not my numbers; these are from the Washington Post last Saturday. Prices in Norway on a pack are well over $6, about $7 a pack in Norway. In Britain, prices are about $5 a pack; in Denmark, just under $5 a pack; in Finland, just under $5 a pack; in New Zealand, about $4.20 a pack; in France, about $3.75 a pack; in Canada, about $3.50 a pack; in the Netherlands, about $3.30 a pack; in Singapore, nearly $4 a pack; in Brazil, Thailand, and the United States, under $2. Our average price, about $1.94.

So they talk about this massive black market. How is it that these countries that have much higher prices don't have much of a black market problem? And even if we added $1.10 to $1.94—which is in the McCain bill, taking it to $3.04—we would be well below most of the rest of the industrialized world in terms of a price. Even if we had $1.50, we would be well below the average price in the rest of the industrialized world.

Again on this question of black market activity, we had an international expert before our task force. He provided us with this chart. It showed the price of cigarettes and the level of smuggling in the countries of the European Union. It was a very, very interesting report. This man is an international consultant to countries on how to combat smoking. Here is what his report shows. Countries with high smuggling levels are in red; medium are in yellow; low smuggling rates are in green. On this axis, we have the price per pack.

What you find is very interesting. The countries with the highest prices have the least smuggling. The countries with lower prices have the smuggling problem. Spain has the lowest price, yet it has the highest smuggling problem of any country in Europe. Portugal has a medium level of smuggling and has among the lowest prices. You can see right up the line. But the countries with the highest prices have the lowest rates of smuggling—France, Ireland, U.K., Finland, Denmark.

Now, these guys come around and say there will be this massive black market—massive black market. It hasn't developed in these other countries in the European Union that have much higher prices than we do. Why not? Because they have control mechanisms. They have labeling. They have licensing of those who sell.

Here is what the Treasury Department, Larry Summers, Deputy Secretary, said just at the end of last month: "The black market can and should be minimized through careful legislation." He said, "By closing the distribution chain for tobacco products, we will be able to ensure that these products flow through legitimate channels and effectively police any leakages that do take place."

I close as I began. This is a question of saving children's lives. This vote tomorrow is a question of, do we save 800,000 lives or don't we? A very simple choice—a profound choice, but it is very simple. That is what this vote will be tomorrow. Are we going to keep an additional 2.7 million kids from taking up the habit of smoking? That translates into 800,000 lives saved. Or do we miss the opportunity to throw those kids a lifeline and prevent them from taking up a habit that will addict them, that will create disease in them, and that will ultimately kill a third of them? That is the record.

The factual base could not be more clear. Every health expert that came before our task force said that is the issue. That is why Dr. Koop and Dr. Kessler have written us this day and urged us to have the courage to act. I hope our colleagues will have the courage to act.

I want to commend Senator MCCAIN. I want to commend Senator KERRY and the other Members of the Commerce Committee who have done a Herculean job to get us an excellent package to begin deliberations on. They have done a superb job and have shown remarkable public courage. I think every American should stand up and commend them for what they have done. They have brought to this floor the most sweeping, the most comprehensive, the most profound bill in terms of tobacco policy we have ever had before us. They have done it against long odds. We are in their debt. But it is also true we have an opportunity to make this bill somewhat better. I hope we take that chance.

I yield the floor.

Mr. MCCAIN. I want to thank the Senator from North Dakota for not only his kind remarks but for the enormous contributions he has made to this effort. He has worked tirelessly. He has appeared with our committee—not before our committee, but with our committee, where we had one of the most stimulating, I think, dialog and exchange of views since I have been a member of that committee.

I want to thank him. I know there will continue to be areas where we are

not in agreement. The fact is, we disagree very agreeably.

I also want to mention again our friends, the attorneys general who began this process. Forty of them settled a suit with the industry back on June 20. This legislation that we are considering now is a direct result of that initial effort on their part. They have been extremely helpful as we moved this process along.

It is my understanding that the Senator from Massachusetts has agreed to conclude his remarks after the wrap-up. Is that correct?

Mr. KENNEDY. That is correct.

Mr. MCCAIN. I yield the floor.

Mr. KERRY. I thank the Chair. I will be very brief. I join in thanking Senator CONRAD for his very generous comments about the Commerce Committee and about Senator MCCAIN's and my efforts in it.

The truth is that so much of the energy of the Senate has been focused as a result of Senator CONRAD's leadership. The task force effort that he put together was really exemplary. It reached every corner of every community that has anything to do with this issue. It is one of the most thorough and exacting pieces of work that I have seen in the Senate. I think Senator MCCAIN would agree with me that there are significant components of the product that has been brought to the floor as a result of his efforts and leadership and his vision about this issue. So I think the quality of the presentation he just made to the Senate and to the country is a tribute to the groundwork he has done in order to get us here.

Likewise, for years, my colleague from Massachusetts, the senior Senator from Massachusetts, has been at the forefront of all of the health issues with respect to children and, particularly, leading the effort with respect to the awareness of tobacco, and his leadership on this has been essential to our ability to have this product. So I thank them for that. I will say more about this particular issue tomorrow.

Very quickly, I might say to the Senator from North Dakota that a few weeks ago there was an article in the New York Times that showed that the smuggling, to the degree there was a problem, has fundamentally been between countries, our cigarettes going out from the United States to Europe as a consequence of the price differential. If anything, as a result of the increase in price, there is a potential of closing that gap, No. 1.

No. 2, with respect to those who worry about Mexico or an infusion into this country, we have an increase in the law enforcement and inspection capacity. Most people in the law enforcement community accept that the returns on heroin and cocaine are so much more significant than the bulk difficulties of transferring cigarettes, and that is a deterrent to those becoming a problem.

Most people want the quality of the American cigarette. They are not particularly prepared to smoke Chinese or other kinds of cigarettes. There are a whole lot of ingredients that work against the smuggling argument, and we will get to that.

I thank the Senator for his efforts.

REGARDING PLACEMENT OF THE REQUIRED INSCRIPTIONS ON QUARTER DOLLARS ISSUED UNDER THE 50 STATES COMMEMORATIVE COIN PROGRAM

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3301, which was received from the House.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3301) to amend chapter 51 of title 31, U.S. Code to allow the Secretary of the Treasury greater discretion with regard to the placement of the required inscriptions on quarter dollars issued under the 50 States commemorative coin program.

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. MCCAIN. 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. 3301), was considered read the third time, and passed.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, May 18, 1998, the federal debt stood at $5,497,225,027,113.83 (Five trillion, four hundred ninety-seven billion, two hundred twenty-five million, twenty-seven thousand, one hundred thirteen dollars and eighty-three cents).

Five years ago, May 18, 1993, the federal debt stood at $4,284,320,000,000 (Four trillion, two hundred eighty-four billion, three hundred twenty million).

Ten years ago, May 18, 1988, the federal debt stood at $2,523,270,000,000 (Two trillion, five hundred twenty-three billion, two hundred seventy million).

Fifteen years ago, May 18, 1983, the federal debt stood at $1,268,788,000,000 (One trillion, two hundred sixty-eight billion, seven hundred eighty-eight million).

Twenty-five years ago, May 18, 1973, the federal debt stood at $453,126,000,000 (Four hundred fifty-three billion, one hundred twenty-six million) which reflects a debt increase of more than $5 trillion—$5,044,099,027,113.83 (Five trillion, forty-four billion, ninety-nine million, twenty-seven thousand, one hundred thirteen dollars and eighty-three cents) during the past 25 years.

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 one nomination which was referred to the Committee on the Judiciary.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:55 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that pursuant to the provisions of section 806(c)(1) of Public Law 104–132, the Speaker appoints the following member on the part of the House to the Commission on the Advancement of Federal Law Enforcement to fill the existing vacancy thereon: Mr. Robert E. Sanders of Florida.

ENROLLED BILLS SIGNED

At 2:55 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1065. An act to establish a matching grant program to help State and local jurisdictions purchase armor vests for use by law enforcement departments.

H.R. 3565. An act to amend Part L of the Omnibus Crime Control and Safe Streets Act of 1968.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 8. A bill to reauthorize and amend the Comprehensive Environmental Response, Liability, and Compensation Act of 1980, and for other purposes (Rept. No. 105–192).

By Mr. HELMS, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 172. A resolution congratulating President Chandrika Bandaranaike Kumaratunga and the people of the Democratic Socialist Republic of Sri Lanka on the celebration of 50 years of independence.

S. Res. 188. A resolution expressing the sense of the Senate regarding Israeli membership in a United Nations regional group.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

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

Charles H. Dolan, Jr., of Virginia, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 2000. (Reappointment)

William Joseph Burns, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Hashemite Kingdom of Jordan.

Federal Campaign Contribution Report

Nominee: William J. Burns.

Post: Ambassador to Jordan.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, and donee:

1. Self: William J. Burns, none.
2. Spouse: Lisa A. Carty, none.
3. Children: Elizabeth and Sarah Burns, none.
4. Parents: William F. Burns, $100, 1996, Republican National Committee; Margaret C. Burns, none.
5. Grandparents: William H. and Eleanor Burns (deceased); John and Mary Cassady (deceased).
6. Brothers and spouses: John R. and Ann Davis Burns, none; Robert P. and Vicki Burns, none.
7. Sisters and spouses: Mark E. and Jennifer Burns, none.

Ryan Clark Crocker, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Syrian Arab Republic.

Federal Campaign Contribution Report

Nominee: Ryan Clark Crocker.

Post: Ambassador to Syrian Arab Republic.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, and donee:

1. Self: none.
2. Spouse: Christine Barns Crocker, none.
3. Children and spouses: none.
4. Parents: Carol Crocker, none; Howard Crocker (deceased).
5. Grandparents: All deceased since 1926.
6. Brothers and spouses: none.
7. Sisters and spouses: none.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of March 26, 1998 and April 22, 1998, at the end of the Senate proceedings.)

In the Foreign Service nominations beginning Alexander Almasov, and ending James Hammond Williams, which nominations were received by the Senate and appeared in the RECORD of March 26, 1998

In the Foreign Service nominations beginning Joan E. La Rosa, and ending Morton J. Holbrook, III, which nominations were received by the Senate and appeared in the RECORD of March 26, 1998

In the Foreign Service nominations beginning Michael Farbman, and ending Mary C. Pendleton, which nominations were received by the Senate and appeared in the RECORD of April 22, 1998

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. GRAMS:

S. 2091. A bill to amend title XVIII of the Social Security Act to ensure medicare reimbursement for certain ambulance services, and to improve the efficiency of the emergency medical system, and for other purposes; to the Committee on Finance.

By Mr. SMITH of Oregon (for himself, Mr. WYDEN, Mr. THOMAS, and Mr. BROWNBACK):

S. 2092. A bill to promote full equality at the United Nations for Israel; to the Committee on Foreign Relations.

By Mr. FEINGOLD:

S. 2093. A bill to provide class size demonstration grants; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DORGAN (for himself, Mr. KEMPTHORNE, Mr. WYDEN, Mrs. MURRAY, Mr. JOHNSON, Mr. BAUCUS, Mr. CRAIG, Mr. BURNS, Mr. SMITH of Oregon, Mr. CONRAD, Mr. GORTON, Mr. DASCHLE, Mr. ENZI, and Mr. THOMAS):

S. Res. 232. A resolution to express the sense of the Senate that the European Union should waive the penalty for failure to use restitution subsidies for barley to the United States and ensure that restitution or other subsidies are not used for similar sales in the United States and that the President, the United States Trade Representative, and the Secretary of Agriculture should conduct an investigation of and report on the sale and subsidies; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAMS:

S. 2091. A bill to amend title XVIII of the Social Security Act to ensure medicare reimbursement for certain ambulance services, and to improve the efficiency of the emergency medical system, and for other purposes; to the Committee on Finance.

EMERGENCY MEDICAL SERVICES EFFICIENCY ACT OF 1998

Mr. GRAMS. Mr. President, I rise this morning on behalf of all those who serve their fellow citizens through their active participation in the Nation's emergency care system to introduce the Emergency Medical Services Act.

Mr. President, as a Senator who is deeply concerned about the ever-expanding size and scope of the Federal Government, I have long believed Washington is too big, too clumsy and too removed to deal effectively with many of the issues in which it already meddles.

However, I also believe there's an overriding public health interest in ensuring a viable, seamless, nationwide EMS system. By designating this week as National EMS Week, the Nation recognizes those individual who make the EMS system work.

There is no more appropriate time to reaffirm our commitment to EMS by addressing some of the problems the system is presented with daily.

I have been privileged to get to know the men and women who dedicate their talents to serving others in an emergency. We have together discussed problems within the EMS system and concluded there are areas in which the Federal Government can help.

The original result of our discussions concerning the Federal role in EMS was S. 238, the Emergency Medical Services Act [EMSEA]. When I introduced S. 238 on January 30, 1997, I acknowledged that it wasn't intended to solve all the problems EMS faces; it was merely a first step toward a meaningful national dialog on EMS. Indeed, this first step was a productive one.

Last summer, I assembled EMS and health care leaders in Minnesota, asked them to take another look at the EMSEA, and report back to me with their thoughts. In January, I received a copy of their report.

I was extremely pleased with their efforts and have used those suggestions as the basis for the legislative language comprising the new Emergency Medical Services Efficiency Act I am introducing today.

I have often said that Congress has a tendency to wait until there's a crisis before it acts, but Congress cannot wait until there's a crisis in the EMS system before we take steps to improve it. There is simply too much at stake.

Whether we realize it or not, we depend on and expect the constant readiness of emergency medical services. To ensure that readiness, we need to make efficient and effective efforts to secure the stability of the system.

This has been my focus in redrafting this legislation.

There are many similarities between S. 238 and the new bill I am introducing today.

For instance, we continue to assert that the most important thing we can do to maintain the vitality of the EMS system is to compel the government to reimburse for the services it says it will pay for under Medicare.

In the meetings I have had with ambulance providers, emergency medical technicians emergency physicians, nurses, and other EMS-related personnel, their most common request is to base reimbursement on a "prudent layperson" standard, rather than the ultimate diagnosis reached in the emergency room.

While the Balanced Budget Act of 1997 [BBA] contained a provision basing reimbursement for emergency services on the prudent layperson standard, we have yet to see HCFA's interpretation of the provision and whether it will include ambulance services.

I have written letters to HCFA and Senate Finance Committee Chairman WILLIAM ROTH indicating my understanding that ambulance services would be considered part of "emergency services" as defined in the BBA.

I have been given no assurances from HCFA that they intend to include ambulance services as part of the "emergency services" definition in the balanced budget agreement.

To illustrate how prevalent this problem is, I want to share with you a case my staff worked on relating to Medicare reimbursement for ambulance services. Please keep in mind that this is the fee-for-service Medicare program.

It was back in 1994 that Andrew Bernecker of Braham, MN, was mowing with a power scythe and tractor when he fell. The rotating blades of the scythe severely cut his upper arm. Mr. Bernecker tried to walk toward his home but was too faint from the blood loss, so he crawled the rest of the way.

Afraid that his wife, who was 86 years old at the time, would panic—or worse, have a heart attack—he crawled to the pump and washed as much blood and dirt off as he could. His wife saw him and immediately called 911 for an ambulance.

He was rushed to the hospital where Mr. Bernecker ultimately had orthopedic surgery and spent some time in the intensive care unit.

In response to the bills submitted to Medicare, the Government sent this reply with respect to the ambulance billing:

> Medicare Regulations Provide that certain conditions must be met in order for ambulance services to be covered.
>
> Medicare pays for ambulance services only when the use of any other method of transportation would endanger your health.

The Government denied payment, claiming the ambulance wasn't medically necessary.

Apparently, Medicare believed the man's wife—who was, remember, 86 years old—should have been able to drive him to the hospital for treatment. Mr. and Mrs. Bernecker appealed, but were denied, and they began paying what they could afford each month on the ambulance bill.

After several years of paying $20 a month, they finally paid off the ambulance bill. Medicare however, later reopened the case and reimbursed the Berneckers.

I believe the experience this family had with Medicare's denial of payment for ambulance services happens far too often, and Congress needs to make sure it doesn't happen again.

Another similarity between the two versions of this bill is the creation of a Federal commission on emergency medical services to make recommendations and to help provide input on how Federal regulatory actions affect all types of EMS providers.

EMS needs a seat at the table when health care and other regulatory policy is made.

Few things are more frustrating for ambulance services than trying to navigate and comply with the tangled mess of laws and regulations from the Federal level on down, only to receive either a reimbursement that doesn't cover the costs of providing the service or otherwise a flat denial of the payment.

Mr. President, I came across this chart last year, the chart I have with me on the floor this morning, that demonstrates how a Medicare claim moves from submittal to payment, denial, or write-off by the ambulance provider.

If you look at this chart, I ask you, tell me how a rural ambulance provider who depends on volunteers has the manpower or the expertise to navigate through this entire mess. And, in the event that it is navigated successfully, ambulance services are regularly reimbursed at a level that doesn't even cover their costs.

Now let us talk about how much it costs to run just one ambulance. There is the cost of the dispatcher who remains on the line to give prearrival assistance, the ambulance itself, which costs from $85,000 to $100,000 to put on the road, the radios, beepers, and the cellular telephones used to communicate between the dispatcher, the ambulance, and the hospital, the supplies and equipment in the ambulance, including defibrillators, stretchers, EKG monitors, and bandages, and the two emergency medical technicians or paramedics who both drive the ambulance and provide care to the patient, the vehicle repair, maintenance, and insurance costs, and the liability insurance for the paramedics. As you can see, the list goes on and on.

Yes, the costs can be high, but it is clear to me that, with the uncertainty ambulance providers face out in the field each day, they need to be prepared for every type of injury or condition. Mr. President, that is expensive, but we as consumers expect that in the case of an emergency.

I am convinced those who complain about the high costs of emergency care would be aghast if the ambulance that arrived to care for them in an emergency didn't have the lifesaving equipment needed for their treatment.

Let us be honest with ourselves: We want the quickest and best service when we face an emergency—and the bottom line is that costs money.

Mr. President, many of our political debates in Washington center around how to better prepare for the 21st century.

I have always supported research and efforts to expand the limits of technology and continue to believe technological innovations and advances in biomedical and basic scientific research hold tremendous promise.

Under the new bill I am introducing today, Federal grant programs will be clarified to ensure that EMS agencies are eligible for programs that relate to highway safety, rural development, and tele-health technology.

Emergency medical services have come a long way since the first ambulance services began in Cleveland and New York City way back during the 1860's.

Indeed, the scientific and technological advances have created a new practice of medicine in just 2 short decades, and have dramatically improved the prospects of surviving any serious trauma.

There is reason to believe further advances will have equally meaningful results.

Innovations like tele-health technology may soon allow EMT's, nurses, and paramedics to perform more sophisticated procedures under a physician's supervision via real-time, ambulance-mounted monitors and cameras networked to emergency departments in specific service areas.

By not considering EMS agencies for Federal grant dollars, we may cause significant delays in the application of current technologies. That would be a mistake.

Perhaps the most dramatic departure the reintroduced bill takes from S. 238 related to the designation of a lead Federal agency for EMS.

In August of 1996, the National Highway Traffic and Safety Administration and the Health Resources and Services Administration, Maternal and Child Health Bureau issued their report, "Emergency Medical Services: Agenda for the Future."

The report outlined specific ways EMS can be improved, and one of the stated goals was the authorization of a "lead Federal agency."

My original legislation instructed the Secretaries of Health and Transportation to confer on and facilitate the transfer of all EMS-related functions to the Department of Transportation.

While we recognized that there would be some who would applaud the notion and others who would berate it, the suggestion compelled people to consider the issue and offer alternative approaches.

The recommendations of the advisory committee and the comments I have received from national groups indicate we have yet to reach a solution to the problematic designation of a lead Federal agency.

As such, under the new legislation, we call for an independent study to determine which existing agency or new board would best serve as the lead Federal entity for EMS.

The concerns expressed to me about designating the Department of Transportation as the lead Federal agency were virtually identical to the concerns about granting lead-agency designation to the Department of Health and Human Services. It just didn't seem to fit.

Therefore, I believe the most appropriate action is to take our time and get it right by conducting this study.

Mr. President, in 1995, there were approximately 100 million visits to emergency departments across the country.

Roughly 20 to 25 percent of those visits started with a call for an ambulance. Each one of those calls is important, especially to those seeking assistance and the responding EMS personnel.

The Nation owes a great deal to the EMS personnel who have dedicated themselves to their profession because they care about people and they want to help those who are suffering.

Nobody gets rich as a professional paramedic, and there is even less compensation as a volunteer. The field of emergency medical services presents many challenges—but offers the reward of knowing you helped someone in need of assistance.

Every year, the American Ambulance Association recognizes EMS personnel across the country for their contributions to the profession, and bestows upon them the Stars of Life Award.

This year, 124 individuals have been chosen by their peers to be honored for demonstrating exceptional kindness and selflessness in performing their duties.

I ask unanimous consent to have printed the 1998 American Ambulance Association Stars of Life honorees in the RECORD.

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

1998 STARS OF LIFE HONOREES

Alaska—Monica Helmuth.

Arizona—Jeff Mayhew, Michael Norling, Tammy Smith, Karen Deo, and Sharon R. Featherston.

California—Eva Eveland, John Erie Henry, Chris McGeragle, Nephty Landin, Victor Oseguera, Todd Hombs, Kathy Hester, Les Hutchison, David Pratt, Ted Boorkman, and Paul Maxwell.

Colorado—Kurt Dennison and Jed Swank.

Connecticut—Leonard Sudniek, Michael Pederson, and Alfonso Anglero.

Delaware—Mary McGuire.

Florida—Sean Kelley, Kenneth Warner, David Meck, and John Morrow.

Georgia—Damon Wisdom and Dwayne Friday.

Hawaii—Thomas Sodoma.

Iowa—Elaine Snell and Gary Soderstrom.

Illinois—Julie Burke.

Indiana—Thomas Shoemaker, Rebecca Johnson, and Betty Nickens.

Kansas—Darren Root.

Kentucky—Aaron Gutermuth.

Louisiana—Mark Reis, Wilson "Billy" Hughes, Patrice Shows, and Dennis McKinley.

Massachusetts—Warren F. Nicklas, Shawn Payton, Bernard Underwood, Chester "Chuck" Cummens, Michael Ward, Dana Gerrard, Priscilla Gerrard, and John Conceison, Jr.

Maryland—James Pirtle, John Dimitriadis, Chad Packard, and Jeff Meyer.

Maine—Paul Knowlton and Doug Chapelle.

Michigan—Nancy Hunger, Craig Veldheer, Jeffrey Buchanan, Timothy Waters, Lydia Paulus, Thomas Scott, and Tonya Prescott.

Minnesota—Daryl Howe, Dan Anger, and John Hall.

Missouri—David Michael, Royce McGuire, and Kirk N. Wattman.

Mississippi—Denise Pilgreen.

North Carolina—Cynthia Seamon, Amy Beinke, Jerry Cornelison, Ronald Corrado, Thomas Wright, Tim Marshburn, and Heather VanRaalte.

Nebraska—Jodi Kozol.

New Jersey—Kimberly Matthews and Michael Maciejczyk.

New Mexico—Gergory Pollard.

Nevada—Mike Denton and Eric Guevin.

New York—Thomas Murphy, Vicki Knarr, Tina Pawlukovich-Cross, Lynn Pulaski, Stacey Wallace, Larry Abbey, Edward Schaeffer, Brent Sala, Dana Peritore, Jean Zambrano, Darrel Grigg, Debra Yandow, John Falgitano, Sam Lubin, and Jim Mazzucca.

Ohio—Kenton Kirkland, Robert Good, and James Drake.

Oklahoma—Terri Farmer.

Oregon—Gregory Sanders, Doug Carlson, and Shawn Hunt.

Pennsylvania—Lisa Mauger, Stephanie Schmoyer, and Christine Webster.

Tennessee—James Quilliams.

Texas—Cory Jeffcoat, Eric Silva, Christine Saucedo, Elaine Tyler, and Brad Redden.

Utah—Marcie Mehl, Charles Cruz, and Patrick Eden.

Virginia—Gerrit "Bip" Terhune.

Vermont—Eric Davenport and Paul Jardine.

Washington—George McGibbon and Jim Hogenson.

Mr. GRAMS. Mr. President, in closing I have talked with many EMT's, paramedics, and emergency nurses, and most tell me that they wouldn't think of doing anything else for their chosen career.

So, in honoring them during this National EMS Week, I can think of no better way to recognize their service than through the introduction of legislation that will help them to help others.

I ask my colleagues to support them by supporting the Emergency Medical Services Act.

By Mr. SMITH of Oregon (for himself, Mr. WYDEN, Mr. THOMAS, and Mr. BROWNBACK):

S. 2092. A bill to promote full equality at the United Nations for Israel; to the Committee on Foreign Relations.

EQUALITY FOR ISRAEL AT THE UNITED NATIONS ACT OF 1998

Mr. SMITH of Oregon. Mr. President, today I introduce legislation requiring the Secretary of State report on actions taken by our Ambassador to the United Nations to push the nations of the Western Europe and Others Group (WEOG) to accept Israel into their group.

As you may know, Israel is the only nation among the 185 member states that does not hold membership in a regional group. Membership in a regional group is the prerequisite for any nation to serve on key United Nations bodies such as the Security Council. In order to correct this inequality, I am introducing "The Equality for Israel at the United Nations Act of 1998." I believe that this legislation will prompt our United Nations Representative to make equality for Israel at the United Nations a high priority.

I am proud to be joined by Senators WYDEN, BROWNBACK, and THOMAS as original co-sponsors of this important legislation.

Mr. President, Israel has been a member of the United Nations since 1949, yet it has been continuously precluded from membership in any regional bloc. Most member states from the Middle East would block the vote needed to join their own regional group. The Western Europe and Others Group, however, has accepted countries from other geographical areas—the United States and Australia for example.

Recently United Nations Secretary General Kofi Annan announced that "It's time to usher in a new era of relations between Israel and the United Nations . . . One way to rectify that new chapter would be to rectify an anomaly: Israel's position as the only Member State that is not a member of one of the regional groups, which means it has no chance of being elected to serve on main organs such as the Security Council or the Economic and Social Council. This anomaly would be corrected."

I believe it is time to back Secretary General Annan's idea with strong support from the United States Senate and I ask all my colleagues to join me in sending this message to the UN to stop this discrimination against Israel.

Mr. President, I ask unanimous consent to have this legislation printed in the RECORD.

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

S. 2092

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 "Equality for Israel at the United Nations Act of 1998".

SEC. 2. EFFORTS TO PROMOTE FULL EQUALITY AT THE UNITED NATIONS FOR ISRAEL.

(a) CONGRESSIONAL STATEMENT.—It is the sense of the Congress that—

(1) the United States must help promote an end to the persistent inequity experienced by Israel in the United Nations whereby Israel is the only longstanding member of the organization to be denied acceptance into any of the United Nations regional blocs, which serve as the basis for participation in important activities of the United Nations, including rotating membership on the United Nations Security Council; and

(2) the United States Ambassador to the United Nations should take all steps necessary to ensure Israel's acceptance in the Western Europe and Others Group (WEOG) regional bloc, whose membership includes the non-European countries of Canada, Australia, and the United States.

(b) REPORTS TO CONGRESS.—Not later than 60 days after the date of the enactment of this Act and on a quarterly basis thereafter, the Secretary of State shall submit to the appropriate congressional committees a report which includes the following information (in classified or unclassified form as appropriate):

(1) Actions taken by representatives of the United States, including the United States Ambassador to the United Nations, to encourage the nations of the Western Europe and Others Group (WEOG) to accept Israel into their regional bloc.

(2) Efforts undertaken by the Secretary General of the United Nations to secure Israel's full and equal participation in that body.

(3) Specific responses solicited and received by the Secretary of State from each of the nations of Western Europe and Others Group (WEOG) on their position concerning Israel's acceptance into their organization.

(4) Other measures being undertaken, and which will be undertaken, to ensure and promote Israel's full and equal participation in the United Nations.

By Mr. FEINGOLD:

S. 2093. A bill to provide class size demonstration grants; to the Committee on Labor and Human Resources.

• Mr. FEINGOLD. Mr. President, today I introduce the National SAGE Act. This legislation would authorize a limited number of innovative demonstration grant programs to assist states in their efforts to reduce public school class size and improve learning in the earliest grades.

Mr. President, my own state of Wisconsin has been a leader in the effort to reduce class size in public schools. This legislation is modeled after Wisconsin's successful pilot program, the Student Achievement Guarantee in Education of SAGE program. I am proud that my bill bears the same name as that groundbreaking program.

SAGE is a very appropriate acronym for this legislation, for a sage is a teacher who imparts knowledge and wisdom through direct engagement with his or her students. By providing grants to states trying to reduce class size and implement educational reforms, the National SAGE Act would give students and teachers more opportunities to interact directly. The result will be better teacher morale, better student performance and a happier, more successful school.

Mr. President, I have heard about the need for smaller classes from parents, teachers and school administrators around Wisconsin—including my mother-in-law, who has been a 1st grade teacher for more than 20 years in Waunakee. They all tell me by reducing class size students receive more attention from teachers, and it stands to reason that more attention will translate into more learning.

When asked to evaluate the Wisconsin SAGE program, eight-year teaching veteran Shelia Briggs, of Glendale Elementary School in Madison, Wisconsin said, "SAGE is just phenomenal. I have kindergarteners who are writing paragraphs. In addition, behavior is a huge benefit of SAGE. With too many little bodies, you will have difficulties. Things are so much more manageable." Additionally, second grade teacher Amy Kane says, "I have taught second grade for nine years and never had this high a percentage of readers. Their writing skills are much higher, and they are able to behave better. I make contact with parents now that I could never make with 34 students."

Wisconsin's SAGE program has again demonstrated empirically what we know instinctively: students in smaller classes get more attention from teachers, and teachers with fewer students will have more time and energy to devote to each child.

In addition to vital input from these Wisconsin educators, other studies confirm that small class size promotes effective teaching and learning. The leading scientific studies of the impact of small class size, Tennessee's STAR study and its follow up, the Lasting Benefit Study, found that students in small classes in the early years earned significantly higher scores on basic skill tests in all four years and in all types of schools. Follow-up studies have shown that these achievement gains were sustained in later years even if students are placed in larger classes. While I certainly recognize that teacher quality, high expectations an parental involvement are important factors in quality education, the significance of small class size should not be underestimated and cannot be ignored.

Mr. President, Wisconsin is not the only state fighting to reduce class size and implement educational reforms in its public schools. Several states have made small class size a priority, including California, Tennessee, Indiana and Nevada to name a few. My legislation, the National SAGE Act, authorizes $75 million over a period of five years to fund a limited number of demonstration grants to state that create innovative programs to reduce public school class size and improve educational performance, as Wisconsin has done. The Secretary of Education would choose the states to receive funding based on several criteria, including the state's need to reduce class size, the ability of a state education agency to furnish 50 percent of the funds and the degree to which parents, teachers, school administrators and local teacher organizations are consulted in designing the program. The funding for the National SAGE Act would be fully offset by cuts in a wasteful federal program that subsidizes research and development for a huge aircraft manufacturer. That's classic corporate welfare and by eliminating it, we can fund this important SAGE program and still reduce federal spending by more than $1.7 billion over a five year period.

The National SAGE Act also includes a comprehensive research and evaluation component to document the benefit of smaller class size in the earliest grades, and support efforts to reduce class size in schools all over America.

Mr. President, I want to take a moment to say how pleased I am that the Clinton Administration has been pushing the issue of class size to the forefront of the education debate. In January I wrote to the President requesting that he make reducing class size a priority in his FY 99 education budget. I was pleased that the President's budget includes an incentive to help schools provide small classes in the early grades.

While I support the intent of the President's class size proposal, it is not funded. I was uncomfortable with the President's original proposal to fund a small class size initiative with money from a tobacco settlement that did not yet exist. I am hopeful that Congress will soon pass tobacco legislation, Mr. President, but it is best that we not tie class size legislation to something as controversial and decisive as the tobacco bill.

My fear is that the end of the 105th session will come and Congress will go home having done nothing to assist States trying to reduce class size. My bill approaches this issue more directly, without the baggage of the tobacco bill and without expanding the deficit.

I have been very active on the class size issue over the last year because again—I believe that there is a great national purpose of helping our children to learn by doing all we can to reduce class sizes for children in the earliest grades. While I embrace that national purpose, I do not seek a national mandate for smaller classes. That is not a proper federal goal. Instead, I support smaller classes as a national goal, to be achieved by the local school boards. I think we all can agree that there are no magic remedies to the problems in our public schools and no instant fix to improve learning. However, I believe that targeting federal funds matched on a 50–50 basis by state funding, to assist school districts moving toward smaller class size, is an effective use of federal dollars.

At its core, Mr. President, the small class size issue is really about protecting pubic education. The promising achievements of state efforts in education reform merit strong federal support. We have an obligation to strengthen public schools, because they are the principal institution for educating American children.

Public schools are all-inclusive; they accept all students, regardless of income, race, religion or ethnicity. In introducing the National SAGE Act today, I want to reiterate my strong commitment to quality public education. I am proud of the education I received from Wisconsin's public schools; proud to have graduated from them, and proud that my children attend them. I am committed to helping our public schools improve and adapt and respond to the increased burdens placed on them. I feel strongly that the federal government has a limited—but important role to play in public education.

Mr. President, the Washington Post recently wrote an article about the growing number of families in the Washington area deciding to educate their children at home, rather than participate in the public school system. Mr. President, this trend is not happening in Washington alone, but around the nation.

The Post article states that one of their biggest complaints for families opting out of the public schools is large class size. Parents understand the importance of a low teacher to child ratio in the classroom. They understand the critical difference additional teacher attention can make for their child's educational achievement.

The parent's highlighted in the Post article, Mr. President, are fed up with public school classes made up of twenty-five to thirty students or more, fed up with the lack of individual attention their children are receiving in the classroom; and finally, Mr. President, parents are fed up with the discipline problems created by too many children and too few adults in one classroom.

While I support the choices of families who send their children to public schools or home school their children, the growing trend to move public resources away from the public schools, where more than 90% of our nation's children are educated, is disturbing. Instead of abandoning public education with tax breaks for private schools or spending time and energy designing a Constitutionally flawed voucher program, Congress should be working to ensure that we target federal dollars to meet the needs of local school districts. Those of us who believe a high quality public education system is essential to the productivity of our nation should be very alarmed by this growing effort to move resources away from our public schools.

Mr. President, the federal government has a responsibility during the 105th Congress to take a positive step toward helping school districts reduce class size as part of an overall effort to improve education and ensure that our children have the best chance to excel and reach their full potential. I look forward to continued debate on this issue and hope that my colleagues will consider the National SAGE Act as a reasonable, fiscally responsible proposal to assist states in their efforts to reduce public school class size and improve learning in the earliest grades.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 2093

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. CLASS SIZE DEMONSTRATION GRANTS.

Subpart 3 of part D of title V of the Higher Education Act of 1965 (20 U.S.C. 1109 et seq.) is amended to read as follows:

"Subpart 3—Class Size Demonstration Grants

"SEC. 561. PURPOSE.

"It is the purpose of this subpart to provide grants to State educational agencies to enable such agencies to determine the benefits, in various school settings, of reducing class size on the educational performance of students and on classroom management and organization.

"SEC. 562. PROGRAM AUTHORIZED.

"(a) PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary shall award grants, on a competitive basis, to State educational agencies to pay the Federal share of the costs of conducting demonstration projects that demonstrate methods of reducing class size that may provide information meaningful to other State educational agencies and local educational agencies.

"(2) FEDERAL SHARE.—The Federal share shall be 50 percent.

"(b) RESERVATION.—The Secretary may reserve not more than 5 percent of the amount appropriated under section 565A for each fiscal year to carry out the activities described in section 565.

"(c) SELECTION CRITERIA.—The Secretary shall make grants to State educational agencies on the basis of—

"(1) the need and the ability of a State educational agency to reduce the class size of an elementary school or secondary school served by such agency;

"(2) the ability of a State educational agency to furnish the non-Federal share of the costs of the demonstration project for which assistance is sought;

"(3) the ability of a State educational agency to continue the project for which assistance is sought after the termination of Federal financial assistance under this subpart; and

"(4) the degree to which a State educational agency demonstrates in the application submitted pursuant to section 564 consultation in program implementation and design with parents, teachers, school administrators, and local teacher organizations, where applicable.

"(d) PRIORITY.—In awarding grants under this subpart, the Secretary shall give priority to demonstration projects that involve at-risk students in the earliest grades, including educationally or economically disadvantaged students, students with disabilities, and limited English proficient students.

"(e) GRANTS MUST SUPPLEMENT OTHER FUNDS.—A State educational agency shall use the Federal funds received under this subpart to supplement and not supplant other Federal, State, and local funds available to the State educational agency to carry out the purpose of this subpart.

"SEC. 563. PROGRAM REQUIREMENTS.

"(a) ANNUAL COMPETITION.—In each fiscal year, the Secretary shall announce the factors to be examined in a demonstration project assisted under this subpart. Such factors may include—

"(1) the magnitude of the reduction in class size to be achieved;

"(2) the level of education in which the demonstration projects shall occur;

"(3) the form of the instructional strategy to be demonstrated; and

"(4) the duration of the project.

"(b) RANDOM TECHNIQUES AND APPROPRIATE COMPARISON GROUPS.—Demonstration projects assisted under this subpart shall be designed to utilize randomized techniques or appropriate comparison groups.

"SEC. 564. APPLICATION.

"(a) IN GENERAL.—In order to receive a grant under this subpart, a State educational agency shall submit an application to the Secretary that is responsive to the announcement described in section 563(a), at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(b) DURATION.—The Secretary shall encourage State educational agencies to submit applications under this subpart for a period of 5 years.

"(c) CONTENTS.—Each application submitted under subsection (a) shall include—

"(1) a description of the objectives to be attained with the grant funds and the manner in which the grant funds will be used to reduce class size;

"(2) a description of the steps to be taken to achieve target class sizes, including, where applicable, the acquisition of additional teaching personnel and classroom space;

"(3) a statement of the methods for the collection of data necessary for the evaluation of the impact of class size reduction programs on student achievement;

"(4) an assurance that the State educational agency will pay, from non-Federal sources, the non-Federal share of the costs of the demonstration project for which assistance is sought; and

"(5) such additional assurances as the Secretary may reasonably require.

"(d) SUFFICIENT SIZE AND SCOPE REQUIRED.—The Secretary shall award grants under this subpart only to State educational agencies submitting applications which described projects of sufficient size and scope to contribute to carrying out the purpose of this subpart.

"SEC. 565. EVALUATION AND DISSEMINATION.

"(a) NATIONAL EVALUATION.—The Secretary shall conduct a national evaluation of the demonstration projects assisted under this subpart to determine the costs incurred in achieving the reduction in class size and the effects of the reductions on results, such as student performance in the affected subjects or grades, attendance, discipline, classroom organization, management, and teacher satisfaction and retention.

"(b) COOPERATION.—Each State educational agency receiving a grant under this subpart

shall cooperate in the national evaluation described in subsection (a) and shall provide such information to the Secretary as the Secretary may reasonably require.

"(c) REPORTS.—The Secretary shall report to Congress on the results of the evaluation conducted under subsection (a).

"(d) DISSEMINATION.—The Secretary shall widely disseminate information about the results of the class size demonstration projects assisted under this subpart.

"SEC. 565A. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart $15,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.".

SEC. 2. PRIVATE SECTOR FUNDING FOR RESEARCH AND DEVELOPMENT BY NASA RELATING TO AIRCRAFT PERFORMANCE.

The Administrator of the National Aeronautics and Space Administration may not carry out research and development activities relating to the performance of aircraft (including supersonic aircraft and subsonic aircraft) unless the Administrator receives payment in full for such activities from the private sector.●

ADDITIONAL COSPONSORS

S. 374

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 374, a bill to amend title 38, United States Code, to extend eligibility for hospital care and medical services under chapter 17 of that title to veterans who have been awarded the Purple Heart, and for other purposes.

S. 772

At the request of Mr. SPECTER, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 772, a bill to establish an Office of Religious Persecution Monitoring, to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution, and for other purposes.

S. 1251

At the request of Mr. D'AMATO, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1252

At the request of Mr. D'AMATO, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1464

At the request of Mr. HATCH, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 1464, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, and for other purposes.

S. 1534

At the request of Mr. TORRICELLI, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 1534, a bill to amend the Higher Education Act of 1965 to delay the commencement of the student loan repayment period for certain students called to active duty in the Armed Forces.

S. 1645

At the request of Mr. ABRAHAM, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 1645, a bill to amend title 18, United States Code, to prohibit taking minors across State lines to avoid laws requiring the involvement of parents in abortion decisions.

S. 1700

At the request of Mr. MOYNIHAN, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 1700, a bill to designate the headquarters building of the Department of Housing and Urban Development in Washington, District of Columbia, as the "Robert C. Weaver Federal Building".

S. 1758

At the request of Mr. LUGAR, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1758, a bill to amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests.

S. 1997

At the request of Ms. MIKULSKI, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1997, a bill to protect the right of a member of a health maintenance organization to receive continuing care at a facility selected by that member.

S. 2054

At the request of Mr. JEFFORDS, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 2054, a bill to amend title XVIII of the Social Security Act to require the Secretary of Veterans Affairs and the Secretary of Health and Human Services to carry out a model project to provide the Department of Veterans Affairs with Medicare reimbursement for Medicare health-care services provided to certain Medicare-eligible veterans.

S. 2064

At the request of Ms. MIKULSKI, the names of the Senator from Connecticut [Mr. LIEBERMAN] and the Senator from Oregon [Mr. WYDEN] were added as cosponsors of S. 2064, a bill to prohibit the sale of naval vessels and Maritime Administration vessels for purposes of scrapping abroad, to establish a demonstration program relating to the breaking up of such vessels in United States shipyards, and for other purposes.

S. 2084

At the request of Mrs. BOXER, the names of the Senator from New Jersey [Mr. TORRICELLI] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 2084, a bill to amend the Outer Continental Shelf Lands Act to direct the Secretary of the Interior to cease mineral leasing activity on submerged land of the Outer Continental Shelf that is adjacent to a coastal State that has declared a moratorium on mineral exploration, development, or production activity in adjacent State waters.

SENATE CONCURRENT RESOLUTION 30

At the request of Mr. HELMS, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Concurrent Resolution 30, a concurrent resolution expressing the sense of the Congress that the Republic of China should be admitted to multilateral economic institutions, including the International Monetary Fund and the International Bank for Reconstruction and Development.

SENATE CONCURRENT RESOLUTION 84

At the request of Mr. KEMPTHORNE, the names of the Senator from Alabama [Mr. SESSIONS] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Concurrent Resolution 84, a concurrent resolution expressing the sense of Congress that the Government of Costa Rica should take steps to protect the lives of property owners in Costa Rica, and for other purposes.

SENATE RESOLUTION 188

At the request of Mr. MOYNIHAN, the name of the Senator from Alabama [Mr. SESSIONS] was added as a cosponsor of Senate Resolution 188, a resolution expressing the sense of the Senate regarding Israeli membership in a United Nations regional group.

SENATE RESOLUTION 232—EXPRESSING THE SENSE OF THE SENATE RELATIVE TO EUROPEAN UNION SUBSIDIES OF BARLEY

Mr. DORGAN (for himself, Mr. KEMPTHORNE, Mr. WYDEN, Mrs. MURRAY, Mr. JOHNSON, Mr. BAUCUS, Mr. CRAIG, Mr. BURNS, Mr. SMITH of Oregon, Mr. CONRAD, Mr. GORTON, Mr. DASCHLE, Mr. ENZI, and Mr. THOMAS) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 232

Whereas, in an unprecedented sale, the European Union entered into a contract with a United States buyer to sell heavily subsidized European barley to the United States;

Whereas the sale of almost 1,400,000 bushels (30,000 metric tons) of feed barley was shipped from Finland to Stockton, California;

Whereas news of the sale depressed feed barley prices in the California feed barley market;

Whereas, since the market sets national pricing patterns for both feed and malting barley, the sale would mean enormous market losses for barley producers throughout the United States, at a time when the United States barley producers are already suffering from low prices;

Whereas the European restitution subsidies for this barley amounts to $1.11 per bushel ($51 per metric ton);

Whereas the price-depressing effects of this one sale will continue to adversely affect market prices for at least a 9-month period as this grain moves through the United States marketing system;

Whereas this shipment is part of about 2.1 million metric tons of European feed barley that have been approved for restitution subsidies by the European Union this year;

Whereas the availability of the additional subsidized European barley in the international market not only artificially depressed market prices, but also threatens to open new import channels into the United States;

Whereas, as the world's largest feed grain producer and the world's largest exporter of feed grains, the United States does not require imported feed grains;

Whereas, at the same time that subsidized European barley is being imported into the United States, some United States feed grains are prevented from entering European markets under European Union food regulations;

Whereas United States barley growers continue to suffer the negative impacts of the sale, regardless of whether the subsidized European barley was originally targeted for sale into the United States and whether the subsidies comply with the letter of current World Trade Organization export subsidy rules; and

Whereas the sale not only undermines the intent and the spirit of free trade agreements and negotiations, it also moves away from the goals of level playing fields and fairness in trade relationships: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF SENATE ON EXPORT OF EUROPEAN BARLEY TO THE UNITED STATES.

It is sense of the Senate that—

(1) the European Union should—

(A) take immediate steps to waive the penalty for failure to use restitution subsidies for barley exported to the United States; and

(B) establish procedures to ensure that restitution and other subsidies are not used for sales of agricultural commodities to the United States or other countries of North America;

(2) the President of the United States, the United States Trade Representative, and the Secretary of Agriculture should immediately consult with the European Union regarding the sale of European feed barley to the United States in order to avoid any future sale of any European barley to the United States that is based on restitution or other subsidies; and

(3) not later than 60 days after approval of this resolution, the United States Trade Representative and the Secretary of Agriculture should report to Congress on—

(A) the terms and conditions of the sale of European barley to the United States;

(B) the results of the consultations under paragraph (2);

(C) other steps that are being taken or will be taken to address to such situations in the future; and

(D) any additional authorities that may be necessary to carry out subparagraphs (B) and (C).

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

FAIRCLOTH (AND OTHERS) AMENDMENT NO. 2421

Mr. FAIRCLOTH (for himself, Mr. SESSIONS, and Mr. MCCONNELL) proposed an amendment to the bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

At the appropriate place, insert the following:

Sec. . Limit on Attorney's Fees.

(a) FEE ARRANGEMENTS.—Subsection (f) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

(1) court order;

(2) settlement agreement;

(3) contingency fee arrangement;

(4) arbitration procedure;

(5) alternative dispute resolution procedure (including mediation);

(6) retainer agreements; or

(7) other arrangement providing for the payment of attorneys' fees.

(b) REQUIREMENTS.—No award of attorneys' fees under any action to which this Act applies shall be made under this Act until the attorneys involved have—

(1) provided to the Congress a detailed time accounting with respect to the work performed in relation to the legal action involved; and

(2) made public disclosure of the time accounting under paragraph (1) and any fee arrangements entered into, or fee arrangements made, with respect to the legal action involved.

(c) APPLICATION.—This section shall apply to fees paid or to be paid to attorneys under any arrangement described in subsection (a)—

(1) who acted on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(2) who acted on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(3) who act at some future time on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(4) who act at some future time on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures;

(5) who acted on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(6) who act at some future time on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(7) who acted on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(8) who act at some future time on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(9) who expended efforts that in whole or in part resulted in or created a model for programs in this Act;

(10) who acted on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection; or

(11) who act at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection.

(d) REPORT.—

(1) Each attorney whose fees for services already rendered are subject to subsection (a) shall, within 60 days of the date of the enactment of this Act, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

(2) Each attorney whose fees for services rendered in the future are subject to subsection (a) shall, within 60 days of the completion of the attorney's services, submit to Committees on the Judiciary of the House of Representatives and the Senate a comprehensive record of the time and expenses for which the fees are to be paid. Such record shall be subject to section 1001(a) of title 18, United States Code.

(e) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(f) GENERAL LIMITATION.—Notwithstanding any other provision of law, for each hour spent productively and at risk, separate from the reimbursement of actual out-of-pocket expenses as approved by the court in such action, any attorneys' fees or expenses paid to attorneys for matters described in subsection (c) shall not exceed $250 per hour.

KENNEDY (AND OTHERS) AMENDMENT NO. 2422

Mr. KENNEDY (for himself, Mr. LAUTENBERG, Mr. CONRAD, Mr. GRAHAM, Mr. WELLSTONE, and Mr. HARKIN) proposed an amendment to the bill, S. 1415, supra; as follows:

Beginning in section 402, strike subsection (b) and all that follows through section 403(2) and insert the following:

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in paragraph (4) and section 403:

(1) For year 1—$14,400,000,000;

(2) For year 2, an amount equal to the product of $1.00 and the total number of units of tobacco products that were sold in the United States in the previous year.

(3) For year 3, an amount equal to the product of $1.50 and the total number of units of tobacco products that were sold in the United States in the previous year.

(4) For year 4, and each subsequent year, an amount equal to the amount paid in the prior year, multiplied by a ratio in which the numerator is the number of units of tobacco products sold in the prior year and the denominator is the number of units of tobacco products sold in the year before the prior year, adjusted in accordance with section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION .—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) IN GENERAL.—Beginning with the sixth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(4) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI.

(2) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

HUTCHINSON AMENDMENTS NOS. 2423–2426

(Ordered to lie on the table.)

Mr. HUTCHINSON submitted four amendments intended to be proposed by him to the bill (S. 2057) to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

AMENDMENT NO. 2423

Add at the end the following new sections:

SEC. ___. CONGRESSIONAL STATEMENT OF POLICY.

It is the sense of Congress that the President should make freedom of religion one of the major objectives of United States foreign policy with respect to China. As part of this policy, the Department of State should raise in every relevant bilateral and multilateral forum the issue of individuals imprisoned, detained, confined, or otherwise harassed by the Chinese Government on religious grounds. In its communications with the Chinese Government, the Department of State should provide specific names of individuals of concern and request a complete and timely response from the Chinese Government regarding the individuals' whereabouts and condition, the charges against them, and sentence imposed. The goal of these official communications should be the expeditious release of all religious prisoners in China and Tibet and the end of the Chinese Government's policy and practice of harassing and repressing religious believers.

SEC. ___. PROHIBITION ON USE OF FUNDS FOR THE PARTICIPATION OF CERTAIN CHINESE OFFICIALS IN CONFERENCES, EXCHANGES, PROGRAMS, AND ACTIVITIES.

(a) PROHIBITION.—Notwithstanding any other provision of law, for fiscal years after fiscal year 1997, no funds appropriated or otherwise made available for the Department of State, the United States Information Agency, and the United States Agency for International Development may be used for the purpose of providing travel expenses and per diem for the participation of nationals of the People's Republic of China described in paragraphs (1) and (2) in conferences, exchanges, programs, and activities:

(1) The head or political secretary of any of the following Chinese Government-created or approved organizations:

(A) The Chinese Buddhist Association.

(B) The Chinese Catholic Patriotic Association.

(C) The National Congress of Catholic Representatives.

(D) The Chinese Catholic Bishops' Conference.

(E) The Chinese Protestant "Three Self" Patriotic Movement.

(F) The China Christian Council.

(G) The Chinese Taoist Association.

(H) The Chinese Islamic Association.

(2) Any military or civilian official or employee of the Government of the People's Republic of China who carried out or directed the carrying out of any of the following policies or practices:

(A) Formulating, drafting, or implementing repressive religious policies.

(B) Imprisoning, detaining, or harassing individuals on religious grounds.

(C) Promoting or participating in policies or practices which hinder religious activities or the free expression of religious beliefs.

(b) CERTIFICATION.—

(1) Each Federal agency subject to the prohibition of subsection (a) shall certify in writing to the appropriate congressional committees no later than 120 days after the date of enactment of this Act, and every 90 days thereafter, that it did not pay, either directly or through a contractor or grantee, for travel expenses or per diem of any national of the People's Republic of China described in subsection (a).

(2) Each certification under paragraph (1) shall be supported by the following information:

(A) The name of each employee of any agency of the Government of the People's Republic of China whose travel expenses or per diem were paid by funds of the reporting agency of the United States Government.

(B) The procedures employed by the reporting agency of the United States Government to ascertain whether each individual under subparagraph (A) did or did not participate in activities described in subsection (a)(2).

(C) The reporting agency's basis for concluding that each individual under subparagraph (A) did not participate in such activities.

(c) DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.—For purposes of this section the term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

SEC. ___. CERTAIN OFFICIALS OF THE PEOPLE'S REPUBLIC OF CHINA INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION.

(a) REQUIREMENT.—Notwithstanding any other provision of law, any national of the People's Republic of China described in section ___(a)(2) (except the head of state, the head of government, and cabinet level ministers) shall be ineligible to receive visas and shall be excluded from admission into the United States.

(b) WAIVER.—The President may waive the requirement in subsection (a) with respect to an individual described in such subsection if the President—

(1) determines that it is vital to the national interest to do so; and

(2) provides written notification to the appropriate congressional committees (as defined in section ___(c)) containing a justification for the waiver.

SEC. ___. SUNSET PROVISION.

Sections ___ and ___ shall cease to have effect 4 years after the date of the enactment of this Act.

AMENDMENT NO. 2424

Add at the end the following new title:

TITLE ___—FORCED ABORTIONS IN CHINA

SEC. ___. SHORT TITLE.

This title may be cited as the "Forced Abortion Condemnation Act".

SEC. ___. FINDINGS.

Congress makes the following findings:

(1) Forced abortion was rightly denounced as a crime against humanity by the Nuremberg War Crimes Tribunal.

(2) For over 15 years there have been frequent and credible reports of forced abortion and forced sterilization in connection with the population control policies of the People's Republic of China. These reports indicate the following:

(A) Although it is the stated position of the politburo of the Chinese Communist Party that forced abortion and forced sterilization have no role in the population control program, in fact the Communist Chinese Government encourages both forced abortion and forced sterilization through a combination of strictly enforced birth quotas and immunity for local population control officials who engage in coercion. Officials acknowledge that there have been instances of forced abortions and sterilization, and no evidence has been made available to suggest that the perpetrators have been punished.

(B) People's Republic of China population control officials, in cooperation with employers and works unit officials, routinely monitor women's menstrual cycles and subject women who conceive without government authorization to extreme psychological pressure, to harsh economic sanctions, including unpayable fines and loss of employment, and often to physical force.

(C) Official sanctions for giving birth to unauthorized children include fines in amounts several times larger than the per capita annual incomes of residents of the People's Republic of China. In Fujian, for example, the average fine is estimated to be twice a family's gross annual income. Families which cannot pay the fine may be subject to confiscation and destruction of their homes and personal property.

(D) Especially harsh punishments have been inflicted on those whose resistance is motivated by religion. For example, according to a 1995 Amnesty International report, the Catholic inhabitants of 2 villages in Hebei Province were subjected to population control under the slogan "better to have more graves than one more child". Enforcement measures included torture, sexual abuse, and the detention of resisters' relatives as hostages.

(E) Forced abortions in Communist China often have taken place in the very late stages of pregnancy.

(F) Since 1994 forced abortion and sterilization have been used in Communist China not only to regulate the number of children, but also to eliminate those who are regarded as defective in accordance with the official eugenic policy known as the "Natal and Health Care Law".

SEC. ___. DENIAL OF ENTRY INTO THE UNITED STATES OF PERSONS IN THE PEOPLE'S REPUBLIC OF CHINA ENGAGED IN ENFORCEMENT OF FORCED ABORTION POLICY.

The Secretary of State may not issue any visa to, and the Attorney General may not admit to the United States, any national of the People's Republic of China, including any official of the Communist Party or the Government of the People's Republic of China and its regional, local, and village authorities (except the head of state, the head of government, and cabinet level ministers) who the Secretary finds, based on credible information, has been involved in the establishment or enforcement of population control policies resulting in a woman being forced to undergo an abortion against her free choice, or resulting in a man or woman being forced to undergo sterilization against his or her free choice.

SEC. ___. WAIVER.

The President may waive the requirement contained in section ___ with respect to a national of the People's Republic of China if the President—

(1) determines that it is in the national interest of the United States to do so; and

(2) provides written notification to Congress containing a justification for the waiver.

AMENDMENT NO. 2425

Add at the end the following new title:

TITLE ___—OPPOSITION TO CONCESSIONAL LOANS TO CHINA

SEC. ___. SHORT TITLE.

This title may be cited as the "Communist China Subsidy Reduction Act of 1998".

SEC. ___. FINDINGS.

Congress finds that—

(1) the People's Republic of China has enjoyed ready access to international capital through commercial loans, direct investment, sales of securities, bond sales, and foreign aid;

(2) regarding international commercial lending, the People's Republic of China had $48,000,000,000 in loans outstanding from private creditors in 1995;

(3) regarding international direct investment, international direct investment in the People's Republic of China from 1993 through 1995 totaled $97,151,000,000, and in 1996 alone totaled $47,000,000,000;

(4) regarding investment in Chinese securities, the aggregate value of outstanding Chinese securities currently held by Chinese nationals and foreign persons is $175,000,000,000, and from 1993 through 1995 foreign persons invested $10,540,000,000 in Chinese stocks;

(5) regarding investment in Chinese bonds, entities controlled by the Government of the People's Republic of China have issued 75 bonds since 1988, including 36 dollar-denominated bond offerings valued at more than $6,700,000,000, and the total value of long-term Chinese bonds outstanding as of January 1, 1996, was $11,709,000,000;

(6) regarding international assistance, the People's Republic of China received almost $1,000,000,000 in foreign aid grants and an additional $1,566,000,000 in technical assistance grants from 1993 through 1995, and in 1995 received $5,540,000,000 in bilateral assistance loans, including concessional aid, export credits, and related assistance; and

(7) regarding international financial institutions—

(A) despite the People's Republic of China's access to international capital and world financial markets, international financial institutions have annually provided it with more than $4,000,000,000 in loans in recent years, amounting to almost a third of the loan commitments of the Asian Development Bank and 17.1 percent of the loan approvals by the International Bank for Reconstruction and Development in 1995; and

(B) the People's Republic of China borrows more from the International Bank for Reconstruction and Development and the Asian Development Bank than any other country, and loan commitments from those institutions to the People's Republic of China quadrupled from $1,100,000,000 in 1985 to $4,300,000,000 by 1995.

SEC. ___. OPPOSITION OF UNITED STATES TO CONCESSIONAL LOANS TO THE PEOPLE'S REPUBLIC OF CHINA.

Title XV of the International Financial Institutions Act (22 U.S.C. 262o–262o–1) is amended by adding at the end the following:

"SEC. 1503. OPPOSITION OF UNITED STATES TO CONCESSIONAL LOANS TO THE PEOPLE'S REPUBLIC OF CHINA.

"(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Directors at each international financial institution (as defined in section 1702(c)(2) of the International Financial Institutions Act) to use the voice and vote of the United States to oppose the provision by the institution of concessional loans to the People's Republic of China, any citizen or national of the People's Republic of China, or any entity established in the People's Republic of China.

"(b) CONCESSIONAL LOANS DEFINED.—As used in subsection (a), the term 'concessional loans' means loans with highly subsidized interest rates, grace periods for repayment of 5 years or more, and maturities of 20 years or more.".

SEC. ___. PRINCIPLES THAT SHOULD BE ADHERED TO BY ANY UNITED STATES NATIONAL CONDUCTING AN INDUSTRIAL COOPERATION PROJECT IN THE PEOPLE'S REPUBLIC OF CHINA.

(a) PURPOSE.—It is the purpose of this section to create principles governing the conduct of industrial cooperation projects of United States nationals in the People's Republic of China.

(b) STATEMENT OF PRINCIPLES.—It is the sense of Congress that any United States national conducting an industrial cooperation project in the People's Republic of China should:

(1) Suspend the use of any goods, wares, articles, or merchandise that the United States national has reason to believe were mined, produced, or manufactured, in whole or in part, by convict labor or forced labor, and refuse to use forced labor in the industrial cooperation project.

(2) Seek to ensure that political or religious views, sex, ethnic or national background, involvement in political activities or nonviolent demonstrations, or association with suspected or known dissidents will not prohibit hiring, lead to harassment, demotion, or dismissal, or in any way affect the status or terms of employment in the industrial cooperation project. The United States national should not discriminate in terms or conditions of employment in the industrial cooperation project against persons with past records of arrest or internal exile for nonviolent protest or membership in unofficial organizations committed to nonviolence.

(3) Ensure that methods of production used in the industrial cooperation project do not pose an unnecessary physical danger to workers and neighboring populations or property, and that the industrial cooperation project does not unnecessarily risk harm to the surrounding environment; and consult with community leaders regarding environmental protection with respect to the industrial cooperation project.

(4) Strive to establish a private business enterprise when involved in an industrial cooperation project with the Government of the People's Republic of China or other state entity.

(5) Discourage any Chinese military presence on the premises of any industrial cooperation projects which involve dual-use technologies.

(6) Undertake to promote freedom of association and assembly among the employees of the United States national. The United States national should protest any infringement by the Government of the People's Republic of China of these freedoms to the International Labor Organization's office in Beijing.

(7) Provide the Department of State with information relevant to the Department's efforts to collect information on prisoners for the purposes of the Prisoner Information Registry, and for other purposes.

(8) Discourage or undertake to prevent compulsory political indoctrination programs from taking place on the premises of the industrial cooperation project.

(9) Promote freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media. To this end, the United States national should raise with appropriate authorities of the Government of the People's Republic of China concerns about restrictions on the free flow of information.

(10) Undertake to prevent harassment of workers who, consistent with the United Nations World Population Plan of Action, decide freely and responsibly the number and spacing of their children; and prohibit compulsory population control activities on the premises of the industrial cooperation project.

(c) PROMOTION OF PRINCIPLES BY OTHER NATIONS.—The Secretary of State shall forward a copy of the principles set forth in subsection (b) to the member nations of the Organization for Economic Cooperation and Development and encourage them to promote principles similar to these principles.

(d) REGISTRATION REQUIREMENT.—

(1) IN GENERAL.—Each United States national conducting an industrial cooperation project in the People's Republic of China shall register with the Secretary of State and indicate that the United States national agrees to implement the principles set forth in subsection (b). No fee shall be required for registration under this subsection.

(2) PREFERENCE FOR PARTICIPATION IN TRADE MISSIONS.—The Secretary of Commerce shall consult the register prior to the selection of private sector participants in any form of trade mission to China, and undertake to involve those United States nationals that have registered their adoption of the principles set forth above.

(e) DEFINITIONS.—As used in this section—

(1) the term "industrial cooperation project" refers to a for-profit activity the business operations of which employ more than 25 individuals or have assets greater than $25,000; and

(2) the term "United States national" means—

(A) a citizen or national of the United States or a permanent resident of the United States; and

(B) a corporation, partnership, or other business association organized under the laws of the United States, any State or territory thereof, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

SEC. ___. PROMOTION OF EDUCATIONAL, CULTURAL, SCIENTIFIC, AGRICULTURAL, MILITARY, LEGAL, POLITICAL, AND ARTISTIC EXCHANGES BETWEEN THE UNITED STATES AND CHINA.

(a) EXCHANGES BETWEEN THE UNITED STATES AND CHINA.—Agencies of the United States Government which engage in educational, cultural, scientific, agricultural, military, legal, political, and artistic exchanges shall endeavor to initiate or expand such exchange programs with regard to China.

(b) SENSE OF CONGRESS.—It is the sense of Congress that a federally chartered not-for-profit organization should be established to fund exchanges between the United States and China through private donations.

AMENDMENT NO. 2426

Add at the end the following new titles:

TITLE ___—MONITORING OF HUMAN RIGHTS ABUSES IN CHINA

SEC. ___. SHORT TITLE.

This title may be cited as the "Political Freedom in China Act of 1998".

SEC. ___. FINDINGS.

Congress makes the following findings:

(1) Congress concurs in the following conclusions of the United States State Department on human rights in the People's Republic of China in 1996:

(A) The People's Republic of China is "an authoritarian state" in which "citizens lack the freedom to peacefully express opposition to the party-led political system and the right to change their national leaders or form of government".

(B) The Government of the People's Republic of China has "continued to commit widespread and well-documented human rights abuses, in violation of internationally accepted norms, stemming from the authorities' intolerance of dissent, fear of unrest, and the absence or inadequacy of laws protecting basic freedoms".

(C) "[a]buses include torture and mistreatment of prisoners, forced confessions, and arbitrary and incommunicado detention".

(D) "[p]rison conditions remained harsh [and] [t]he Government continued severe restrictions on freedom of speech, the press, assembly, association, religion, privacy, and worker rights".

(E) "[a]lthough the Government denies that it holds political prisoners, the number of persons detained or serving sentences for 'counterrevolutionary crimes' or 'crimes against the state', or for peaceful political or religious activities are believed to number in the thousands".

(F) "[n]onapproved religious groups, including Protestant and Catholic groups * * * experienced intensified repression".

(G) "[s]erious human rights abuses persist in minority areas, including Tibet, Xinjiang, and Inner Mongolia[, and] [c]ontrols on religion and on other fundamental freedoms in these areas have also intensified".

(H) "[o]verall in 1996, the authorities stepped up efforts to cut off expressions of protest or criticism. All public dissent against the party and government was effectively silenced by intimidation, exile, the imposition of prison terms, administrative detention, or house arrest. No dissidents were known to be active at year's end.".

(2) In addition to the State Department, credible independent human rights organizations have documented an increase in repression in China during 1995, and effective destruction of the dissident movement through the arrest and sentencing of the few remaining pro-democracy and human rights activists not already in prison or exile.

(3) Among those were Wang Dan, a student leader of the 1989 pro-democracy protests, sentenced on October 30, 1996, to 11 years in prison on charges of conspiring to subvert the government; Li Hai, sentenced to 9 years in prison on December 18, 1996, for gathering information on the victims of the 1989 crackdown, which according to the court's verdict constituted "state secrets"; Liu Nianchun,

an independent labor organizer, sentenced to 3 years of "re-education through labor" on July 4, 1996, due to his activities in connection with a petition campaign calling for human rights reforms; and Ngodrup Phuntsog, a Tibetan national, who was arrested in Tibet in 1987 immediately after he returned from a 2-year trip to India, where the Tibetan government in exile is located, and following a secret trial was convicted by the Government of the People's Republic of China of espionage on behalf of the "Ministry of Security of the Dalai clique".

(4) Many political prisoners are suffering from poor conditions and ill-treatment leading to serious medical and health problems, including—

(A) Wei Jingsheng, sentenced to 14 years in prison on December 13, 1996, for conspiring to subvert the government and for "communication with hostile foreign organizations and individuals, amassing funds in preparation for overthrowing the government and publishing anti-government articles abroad," is currently held in Jile No. 1 Prison (formerly the Nanpu New Life Salt Farm) in Hebei province, where he reportedly suffers from severe high blood pressure and a heart condition, worsened by poor conditions of confinement;

(B) Gao Yu, a journalist sentenced to 6 years in prison in November 1994 and honored by UNESCO in May 1997, has a heart condition; and

(C) Chen Longde, a leading human rights advocate now serving a 3-year reeducation through labor sentence imposed without trial in August 1995, has reportedly been subject to repeated beatings and electric shocks at a labor camp for refusing to confess his guilt.

(5) The People's Republic of China, as a member of the United Nations, is expected to abide by the provisions of the Universal Declaration of Human Rights.

(6) The People's Republic of China is a party to numerous international human rights conventions, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

SEC. ___. CONDUCT OF FOREIGN RELATIONS.

(a) RELEASE OF PRISONERS.—The Secretary of State, in all official meetings with the Government of the People's Republic of China, should request the immediate and unconditional release of Ngodrup Phuntsog and other prisoners of conscience in Tibet, as well as in the People's Republic of China.

(b) ACCESS TO PRISONS.—The Secretary of State should seek access for international humanitarian organizations to Drapchi prison and other prisons in Tibet, as well as in the People's Republic of China, to ensure that prisoners are not being mistreated and are receiving necessary medical treatment.

(c) DIALOGUE ON FUTURE OF TIBET.—The Secretary of State, in all official meetings with the Government of the People's Republic of China, should call on that country to begin serious discussions with the Dalai Lama or his representatives, without preconditions, on the future of Tibet.

SEC. ___. AUTHORIZATION OF APPROPRIATIONS FOR ADDITIONAL PERSONNEL AT DIPLOMATIC POSTS TO MONITOR HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA.

There are authorized to be appropriated to support personnel to monitor political repression in the People's Republic of China in the United States Embassies in Beijing and Kathmandu, as well as the American consulates in Guangzhou, Shanghai, Shenyang, Chengdu, and Hong Kong, $2,200,000 for fiscal year 1998 and $2,200,000 for fiscal year 1999.

SEC. ___. DEMOCRACY BUILDING IN CHINA.

(a) AUTHORIZATION OF APPROPRIATIONS FOR NED.—In addition to such sums as are otherwise authorized to be appropriated for the "National Endowment for Democracy" for fiscal years 1998 and 1999, there are authorized to be appropriated for the "National Endowment for Democracy" $5,000,000 for fiscal year 1998 and $5,000,000 for fiscal year 1999, which shall be available to promote democracy, civil society, and the development of the rule of law in China.

(b) EAST ASIA-PACIFIC REGIONAL DEMOCRACY FUND.—The Secretary of State shall use funds available in the East Asia-Pacific Regional Democracy Fund to provide grants to nongovernmental organizations to promote democracy, civil society, and the development of the rule of law in China.

SEC. ___. HUMAN RIGHTS IN CHINA.

(a) REPORTS.—Not later than March 30, 1998, and each subsequent year thereafter, the Secretary of State shall submit to the International Relations Committee of the House of Representatives and the Foreign Relations Committee of the Senate an annual report on human rights in China, including religious persecution, the development of democratic institutions, and the rule of law. Reports shall provide information on each region of China.

(b) PRISONER INFORMATION REGISTRY.—The Secretary of State shall establish a Prisoner Information Registry for China which shall provide information on all political prisoners, prisoners of conscience, and prisoners of faith in China. Such information shall include the charges, judicial processes, administrative actions, use of forced labor, incidences of torture, length of imprisonment, physical and health conditions, and other matters related to the incarceration of such prisoners in China. The Secretary of State is authorized to make funds available to nongovernmental organizations presently engaged in monitoring activities regarding Chinese political prisoners to assist in the creation and maintenance of the registry.

SEC. ___. SENSE OF CONGRESS CONCERNING ESTABLISHMENT OF A COMMISSION ON SECURITY AND COOPERATION IN ASIA.

It is the sense of Congress that Congress, the President, and the Secretary of State should work with the governments of other countries to establish a Commission on Security and Cooperation in Asia which would be modeled after the Commission on Security and Cooperation in Europe.

SEC. ___. SENSE OF CONGRESS REGARDING DEMOCRACY IN HONG KONG.

It is the sense of Congress that the people of Hong Kong should continue to have the right and ability to freely elect their legislative representatives, and that the procedure for the conduct of the elections of the first legislature of the Hong Kong Special Administrative Region should be determined by the people of Hong Kong through an election law convention, a referendum, or both.

SEC. ___. SENSE OF CONGRESS RELATING TO ORGAN HARVESTING AND TRANSPLANTING IN THE PEOPLE'S REPUBLIC OF CHINA.

It is the sense of Congress that—

(1) the Government of the People's Republic of China should stop the practice of harvesting and transplanting organs for profit from prisoners that it executes;

(2) the Government of the People's Republic of China should be strongly condemned for such organ harvesting and transplanting practice;

(3) the President should bar from entry into the United States any and all officials of the Government of the People's Republic of China known to be directly involved in such organ harvesting and transplanting practice;

(4) individuals determined to be participating in or otherwise facilitating the sale of such organs in the United States should be prosecuted to the fullest possible extent of the law; and

(5) the appropriate officials in the United States should interview individuals, including doctors, who may have knowledge of such organ harvesting and transplanting practice.

TITLE ___—AGREEMENT ON NUCLEAR COOPERATION

SEC. ___. AMENDMENT TO JOINT RESOLUTION RELATING TO AGREEMENT FOR NUCLEAR COOPERATION.

The joint resolution entitled "Joint Resolution relating to the approval and implementation of the proposed agreement for nuclear cooperation between the United States and the People's Republic of China (Public Law 99-183; approved December 16, 1985) is amended—

(1) in subsection (b)—

(A) by inserting "and subject to section 2," after "or any international agreement,"; and

(B) in paragraph (1) by striking "thirty" and inserting "120"; and

(2) by adding at the end the following:

"SEC. 2. (a) ACTION BY CONGRESS TO DISAPPROVE CERTIFICATION.—No license may be issued for the export to the People's Republic of China of any nuclear material, facilities, or components subject to the Agreement, and no approval for the transfer or retransfer to the People's Republic of China of any nuclear material, facilities, or components subject to the Agreement shall be given if, during the 120-day period referred to in subsection (b)(1) of the first section, there is enacted a joint resolution described in subsection (b) of this section.

"(b) DESCRIPTION OF JOINT RESOLUTION.—A joint resolution is described in this subsection if it is a joint resolution which has a provision disapproving the President's certification under subsection (b)(1), or a provision or provisions modifying the manner in which the Agreement is implemented, or both.

"(c) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

"(1) REFERENCE TO COMMITTEES.—Joint resolutions—

"(A) may be introduced in either House of Congress by any Member of such House; and

"(B) shall be referred, in the House of Representatives, to the Committee on International Relations and, in the Senate, to the Committee on Foreign Relations.

It shall be in order to amend such joint resolutions in the committees to which they are referred.

"(2) FLOOR CONSIDERATION.—(A) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to joint resolutions described in subsection (b).

"(B) It is not in order for—

"(i) the House of Representatives to consider any joint resolution described in subsection (b) that has not been reported by the Committee on International Relations; and

"(ii) the Senate to consider any joint resolution described in subsection (b) that has not been reported by the Committee on Foreign Relations.

"(c) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—It shall not be in order in either the House of Representatives or the

Senate to consider a joint resolution described in subsection (b) (other than a joint resolution described in subsection (b) received from the other House), if that House has previously adopted such a joint resolution.

"(d) PROCEDURES RELATING TO CONFERENCE REPORTS IN THE SENATE.—

"(1) CONSIDERATION.—Consideration in the Senate of the conference report on any joint resolution described in subsection (b), including consideration of all amendments in disagreement (and all amendments thereto), and consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

"(2) DEBATE ON AMENDMENTS IN DISAGREEMENT.—In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment to any amendment in disagreement shall be received unless it is a germane amendment.

"(3) CONSIDERATION OF VETO MESSAGE.—Consideration in the Senate of any veto message with respect to a joint resolution described in subsection (b), including consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.".

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

ASHCROFT AMENDMENT NO. 2427

Mr. ASCHCROFT proposed an amendment to amendment No. 2422 proposed by Mr. KENNEDY to the bill, S. 1415, supra; as follows:

In lieu of the language proposed to be inserted, insert the following:

(1) Amounts equivalent to penalties paid under section 202, including interest thereon.

(c) REPAYABLE ADVANCES.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the trust fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures authorized by this Act.

(2) REPAYMENT WITH INTEREST.—Repayable advances made to the trust fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the trust fund for such purposes.

(3) RATE OF INTEREST.—Interest on advances made under this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

(d) EXPENDITURES FROM TRUST FUND.—Amounts in the trust fund shall be available in each calendar year, as provided by appropriations Acts, except that distributions to the States from amounts credited to the State Litigation Settlement Account shall not require further authorization or appropriation and shall be as provided in the Master Settlement Agreement and this Act, and not less than 15 percent of the amounts shall be expended, without further appropriation, notwithstanding any other provision of this Act, from the trust fund for each fiscal year, in the aggregate, for activities under this Act related to—

(1) the prevention of smoking;

(2) education;

(3) State, local, and private control of tobacco product use; and

(4) smoking cessation.

(e) BUDGETARY TREATMENT OF TRUST FUND OPERATIONS.—The receipts and disbursements of the National Tobacco Settlement Trust Fund shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 95 of such Code.

SEC. 402. STATE LITIGATION SETTLEMENT ACCOUNT.

(a) IN GENERAL.—There is established within the trust fund a separate account, to be known as the State Litigation Settlement Account.

(b) TRANSFERS TO ACCOUNT.—From amounts received by the trust fund under section 403, the State Litigation Settlement Account shall be credited with all settlement payments designated for allocation, without further appropriation, among the several States.

(c) REIMBURSEMENT FOR STATE EXPENDITURES.—

(1) PAYMENT.—Amounts credited to the account are available, without further appropriation, in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

(2) AMOUNT.—The amount for which a State is eligible for under subparagraph (A) for a fiscal year shall be based on the Master Settlement Agreement and its ancillary documents in accordance with such agreements thereunder as may be entered into after the date of enactment of this Act by the governors of the several States.

(3) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate.

(4) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(d) PAYMENTS TO BE TRANSFERRED PROMPTLY TO STATES.—The Secretary of the Treasury shall transfer amounts available under subsection (c) to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

( ) PROVISIONS RELATING TO AMOUNTS IN TRUST FUND.—

(1) CERTAIN PROVISIONS NULL AND VOID.—Notwithstanding any other provision of law, the following provisions of this Act shall be null and void and not given effect:

(B) Sections 402 through 406.

KERREY AMENDMENTS NOS. 2428–2429

(Ordered to lie on the table.)

Mr. KERREY submitted two amendments intended to be proposed by him to the bill, S. 1415, supra; as follows:

AMENDMENT NO. 2428

At the end of subtitle C of title XI add the following:

SEC. ___. LIMITATION ON FUNDING OF PROGRAMS AND ACTIVITIES.

Notwithstanding any other provision of law, only amounts deposited into the National Tobacco Trust Fund may used to fund the programs and activities authorized under this Act.

AMENDMENT NO. 2429

Section 1991D of the Public Health Service Act, as added by section 221, is amended by inserting after subsection (g) the following:

"(i) COMMUNITY-BASED ACTIVITIES OF TOBACCO SCHOLARS.—

"(1) IN GENERAL.—Of the sums made available to the National Institutes of Health under this section, the Director shall make available a portion of such sums to support the community-based activities of the tobacco scholars assigned to States in accordance with paragraph (2).

"(2) TOBACCO SCHOLARS.—The Director of the National Institutes of Health shall—

"(A) designate individuals to serve as tobacco scholars from among individuals who receive funding through the National Institutes of Health for tobacco-related research; and

"(B) assign a tobacco scholar to each State.

"(3) COMMUNITY-BASED ACTIVITIES.—For purposes of paragraph (1), the term 'community-based activities' includes—

"(A) public forums for sharing research by tobacco scholars and other tobacco-related research with the medical community within States; and

"(B) dissemination of information to the public on tobacco-related research and the health-related implications of the conclusions of such research through means such as public forums, public service announcements, advertisements, and television broadcasts.

KERREY (AND KENNEDY) AMENDMENT NO. 2430

Mr. KERREY (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:

At the end of title XI, add the following:

SEC. ___. PROGRAM OF PAYMENTS TO CHILDREN'S HOSPITALS THAT OPERATE GRADUATE MEDICAL EDUCATION PROGRAMS.

(a) PAYMENTS.—

(1) IN GENERAL.—The Secretary shall make payments under this section to each children's hospital for each hospital cost reporting period beginning after fiscal year 1998 and before fiscal year 2003 for the direct and indirect expenses associated with operating approved medical residency training programs.

(2) CAPPED AMOUNT.—The payments to children's hospitals established in this subsection for cost reporting periods ending in a

fiscal year are limited to the extent of funds appropriated under subsection (d) for that fiscal year.

(3) PRO RATA REDUCTIONS.—If the Secretary determines that the amount of funds appropriated under subsection (d) for cost reporting periods ending in a fiscal year is insufficient to provide the total amount of payments otherwise due for such periods, the Secretary shall reduce the amount payable under this section for such period on a pro rata basis to reflect such shortfall.

(b) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—The amount payable under this section to a children's hospital for direct and indirect expenses relating to approved medical residency training programs for a cost reporting period is equal to the sum of—

(A) the product of—

(i) the per resident rate for direct medical education, as determined under paragraph (2), for the cost reporting period; and

(ii) the weighted average number of full-time equivalent residents in the hospital's approved medical residency training programs (as determined under section 1886(h)(4) of the Social Security Act) for the cost reporting period; and

(B) the product of—

(i) the per resident rate for indirect medical education, as determined under paragraph (3), for the cost reporting period; and

(ii) the number of full-time equivalent residents in the hospital's approved medical residency training programs for the cost reporting period.

(2) PER RESIDENT RATE FOR DIRECT MEDICAL EDUCATION.—

(A) IN GENERAL.—The per resident rate for direct medical education for a hospital for a cost reporting period ending in or after fiscal year 1999 is the updated rate determined under subparagraph (B), as adjusted for the hospital under subparagraph (C).

(B) COMPUTATION OF UPDATED RATE.—The Secretary shall—

(i) compute a base national DME average per resident rate equal to the average of the per resident rates computed under section 1886(h)(2) of the Social Security Act for cost reporting periods ending during fiscal year 1998; and

(ii) update such rate by the applicable percentage increase determined under section 1886(b)(3)(B)(i) of such Act for the fiscal year involved.

(C) ADJUSTMENT FOR VARIATIONS IN LABOR-RELATED COSTS.—The Secretary shall adjust for each hospital the portion of such updated rate that is related to labor and labor-related costs to account for variations in wage costs in the geographic area in which the hospital is located using the factor determined under section 1886(d)(3)(E) of the Social Security Act.

(3) PER RESIDENT RATE FOR INDIRECT MEDICAL EDUCATION.—

(A) IN GENERAL.—The per resident rate for indirect medical education for a hospital for a cost reporting period ending in or after fiscal year 1999 is the updated amount determined under subparagraph (B).

(B) COMPUTATION OF UPDATED AMOUNT.—The Secretary shall—

(i) determine, for each hospital with a graduate medical education program which is paid under section 1886(d) of the Social Security Act, the amount paid to that hospital pursuant to section 1886(d)(5)(B) of such Act for the equivalent of a full twelve-month cost reporting period ending during the preceding fiscal year and divide such amount by the number of full-time equivalent residents participating in its approved residency programs and used to calculate the amount of payment under such section in that cost reporting period;

(ii) take the sum of the amounts determined under clause (i) for all the hospitals described in such clause and divide that sum by the number of hospitals so described; and

(iii) update the amount computed under clause (ii) for a hospital by the applicable percentage increase determined under section 1886(b)(3)(B)(i) of such Act for the fiscal year involved.

(c) MAKING OF PAYMENTS.—

(1) INTERIM PAYMENTS.—The Secretary shall estimate, before the beginning of each cost reporting period for a hospital for which a payment may be made under this section, the amount of the payment to be made under this section to the hospital for such period and shall pay such amount in 26 equal interim installments during such period.

(2) FINAL PAYMENT.—At the end of each such period, the hospital shall submit to the Secretary such information as the Secretary determines to be necessary to determine the final payment amount due under this section for the hospital for the period. Based on such determination, the Secretary shall recoup any overpayments made, or pay any balance due. The final amount so determined shall be considered a final intermediary determination for purposes of applying section 1878 of the Social Security Act and shall be subject to review under that section in the same manner as the amount of payment under section 1886(d) is subject to review under such section.

(d) LIMITATION ON EXPENDITURES.—

(1) IN GENERAL.—Subject to paragraph (2), there are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for payments under this section for cost reporting periods beginning in—

(A) fiscal year 1999 $100,000,000;

(B) fiscal year 2000, $285,000,000;

(C) fiscal year 2001, $285,000,000; and

(D) fiscal year 2002, $285,000,000.

(2) CARRYOVER OF EXCESS.—If the amount of payments under this section for cost reporting periods ending in fiscal year 1999, 2000, or 2001 is less than the amount provided under this subsection for such payments for such periods, then the amount available under this subsection for cost reporting periods ending in the following fiscal year shall be increased by the amount of such difference.

(e) RELATION TO MEDICARE AND MEDICAID PAYMENTS.—Notwithstanding any other provision of law, payments under this section to a hospital for a cost reporting period—

(1) are in lieu of any amounts otherwise payable to the hospital under section 1886(h) or 1886(d)(5)(B) of the Social Security Act to the hospital for such cost reporting period, but

(2) shall not affect the amounts otherwise payable to such hospitals under a State medicaid plan under title XIX of such Act.

(f) DEFINITIONS.—In this section:

(1) APPROVED MEDICAL RESIDENCY TRAINING PROGRAM.—The term "approved medical residency training program" has the meaning given such term in section 1886(h)(5)(A) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(A)).

(2) CHILDREN'S HOSPITAL.—The term "children's hospital" means a hospital described in section 1886(d)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iii)).

(3) DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The term "direct graduate medical education costs" has the meaning given such term in section 1886(h)(5)(C) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(C)).

(4) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, May 19, 1998, at 9:30 a.m. on Oversight of the Wireless Bureau of the Federal Communications Commission.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, May 19, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this oversight hearing is to consider the fiscal and economic implications of Puerto Rico status.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 19, 1998 at 2:30 p.m. to hold a Business Meeting.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MCCAIN. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Tuesday, May 19, 1998, at 10:00 a.m. for a hearing on "Government Computer Security."

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on "Health Care Quality: Grievance Procedures" during the session of the Senate on Tuesday, May 19, 1998, at 10:00 a.m.

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

SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS AND COMPETITION

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Business Rights, and Competition, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Tuesday, May 19, 1998 at 10:00 a.m.

to hold a hearing in room 226, Senate Dirksen Building, on "Consolidation in the Telephone Industry: Good or Bad for Consumers?"

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

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. McCAIN. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the Courts, of the Senate Judiciary Committee, be authorized to meet during the session of the Senate on Tuesday, May 19, 1998 at 2:30 p.m. to hold a hearing in room 226, Senate Dirksen Building, on: "S. 1914, The Business Bankruptcy Reform Act: Business Bankruptcy Issues in Review."

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

ADDITIONAL STATEMENTS

NATO WRAP UP

• Mr. BINGAMAN. Mr. President, I joined the majority of my Senate colleagues in voting overwhelmingly in favor of the resolution approving the accession to NATO of Poland, Hungary, and the Czech Republic. I believe that these three countries have made remarkable progress in establishing democratic institutions and undertaking fundamental economic reforms. In addition, for the United States to refuse their admission into NATO at this stage would undermine U.S. leadership both in the Atlantic Alliance and globally.

However, my support for the admission of Poland, Hungary, and the Czech Republic into NATO should not be interpreted as a green light for further rounds of NATO enlargement. I believe that there is no mandate for further rounds of NATO enlargement. As the forty-one votes in support of the Warner Amendment indicate, more than enough Senators are concerned about moving too fast on NATO enlargement to block approval of the accession of any additional states to NATO in the near-term. In addition, provisions of the NATO resolution makes clear that the Senate expects to be closely consulted prior to any future negotiations on inviting other countries to join NATO.

We must get answers to critical questions before we even begin to consider whether additional countries should be invited to join NATO. Before any further enlargement is contemplated, the United States needs to know the costs of the first several years of integrating Poland, Hungary, and the Czech Republic into NATO, and the burden sharing arrangements for meeting those costs. In addition, the Alliance must first complete revising and updating its Strategic Concept, the statement of NATO's fundamental military mission. This will allow NATO members, and countries potentially seeking membership, to judge for themselves whether further expansion strengthens—or undermines—the Alliance's ability to carry out its strategic mission.

I continue to have serious doubts about the wisdom of any further enlargement of NATO. In rushing to bring the states of the former Warsaw Pact and the former Soviet Union into the NATO military fold, we risk undermining our ability to work with Russia to reduce the most immediate threats to our security. In particular, I am concerned about the adverse impact that the consideration of the Baltic states for NATO membership might have on on-going U.S.-Russian cooperative initiatives. These initiatives address some of our highest security concerns, including the containment of the proliferation of nuclear, chemical, and biological technology and materials, and achieving mutual reductions in strategic nuclear forces. With regard to the Baltics, I draw the attention of my colleagues to a colloquy between Sen. BIDEN and myself recorded in the CONGRESSIONAL RECORD of April 30th, on page S3888. This colloquy clarifies that the United States has not pre-committed, either in the U.S.-Baltic Charter of Partnership or elsewhere, to support NATO membership for the Baltic states.

I hope now we can put the distraction of NATO enlargement behind us. It has yet to be explained how the expansion of a military alliance, formed during the height of the Cold War to defend its members' territory from external attack, serves our needs in today's changed security environment. The threats we face today require careful consideration of a full range of options—whether NATO, the Partnership for Peace initiative between NATO and 28 countries of Europe and the former Soviet Union, or other collective security arrangements—to increase the security and stability of all democratic states.

The Senate, as well, needs to turn its attention to efforts that mutually enhance the security of the United States, its NATO allies, and the states of Eastern Europe, including Russia. These include laying the groundwork for Senate approval of the Comprehensive Test Ban Treaty, supporting the elimination of Russian strategic arms under the Cooperative Threat Reduction program, and encouraging acceleration of the START process to further reduce Russian nuclear weapons. In the long-run these initiatives offer valuable alternatives to NATO enlargement for addressing the highest security concerns in today's post-Cold War security environment.•

TRIBUTE TO THE WILLIAM E. BIVIN FORENSICS SOCIETY: 1998 NATIONAL COLLEGIATE DEBATE CHAMPIONS

• Mr. McCONNELL. Mr. President, I rise today to ask my colleagues to join me in congratulating the William E. Bivin Forensic Society—the debate team at Western Kentucky University, located in Bowling Green, Kentucky—for their recent victories at the national collegiate debate championships.

In mid-March, Western won the Delta Sigma Rho—Tau Kappa Alpha Lincoln-Douglas Debate Championships at Miami University in Ohio. Two members of the team, Mike McDonner and Aaron Whaley—were co-national champions in the individual competition.

Then, in April, Western also won at the National Forensics Association tournament at Western Illinois University, defeating Ohio State University by a 5–0 decision. Mike McDonner again captured the individual title, and teammate Kerri Richardson was a semifinalist. In addition, Kristin Pamperin and Doug Morey were quarterfinalists. Other varsity members of the victorious Western Kentucky team were Amanda Gibson and Aaron Whaley. Novice debaters Mitchell Bailey, Jennifer Cloyd and Brian Sisk also contributed to the team title.

These two debates comprise the national championships in college debating circles, and it is extremely rare that one team wins both events. Amazingly, this is second time in three years that Western Kentucky has claimed both debates. The winning tradition being built in Bowling Green is a testament to the strong leadership of the team's coach, Judy Woodring.

Mr. President, Western Kentucky University's debate team is building quite a tradition. I offer my congratulations to Coach Woodring and to all the members of the Bivin Forensics Society for another great year. With two national championships in three years, I expect that we may be seeing the beginning of a dynasty in Bowling Green.•

MIGNON CLYBURN'S APPOINTMENT TO THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

• Mr. HOLLINGS. Mr. President, I rise today to congratulate Mignon Clyburn, daughter of U.S. Representative JAMES CLYBURN, on her election to the South Carolina Public Service Commission. The PSC—which overseas electricity, gas, phone, water, and sewer rates—is crucial to safeguarding consumer rights for all the people of South Carolina. Its work will be especially important and complex now that the telecommunications and utilities industries have been deregulated. It is because the work of the Public Service Commission is so important that I am

glad to see someone as capable and dedicated as Mignon Clyburn appointed to the Commission.

Public service flows in Mignon's blood. Her father, the first black Representative elected from South Carolina since Reconstruction, served South Carolina for many years in various community and state positions before entering the House of Representatives.

Mignon has worked for over a decade as the driving force behind The Coastal Times newspaper. Her tireless work writing, editing, and marketing the magazine has earned it well-deserved praise as one of the best community papers in the Southeast. Mignon also has served her community through extensive volunteer work with the United Way and other organizations.

Mr. President, Mignon Clyburn will make an excellent Commissioner. She understands the importance of the Public Service Commission for the people of South Carolina. She said after accepting the position, "I think this is the most significant agency . . . in the state. What's more vital or fundamental than your utilities?"

Mignon Clyburn will make a wonderful Public Service Commissioner. She is an intelligent, hard working, and committed to improving the life of every South Carolinian. I am confident she will be a dedicated and effective guardian of South Carolina consumers.•

NATIONAL ASSOCIATION OF LETTER CARRIERS FOOD DRIVE

• Mr. SANTORUM. Mr. President, I rise today to discuss the importance of the National Association of Letter Carriers Food Drive. The National Association of Letter Carriers Food Drive, held in conjunction with the U.S. Postal Service and local United Way, is the largest one-day collection of food in the Nation. Last year almost 5,000 pounds were collected in Horsham, Pennsylvania, while some 73 million pounds were collected nationwide.

On Saturday, May 9, letter carriers in Horsham and across the Nation reached out to help their neighbors who fell on hard times by collecting nonperishable food donations along their mail routes. Each year, their efforts help to restock the shelves of local food pantries. Likewise, the donations raided through this annual event prepare charities for the overwhelming demand for food during the Thanksgiving and Christmas holiday seasons.

Mr. President, I commend the letter carriers, the men and women of the U.S. Postal Service, and the United Way for making this collection possible. On behalf of the United States Senate, I would like to recognize the dedication of these public servants and the generosity of the families who donated to this worthy cause. I ask my colleagues to join me in extending the Senate's best wishes for continued success to all those who participated in the National Association of Letter Carriers Food Drive.•

TRIBUTE TO GEORGE NORCROSS

• Mr. LAUTENBERG. Mr. President, I rise today to remember a dear friend and treasured community leader in Southern New Jersey, George Norcross II.

George and I shared many experiences and values and each of us ended up in public service.

We both grew up in a poor, urban environment, he in Camden, and I in Paterson. We both lost our fathers at a very young age, but continued to attend high school while beginning to work. We both served in the military during World War II, he in the Navy and I in the Army.

After George returned from the war, he built a career in union organizing efforts and community service. His was a voice of strength and determination for working families in Camden County—and what a loud voice it was! He fought tooth and nail for union workers, never without a cigar in hand. But his rough exterior was complemented by his caring heart, and the effectiveness of his work with organized labor was reinforced through his numerous philanthropic activities.

The Union Organization of Social Services, of which George became president in 1955, reflected his marriage of organized labor and charity work. The mission of UOSS is to deal with drug and alcohol abuse, job training, food banks, disaster relief, clothing drives and blood banks within its community.

George was also active in the United Way his entire life, serving as its general chairman in 1992 and as chairman emeritus after his retirement. His involvement with this organization led to the United Way's Labor Support Committee, which raised millions of dollars for charity.

As a tough negotiator, a coalition builder, and someone who always got the job done, George's unrivaled union leadership will never be forgotten. He served as president of the AFL-CIO Central Labor Union for 16 years, was a member of the International Brotherhood of Electrical Workers Local 1448, and became the international representative of the International Union of Electrical Workers.

George and I shared the conviction that educational opportunity is critical to a robust and stable democracy. George's dedication to providing educational opportunities to others led to his creation of the Peter J. McGuire Scholarship Program in conjunction with the American Federation of Teachers. These scholarships, presented every year at New Jersey's Labor Day celebration, benefit children of southern New Jersey union members. And if my schedule didn't permit me to attend this annual event one year, I would get an earful from George!

George's union leadership and sense of civic responsibility have benefitted countless New Jerseyans, including students able to go to school on scholarship, people in need who receive help, and workers with grievances whose rights are defended.

George Norcross will be dearly missed. I want to extend my heartfelt condolences to Carol, George's wife of 43 years, and his four sons, George III, John, Don and Phil. I know I will continue to cross paths and work with them on behalf of New Jersey.•

TRIBUTE TO GARY HIRSHBERG

• Mr. SMITH of New Hampshire. Mr. President, I rise today to recognize Gary Hirshberg, president and chief executive officer of Stonyfield Farm in Londonderry, New Hampshire, who is being honored with the two most prestigious business leadership awards in New Hampshire. Dedicated to social and environmental corporate responsibility, Gary Hirshberg became the first New Hampshire entrepreneur to be named both "Business Leader of the Year" by Business NH magazine and "New Hampshire's 1998 Small Business Person of the Year" by the United States Small Business Administration.

A New Hampshire native and third-generation manufacturer, Gary's vision and commitment to social and environmental issues played an integral role in the development of Stonyfield Farm. Gary Hirshberg was named CEO shortly after joining Stonyfield. Together, with founder Samuel Kaymen, they embarked on an educational project designed to revitalize family farms in the New England dairy industry while positively impacting the environment and the local economy.

The same dedication and determination that prompted two individuals to do everything from milk cows to deliver products out of an old farmhouse in Wilton, helped the Stonyfield Farm family to grow to its current 150 employees and 21,000-square-foot, custom-designed "Yogurt Works" in Londonderry. Having been raised on a farm myself, I can appreciate the hard work done by Gary and his partner over the years. As Gary watched the company's distribution expand to all 50 States and Great Britain and annual sales exceed $40 million, he never lost sight of his commitment to family-owned farms. Under Gary Hirshberg's leadership, Stonyfield Farm continues to promote awareness of the plight of the small farm through such programs as "Adopt a Cow," and to raise environmental consciousness through the company's use of operationally efficient natural

resources and its sponsorship of recycling programs.

As a former small business owner, I appreciate the challenges faced by small business owners and understand that these businesses are the backbone of our economy. Consequently, I have worked throughout my tenure in Congress to lift the tax and regulatory burden from the shoulders of small business so that the dreams and aspirations of people like Gary Hirshberg and Stonyfield Farm may continue to grow and prosper. Gary's compassion and commitment to local communities, environmental awareness, and social responsibility embodies the true New Hampshire spirit. I commend him for serving as a role model for not only the youth of the Granite State but for all of us. It is with great pride that I represent Gary Hirshberg in the United States Senate.•

TRIBUTE TO MARJORY STONEMAN DOUGLAS

• Mr. GRAHAM. Mr. President, I rise today with a heavy heart and bearing the sorrow that Floridians and Americans everywhere feel at the death of a national treasure—Marjory Stoneman Douglas.

Marjory Stoneman Douglas is and will always be the "Mother of the Everglades." That title was made official in 1993, when President Clinton presented here with the Presidential Medal of Freedom—our Nation's most prestigious civilian honor.

Over 130 years ago, upon meeting Harriet Beecher Stowe for the first time, President Abraham Lincoln greeted the author of Uncle Tom's Cabin with this salutation: "So this is the little woman who started the great war."

Marjory Stoneman Douglas was equally influential in her own time. She was the feisty woman who started the great effort to save the Everglades from mankind's abuse and neglect.

She was born on April 7, 1880 in Minneapolis, Minnesota. Perhaps it was this connection to "The Land of Ten Thousand Lakes" that was responsible for her intense passion for environmental preservation. She graduated from Wellesley College just over two decades later with the prophetic title of "Class Orator."

These two characteristics—a love of nature and a powerful determination to make her voice heard—would soon come together to the benefit of the Florida Everglades. In 1915, Marjory arrived in Miami and joined the staff of the *Miami Herald*. With the exception of a brief stint as a Red Cross worker during World War I, she spent the next eighty-three years working to save the Everglades from destruction.

When Marjory Stoneman Douglas arrived in South Florida, many people thought of the Everglades as nothing more than another Florida swamp. Indeed, Governor Napoleon Bonaparte Broward, who served from 1905 to 1909, had proposed draining the Everglades to reclaim the land there.

Marjory did not brook ignorance about the Everglades. Instead, she poured time, energy, blood, sweat, and tears into re-educating the people of Florida about the crowning jewel in Florida's collection of environmental treasures. Long before scientists became alarmed about the effects on the natural ecosystems of South Florida, she was taking public officials to task for destroying wetlands, eliminating the sheet flow of water across the Everglades, and upsetting the natural cycles upon which the entire South Florida ecosystem depends.

Marjory's oratory and hustle produced tangible accomplishments. Her crusade to win Federal protection for the wetlands scored a major victory when President Harry Truman dedicated Everglades National Park in 1947.

That same year, she published the work that would jump-start the modern era of Everglades restoration: The Everglades: River of Grass. To this day, that tome stands as the definitive descriptive of the national treasure she fought so hard to protect.

Visitors travel thousands of miles to see the Everglades. Scientists and naturalists spend entire lifetimes studying the Everglades' diverse habitats and unique collection of plants and animal life. Today, public officials from every ideological persuasion and geographic location line up to support efforts to protect the Everglades. None of this would have been possible without Marjory Stoneman Douglas' Herculean efforts.

She supplemented her hard work and determination with a disarming candor. Some people will remember that Marjory co-authored a 1920's anti-gangster play entitled Storm Warnings. That title was well-suited to the personality of its author. She would frequently blow in like a Florida summer thunderstorm and give you her thoughts in no uncertain terms, leaving you dazed and drained but unmistakably sure of her intentions.

When I was a state legislator in the late 1960's, Marjory came to Tallahassee to speak to the Dade County delegation. She conveyed one simple, blunt message: we would safeguard the health of the Everglades and if we didn't, we would all spend an uncomfortable afterlife in hell.

I took those words to heart. When I was Governor from 1979 to 1987, Marjory and I teamed up to launch a campaign to safeguard the Florida Everglades. It is an effort that has attracted broad, bipartisan support over the years—a testament to Marjory's persuasive powers.

In 1997, I joined Senator CONNIE MACK and U.S. Representative PETER DEUTSCH in introducing legislation to name over 1.3 million acres of the Everglades after its modern savior. President Clinton signed that legislation in mid-November, and I helped to dedicate the "Marjory Stoneman Douglas Wilderness" on December 4, 1997—Everglades National Park's 50th Birthday. Marjory's ashes will be scattered over that wilderness area.

Marjory Stoneman Douglas was a friend and mentor to me for many years. I will miss her greatly. I want to conclude today by reading from John Rothchild's introduction to her autobiography. Recalling her appearance at a 1973 public meeting in Everglades City, Mr. Rothchild offered this apt description:

> Mrs. Douglas was half the size of her fellow speakers and she wore huge dark glasses, which along with the huge floppy hat made her look like Scarlet O'Hara as played by Igor Stravinsky. When she spoke, everybody stopped slapping [mosquitoes] and more or less came to order. She reminded us all of our responsibility to nature. Her voice had the sobering effect of a one-room schoolmarm's. The tone itself seemed to tame the rowdiest of the local stone crabbers, developers, and the lawyers on both sides. I wonder if it didn't also intimidate the mosquitoes.

Marjory Stoneman Douglas always got your attention—she was the most eloquent spokesperson that the Everglades will ever have. The embattled wetland lost its "Mother" last week, but we must keep her memory and legacy alive by continuing our efforts to preserve the Everglades for future generations of Floridians and Americans.•

TRIBUTE TO DR. ALVIN C. POWELEIT: A FIXTURE IN NORTHERN KENTUCKY FOR OVER 50 YEARS

• Mr. MCCONNELL. Mr. President, I rise today to remember the life of Dr. Alvin C. Poweleit. For nearly 50 years, the people of Covington were blessed to have Dr. Poweleit as a member of their community, and few families were not touched by the kind gentleman known as "Pepa."

Pepa Poweleit grew up in northern Kentucky in the town of Newport. After earning his medical degree, Dr. Poweleit returned to Newport in the late 1930s as general practitioner. Like most young men of his generation, he left his hometown behind when he signed up to serve in World War II. He soon found himself in the Philippines, where he was the first U.S. medical officer to be decorated in the war, when he saved personnel in a submerged Brenn Gun Carrier.

Dr. Poweleit spent over three years in Japanese POW camps in the Philippines, and was a survivor of the Bataan Death March. After the war, Dr. Poweleit returned to northern Kentucky, where he opened up his own practice in Covington as an eye, ear, nose and throat specialist.

For the last 50 years, the Poweleit family has maintained the office at the corner of Eighth and Scott in Covington. It was a rare day that Dr. Poweleit didn't work 14 hours. If there were sick patients to be seen, Pepa Poweleit would see every single one. At a time when most people lived within walking distance of their family doctor, it wasn't rare to see Dr. Poweleit still in the office after midnight.

Pepa Poweleit retired from practice in 1981, leaving the family practice to his son Alvin D, an eye specialist known in the community as Dr. Alvin. Carrying on the tradition of family practice, Dr. Alvin remains a fixture today in the Covington community.

Mr. President, last June, Pepa Poweleit was tragically killed when the car in which he was a passenger was run into by a truck. He was 89. Pepa Poweleit was a beloved figure in the communities of Northern Kentucky. Though nearly two decades have gone by since he retired, and almost a year has passed since his death, Pepa Poweleit is still sorely missed.•

NATIONAL EMS WEEK

• Mr. SANTORUM. Mr. President, I rise today to congratulate Lisa Mauger, Mary McGuire, Stephanie Schmoyer and Christine Webster on being honored with the Stars of Life award by the American Ambulance Association (AAA).

For the past four years, AAA has honored paramedics and emergency medical service (EMS) personnel who exemplify what is best about their field. Past Stars of Life award recipients have included paramedics who were part of the rescue efforts during disasters like the Centennial Olympic Park and Oklahoma City bombings and the severe flooding in the South and Midwest.

Through a spirit of selflessness, Lisa, Mary, Stephanie and Christine have dedicated themselves to serving others. Their spirit of community is a great source of pride, not only for Pennsylvania, but for the United States.

Mr. President, I hope my colleagues will join with me in honoring these women for their faithful service and extending best wishes for continued success in the years to come.•

ORDERS FOR WEDNESDAY, MAY 19, 1998

Mr. MCCAIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, May 20.

I further ask that, on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate resume consideration of the pending amendments to the tobacco legislation.

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

PROGRAM

Mr. MCCAIN. Mr. President, a motion to table the Kennedy amendment and the Ashcroft amendment is expected to occur by midmorning. In addition, several other amendments are expected to be offered. Therefore, votes can be expected throughout the day and into the evening on Wednesday.

ORDER FOR ADJOURNMENT

Mr. MCCAIN. If there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator KENNEDY.

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

The Senator from Massachusetts is recognized.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. KENNEDY. Mr. President, I join all of my colleagues in thanking our friend and colleague and chairman of our task force, Senator CONRAD, for the enormously informative presentation that was made in support of our proposal before the Senate now, which is to raise the cost of a pack of cigarettes by $1.50.

I thank my colleague and friend, Senator KERRY, for his comments and for all the work he has done, as well, in bringing us to where we are in this legislative session, so that we are having an opportunity to debate these issues on the floor of the Senate and having an opportunity to express a judgment about these matters this afternoon, again tomorrow, and the remainder of this week.

This is enormously important. Perhaps, in many respects, it is the most important measure that we will have before the Senate in this term—certainly one of the most important public health issues that we will have before the Senate. I think it is important that the American people give focus and attention to this issue and, in particular, to the amendments we are now discussing and debating on the increase of the per pack cost of cigarettes.

I also mention our colleague and friend, the chairman of the committee, Senator MCCAIN. I, too, want to join in expressing appreciation for the fact that we had the opportunity to get to this legislation through his leadership. Now we have an opportunity to strengthen and improve it. We are grateful for his leadership.

Mr. President, I want to just take a few moments to respond to the issue that Senator MCCAIN spoke to when we were making the presentation about the importance of increasing the price per pack by $1.50. Senator MCCAIN at that time talked about, what is magical about $1.50? What is really the difference between that and $2 or $2.50 or $3?

Mr. President, I think it is important to understand why we do have the $1.50. It is, as I mentioned earlier, and as Senator LAUTENBERG and Senator CONRAD have pointed out, the recommended figure by not just the majority, but the entirety of the public health community, to be essential if we are going to have some impact in reducing cigarette smoking by teenagers in this country and also to achieve the goal that was established by the attorneys general in their own proposal. They established a 10-year goal of 60 percent. That was in the initial proposal made by the attorneys general—the 60 percent.

In our Committee on Labor and Human Resources, which had the consideration of this legislation for a short period of time—we had the jurisdiction because of the responsibility that the committee has regarding the Food and Drug Administration, and we had a markup on the legislation—we had a majority of the members who said, "We don't want to see a reduction of 60 percent, we want a reduction of 80 percent." If we are going to accept that, then we have to find out how we are going to get and reach that particular goal. That is really the fundamental issue. It doesn't do much good to say we are going to set a goal of 30, 40, 50, or 60 percent and then not take the steps to be able to achieve it.

The attorneys general went with 60 percent. The goal established out of the Commerce Committee was 60 percent. So it is fair enough to ask ourselves, will we reach that goal of 60 percent with the proposal of the Commerce Committee? And what we are saying is that we will not. You won't reach that with $1.10. You will get maybe into a 34, 36 percent reduction, but you are not going to get the 60 percent reduction, which has been the goal—and I think a worthwhile goal—to see that 60 percent of the young people in this country are going to stop smoking over a period of 10 years. We will be able to reach that with $1.50. I will come back and explain that in greater detail in a few moments. We will be able to reach that and give the authority for that.

The chairman of the Commerce Committee says we will get there, and if we don't get there on the front end, we will get there on the back end by the requirements we have on the look-back provisions. But I think it is fair to say that with the look-back provisions, and the capping of the payments on the look-back provisions of some $4 billion, that the best estimate, even if you are going to have the violations of the

look-back provisions, you are only talking about perhaps 15 or 20 cents more per pack.

So you get up to maybe $1.30 or $1.35. But you still are not getting to where the health economists and professionals say you have to get in order to have the significant reduction.

That is really the issue that is before the Senate. That is the question that we are going to decide on tomorrow.

What is the justification for not taking the recommendations of the public health community? What is possibly the reason for not doing so? There are those who can say, "Well, if you do so you are going to pay for the industry itself." Senator CONRAD just responded to that.

I come back to the excellent testimony we had before the Judiciary Committee and before the task force that responds to that which estimates that even with $1.50 as Jeffrey Harris, who is probably the most thoughtful and competent unbiased health economist who has studied this for the longest period of time, has estimated that even with an increase of $1.50, that by the year 2003 the profits for the industry will be in excess of $5 billion just on the domestic sales of product here in the United States, a very, very generous profit for this industry—a generous profit for the industry even at $1.50.

What is possibly the reason not to support the recommendation of the public health community which says we ought to go to $1.50 a pack if we are serious about stopping young people from smoking?

That is overwhelming testimony. That is overwhelming presentation. It is overwhelming evidence. It has not been rebutted. It won't be rebutted. It hasn't been rebutted tonight. It won't be rebutted tomorrow. And it has not been rebutted by any of the publications, including the tobacco industry itself. It has not been rebutted.

We will come back to what the tobacco industry has been doing. So this is the issue. Why wouldn't we want to do it? What is going to be the argument against it? I don't find the arguments very persuasive. I do not hear them. It is just, "Well, we have a better way of doing it." But we are taking a very significant chance. Why do that when we have such overwhelming and powerful evidence this amendment can make a significant difference, and based upon the human tragedy that is taking place among our teenagers every single day across this country? It isn't a problem that is becoming less important. It is becoming more important. It isn't an issue that is resolving itself. It is becoming more acute. That is the question that we can ask.

We in this body tomorrow can take a major step in improving the quality of life for young people in this country for years ahead. The overwhelming majority of the American people are for it. The powerful special interests of the tobacco industry are against it. And we are going to find out here on the floor of the Senate when that rollcall is going to be there whether we are going to stand with the families and stand with the children of this country and stand with the future, or whether we are going to stand with an industry that has been so discredited in terms of its representations and presentations in this whole discussion and debate and over the period of this past year. That is the issue. I don't think we can have many that are more clearly defined than the one we have before us and will have before us tomorrow.

According to University of Illinois Professor Chaloupka, the Nation's leading authority on the impact of higher cigarette prices on teenage smoking, a $1.50 per pack increase in cigarette prices will reduce the teenage smoking by 56 percent over 10 years. A $1.10-a-pack increase, on the other hand, will reduce youth smoking rates by only 34 percent. In fact, the $1.15 increase will only return youth smoking to its 1991 level because of the recent surge in teenage smoking rates. That is clearly unacceptable.

FDA Commissioner David Kessler has called smoking a "pediatric disease with its onset in adolescents." In fact, studies show that over 90 percent of the current adult smokers began to smoke before they reached the age of 18.

It makes sense for Congress to do what we can to discourage young Americans from starting to smoke during these critical years. A $1.50-a-pack increase over 3 years is the right medicine. A $1.10 increase won't do the job.

Youth smoking in America has reached epidemic proportions. According to a report issued last month by the Centers for Disease Control and Prevention, smoking rates among high school students soared by nearly a third between 1991 and 1997. Among African-Americans, the rates have soared by 80 percent. More than 36 percent of high school students smoke, a 1991 year high.

With youth smoking at crisis levels and still increasing we cannot rely on halfway measures. Congress must use the strongest legislative tools available to reduce youth smoking as rapidly as possible.

Mr. President, let's take a look at what has been happening to the teenagers in this country over the period of the recent years. Tobacco use, as mentioned, is a "pediatric disease with its onset in adolescents." It is no coincidence that teenage smoking has continued to increase since the early 1990s. The industry has systematically reduced its prices on cigarettes and increased its spending on marketing and promotional strategies targeted at youth.

A significant date in this cynical manipulation is April 2, 1993, a day which will live in infamy in the tobacco industry. On that day, often called "Marlboro Friday," the Nation's largest tobacco company, Philip Morris, fired the opening salvo in the new price strategy which reversed a decade-long decline in youth smoking in the United States. Philip Morris slashed 40 cents off the price of Marlboro, its most popular brand of cigarettes among children. The strategy was defined to protect its profits against generic and discount brands which were capturing an increased share of the market.

Let me show this chart which gives the overall changes about what is happening with teenage smoking here in the United States. In 1991, it increased 27 percent; in 1993, 30 percent; in 1995, 34.5 percent; in 1997, 36.4 percent; a yearly average of a 32-percent rise since 1991.

This is going up so rapidly that we have to ask ourselves what are we going to do to try to slow it down? What can we do to possibly stop it? And the goals that have been set by the attorneys general and by the Commerce Committee is 60 percent. Let's try to do that. The best way is with the $1.50.

Teenage smoking on the rise. Just look at who has been the targets of the tobacco companies.

Blacks and non-Hispanic increased 80.2 percent. They have been targeted by the industry. They have been successful. Hispanic, up 34 percent, and white and non-Hispanic, 28 percent. They have been the targets of the tobacco industry effort to expand their market to bring these young people into addiction to be the source of profits for future years.

The tobacco industry looks at a child, and, says, "This is my profit for the future years. See what I can do to get that child addicted."

You say, "How can you say that, Senator? How can you make a statement like that on the floor of the U.S. Senate?"

Listen to what the Philip Morris memo says in 1987 at the Minnesota trial.

> The '82–'83 round of price increases prevented 500,000 teenagers from starting to smoke. This means that 420,000 of the nonstarters would have been Philip Morris smokers. We were hit hard. We don't need that to happen again.

This isn't a statement made by the Senators from Massachusetts, North Dakota or New Jersey. Here it is in the words of the tobacco industry. Listen to what they say about an increase in price.

> The '82–'83 price increase prevented 500,000 teenagers from starting to smoke. This means that 420,000 of the nonstarters would have been Philip Morris smokers.

That is their percent of the market.

> We were hit hard. We don't need that to happen again.

Well, they will have a chance to have it happen to them again tomorrow at

noontime when we do what the cigarette companies dread the most, give them an increase in price. That is what they dread the most. We will hear, oh, my goodness, all this fluttering around over this tax bill—can we afford it; it is regressive, and all the rest.

If you want to stop teenagers from smoking, there it is, according to the industry itself. And now, Mr. President, we see what has happened. Every parent in this country ought to be concerned about the explosion in the numbers of teenage smokers in this country with an extraordinary rise, the fastest rise we have seen really in the history of any kind of documentation about kids smoking.

Now, you can say let's look again at what was really the reason for this.

Well, Mr. President, I suppose it is all summarized best by this Philip Morris memo. We can see now what they were talking about when you look at what has happened to the real price—the impact on teen smoking from 1980 to 1995. Here is the steep increase in the price, and here is the decline in the teenage smoking.

That is what Philip Morris was talking about—the '1982-83 increase in the price and the decline in the teenage smoking, right there. There it is, Mr. President. And that represents the 420,000 Philip Morris potential smokers who didn't get started—in just that short line here.

But now let's look at what has happened with the price over the rest of the period of time. We had the gradual increase. And we will hear more about that. That is basically the monitoring and increasing of what? You say, Senator, well, it is just the price that is going up. How could they possibly—why would they do that?

Well, there is no question the price was on the rise all through here and look what was happening with teenage smoking, Mr. President. Look what was happening with teenage smoking. As the prices were going up here, the number of teenage smokers was coming down here.

We are challenged: Well, who are these public health officials? Where are these studies? What kind of findings is Dr. Koop referring to?

Just look at this record. Just look at this record as to what is happening out there in the countryside, the dramatic increases in the number of kids that are going ahead and smoking and look in the more recent times. And then look what happened where you have the increase in the price and the decline here. And then we see the drop, the real price right here corresponding to the dramatic increase and leveling off.

See the drop here, Mr. President. You see the drop in the real price and the explosion of teenage smoking. How many times do we have to make this case?

Well, you know something. People can say, "Well, look, it is flattened off." This hasn't flattened off.

Well, what happened in the interim? What happened in the interim is the explosion of the tobacco industry in advertising, $5 billion a year in advertising. And that has made sure that these kids continued on with their smoking. They monitor this carefully, what the price and the necessary advertising is. They take the focus groups; they do their polling; they do their marketing surveys. And then they know exactly what to do, how to calculate this, and that is what they are doing.

This whole group, increasing 30 percent a year during all of this period of time, are the kids that are being addicted to smoking. As we found out in our Judiciary Committee, we are a Nation that is concerned about what we are going to do about the problems of substance abuse, and just about every professional will tell you that the gateway in terms of the use of heroin, cocaine, the other substance abuse starts with smoking—and starts with teenage smoking. And they can draw you a correlation about where those kids start getting off the straight and narrow path almost by the time they begin to smoke as kids. That record is out there. I will put some of that in the RECORD and reference it tomorrow morning, Mr. President, but that is a fact and they can demonstrate that to you. That makes the case about as well as it can be made.

I don't know how much more convincing you have to be. I do not hear the response from our colleagues and friends who are opposed to this. According to Jeffrey Harris, health economist at MIT, who is the most experienced, thoughtful and knowledgeable, and certainly the most experienced in terms of these issues, the profit even with $1.50 for the industry itself will be $5.1 billion—$5.1 billion—$5.7 billion under the McCain bill; with no legislation, $6.3 billion. Very, very profitable industry. And another $2 billion to $3 billion per year from international cigarette sales and from nontobacco products—Miller, Kraft, Nabisco.

We are talking about economic dynamite when we are talking about these companies. And they shed these crocodile tears if we propose putting on a $1.50 per pack.

The thing we do know, Mr. President, is that we will have a significant impact in reducing teenage smoking. Why take a chance? Why take a chance of not doing this job right? Why take a chance of not taking the steps that are necessary to move ahead to make a difference for all of these kids? I do not understand it.

We have heard about some of the reasons why we should not do it. I think the Senator from North Dakota stated it well. If we do it, the arguments have been made, they won't be profitable. That has been responded to. If we do it, we are going to get into questions of smuggling. We will have to deal with this issue. And as Senator CONRAD had pointed out, the smuggling is not taking place in the countries with the highest costs, which you would normally think. Countries where smuggling is the greatest is where the prices are, in some instances, a quarter or a third of the higher price, but fail to have effective law enforcement provisions. So you can say, "Well, what are you going to have in terms of law enforcement provisions?"

Mr. President, others will speak to this. But just to mention briefly: Closed distribution systems; require licensing of everyone in the cigarette distribution chain, manufacturer or wholesaler, distributor and retailer; all cigarettes manufactured for export must be clearly marked so they can be easily identified; additional law enforcement resources for Customs and ATF.

We hear excellent responses from those who have responsibilities for smuggling, and they have answered to that. So we know we are going to have minimal impact on the profits of the industry. We know it can work effectively on smuggling. And we know what group in our society is going to benefit the most.

Let me just continue about the teenagers and some of the things that happen to these teenagers. Philip Morris reduced prices by 50 cents in my own State of Massachusetts and New York, both of which had recently increased their cigarette tax. This is some 3 years ago. A month later, R.J. Reynolds, the Nation's second largest cigarette company, which manufactures Camel cigarette, responded by matching Philip Morris price cuts on its most popular brands with teenagers, and the price cuts came at the same time the Federal tax was being increased from 20 to 24 cents a pack and a larger tobacco increase was being considered to fund the Clinton administration's proposal for health care reform. In addition to the price cuts, the tobacco industry continued to spend on advertising, promotional giveaways, T-shirts, coupons, sports gear, buy-some-get-some-free offers to increase sales.

And, as I mentioned, much of this advertising was targeted to children and adolescents, promising popularity, excitement, success, for those who begin to smoke. It is no coincidence, then, that the price cuts and increased advertising aimed at kids led to the rise in teenage smoking.

I just show that, time in and time out, if you lower the price and you increase the advertising, you increase the teenage smoking. That is as clear as it is that we are standing tonight. You just cannot argue with those facts; they are indisputable. And, still, we are

having to make this case for the increase, for $1.50. The $1.50 per pack will address these problems. We will see this dramatic reduction in teenage smoking. It has been stated by those who have studied and reviewed this. The amendment we are proposing provides for the cigarette price index of $1.50 a pack for the next 3 years. The $1.10 increase over 5 years in the managers' amendment is not adequate to achieve the youth smoking reduction goals.

If you had the $1.10 in 1 year, even $1.10 in 2 years, you would have some impact. But $1.10 over 5 years is not going to have the kind of impact, even with the look-back provisions, that those who support that proposal are supporting, particularly if you are talking about reductions of 60 percent. You cannot have it both ways. If you are going to reach 60 percent, you have to have the increase in the price, and it has to be fast. And you have to have the corresponding counteradvertising measures and other supports, and a look-back provision that is going to be worthy of the name. But just to say we are establishing a goal and then not to have the real teeth in that proposal I think diminishes what we are stating is our goal and what should be our goal, and that is to pass legislation that is going to do something about kids smoking in our country and around the world.

By raising the price by $1.50 instead of $1.10, we will prevent an additional 750,000 children from smoking over the next 5 years. That will mean 250,000 fewer premature deaths from tobacco-induced diseases. What other step could we take here in the U.S. Senate, what could we possibly do in this session, so we could say we will save the lives of 250,000 children in the action of a single day? You don't find it. We won't have it. It is not there. But it will be tomorrow. We will have that kind of impact. And that is the issue.

Public health experts have overwhelmingly concluded that the increase of $1.50 is the minimum price increase necessary to achieve our youth smoking reduction. Dr. Koop, Dr. Kessler, the Academy of Sciences, the American Cancer Society, the American Heart Association, American Lung Association, American Medical Association, the ENACT Coalition, Save Lives Not Tobacco Coalition, have all stressed the importance of a price increase of at least $1.50 per pack—some for $2, most for $1.50. And even those that were for $2 believe $1.50 with adequate look-back can achieve the goal. It is the single most important step we can take to reduce youth smoking.

More than a third of the Members of the Senate have already cosponsored bills proposing $1.50 increase, because, as our colleagues know, the Budget Committee endorsed a $1.50 increase on a bipartisan vote, 14 to 8, in March. Last Thursday, a bipartisan majority of the Finance Committee voted for a cigarette price increase of $1.50. Too many young people are at stake for us to ignore the advice of all of our public health experts. Those efforts were bipartisan. Just as Dr. Koop speaks for Republicans and Democrats, those efforts were bipartisan in the Finance Committee and the Budget Committee. It should be bipartisan tomorrow.

The American people have had enough of the tobacco industry's distortions and denials about the addictiveness of nicotine. They have had enough of the industry's cynical marketing of cigarettes to children. They have had enough of the industry's decades-long coverup of the health risks associated with smoking.

This is an industry which once argued that cigarettes are no more addictive than Gummy Bears. This is an industry that used Joe Camel in advertising, blatantly designed to hook children on smoking. Now they ask us to believe that a $1.50 increase will lead to the bankruptcy of big tobacco and a rampant black market for illegal cigarettes. That argument by big tobacco has no more credibility than any of the other false arguments that have been made over the past 30 years and more. Over the years, big tobacco has proved itself to be the master of the big lie. Congress should have learned this lesson long ago, and it is time to trust the Nation's public health leaders, not big tobacco's public health prevaricators.

The tobacco companies have known these facts about addiction. For years they have been fully aware that they need to persuade children to take up smoking in order to preserve their future profits. That is why big tobacco has targeted children, the billions of dollars in advertising and promotional giveaways, their promise of popularity, excitement, and success for young men and women who take up smoking.

The recent documents released in the Minnesota case against the industry reveal the vast extent of the industry's marketing strategy to children. In the 1981 Philip Morris memo entitled "Young Smokers, Prevalence, Implications, Related Demographic Trends," the authors wrote that it is important to know as much as possible about teenage smoking patterns and attitudes. "Today's teenager is tomorrow's potential regular customer and the overwhelming majority of smokers first beginning to smoke while still in their teens and the smoking patterns of teenagers are particularly important to Philip Morris. Furthermore, it is during the teenage years that the initial choice is made."

If nothing is done to reverse this trend in adolescent smoking, the Centers for Disease Control and Prevention estimate 5 million of today's children will die prematurely from smoke-caused illnesses. Five million of today's children will die from smoke-caused illnesses. The American public has had enough of the daily tragedy of death and disease caused by tobacco use. The tobacco industry has literally had a license to kill for many decades. Now the license is being revoked and Americans are demanding dramatic action by Congress to drastically curb youth smoking.

This Congress will be judged, in large measure, by whether or not we respond effectively to that challenge, and increasing cigarette prices by $1.50 is the most effective way to reduce teenage smoking. The public health community agrees it is the minimum increase needed to achieve 60 percent over 10 years.

The $1.50 has the broad support of the health community, and it deserves the broad support of the U.S. Senate as well.

In conclusion, I want to mention again what this issue is all about, and that is what this amendment will do for the young people of this country.

We have the $1.10 increase over a 5-year period that is in the measure that is before us this evening. The measure that we offer will raise the price of cigarettes by $1.50. The number of children whose lives will be saved by the cigarette price increase by $1.10, over what it would otherwise be, will be 1 million; increasing cigarettes by $1.50, an additional 1.25 million. There is for every 10 percent, some 7-percent increase in reduced teenage smoking.

The difference from the $1.10 and the $1.50 is 750,000 in terms of those teenagers who will smoke—750,000. Mr. Koop said today the new studies would bring it up to 900,000. But we are talking between 750,000 to 900,000 children, of which some 300,000 of those will die prematurely. We can save those children. We can save the 750,000 who would otherwise smoke, and we can say to the 300,000 young people, the children in America today, "We can save your lives as well." The question is, Are we willing to take that step to raise the cost by $1.50?

I certainly hope we will, Mr. President. I point out that even raising it by $1.50, we will be where most of the European countries are. Even with the $1.50 increase, the United States will be at $3.59; France at $3.50; United Kingdom at $4.40; Denmark at $5.10; and Norway at $6.82. We will be right in the middle of the industrial nations of the world.

Let me say, the tobacco industry makes profits on all of those countries. The tobacco industry makes generous profits from all of these countries that are a good deal higher than even the $3.50, as well as from the other countries.

Mr. President, this actually is a modest step, a very modest step, but one that is necessary in order to protect the young people of this country. I hope we will do so tomorrow when the roll is called.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate will stand in adjournment until tomorrow, May 20, at 9:30 a.m.

Thereupon, the Senate, at 8:23 p.m., adjourned until Wednesday, May 20, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 19, 1998:

THE JUDICIARY

CARL J. BARBIER, OF LOUISIANA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA, VICE OKLA JONES, II, DECEASED.

HOUSE OF REPRESENTATIVES—*Tuesday, May 19, 1998*

The House met at 10:30 a.m.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate passed a bill of the following title, in which concurrence of the House is requested:

S. 1723. An act to amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers.

MORNING HOUR DEBATES

The SPEAKER. Pursuant to the order of the House of January 21, 1997, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to 30 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to 5 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. SAXTON) for 5 minutes.

IMF PROGRAM SPARKS INDONESIAN TURMOIL

Mr. SAXTON. Mr. Speaker, Americans across our country have seen televised pictures of rioting in Indonesia, of social unrest and political unrest and, according to various news service accounts, the outbreak of rioting in Indonesia was triggered by price increases of basic commodities mandated by the International Monetary Fund. One recent Reuters news story notes that the IMF conditions were "A key cause of the recent demonstrations."

The recent violence raises important questions about whether the IMF and its program underestimated the political fragility and instability, both political and social, of Indonesia. This is a relevant concern because political instability could well undermine the potential for economic stabilization.

In yesterday's Wall Street Journal there was an article, and I would like to read a few lines from it. Date line, Washington:

Last fall, Indonesia turned to the International Monetary Fund for an economic life raft. Instead, the resulting IMF program contributed to the turmoil now wracking the world's fourth most populous nation. The IMF program failed to stabilize the Indonesian economy, its stated purpose. As the economy worsened, domestic dissatisfaction grew.

And it goes on,

Jeffrey Sachs, whose Harvard institute has long been an adviser to Indonesia, has been warning for months that the U.S.-backed IMF prescription was harsh and counterproductive.

In addition, it goes on,

Malaysian prime minister Mahathir Mohamad also blames the IMF for worsening Indonesia's problems. "The IMF is not sensitive to social and economic restructuring," he said, according to Malaysia's official news agency.

To answer these questions, more information is needed to understand the International Monetary Fund program and its recent impact on Indonesia. Once again I call on the IMF and the Treasury to publicly release its staff reviews of the Indonesian bailout so that Congress, the public, and private experts can better understand the IMF policy and its effects.

Previous problems with the IMF program were documented in the New York Times article last winter which reported that the International Monetary Fund reviewed and found that the IMF conditions had sparked a bank run on Indonesia several months ago. In recent days the Wall Street Journal has also come to similar conclusions, and I just read from that article.

Given this horrific outburst of violence in Indonesia, Congress has an important obligation to examine the role of the IMF and the role it has played in contributing to this situation with, I might add, the use of U.S. taxpayers' dollars. While it is clear that the policies of the Indonesian government had caused severe economic problems, it appears that the IMF conditions made the situation even worse.

The fragility of the political environment and the potential for violence must be adequately considered when considering these programs. For example, is it not evident that the IMF formally integrated a political risk analysis into the economic program? Obviously, it failed to do so. If the IMF program failed to address the potential that it could destabilize political, social and economic conditions even further, then it was flawed to start with.

Congress has the public need and the ability to examine the IMF staff reviews of the bailouts to determine whether the risks of the IMF program were adequately considered. We have that responsibility and the IMF should give us the information. These documents have been requested repeatedly of the IMF and the Treasury Department. It has been made clear that they may be sanitized before their release.

Mr. Speaker, I include the entire article from the Wall Street Journal for the RECORD:

[From the Wall Street Journal, May 18, 1998]

TIME WILL TELL IF IMF HELPED SAVE OR WRECK INDONESIA

(By Bob Davis and David Wessel)

WASHINGTON.—Last fall, Indonesia turned to the International Monetary Fund for an economic life raft. Instead, the resulting IMF program contributed to the turmoil now wracking the world's fourth most-populous nation.

The IMF program failed to stabilize the Indonesian economy, its stated purpose. As the economy worsened, domestic dissatisfaction grew. The fund also high-lighted what the IMF and the U.S. condemn as a crooked brand of capitalism practiced by the Suharto regime, undermining its legitimacy and emboldening the opposition.

Whether the IMF, in the end, is seen as a villain that provoked widespread suffering or a catalyst for constructive change depends largely on what happens in Indonesia over the coming weeks and months.

IMF critics, led by outspoken Harvard University economist Jeffrey Sachs whose Harvard institute has long been an adviser to Indonesia, have been warning for months that the U.S.-backed IMF prescription was harsh and counterproductive. "The IMF program was really badly designed and made a bad situation worse," says Steven Radelet, a Sachs colleague.

Malaysian Prime Minister Mahathir Mohamad also blames the IMF for worsening Indonesia's problems. "The IMF is not sensitive to the social cost of economic restructuring," he said, according to Malaysia's official news agency.

But the Indonesian government hurt itself, too. It backtracked on pledges it made publicly to the IMF, undermining the confidence of both domestic and foreign investors. It vowed to dismantle unpopular arrangements that enriched Suharto cronies, but then rebuilt them under different names. And, at a pivotal moment, it flirted with a controversial currency-board approach to monetary policy. After a parade of international leaders pressured Indonesia to live up to its agreements, Mr. Suharto relented, underscoring his weakness to the newly emboldened opposition.

Then earlier this month, Mr. Suharto's new cabinet ministers changed direction and implemented IMF-backed increases in fuel prices much faster than the IMF demanded, sparking the recent riots. Although the IMF program allowed for the increases to be spread out over a month, some prices soared as much as 70% overnight. "We didn't set a precise date for [removing subsidies]. The date was chosen by the government," an IMF official says.

Despite occasional misgivings about some elements of the IMF approach, the Clinton administration strongly defends the fund.

"The IMF didn't create the Indonesian economic and political crisis," says Mr. Clinton's national security adviser, Sandy Berger. "Indonesia created the economic and political crisis. The International Monetary Fund came in to try to help restore stability and put it on a path back towards growth."

At their annual summit this weekend, leaders of the Group of Seven large industrial nations and Russia, put the onus on the Suharto government. "Successful economic reform and international support for it will require political and social stability," they said in a statement, and urged the Indonesian government to open a dialogue with opposition leaders over reforms that address "the aspirations of the Indonesian people."

Inside the IMF, some argue that the fund's willingness to confront not only fiscal and financial policy issues, but also the corruption of the Suharto regime, is hastening long-overdue social change. Indeed, IMF programs in Korea and Thailand, they argue, may be succeeding precisely because they coincide with political reforms—a new democratic government in Seoul, constitutional reforms in Bangkok. Mr. Suharto's departure wouldn't be mourned at the IMF.

But it's also clear that IMF advice failed to revive the Indonesian economy and may have worsened a bad situation. Last year's demand that Indonesia close 16 troubled banks—meant a signal that the government was finally addressing problems in the financial sector—backfired. Depositors pulled funds out of other banks, further weakening the system.

Harvard's Mr. Radelet said the IMF's emphasis on ending monopolies and closing government projects that are owned by friends and family of Mr. Suharto didn't address some fundamental economic problems. For months, for instance, the fund did little to help restructure Indonesian companies' huge foreign debt, which prevents them from getting the added financing needed to run their businesses and from taking advantage of a weak currency to increase exports.

The IMF has until early June to decide whether to disburse another $1 billion to Indonesia, as part of a $43 billion bailout package it cobbled together for the nation. Indonesian authorities have said they plan to roll back some of the price increases that sparked riots. But that by itself isn't expected to put the IMF's added lending in jeopardy.

TRIBUTE TO THE HONORABLE JENNINGS RANDOLPH

The SPEAKER pro tempore (Mr. PETRI). Under the Speaker's announced policy of January 21, 1997, the gentleman from West Virginia (Mr. RAHALL) is recognized during morning hour debates for 4 minutes.

Mr. RAHALL. Mr. Speaker, on May 8 this year, the Nation lost a great man, a former U.S. Senator, a beloved West Virginian, a great orator, a man of civility and courtesy, a master of the legislative compromise, a builder of concrete, asphalt and stone, and a builder of character named Jennings Randolph, who died at the grand old age of 96.

When Senator Randolph passed on, it was truly the end of an era. He was the last living Member of Congress from the New Deal era, making him the last of the New Deal legislators who voted to enact the Social Security System and a minimum wage.

On May 11 of this year, had he lived, Senator Randolph would have marked the 65th anniversary of his freshman speech on the floor of the House. He spoke on the subject of Mother's Day, an event founded by fellow West Virginian Anna Jarvis, and his speech, an eloquent one, was entitled, "The Unapplauded Molders of Men". This speech was given on the 69th day of Roosevelt's famous first 100 days, and on that day Jennings Randolph the great orator was born.

As many of my colleagues will know, it was Senator Randolph who began, during his House tenure, to amend the Constitution to allow 18-year-olds to vote. He succeeded in this endeavor in 1972, as a U.S. Senator, with the 21st Amendment to the Constitution, the first and only constitutional amendment that took a mere 90 days to achieve ratification by the requisite number of States and to become the law of the land.

At one time, I am told, he forced then-President Nixon to spend the funds appropriated for the interstate system by filing an injunction against Nixon's practice of impounding the funds, keeping them from being spent. It was in the 1974 budget act that impounding funds by a President was first restricted.

Jennings Randolph would be proud of our every effort, Mr. Speaker, and success this very day in freeing some of the collected motorists' gas taxes and spending them on transportation needs. Yes, J.R., we will one day restore trust to our Highway Trust Funds.

I would like to tell my colleagues a little something about the Senator's lifelong public service, that we have seen little written about of recent date. Having traveled so often with the Senator, many times late at night in a very small plane, two or four-passenger plane, sometimes through very stormy weather, the first comment the Senator would make upon landing was "Where is the telephone?". I would be thinking of other places to visit but the Senator was always wanting to keep in touch with the people.

Senator Randolph was known for his devotion to people and his compassion for all people in need. He coauthored the Randolph-Shepherd Act for the Blind, giving blind persons the opportunity and the right to be employed and have the dignity of a paycheck. The blind are still benefiting from that effort today.

He fought for and maintained the Black Lung Benefits Act throughout his public life in the Senate. Once, when he was being chastised by some of his Coal Mining constituents because the Black Lung benefits bill was then languishing in the Senate with no action being taken, Senator Randolph quietly but firmly said: There are only 18 coal mining states in the Union. Those 36 Senators are going to vote for this legislation. Persuading 64 other Senators representing non-coal mining states that their constituents should or must allow their tax dollars to be used to pay for the benefits for workers in other States is not an easy matter to accomplish. It takes time. And I pay those 64 Senators the courtesy of approaching them one on one, personally, to discuss the plight of coal miners with black lung disease, and their need for disability compensation for themselves and, for those who have died, their widows and orphans. He told them "it will get done * * *" And it did.

Senator Randolph, concerned for the plight of mentally and physically disabled children and concerned over their lack of an appropriate education, established the first Subcommittee on the Handicapped in the Senate, and he chaired that Subcommittee with passion and the courage of his beliefs as he authored and guided to enactment the Education for all Handicapped Children Act. Today, the Special Education law is working to mainstream disabled children into regular classrooms with their peers across this Nation in every school building getting a free and equal education to which all children are entitled.

It was Senator Randolph, with his great love for airplanes and aviation, who first proposed the establishment of the National Air and Space Museum. When he first proposed it, of course, the space age hadn't been ushered in yet—and so when asked to give the Dedication speech for the new Museum, Randolph remarked that it took so long to get Congress to act on his proposed aviation museum, they had to add the word "space" to its name.

And it was Senator Jennings Randolph who, with another licensed pilot aboard, flew the first coal-fueled aircraft from Morgantown, West Virginia to National Airport. Senator Randolph was always looking for ways in which coal mined by his coal-mining constituents could be used to help strengthen and stabilize the economic base of his beloved State of West Virginia.

And finally, but never lastly, the Senator realized his long held dream of establishing a peace-arm of the U.S. Government. Serving under Roosevelt when the Nation was drawn into World War II, Randolph believed that the U.S. Government ought to have a Peace Department since it had a War Department (the War Department was changed to the Defense Department in 1948, the year after Randolph left the House). It took him from 1943 to 1984—41 years—but the last legislative initiative he authored and guided to enactment was the creation of the U.S. Institute for Peace, a still vital, thriving institution devoted to the waging of peace, not war.

Speaking of the U.S. Institute of Peace, the Senate's consideration of the legislation in 1984 was not an easy road. Some of the more conservative Members accused him of creating an institution that would attract communists and become a possible security risk. And one Member went so far as to call Senator Randolph the "Jane Fonda" of the Senate. Randolph did not respond to the charges, of course, for that was not his way. But he did try to get President Reagan to support his Peace Institute bill.

One day, when the Labor and Public Welfare Committee in the Senate was about to vote on whether to waive the budget act so that the Randolph Peace Institute bill could come to the floor for a vote, President Reagan called Senator Randolph. The Senator gently but firmly said to the Committee Clerk: Please tell the President I am busy here. I will have to call him back." In about 15 minutes the Committee had voted favorably on the budget waiver Senator Randolph needed, and he then turned to the Clerk and said: Please get the President for me, I can talk with him now. To which the Clerk replied: The White House is still on the line, Senator, waiting for you to finish.

Randolph still did not get the President to endorse his bill, but he spoke with him about why he should do so.

As I conclude, Mr. Speaker, I quote from Senator Randolph's maiden speech on the House floor in 1933, when he said,

Volumes have been written about kings and emperors; historians have told of the exploits of a thousand heroes of battle; biographers have packed into colorful words the life and death of our statesmen; while painters have filled galleries with the likenesses of our living great.

Some day, some enterprising young scholar will write volumes about Jennings Randolph, and historians will tell of his exploits, and biographers will pack many colorful words about the life of this mighty statesman from West Virginia, Jennings Randolph.

INTRODUCTION OF AUTO CHOICE REFORM ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from Texas (Mr. ARMEY) is recognized during morning hour debates for 2 minutes.

Mr. ARMEY. Mr. Speaker, tomorrow the Subcommittee on Finance and Hazardous Materials of the Committee on Commerce will hold a hearing on my bill, the Auto Choice Reform Act, which will cut auto insurance premiums by 24 percent and save American drivers $193 billion over 5 years.

Today we are forced to pay more than is necessary for auto liability insurance in order to be eligible to play the tort lottery, whether we want to or not. Some people see this lottery as a way to hit the jackpot. They exaggerate their real damages in order to sue for huge noneconomic damage awards. This fraud and abuse, as well as the excessive lawsuits, have helped drive up the cost of auto insurance and have led to the undercompensation of seriously injured victims.

Auto Choice addresses these problems by giving American drivers a choice in the kind of insurance they can buy. Under Auto Choice they can stay in the tort system or they can opt to collect their actual losses from their own insurance company and forego suits for economic damages. In exchange, they will see lower premiums and better compensation.

Americans should be free to buy the auto insurance policy that best fits their needs. Auto Choice gives them this freedom.

THE ARMENIAN JOURNEY TO WORCESTER

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from Massachusetts (Mr. MCGOVERN) is recognized during morning hour debates for 1 minute.

Mr. MCGOVERN. Mr. Speaker, on Sunday I had the privilege to welcome to Worcester, Massachusetts, His Holiness Karekin I, Supreme Patriarch and Catholicos of all Armenians.

Also present were Worcester Mayor Raymond Mariano; Massachusetts Governor Paul Celluci; Archbishop Khajag Barsamian, Primate of the Diocese of the Armenian Church of America; Reverent Father Aved Terzian, Pastor of the Armenian Church of our Savior; and many other ecumenical and governmental officials.

Worcester is a fitting site to welcome his Holiness on his Pontifical visit to celebrate the centennial of the Armenian church in the United States. In 1891, the Armenian Church of our Savior on Salisbury Street in Worcester was the first Armenian church founded in the United States.

Today, over 1,400 Armenian Americans reside in the Third Congressional District of Massachusetts. The history of their journeys to America is a proud and important part of our community heritage.

These stories were recently highlighted in a published story in the Worcester Magazine entitled, "The Armenian Journey to Worcester". In honor of the visit of his Holiness to Worcester, I include the story in the RECORD:

[From Worcester Magazine, Apr. 29, 1998]

THE ARMENIAN JOURNEY TO WORCESTER

(By Clare Karis)

"Who today remembers the extermination of the Armenians?" Adolf Hitler's ominous words, spoken on the eve of his invasion of Poland on Aug. 22, 1939, launched his six-year extermination of 6 million Jews and 7 million others. His reasoning, unconscionable as it was, was chillingly clear: Not much attention was paid to that genocide, surely we can up the count this time.

Nearly 60 years later, the average American knows little of the Armenian Genocide. But that blood-soaked page of history is seared indelibly into the memories of those who survived. Those who saw their own mothers doused with kerosene and set on fire. Those who saw their brothers beheaded. Those who saw their families, one by one, drop starved and exhausted to the burning desert sands. Those who saw a river run red with blood. Those who, by whatever twist of fate or fortune, escaped with their lives.

But those survivors' numbers are fast dwindling. Children who witnessed the Armenian Genocide of 1915 are now 90 or so. And as the corps of survivors is reduced, so too is the chance that the story will be documented, recorded and passed on—and heeded.

"Those who cannot remember the past are condemned to repeat it." George Santayana's prophecy, inscribed in the atrium of the Simon Wiesenthal Center in Los Angeles, is darkly telling on the 83rd anniversary of the genocide, which began April 24, 1915, and before its end claimed the lives of up to 2 million Armenians.

A goodly number of the diaspora settled in Worcester. The Armenians equated the city with America; they would say, "Worcester is America." A strong and insular Armenian community sprang up in the Laurel Hill neighborhood, which reminded the emigres of the sun-splashed hills and valleys of their beloved homeland. That neighborhood was known as "Little Armenia"; after housing became scarce there the population spilled out onto nearby streets—Chandler, Bancroft, Pleasant, May, Irving—to become the colony "Big Armenia." It was a joyful day for the God-fearing tempest-tossed when the Laurel Street Church opened its doors for worship and community gatherings.

The survivors live each day with their memories. Their ears echo even now with the sound of an ax splitting a door, bullets whistling through the air, a baby crying over its mother's body. Their unrelenting mind's eye flashes back and then fast-forwards—like jump cuts in a macabre film noir—to and from images that can never be forgotten.

For some eyewitnesses, the memories run clear and pure as a mountain stream. For others, the waters have muddied; images have begun to dim and blur and overlap until it's hard to separate what happened eight decades ago from yesterday's daydream or last week's nightmare. One of our chroniclers, Dr. George Ogden, is very careful to say that he can't be quite sure that all he remembers today happened exactly the way he thinks it did. It was a lifetime ago, after all, and he was just a little boy. But how can he forget being dragged to a police station and having his hands flayed until they bled because he hummed a patriotic song?

In the book Black Dog of Fate, a cousin of author Peter Balakian gives this acount of what she saw along the Euphrates. "We were delirious from hunger and thirst. We picked seed out of the camel dung and cleaned them off the best we could and put them on the rocks to dry them out in the sun before we ate them. . . . Whenever we passed a eucalyptus tree I gathered some leaves so that at night I could suck on them to get water in my mouth. . . . For miles and miles you saw nothing but corpses, and the brown water sloshing up on the banks. I found corpses washed up, half deteriorated, headless, limbless, body parts floating. Hundreds of rotting bodies were piled in heaps and the black terns were feeding on them. Many women and girls threw themselves in the river rather than be abducted or raped. At several spots there were girls who had tied their hands together and drowned themselves . . . their blue bodies were still tied to each other's. Their tongues were black, half-eaten, and their hair was muddy and dry like old grass. There were dead babies too . . . when Dikran, who was delirious now, began to pick the bodies out of the water, the gendarmes whipped him and told him to put them back. Later the geese and the wildcats came down from the valley to eat them."

Turkish officials denied then—and continue to deny—that such gory tableaux were

any more than the usual unfortunate sidelights of war, certainly not evidence of any premeditated plot to kill off the Armenians. At a genocide commemoration at which Balakian, a poet, spoke, Turkish people passed around pamphlets. One, published by the Assembly of Turkish American Associations, attempted to debunk Armenians' claims that they had suffered atrocities in the Ottoman Empire.

"Carefully coached by their Armenian nationalist interviewers," it said, "these aged Armenians relate tales of horror which supposedly took place some 66 years ago in such detail as to astonish the imagination. Far more Turks then Armenians died in the same war . . . consequently one cannot conclude that the Armenians suffered any more terribly or that the Ottoman government attempted to exterminate them. There was no genocide committed against the Armenians in the Ottoman Empire before or during World War I. No genocide was planned or ordered by the Ottoman government and none was carried out."

But Judith Herman, in Trauma and Recovery, points out, "After every atrocity one can expect to hear the same predictable apologies: It never happened; the victim lies; the victim exaggerates; the victim brought it about herself; and in every case it is time to forget the past and move on. The more powerful the perpetrator, the greater is his prerogative to name and define reality, and the more completely his arguments prevail."

The people whose stories are told here have done their best to move on. But they will never forget.

MARION DER KAZARIAN

Marion Der Kazarian was born in 1909, and is 89. She witnessed the death of her father, the Rev. Father Haroutune Der Harootunian, at the hands of Ottoman Empire soldiers in Armenia when she was 6 years old. She immigrated to America in 1921. Graduating from North High School in 1930, she opened Marion's Beauty Shop, where she worked until she married Garabed Der Kazarian and they had children. She has written a book about her experience, "Sacrifice and Redemption."

I was 6 years old when the massacres started. My father was reading the Bible to us. It was night. All of a sudden, the door broke and six gendarmes came in and dragged my father out—like a criminal. My father, who was the priest of the village. My youngest sister Rose ran after them, begging, "Daddy, Daddy, don't go! Please don't take my daddy away." Father stopped and removed a cigarette case from his coat pocket and handed it to her. "Keep this for me until my return," he said in a soft voice. His cheeks were wet with tears. We were left alone.

My mother had gone to Chimishgazak [a city in Armenia, now part of Turkey]. In 1914, my father had befriended a gendarme who told him, "This time it's going to be terrible, not like before. You come over my house. I'll save all your children." My father didn't want to leave so the gendarme said, "Then separate the children." My mother took my brothers to Chimishgazak and they went to school there. When the war broke out, my father said, "We must bring the children together. If anything happens, we'll all die together." So my mother went to bring the boys back to Ashodavan.

After my father was taken, we were all alone and scared but we thought we should go outside. We knew they would find us anyway. People were gathered in front of our house. They were all crying and the gendarmes were hitting them. They used cloths [in people's mouths] to keep them from yelling. The weather was cool and damp. Everyone was crying for their father and mother. The Turkish soldiers were very mean. They wanted to keep the people quiet so they were hitting . . . hitting them hard.

The men had been tied up and taken to the Euphrates River. They lined the men up by the river, with my father in front. They were on their knees with their hands bound behind them. They told my father, "If you renounce your Christian faith, we will spare your life." But my father said, "I will die for my faith." So they killed him. Then they went down the row asking all the men the same thing. When they said "No," they killed them.

Suddenly, people started to yell and scream. They saw clothes coming down the river—the river was all bloody. My sister-in-law Anna had three young children. When she saw the priestly robes of my father in the river, she knew he had been killed. She was crazed with grief. She jumped into the current with her sons. All four drowned. The men's bodies were left on the bank, purposely, to rot and be picked over by birds and animals.

Now we waited for our destiny. What would happen to us? Toward morning, the Turkish soldiers came and took us. They wanted us to cross the river. The man who had befriended my father, the same soldier who warned us about the massacres, came over and said, "I want to take the whole family to my house. I'll keep you. Or you probably won't come out alive." So we went with him.

In the meantime, my mother was out looking for us in the Dersim mountains. She had gone to Chimishgazak to get the other children but they weren't there, so she set out to find the rest of us. She met a lady who told her, "I saw your children. I know where they are. I'll get them to you." The lady told my sister, who had gone to fetch water, "Come here next day, and I'll bring your mother." The next morning my sister told me, early, "We're going out to fetch water." So we went. These two ladies came. We could not recognize the ladies. They were all bundled up so they wouldn't be recognized.

We started walking. Halfway, we met my brother. He was looking for my mother too. We walked all day and came to a cottage in Haghtouk where everyone was staying. I found my sister there, my youngest brother. They were all there. When the lady from the well took off her disguise, Rose and I said, "Mother, mother!" We all cried.

We stayed there that winter. It was a very bad winter. In the summer we heard that the Russian Armenians were coming to save us. There were about 10,000 Armenians in the Kurdish mountains. We had to wait for our turn. We came to Erzeroum. We stayed in the barracks. There was no food, nothing. The Red Cross came the next day and opened a cafeteria. They would give us just a cup of tea and one piece of sommi, bread.

In 1987, the Turkish government claimed that the bones and skeletons of more than 10,000 bodies found in Erzeroum belonged to Turkish citizens killed by Armenians. They built a monument over the bones and said we killed them, that the Armenians killed the Turkish people. But they lied. If the genocide didn't happen, where are all our relatives? What happened to 2 million Armenians? They didn't just disappear.

One day all the men and women were called together and told they would be separated because the Turkish soldiers were coming. So the older people were separated on one side and the younger ones on the other. There were two different roads we were supposed to take. There was fighting in back of us. We reached Baku. We stayed there three days. Again the Turkish soldiers came. Then we went on to Stavropol. We met my mother, who was already there.

We stayed there in Russia for three years. We were comfortable. Then the revolution started. It was terrible, worse than the first one. When we tried to leave, a crowd of men and women were at the railroad station. It was full of people. Everyone was pushing, pushing. I couldn't find my mother. I was crying for her. Everyone was gone, and I was screaming for my mother. This old man came and said, "Why are you crying?" He said, "Don't cry, they'll wait for you at the second station." Then he put me on the wagon, the train, and then my mother was there. From there we went to Constantinople and from Constantinople to America.

DR. GEORGE OGDEN

Dr. George Ogden was born June 5, 1911, in Armenia and is 87. He immigrated to the United States in 1920, settling in Kenosha, Wis., and earned a Ph.D. in surgical chiropody from Northwestern Institute of Foot Surgery. He relocated to Worcester, where he practiced for many years. He and his wife Mary, who was a WAC during World War II, have been married since 1941.

It was a terrible massacre. In order to hide it, the Turkish soldiers sent the Armenians to the desert. They threw them in the river. But they couldn't hide it. They would pick you at random from every family in the country where there were mostly Armenians. They would take the Armenians out and wouldn't tell them what it was all about. They colored it as if nothing serious was going to happen until they collected them all together. And then! Some of them they threw out to the desert, some they threw in the river. Any way it was convenient for them to kill the Armenians.

After the genocide, people sang the song of the misery they went through. It describes the Euphrates river flowing with blood, how awful the Euphrates river looked, flowing with blood instead of water.

I remember I was given a licking in one of the police stations because I hummed the song I was singing as I was selling pencils. The commissar had a whip and a sword on the wall and he said, "Tell your story." I told him where I heard the song and he took the whip from the wall and hit me in the hand. Oh, I was in such pain. It took weeks to heal the wounds. I was only 5 or 6 years old. He said, "Next time you say anything against the government, we're going to cut your hand off." And that's all I remember as a child. There are other things . . . but it was so long ago and I was very young. It's like a dream.

My mother used to lose her babies and she blamed it on the condition of the country, what was happening, how terrible it was how the Turks persecuted the Armenians. She had so much milk after losing the babies that she used to feed other children.

Because of my experiences as a 5-year-old in Turkey it has been my ambition to take children at kindergarten age and teach them that human beings ought to be cherished and raised in the right way: to be proud of their heritage, believe in the sanctity of children and teach them peace—instead of when they get to high school creating their own heritage because they think they're "it," you know! And when they get to be 20, 21, they want to make all the money in the world. Proudness doesn't come from money. It comes in taking care of the young. The kindergarten program should be revamped so by

the time children graduate kindergarten they are already good citizens of America—citizens of peace.

JOHN KASPARIAN

John Kasparian was born in Van, Turkish Armenia, in 1907, and is 91. He immigrated to the United States in 1927. He married in 1932; his wife Virginia died recently. For 55 years, Kasparian owned and operated a shoe-repair shop in Worcester. He saw his 5-year-old brother die of starvation in Armenia.

I lived in Van. I was 7 to 8 years old when I noticed the fighting—24 hours steady, for three months. The Armenians didn't have any army but everyone got together to fight because the Turks were trying to get our country at any cost. They were killing us right and left. But being killed was happier than having your arm or leg cut off and suffering for God knows how long. If you say anything against them, they cut your neck. It was nothing to them to kill humans left and right. It's the God's truth.

My father was trying to protect our house and got shot in his leg. They bandaged it up and he was still fighting, fighting. Finally one of our close friends came and said, "Dick, you better get out of the house and run for your life. They're going to kill your family, without any question."

So we got out, ran out with just what we had on us. No food, nothing. For four or five days, believe me, eating grass. We lived on grass. And thirsty! You couldn't get any water until the rain came. We had to drink the dirty water that animals were going through. We traveled 11 days to reach Yerevan. Left and right, oh my God, people were dying.

Of course, in Armenia they were just as poor as we were in those days. We had to go in back of restaurants and houses and go through garbage, we were so hungry. Who would think to take a bone and bite to try to get something from it? We were six of us, two sisters, my brother, my mother and my father and myself. On the way we lost my brother. In Armenia—we got there at night, it was cold weather—we stay outside, nothing on us, until the sun comes up. Someone told us all the people from Van were in a central park so we go over there and I see my brother who was lost, 5 years old. He was delirious. He didn't know what was going on. He was hungry, thirsty. After three or four days of suffering, he died of starvation.

I have to try to make some money for the family. My mother and father had no job yet so I go around selling water for money. So help me, 2 cents, anything, just to get us by. Then my mother started to make cigarettes, wrapping cigarettes. She hung a box on my neck and I said, "What the heck is this?" She said, "People smoke—you go out, you sell cigarettes." That's how I lived until my father got a job for the American consulate as an Armenian interpreter. From then on, I was relieved! (laughs). Hey, at that time I was 9 years old.

I came here in 1927. We landed in Providence. A friend of my father who was like a brother to him, they had an apartment already, a four-room apartment. We had been living six of us in one room in Armenia, in Van. I couldn't believe it. Four rooms?!—I never saw that in my life.

I have to ask: All the world knows this [genocide] happened. Why is the American government not taking it seriously? Why?

But the only enjoyment and pleasure I get out of my life is in living in the United States. There is no other country in the world would ever be happier than here. A lot of Americans don't appreciate this life. It's a heavenly country. It's heaven on earth.

CHINA CONNECTIONS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from Florida (Mr. STEARNS) is recognized during morning hour debates for 5 minutes.

Mr. STEARNS. Mr. Speaker, over the weekend a lot of people have been calling for hearings on the emerging China scandal. I come to the well this afternoon to rise in support of the New York Times editorial on Sunday entitled, "The New China Connection", that calls for the appointment of a special prosecutor. I thought my colleagues should hear what the Times wrote:

All the disclosures about Johnny Chung, other contributors and their links to China make it clearer than ever that the Attorney General Reno needs to transfer the Justice Department's investigation to an independent counsel. The White House was intensely involved in fund-raising at the highest levels, and only an inquiry led by someone other than a political appointee of the President will satisfy the public.

Mr. Speaker, this is a major concession by The New York Times, and I thought I would call it to my colleagues' attention. These calls for an independent prosecutor come on the heels of groundbreaking and explosive reporting by the Times' investigative journalist, Jeff Gerth.

□ 1045

Mr. Gerth reported on Friday, May 15, that Johnny Chung has admitted that a large portion of the money he raised for the Democrats originated with the People's Liberation Army, the PLA, of China. Mr. Speaker, this is a communist military party. Mr. Chung has identified the conduit of the illegal campaign funds as a Chinese aerospace executive and Chinese Lieutenant Colonel Liu Chaoing, who just happens to be the daughter of General Liu Huaquing, who just happened to be at that time China's most senior and top-ranked military commander in the PLA.

Mr. Speaker, General Liu was also a member of the top leadership of China's Communist Party as he served as a member of the Standing Committee, the very top circle of political leadership in China. General Liu was also vice-chairman of the powerful Central Military Commission and was in charge of China's drive to modernize the People's Liberation Army by selling weapons to other countries and using the hard currency to acquire Western technology.

Newsweek goes on to point out that the latest scandal, in their May 25 issue entitled "A Strange Brew," is also very revealing. It appears on July 19, 1996, Colonel Liu, the daughter of General Liu, arrived at the Los Angeles home of financier Eli Broad, shook the President's hand, had her picture taken with him. Ms. Liu, accompanied by fund-raiser Johnny Chung, is known to have attended a military institute in China used for counterintelligence training.

What Liu did a week after meeting the President is even more interesting. She signed papers incorporating a company in California called Marswell Institute. She and Chung were the only listed directors. U.S. intelligence sources say Marswell is an affiliate of a similarly named firm in Hong Kong, which shares ownership with yet another company they describe as a "front" for the "general political department" of the PLA.

Mr. Speaker, what were China and the Chinese military leaders after? There is some evidence that what they were after was a change in U.S. satellite export policy that made it easier for China to use their missiles to launch American satellites, which also allowed China to further improve their missile capabilities. This same missile technology can be used for intercontinental ballistic missiles, which China now has fixed nuclear targets on.

So, Mr. Speaker, I come to the floor this afternoon to echo the comments from the Sunday editorial from The New York Times. It is time for Attorney General Reno to transfer the department's investigation out of their department into an independent counsel, and I ask her to do it promptly.

TRIBUTE TO SENATOR JENNINGS RANDOLPH

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from West Virginia (Mr. WISE) is recognized during morning hour debates for 5 minutes.

Mr. WISE. Mr. Speaker, today in Salem, West Virginia, in a quiet funeral service, former United States Senator Jennings Randolph comes home to his final rest, to where he grew up and lived. And indeed perhaps it is a fitting memorial to Senator Randolph that this week the Congress of the United States is working on another highway bill for another six years, because Senator Randolph, of course, was Chair of the Senate Public Works Committee. In 1937, as a Member of this body, the House of Representatives, he held hearings on creating a national highway system 20 years ahead of the interstate highway system.

With Senator Randolph's death, an era has truly passed. He was the last surviving Member of Congress of the original New Deal Congress that came in in 1933. And every West Virginian who heard him speak treasures the memory of hearing him recount being called to the White House in the first 100 days with the banks closing, businesses closing, pensions being dissolved.

I can still hear Senator Randolph's tones as he talked about how Franklin

Roosevelt rallied the country. And of course, Senator Randolph was there for the creation of Social Security, for the WPA, for economic recovery, and to create many of the institutions that we take for granted today. Yes, he was a builder, a builder of highways and infrastructure, a creator and preserver of the Appalachian Regional Commission, as well as creating educational opportunities, too.

No matter how many years Jennings Randolph had in his life, he always fought for young people. That is why he was a tireless battler for the 26th Amendment to the Constitution, which in the early 1970's gave the right to vote to those between the ages of 18 and 21. The last speech I ever heard Senator Randolph give was lamenting low voter turnout in our country and challenging all of us, all of us as citizens, to be able to go to the polls and exercise our most precious franchise.

Mr. Speaker, we West Virginians have much to remember in this gentle man. When we drive along on a modern four-lane road or we go to a job training class, when we make use of an Appalachian Regional Commission facility, perhaps a health clinic, when we turn on our spigot and we get fresh water, or perhaps when we retire and we know that Social Security will be there, and of course for the youth, the youth that Jennings Randolph believed in so much that he fought and won for them the right to vote.

Mr. Speaker, a gentle man with a great heart comes home to rest today, and all West Virginia gives thanks for this rich and meaningful life.

AMERICAN TECHNOLOGY TRANSFERS TO CHINA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from California (Mr. ROHRABACHER) is recognized during morning hour debates for 5 minutes.

Mr. ROHRABACHER. Mr. Speaker, outrage is sweeping the United States of America, and a justifiable outrage. The American people are finding out now that the technology that they paid for with their tax dollars to be developed during the Cold War, that some of that technology has been transferred to the communist Chinese in order to upgrade the capabilities of their nuclear weapons delivery system.

When President Clinton became President of the United States, we had a chance to confront any wrongdoing or aggression or belligerency committed by the communist Chinese, knowing that the people of the United States were not at risk. Now, after 5 years, we find almost miraculously that the Chinese have developed the capability of hitting the United States with nuclear weapons.

The outrage that I talked about, as I suggested, comes from the fact that we are now learning that it was American corporations, some moguls from the aerospace industry, who decided to take American technology and improve those Chinese rockets. Then we find out that this administration, inside the administration, the watchdogs that noticed that this illegal act and immoral act was taking place, that when the watchdogs tried to create and tried to establish an investigation and to prosecute those people who had transferred that missile technology, that their effort was undercut by no one else but the President of the United States.

President Bill Clinton took the steps that were necessary to transfer the authority of blocking some certain transfers of technology from the State Department, which opposed that transfer, to the Commerce Department that was headed by Ron Brown which was interested in facilitating transfers of technology. The President also issued waivers and licenses that undercut those people who were preparing the prosecution of those people in the aerospace industry that transferred that technology to the communist Chinese.

And yes, there is one other step in this story of betrayal, and that is the information that now is emerging that the President of the United States, during his reelection effort, received millions of dollars in contributions from those who were transferring this technology, in the same time period that the waivers and licenses were being issued by the Oval Office in order to facilitate those transfers.

Bernard Swartz, the CEO of Lorel Corporation, the corporation that transferred much of this technology, is the biggest contributor to the President's reelection campaign, over a million dollars to the President's reelection or to the Democratic party. And then, of course, we hear about money coming from the communist Chinese themselves, filtering it into the President's reelection campaign, Johnny Chung just a few days ago admitting that the $100,000 he tried to funnel into the Democratic campaign came from the People's Liberation Army.

I would ask my colleagues to pay attention to this story, because the People's Liberation Army, the source of those funds was not just the army itself, it was that part of the communist Chinese army that deals with missile and rocket development. A lieutenant colonel in the Chinese Army gave that money to Johnny Chung to funnel into the President's campaign.

Yes, there is justifiable outrage. The President has a lot of questions to answer, as do these corporations, both on moral grounds and on legal grounds. The President should cancel his trip to China until those questions have been answered, and there should be a moratorium on all presidential actions concerning waivers and licenses and the shipping of technology to communist China until we get to the bottom of this.

Every man, woman, and child in the United States now is in jeopardy of nuclear incineration by the communist Chinese if we ever do confront them in their wrongdoing, because of technology that has been transferred to them with the help of this President and with the profit of American companies making profit off technology developed by the taxpayers for the protection of our country.

This is the most serious scandal that I have heard. Maybe the American people cannot understand what sex scandal and character has to do with making decisions, but this is very understandable. Our country has been betrayed. We need to get to the bottom of it.

TRIBUTE TO SENATOR JENNINGS RANDOLPH

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from West Virginia (Mr. MOLLOHAN) is recognized during morning hour debates for 4 minutes.

Mr. MOLLOHAN. Mr. Speaker, it is an honor for me to rise today with my good friends and colleagues, the gentleman from West Virginia (Mr. RAHALL) and the gentleman from West Virginia (Mr. WISE) in tribute to a fine gentleman and faithful advocate of the people of West Virginia.

I am speaking, of course, of Senator Jennings Randolph, whose lifetime of distinguished service came to an end just 11 days ago. We all mourn his passing, and certainly we send our deepest sympathies to his family. Our thoughts are with them in these difficult days. While recovering from such a loss is a painful process, we hope they find comfort in the legacy he leaves behind, for it truly is a remarkable one.

On the day after Senator Randolph's death, newspapers across the State recounted his inspiring story, the story of a young journalist who was elected to Congress as a New Deal Democrat and would become the last member of the storied class that served in the first 100 days of FDR's presidency. He was thrust into the House during an extraordinary time in our Nation's history, a time of despair, sorrow, and suffering, and he was a part of the extraordinary solution, the package of reforms that revised our Nation, bringing sustenance, opportunity, and hope to millions.

Jennings Randolph never lost that passion for helping those who needed help the most, especially the poor and disabled. The young New Deal Democrat would become a mature hand in the great society, never wavering in his belief that government can and should play an active role in solving people's problems, and he worked mightily to better his home State of West Virginia.

Senator Randolph was a champion of the interstate highway system, the Appalachian Regional Commission, local airports, and countless infrastructure projects that brought the basics to our people. That is how he thought of himself, once saying, "I essentially am a West Virginia senator. I'm not what you'd call a national Senator or international Senator."

It is true that Jennings Randolph was an effective, tireless advocate of West Virginia. But if my colleagues think that he did not have an influence on this Nation, they would be badly mistaken. After all, it was Jennings Randolph who authored the constitutional amendment that gave 18-year-olds the right to vote. And in so many other areas, his work and support was crucial to policies that advantaged citizens from coast to coast. Throughout his service in the House and then in the Senate, he was a model of courtesy, of grace and professionalism.

As the Senate historian said so well, "Very few senatorial careers were as full as his. He always struck me," the historian, "as the image of a Senator's Senator, a teacher within the institution who would take young Senators beneath his wing and lecture them, sometimes gently and sometimes not so gently, about the importance of etiquette."

□ 1100

Mr. Speaker, with Jennings Randolph passing, the people of West Virginia have lost a great friend and representative. We salute his lasting record of achievement and honor his memory as a passionate, dedicated public servant.

WELLER-McINTOSH II MARRIAGE TAX COMPROMISE

The SPEAKER pro tempore (Mr. PETRI). Under the Speaker's announced policy of January 21, 1997, the gentleman from Illinois (Mr. WELLER) is recognized during morning hour debates for 5 minutes.

Mr. WELLER. Mr. Speaker, questions are often asked in this body, and I think one of the most important questions asked is: Why is enactment of the Marriage Tax Elimination Act so important for working families in America? I think this series of questions best illustrates why.

Do Americans feel that it is fair that our Tax Code imposes a higher tax penalty on marriage? Do Americans feel that it is fair that 21 million married working couples on average pay $1,400 more a year just because they are married, $1,400 more than an identical couple that lives together outside of marriage?

Do Americans feel that it is right that our Tax Code actually provides an incentive to get divorced because the only way today to avoid the marriage tax penalty is to get divorced and to live together outside of marriage?

Clearly, Americans feel that the marriage tax penalty is not only unfair, it is wrong. It is immoral that our Tax Code punishes society's most basic institution. The Congressional Budget Office tells us that 21 million married working couples pay an average of $1,400 more just because they are married.

Let me give you an example of a couple in the south suburbs. I represent the south side of Chicago and the south suburbs of Chicago and Illinois. I have an example here of a south suburban couple, working man and working woman, who pay the marriage tax penalty.

The gentleman is a machinist at Caterpillar where they make the big equipment, the heavy earth-moving equipment. This machinist makes $30,500 a year. Under the current Tax Code, if you add in the standard deduction and exemption, he is taxed at the 15 percent rate.

Say this machinist meets a schoolteacher a tenured schoolteacher in the Joliet public schools. The schoolteacher has an identical income. She would be in the 15 percent tax rate if she stays single. But if they choose to get married, if they choose to live in holy matrimony, under our Tax Code, this married working couple, a machinist at Caterpillar and a schoolteacher in the Joliet public schools who choose to get married, will pay the average marriage tax penalty of almost $1,400.

In Washington, D.C., $1,400 is just a drop in the bucket. But in Joliet, Illinois, in the south suburb of Chicago, $1,400 for this machinist and schoolteacher is real money, real money for real people: one year's tuition at Joliet Junior College, 3 months of day care at the local day care center in Joliet; and it is also several months' worth of car payments. That is real money that Uncle Sam is taking away from this machinist and this schoolteacher just because they are married.

We have a solution. We believe that elimination of the marriage tax penalty should be our number one priority as we address the tax provisions in this year's balanced budget which will be, hopefully, the second balanced budget in over a generation.

The Marriage Tax Elimination Act, which is now called the compromise as well as Weller-McIntosh II, it is pretty simple. What it does is it doubles the standard deduction for those who do not itemize from $4,150 for a single person, $8,300 for a married couple, simply doubling it, helping eliminate the marriage penalty.

Also, for the five tax brackets, we double the income threshold for couples. Currently, you are in the 15 percent tax bracket if you make $24,650. We double that to $49,300, eliminating the marriage penalty. Because, currently, even if you are making $24,650, our current Tax Code, you can only make $42,000. So there is about an $8,000 marriage tax penalty in the 15 percent tax bracket.

We want to eliminate the marriage tax penalty. The Marriage Tax Elimination Act of 1998 accomplishes that goal. We believe it should be the centerpiece of this year's balanced budget plan.

There are always competing ideas, and President Clinton has a good idea. He says our priority should be expanding the current child care tax credit. Under the President's child care tax credit, the average family that will qualify would see about an extra $368 in total take-home pay a year.

If we eliminate the marriage tax penalty for that machinist and schoolteacher, they would see an extra $1,400 in take-home pay. So let us think about that which is better. If we eliminate the marriage tax penalty, $1,400 will pay for almost 3 months of child care at a local day care center in Joliet. If we forget about eliminating the marriage tax penalty and just do the expanding the current child tax credit, the President's $358 will pay for 3 weeks worth of day care in Joliet, Illinois. So which is better, 3 weeks or 3 months?

Clearly, elimination of the marriage tax penalty is a better deal for working couples and working married couples throughout America.

What is the bottom line? We want to eliminate the marriage tax penalty. It is wrong that our Tax Code punishes society's most basic institution. It is time that we stop punishing marriage.

We think about it. This Congress in the last 3 years has made helping families by raising take-home pay a real priority. We strengthened families by providing the adoption tax credit in 1996 so that families who hope to provide a loving home for a child in need of adoption can better afford it.

In 1997, we provided the $500 per child tax credit which will benefit 3 million children in Illinois, an extra $1½ billion in higher take-home pay that will stay in Illinois rather than coming to Washington.

Let us eliminate the marriage tax penalty. $1,400 is real money for real people. Let us make elimination of the marriage tax penalty the centerpiece of this year's budget agreement.

OLDER AMERICANS ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentlewoman from California (Ms. SÁNCHEZ) is recognized during morning hour debates for 2 minutes.

Ms. SANCHEZ. Mr. Speaker, May is Older Americans Month, which gives us the special opportunity to honor our Nation's seniors. The theme of this month is living longer and growing stronger in America; and we are saluting the growing numbers of Americans

who enjoy increased longevity and continue to contribute to their families, their communities and to this country. However, we cannot adequately honor them unless we have first ensured them a safe and a healthy lifestyle.

Americans age 65 and older are the fastest-growing segment of our population. In just 2 years, there will be over 35 million of them in this country. Unfortunately, some of the most critical programs that provide seniors with food, health care, and living assistance are now being threatened.

The Older Americans Act has not been reauthorized since 1995. The programs are running out of funding. As a result, seniors throughout this country are suffering.

I have heard from many back home about how these cuts are affecting their lives. I have received many letters from seniors telling me their stories of having to be on a waiting list for 3 years just to get something like Meals on Wheels.

The majority party in this House must promise, and there is no better time than this month of May to get working on the reauthorization of the Older Americans Act. We must complete this work before the 105th Congress adjourns. If not, then essential programs like Meals on Wheels, nutritional services, and elder abuse prevention programs are not going to reach some of our neediest seniors.

Throughout the decades of its existence, the Older Americans Act has served our Nation's aging population well. These programs are important not only because they help seniors maintain a healthy lifestyle, but they also bolster seniors' independence and their sense of dignity. If we are to truly honor our Nation's seniors this month, then we must reauthorize the Older Americans Act.

COSPONSOR HOUSE RESOLUTION 37, MASS TRANSIT PASSES FOR HOUSE EMPLOYEES

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from Oregon (Mr. BLUMENAUER) is recognized during morning hour debates for 5 minutes.

Mr. BLUMENAUER. Mr. Speaker, today, tens of thousands of Americans are celebrating Bike to Work Day by using bicycles to get to their place of employment. They are reinforcing the notion that using a bicycle can be fun; it can provide a healthy and convenient alternative to the private automobile. It will illustrate the impact that small steps can take to improve our quality of life.

At a time when we in Congress are worried about the health of the District of Columbia, when we are concerned about the funding of the Washington Area Mass Transit Authority, when we are looking at almost a billion dollars just to replace the Wilson Bridge here in the metropolitan area, and when, in Washington, D.C., consistently, the congestion is ranked in the top five in the country, bicycles make sense.

There is another simple step that we can take to improve the quality of life, and that is using more effectively the $10 billion investment that we have made in the Washington Area Metro System. It, too, is a way to save money, protect the environment, and improve the quality of life. It has been part of the Federal policy for years to promote the use of transit as an alternative to the single occupant vehicle.

In my community of Portland, Oregon, we promote that alternative by using transit passes as a way to make it easier for employees while we save money. There are over 60 individual companies that provide transit passes to over 45,000 people in the community.

Just this last month, the largest private sector employer in Oregon, Intel, developed a program that is providing free passes for all 11,000 of its employees because it makes sense for the company and for the community.

Here in Washington, D.C., we have over 1,000 employers in the private sector, over 100 Federal agencies that together provide transit checks for over 50,000 commuters in the metropolitan area. Even the United States Senate for the last 6 years has provided transit passes for its employees who do not get free parking.

I would suggest that it is time for us in the House of Representatives to take a step back and look at our policies to get in step with what we suggest the rest of America could do. If only 5 percent of our employees used the transit program, one-half the percentage in the United States Senate, we could eliminate this parking on the parking lot immediately adjacent to the Washington Capitol South Metro Station. We could obviously save the upkeep, the 24-hour-a-day staffing that is there to protect the cars, and we could convert that block into a higher and better use. Certainly there are a number of opportunities for one of the most valuable pieces of real estate in Washington, D.C.

I have introduced House Resolution 37; and, currently, there are over 180 of my colleagues that have cosponsored it. I would suggest that it is time for the remaining people in the House to take a step back, think about what is good for the environment, think about what is fair for our employees, to not simply provide up to $2,000 a year of free parking but provide an alternative for our employees who decide to do the right thing, protecting the environment by using mass transit.

It is good for the environment. It is good for our employees. It is a simple step to use our land more thoughtfully. Most important, it gets the House of Representatives in step with the Senate, with the rest of the Federal bureaucracy, and with what we are telling the private sector to do.

I strongly urge my colleagues to join me in sponsoring House Resolution 37.

OPPOSE ANY EFFORT TO REPEAL THE PRESSLER AMENDMENT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from New Jersey (Mr. PALLONE) is recognized during morning hour debates for 5 minutes.

Mr. PALLONE. Mr. Speaker, as you know, last week, the Republic of India conducted five underground nuclear tests. The Clinton administration imposed sanctions after the second set of tests and I believe was correct in doing so. These sanctions are extremely severe and may affect as much as $20 billion in funds to India.

Mr. Speaker, I am also concerned now that U.S. policy proceed toward an increased dialogue with India. We have made tremendous strides in improving relations between our two countries in recent years, and we must not go back to a Cold War strategy.

Unfortunately, there are Members of this body who feel that there is a need to impose further trade and economic sanctions. There may be an attempt to attach an amendment to the House defense authorization bill that would remove Most Favored Nation's status to India on textile and apparel products.

□ 1115

Mr. Speaker, imposing further economic sanctions on India is meritless and counterproductive to current relations. It would only hurt the workers in India who make the textiles. This amendment to the defense authorization bill would derail U.S.-India relations at times when dialogue between the two democracies is paramount.

I was pleased to read that, at the G-8 summit in England, President Clinton stated that, although sanctions were necessary, he did not want to isolate India.

Mr. Speaker, India cited the threat from China and Pakistan as major reasons for conducting the nuclear tests. For years, Pakistan and China have cooperated in nuclear and missile development. A recent Congressional Research Service Center study showed that the Chinese government had transferred missile technology and nuclear equipment and materials to Iran and Pakistan numerous times. All of these transfers were clearly in violation of international and U.S. law, but they were not met with economic sanctions by the administration.

Mr. Speaker, China is a nuclear-armed dictatorship that had a border war in 1964 against India. Much to India's concern, China continues to maintain a nuclear presence in occupied

Tibet and a large military force in Burma. It is unfortunate that the administration and Members of this body continue to overlook these facts.

India's nuclear tests must be understood in the context of the huge threat posed by China. The United States should be taking the military and nuclear threat from China's dictatorship more seriously.

Mr. Speaker, It is important that the United States continue dialogue with the Indian government at this time. We must urge the Indian government to sign the Comprehensive Test Ban Treaty immediately, without conditions. By signing the treaty, India could assume leadership on international negotiations on capping the accumulation of weapons-grade fissile terms.

It is also important that we not encourage an arms buildup in south Asia. I would urge Members of this body to oppose any effort to repeal the Pressler amendment. Repeal of the Pressler amendment would allow for the delivery of 26 F–16 jet fighters to Pakistan.

U.S. national security adviser Sandy Berger confirmed that the delivery of fighter jets was one of the proposals made to the Pakistan government recently to prevent them from conducting their own nuclear tests, and this is very bad policy. The repeal of the Pressler amendment and the delivery of the F–16 fighters would only increase tension within the region. The U.S. cannot help bring peace to south Asia if it continues to fuel an arms race in that region.

Lastly, Mr. Speaker, I strongly urge President Clinton to continue with his plans to visit India later this year. It has been over 20 years since an American President has visited India. The President has not said he would cancel the trip, but I suppose there is some doubt about that. The President's trip would accelerate negotiations and dialogue on nuclear nonproliferation. Furthermore, it would show to the Indian people that the United States wishes to maintain a long-term relationship with India.

Mr. Speaker, now is the time to continue our dialogue with India and try to get India involved in signing the test ban treaty and trying to promote peace in south Asia. Let us move forward. Let us proceed with a dialogue. Let us not move backward with our relations with India. We have come a long way, and this is the time now to show there can be restraint on both sides.

NUCLEAR DISARMAMENT TO STOP NUCLEAR PROLIFERATION

The SPEAKER pro tempore (Mr. PETRI). Under the Speaker's announced policy of January 21, 1997, the gentleman from American Samoa (Mr. FALEOMAVAEGA) is recognized during morning hour debates for 2 minutes.

Mr. FALEOMAVAEGA. Mr. Speaker, India, the world's largest democracy, detonated five nuclear weapons tests last week in the name of national security. This shocked the world and demonstrated in graphic fashion the perceived unfairness and inherent weakness of the international nuclear nonproliferation system now in place.

We can expect Pakistan to reciprocate and go nuclear, and I would not be surprised to see other countries like North Korea, Iran and Libya to resume their nuclear programs.

Mr. Speaker, this madness and insane rush towards nuclear proliferation is inevitable as long as we continue to perpetuate a 24-year make-believe situation that India could not explode a nuclear bomb, and 28 years of a highly discriminatory and one-sided world of nuclear haves and have-nots. If we are serious about stopping nuclear proliferation, the United States and the nuclear powers must take the first step and commit to a concrete timetable for nuclear disarmament and a verification process.

One of America's finest military officers, former Commander of the U.S. Strategic Command General Lee Butler, said,

> Proliferation cannot be contained in a world where a handful of self-appointed nations both arrogate to themselves the privilege of owning nuclear weapons and extol the ultimate security assurance they assert such weapons convey. A world free of the threat of nuclear weapons is necessarily a world devoid of nuclear weapons. The United States should make unequivocal its commitment to the elimination of nuclear arsenals and take the lead in setting an agenda for moving forthrightly toward that objective.

Mr. Speaker, at this important time of peace, we should pay close attention to General Butler's concerns and foresight.

Mr. Speaker, whether we like it or not, India is now an official member of the so-called "Nuclear Club." But do not blame India for this. Blame our one-sided and faulty policy towards nuclear nonproliferation.

REAUTHORIZE THE OLDER AMERICANS ACT NOW

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentlewoman from North Carolina (Mrs. CLAYTON) is recognized during morning hour debates for 1 minute.

Mrs. CLAYTON. Mr. Speaker, I have in my hand a sampling of hundreds of plates that I have received from senior citizens in my district when I visited them at centers or they have mailed them to me. The plates make a point. They are really about the reauthorization of the Older Americans Act. This act has not been reauthorized now for more than 2 years.

For 30 years, this act has provided the provisions for food, for health care and for a number of services that are very, very important to senior citizens. It allows them to have a quality of life in their homes, without which they would not have.

So I urge our colleagues, during the month of May, which is Senior Citizens Month, to make sure that they consider the reauthorization of the Older Americans Act.

We should not be feeding our senior citizens on paper plates. We really should be feeding them on fine China, because they have given their life for the betterment of their communities.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until 12 noon.

Accordingly (at 11 o'clock and 21 minutes a.m.), the House stood in recess until 12 noon.

□ 1200

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mrs. EMERSON) at 12 noon.

PRAYER

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

O gracious God, from whom we have come and to whom we belong, we are grateful for all Your blessings, for family and friends and colleagues, for freedom and opportunity, for the responsibilities we have as citizens.

We pray, O God, that we will be steadfast custodians of the resources of the land and use our time, talents and treasure in ways that promote the noble ideals that we hold dear. We especially pray for those who work for understanding and reconciliation among all peoples. May we see Your vision, gracious God, of a time when our communities and the world will enjoy a bounty of peace.

And now may Your blessing, O God, that is new every morning, be with us this day and evermore. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Nevada (Mr. GIBBONS) come forward and lead the House in the Pledge of Allegiance.

Mr. GIBBONS led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

DISPENSING WITH CALL OF PRIVATE CALENDAR

Mr. HYDE. Madam Speaker, I ask unanimous consent that the call of the Private Calendar be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
Washington, DC, May 19, 1998.

Hon. NEWT GINGRICH,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5 of Rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on May 18, 1998 at 3:35 p.m. and said to contain a message from the President whereby he notifies the Congress that he has issued a notice continuing the national emergency with respect to Burma.

With warm regards,

ROBIN H. CARLE,
Clerk.

CONTINUATION OF EMERGENCY WITH RESPECT TO BURMA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 105–253)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the Federal Register and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the Federal Register for publication, stating that the emergency declared with respect to Burma is to continue in effect beyond May 20, 1998.

As long as the Government of Burma continues its policies of committing large-scale repression of the democratic opposition in Burma, this situation continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, I have determined that it is necessary to maintain in force these emergency authorities beyond May 20, 1998.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 18, 1998.*

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain 1-minute requests.

DAMAGE IS DONE

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Madam Speaker, as Chairman of the House Committee on Intelligence, I sadly report to my colleagues today that today we are faced with a more dangerous world. The nuclear arms race is on again, and it has intensified. That is a tragedy.

How did it happen? We have reports now that the Indian government has acknowledged that India's concern about Chinese capabilities and Chinese support for Pakistan nuclear development were critical factors in India's decision to proceed with testing. So our national security has been weakened, our children go to sleep less safe tonight.

The administration has much explaining to do about its failed policy, but two steps seem very obvious: first, an appointment of an independent counsel now that there is clear and credible evidence of illegal foreign intelligence participation; and, second, cancellation of President Clinton's scheduled June visit to China, which would only further destabilize the region and intensify the problem.

SPEAKER'S REMARKS WERE RECKLESS

(Mr. MORAN of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MORAN of Virginia. Madam Speaker, last week the Speaker of the House publicly characterized Secretary of State Madeleine Albright as "an agent for the Palestinians."

I realize that there are those in this Chamber who do not feel that the United States should live up to its treaty obligations by acting as an unbiased mediator in the Middle East peace process. But to characterize the Secretary of State in this manner was unfair and irrational.

I understand that it would be best explained as political posturing in an election year, but while we may have grown accustomed to reckless rhetoric when it comes to domestic politics, it is inexcusable to exploit the peace process for domestic political gain.

No lasting peace in the Middle East can be secured by riding political winds in the United States. The people that must determine the acceptability of any peace settlement are those living in the region. It is critical that the administration remain focused on what might be acceptable over the long term to Israelis—to Palestinians and in fact, to all who long for a secure, lasting and just peace throughout the middle east.

I urge the Speaker to retract and apologize for his remarks and to honor America's commitment to the peace process.

CONGRESS MUST INVESTIGATE CHINESE POLITICAL DONATIONS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Madam Speaker, California businessman Johnny Chung gave $300,000 to the Democrat National Committee. Chung said he got the money from a member of the Chinese army.

Surprise. This is the same guy Chung who said, my donations are subway tokens for a train ride to the White House. Train ride, folks. How about a free ride? Maybe a joy ride.

Let us tell it like it is. This is not about tokens, coffees, the Lincoln bedroom, Bill Clinton, Democrats or Republicans. This is about national security, folks. And Americans did not give their lives in foreign wars to have the Chinese Communists buy our freedom. Beam me up. Congress must investigate this Chinese connection.

I yield back what national security I have left.

TRIBUTE TO FRANK SINATRA

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Madam Speaker, last Thursday, Americans lost a great entertainer. In fact, many would say that Frank Sinatra was one of the greatest entertainers of our time. Indeed, Frank Sinatra loved Nevada, and Nevada loved Frank Sinatra. He was indeed perhaps the greatest entertainer to appear in any Nevada showroom; and, since his passing, many Americans have learned what Nevadans have known all along: Mr. Sinatra's heart was bigger than all outdoors.

Next week in Las Vegas, celebrities from around the world will participate in a Frank Sinatra Las Vegas Celebrity Classic golf tournament. This event will benefit Opportunity Village in Las

Vegas, a charitable organization which provides vocational training and continuing education to the mentally disabled.

Frank Sinatra has always opened his heart and wallet to those in need. He did it his way; and, for that, Americans are extremely grateful to this international icon.

OPERATION CASABLANCA

(Mr. GILMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GILMAN. Madam Speaker, today I rise to compliment our Customs Service, our DEA and our other law enforcement officers for the successful money laundering undercover operation, code named "Casablanca."

An extensive money laundering ring of Colombian and Mexican drug dealers, who have been using dozens of Mexican and American banks to launder and disguise their billions of dollars of ill-gotten gains, have now been broken up. Many individuals have been arrested, millions of assets have been seized, along with tons of illicit drugs.

The substantial funds that this operation uncovered flowing from the illicit drug trade underscores just how serious the challenge is from these illicit drug dealers and the corruption they foster in the banking system and in democratic institutions throughout the world.

The magnitude of the disclosure and expanse of the monies and influence from illicit drugs shows our need for a serious and meaningful war on drugs. Our drug czar, Barry McCaffrey, believes that the term "war on drugs" is not appropriate to apply to the problems of drugs in our Nation. Many of us disagree. Our Speaker's task force efforts will hopefully turn this around.

Operation "Casablanca" makes it clear that what is at stake here deserves a war footing by our Nation and the international community. We need to fight drugs on all fronts, including both the demand and supply side simultaneously, as well as hitting them in the pocketbooks, just as "Casablanca" has done.

UNLAWFUL TRANSFER OF MISSILE TECHNOLOGIES WARRANTS IMMEDIATE INVESTIGATION

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Madam Speaker, I, along with many of my colleagues, had an opportunity to hear the Vice President of the United States speak on foreign policy matters last night; and, Madam Speaker, the Vice President went into great detail of his concern and disdain for the transfer of missile technology from the Russians to the Iranians. But, Madam Speaker, not one word was uttered by our Vice President about concerns of the transfer of our own missile technology to the Chinese government.

There are serious questions that exist, Madam Speaker. Indeed, The Washington Post reports this morning that $632,000 in donations to the Democrat party were given by Loral Missile Defense System CEO Bernard Schwartz, the party's largest single donor in the 1996 election.

Madam Speaker, this transcends the issue of Democrats versus Republicans. As Americans, this Congress needs to investigate the unlawful transfer of missile technologies from this government and from our defense capabilities to the People's Republic of China.

Madam Speaker, this House must investigate. There is no other choice.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule 1, the Chair announces that she will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after debate has concluded on all motions to suspend the rules, but not before 5 p.m. today.

RICKY RAY HEMOPHILIA RELIEF FUND ACT OF 1998

Mr. HYDE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1023) to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1023

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Ricky Ray Hemophilia Relief Fund Act of 1998".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HEMOPHILIA RELIEF FUND

Sec. 101. Ricky Ray Hemophilia Relief Fund.
Sec. 102. Compassionate payment relating to individuals with blood-clotting disorders and HIV.
Sec. 103. Determination and payment.
Sec. 104. Limitation on transfer of rights and number of petitions.
Sec. 105. Time limitation.
Sec. 106. Certain claims not affected by payment.
Sec. 107. Limitation on agent and attorney fees.
Sec. 108. Definitions.

TITLE II—TREATMENT OF CERTAIN PRIVATE SETTLEMENT PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE MEDICAID AND SSI PROGRAMS

Sec. 201. Treatment of certain private settlement payments in hemophilia-clotting-factor suit under the Medicaid and SSI programs.

TITLE I—HEMOPHILIA RELIEF FUND

SEC. 101. RICKY RAY HEMOPHILIA RELIEF FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the "Ricky Ray Hemophilia Relief Fund", which shall be administered by the Secretary of the Treasury.

(b) INVESTMENT OF AMOUNTS IN FUND.—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on and proceeds from any such investment shall be credited to and become part of the Fund.

(c) AVAILABILITY OF FUND.—Amounts in the Fund shall be available only for disbursement by the Secretary of Health and Human Services under section 103.

(d) TERMINATION.—The Fund shall terminate upon the expiration of the 5-year period beginning on the date of the enactment of this Act. If all of the amounts in the Fund have not been expended by the end of the 5-year period, investments of amounts in the Fund shall be liquidated, the receipts of such liquidation shall be deposited in the Fund, and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury of the United States.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund to carry out this title $750,000,000.

SEC. 102. COMPASSIONATE PAYMENT RELATING TO INDIVIDUALS WITH BLOOD-CLOTTING DISORDERS AND HIV.

(a) IN GENERAL.—If the conditions described in subsection (b) are met and if there are sufficient amounts in the Fund to make each payment, the Secretary shall make a single payment of $100,000 from the Fund to any individual who has an HIV infection and who is described in one of the following paragraphs:

(1) The individual has any form of blood-clotting disorder, such as hemophilia, and was treated with antihemophilic factor at any time during the period beginning on July 1, 1982, and ending on December 31, 1987.

(2) The individual —

(A) is the lawful spouse of an individual described in paragraph (1); or

(B) is the former lawful spouse of an individual described in paragraph (1) and was the lawful spouse of the individual at any time after a date, within the period described in such subparagraph, on which the individual was treated as described in such paragraph and through medical documentation can assert reasonable certainty of transmission of HIV from individual described in paragraph (1).

(3) The individual acquired the HIV infection through perinatal transmission from a parent who is an individual described in paragraph (1) or (2).

(b) CONDITIONS.—The conditions described in this subsection are, with respect to an individual, as follows:

(1) SUBMISSION OF MEDICAL DOCUMENTATION OF HIV INFECTION.—The individual submits to the Secretary written medical documentation that the individual has an HIV infection.

(2) PETITION.—A petition for the payment is filed with the Secretary by or on behalf of the individual.

(3) DETERMINATION.—The Secretary determines, in accordance with section 103(b), that the petition meets the requirements of this title.

SEC. 103. DETERMINATION AND PAYMENT.

(a) ESTABLISHMENT OF FILING PROCEDURES.—The Secretary of Health and Human Services shall establish procedures under which individuals may submit petitions for payment under this title. The procedures shall include a requirement that each petition filed under this Act include written medical documentation that the relevant individual described in section 102(a)(1) has (or had) a blood-clotting disorder, such as hemophilia, and was treated as described in such section.

(b) DETERMINATION.—For each petition filed under this title, the Secretary shall determine whether the petition meets the requirements of this title.

(c) PAYMENT.—

(1) IN GENERAL.—To the extent there are sufficient amounts in the Fund to cover each payment, the Secretary shall pay, from the Fund, each petition that the Secretary determines meets the requirements of this title in the order received.

(2) PAYMENTS IN CASE OF DECEASED INDIVIDUALS.—

(A) IN GENERAL.—In the case of an individual referred to in section 102(a) who is deceased at the time that payment is made under this section on a petition filed by or on behalf of the individual, the payment shall be made as follows:

(i) If the individual is survived by a spouse who is living at the time of payment, the payment shall be made to such surviving spouse.

(ii) If the individual is not survived by a spouse described in clause (i), the payment shall be made in equal shares to all children of the individual who are living at the time of the payment.

(iii) If the individual is not survived by a person described in clause (i) or (ii), the payment shall be made in equal shares to the parents of the individual who are living at the time of payment.

(iv) If the individual is not survived by a person described in clause (i), (ii), or (iii), the payment shall revert back to the Fund.

(B) FILING OF PETITION BY SURVIVOR.—If an individual eligible for payment under section 102(a) dies before filing a petition under this title, a survivor of the individual may file a petition for payment under this title on behalf of the individual if the survivor may receive payment under subparagraph (A).

(C) DEFINITIONS.—For purposes of this paragraph:

(i) The term "spouse" means an individual who was lawfully married to the relevant individual at the time of death.

(ii) The term "child" includes a recognized natural child, a stepchild who lived with the relevant individual in a regular parent-child relationship, and an adopted child.

(iii) The term "parent" includes fathers and mothers through adoption.

(3) TIMING OF PAYMENT.—The Secretary may not make a payment on a petition under this title before the expiration of the 120-day period beginning on the date of the enactment of this Act or after the expiration of the 5-year period beginning on the date of the enactment of this Act.

(d) ACTION ON PETITIONS.—The Secretary shall complete the determination required by subsection (b) regarding a petition not later than 120 days after the date the petition is filed under this title.

(e) HUMANITARIAN NATURE OF PAYMENT.—This Act does not create or admit any claim of or on behalf of the individual against the United States or against any officer, employee, or agent thereof acting within the scope of employment or agency that relate to an HIV infection arising from treatment with antihemophilic factor, at any time during the period beginning on July 1, 1982, and ending on December 31, 1987. A payment under this Act shall, however, when accepted by or on behalf of the individual, be in full satisfaction of all such claims by or on behalf of that individual.

(f) ADMINISTRATIVE COSTS NOT PAID FROM FUND.—No costs incurred by the Secretary in carrying out this title may be paid from the Fund or set off against, or otherwise deducted from, any payment made under subsection (c)(1).

(g) TERMINATION OF DUTIES OF SECRETARY.—The duties of the Secretary under this section shall cease when the Fund terminates.

(h) TREATMENT OF PAYMENTS UNDER OTHER LAWS.—A payment under subsection (c)(1) to an individual—

(1) shall be treated for purposes of the Internal Revenue Code of 1986 as damages described in section 104(a)(2) of such Code;

(2) shall not be included as income or resources for purposes of determining the eligibility of the individual to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits, and such benefits shall not be secondary to, conditioned upon reimbursement from, or subject to any reduction because of receipt of, any such payment; and

(3) shall not be treated as a third party payment or payment in relation to a legal liability with respect to such benefits and shall not be subject (whether by subrogation or otherwise) to recovery, recoupment, reimbursement, or collection with respect to such benefits (including the Federal or State governments or any entity that provides such benefits under a contract).

(i) REGULATORY AUTHORITY.—The Secretary may issue regulations necessary to carry out this title.

(j) TIME OF ISSUANCE OF PROCEDURES.—The Secretary shall, through the promulgation of appropriate regulations, guidelines, or otherwise, first establish the procedures to carry out this title not later than 120 days after the date of the enactment of this Act.

SEC. 104. LIMITATION ON TRANSFER OF RIGHTS AND NUMBER OF PETITIONS.

(a) RIGHTS NOT ASSIGNABLE OR TRANSFERABLE.—Any right under this title shall not be assignable or transferable.

(b) 1 PETITION WITH RESPECT TO EACH VICTIM.—With respect to each individual described in paragraph (1), (2), or (3) of section 102(a), the Secretary may not make payment with respect to more than 1 petition filed in respect to an individual.

SEC. 105. TIME LIMITATION.

The Secretary may not make any payment with respect to any petition filed under this title unless the petition is filed within 3 years after the date of the enactment of this Act.

SEC. 106. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.

A payment made under section 103(c)(1) shall not be considered as any form of compensation, or reimbursement for a loss, for purposes of imposing liability on the individual receiving the payment, on the basis of such receipt, to repay any insurance carrier for insurance payments or to repay any person on account of worker's compensation payments. A payment under this title shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

SEC. 107. LIMITATION ON AGENT AND ATTORNEY FEES.

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the petition of an individual under this title, more than 5 percent of a payment made under this title on the petition. Any such representative who violates this section shall be fined not more than $50,000.

SEC. 108. DEFINITIONS.

For purposes of this title:

(1) The term "AIDS" means acquired immune deficiency syndrome.

(2) The term "Fund" means the Ricky Ray Hemophilia Relief Fund.

(3) The term "HIV" means human immunodeficiency virus.

(4) Unless otherwise provided, the term "Secretary" means Secretary of Health and Human Services.

TITLE II—TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE SSI PROGRAM

SEC. 201. TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE MEDICAID AND SSI PROGRAMS.

(a) PRIVATE PAYMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the payments described in paragraph (2) shall not be considered income or resources in determining eligibility for, or the amount of—

(A) medical assistance under title XIX of the Social Security Act, or

(B) supplemental security income benefits under title XVI of the Social Security Act .

(2) PRIVATE PAYMENTS DESCRIBED.—The payments described in this subsection are—

(A) payments made from any fund established pursuant to a class settlement in the case of Susan Walker v. Bayer Corporation, et al., 96–C–5024 (N.D. Ill.); and

(B) payments made pursuant to a release of all claims in a case—

(i) that is entered into in lieu of the class settlement referred to in subparagraph (A); and

(ii) that is signed by all affected parties in such case on or before the later of—

(I) December 31, 1997, or

(II) the date that is 270 days after the date on which such release is first sent to the persons (or the legal representative of such persons) to whom the payment is to be made.

(b) GOVERNMENT PAYMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the payments described in paragraph (2) shall not be considered income or resources in determining eligibility for, or the amount of supplemental security income benefits under title XVI of the Social Security Act.

(2) GOVERNMENT PAYMENTS DESCRIBED.—The payments described in this subsection are payments made from the fund established pursuant to section 101 of this Act.

Amend the title so as to read: "A bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated antihemophilic factor, and for other purposes.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois (Mr. HYDE) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

GENERAL LEAVE

Mr. HYDE. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

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

Madam Speaker, I rise in support of H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act of 1998. This legislation has 270 cosponsors in the House, including our distinguished Speaker; and I am informed the Minority Leader also supports this legislation.

When communities in our great Nation are devastated by a natural disaster such as floods or tornadoes, we rush to their aid, as well we should. The hemophilia community has been devastated by another type of natural disaster, the HIV contamination of the blood-clotting products which they need to treat their hemophilia. This legislation provides the disaster relief necessary to assist this community through a very difficult time.

In the late 1970s and early 1980s, half of all people with blood-clotting disorders in the United States were infected with HIV due to their use of blood-clotting products which were on the market at that time. During this period, people with blood-clotting disorders needed to use these products to live a relatively normal life; and because each dose came from a pool of thousands of blood donors, it was almost certain that they would become HIV infected.

□ 1215

However, at that time HIV had not been identified and no tests were available to detect its presence. Most people with blood clotting disorders are already financially strapped by the medical costs they incur to treat their disorder. With earlier medical costs of over $150,000 and the added tragedies of an HIV infection, these families have been emotionally and financially devastated.

In cases involving other types of blood and blood products, such as transfusion cases, where a primary provider or a small child was infected, settlements usually were for hundreds of thousands of dollars. Many of the HIV infected people with hemophilia were young fathers and children.

After many years of litigation, the manufacturers of these blood clotting products containing HIV have set up a fund which provides $100,000 to individuals and their families. However, when considering the incredible financial burden placed on these families due to medical costs and, in many cases, loss of the primary provider of the family, this amount will not sufficiently lift this community out of the financial crisis that has developed.

While no amount will completely alleviate the losses felt, H.R. 1023 provides a payment equal to that of the industry. The amount available to these families would then be comparable to that potentially realized by other HIV-infected blood victims through settlement.

There is a manager's amendment to this legislation. The bill as reported by the committee included a provision of no more than 2 percent of these payments that may be used for attorneys' fees. Concern was raised during committee consideration that should there be a complication in the processing of an individual's application, 2 percent would be insufficient to address that concern, and the 2 percent limitation on attorneys' fees has been increased to 5 percent.

I know my budget-conscious colleagues may balk at this expenditure, but when an extreme crisis hits an American community, we should as a Nation respond to that community's need. That is what this bill does. To aid this community in crisis, I urge a favorable vote on H.R. 1023.

Madam Speaker, I reserve the balance of my time.

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

Madam Speaker, I rise in support of H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act of 1998. The purpose of the bill is to establish a fund to provide compassionate payments of $100,000 to individuals with hemophilia who contracted HIV, the AIDS virus, from contaminated blood-clotting products.

Hemophilia is a blood-clotting disorder genetically passed to sons by their mothers. In the late 1970s and early 1980s approximately 7,200 boys and men were infected with HIV through the use of blood-clotting products. That is nearly half of all people with hemophilia in the United States.

Because these blood-clotting products were derived from pools made up of literally thousands of donors, including prisoners, it has been nearly impossible to conclude causation and liability to any one manufacturer for selling contaminated blood products. Although, as the chairman mentioned, many cases have been settled, of the dozen or so cases that eventually went to trial, the manufacturers were only held liable in two cases, one of which was reversed and the other is still on appeal. To make matters worse, many of the States have passed so-called blood shield laws to protect blood banks from liability when blood-based diseases are passed on to users.

Notwithstanding the industry's courtroom success and new blood shield laws, the industry recently established a fund to provide $100,000 to individuals who contracted HIV through contaminated blood-clotting products in exchange for signing waivers releasing the industry from any future liability. Many hemophiliacs and their families have accepted this offer. Unfortunately, the $100,000 industry payment is insufficient to cover the enormous costs of blood-clotting drugs which people with hemophilia must continue to have in order to live a relatively normal life, and the enormous costs of drugs to combat the AIDS virus. Accordingly, this legislation is necessary to provide additional financial assistance.

The administration supports this proposal. We want to thank the chairman for the manager's amendment to increase the attorneys' fee provision from 2 to 5 percent, because we support this amendment, because we believe that it will allow claimants greater access to legal counsel in processing their applications under the bill.

Madam Speaker, I reserve the balance of my time.

Mr. HYDE. Madam Speaker, I am pleased to yield 8 minutes to the distinguished gentleman from Florida (Mr. GOSS), one of the driving forces behind this excellent legislation.

Mr. GOSS. Madam Speaker, I thank the distinguished gentleman from Illinois (Mr. HENRY HYDE), chairman of the Committee on the Judiciary, with my great respect for him, and I thank him personally from my heart for getting this legislation this far.

Madam Speaker, I rise today in support of H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act, which is designed to respond to the tragedies of hemophilia-associated AIDS.

I first became involved in this issue some nine years ago when I met the Ray family. Ricky Ray, like his two brothers, contracted HIV through the use of contaminated blood products. Ricky, the eldest of the three boys, died of AIDS in 1992 at the age of 15. Before his death Ricky and his family courageously spoke out and became national symbols of the terrible situation we are facing. He inspired many of his peers to tell their stories and begin seeking answers from the Federal Government and the blood product manufacturing industry.

I am saddened that he did not live to see the day when legislation named in his honor would win the approval of this body. But we know his brothers and sisters, his parents, and the extended family of friends he established around the country recognize the enormous contribution that he made in his very short life. It is appropriate that the legislation before us bears his

name, and I am pleased that Ricky's mother Louise is here with us today.

Madam Speaker, hemophilia is an inherited blood-clotting disorder causing serious internal bleeding episodes that, if left untreated, can lead to disfigurement and death. People with hemophilia rely on blood products, commonly called factor, which are manufactured and sold by pharmaceutical companies.

Because these products are made from the pooled blood of thousands of people, the potential for infection with a blood-borne disease among those who use them is obviously very high, something that has been known for decades. In fact, hemophilia sufferers have long been described as the canaries in the coal mine, because when something goes wrong with the blood supply it shows up in the hemophilia community first.

Soon after the introduction of clotting factor in the 1970s, the hepatitis virus swept through the hemophilia community. Largely as a result of the hemophilia community's experience with the hepatitis virus, the Federal Government adopted the national blood policy, which charged the Public Health Service, including the Centers for Disease Control, Food and Drug, and the National Institutes of Health with ensuring the safety and adequacy of the Nation's blood supply. It is worth noting that the Federal responsibility for blood and blood products is indeed unique. No other product has a national policy.

In the early 1980s a much more deadly disease struck as approximately one-half of the Nation's hemophiliacs, some 7,200 people at a minimum, became infected with HIV through the use of contaminated blood products. How did this happen? Why did the system that was established to safeguard the supply of blood and blood products fail to heed the early warning signs and prove so slow to respond to a dangerous threat?

In 1993 I joined with Senators GRAHAM of Florida and KENNEDY of Massachusetts in asking the Department of Health and Human Services to conduct a review of the events surrounding this medical disaster. The results of that intensive and objective review are contained in a report prepared by the Institute of Medicine, an arm of the National Academy of Sciences.

The IOM found "a failure of leadership and inadequate institutional decision-making processes" in the system responsible for ensuring blood safety, concluding that "a failure of leadership led to less than effective donor screening, weak regulatory actions, and insufficient communication to patients about the risk of AIDS."

While the IOM report is important, it does not begin to quantify the human dimension. For me, that is the most compelling part of this tragedy. We cannot talk to these victims without being moved by what they have gone through. It is important to keep in mind that the people with hemophilia already have to manage a sometimes debilitating disease. The average person with hemophilia spends approximately $100,000 per year on clotting factor alone. Many people with hemophilia have had a difficult time obtaining both health and life insurance, understandably.

In addition to the difficulties associated with hemophilia itself, the added complication of HIV AIDS has hit the hemophilia community particularly hard. Each treatment costs somewhere in the range of $10,000 to $50,000 per year, varying on the stage of the disease and the course of the treatment.

As a result of these extraordinary costs and the disproportionate impact of this tragedy on men, who most typically suffer from hemophilia and who tended to be the head of many of these households, many of these folks have been financially devastated. In some cases entire generations have been wiped out: fathers, sons, uncles. Most tragically, some men infected their wives with HIV before they became aware that they had contracted the disease. We know of cases where unborn children in these circumstances were also infected.

The emotional toll on all of these families has been immense. Madam Speaker, the Federal Government cannot become involved in every tragic case that occurs in this country, but this case is unique. I believe the Federal Government can and should, for compassionate reasons, act to help the hemophilia community.

While we cannot right all the wrongs in the world, we should pass this legislation to acknowledge the unique responsibility of the government to protect the blood supply and provide some measure of compassionate assistance to these victims. While I am encouraged that a final class settlement between the people of hemophilia and the blood product manufacturing companies is in fact going forward, it does not change my view that government also must act.

As my colleagues know, and as the hemophilia community has learned firsthand, moving a bill through the legislative process is a slow, difficult, and sometimes frustrating experience, amen. When I first introduced the Ricky Ray bill, we had about two dozen cosponsors. Since then support for the bill has swelled to 270 cosponsors, and we have secured unanimous approval for all three committees with jurisdiction.

This incredible progress is the direct result of the courage, diligence, and hard work of the hemophilia community. Of particular notice is the work of a group of high school students from Robinson Secondary School in Fairfax, Virginia. For several years these kids, as part of a marketing education program called DECA, have lobbied to pass this bill. Their efforts have been extraordinary, and they show that democracy can and does work.

Finally, Madam Speaker, let me say thank you to the congressional staff that have worked with me through the years to research and understand this tragedy, explain it to the House, and get this bill moving.

Madam Speaker, for too long the hemophilia community has felt that government first let them down and later abandoned them. I sincerely hope that the House action today will provide some measure of reassurance that their voices do count, that the legislative process does work, and that we have not forgotten them or the tragedy that befell their community. I only wish we had a cure for AIDS.

I strongly urge my colleagues to support this important legislation.

Madam Speaker, I include for the RECORD the following CRS report.

The report referred to is as follows:

CRS REPORT FOR CONGRESS—BLOOD AND BLOOD PRODUCTS: FEDERAL REGULATION AND TORT LIABILITY

(By Diane T. Duffy and Henry Cohen, Legislative Attorneys, American Law Division)

SUMMARY

Part I of this report, by Diane Duffy, Legislative Attorney, provides an overview of the Federal government's regulation of blood products. Part II, by Henry Cohen, Legislative Attorney, examines tort liability for injuries caused by defective blood or blood products.

The Food and Drug Administration (FDA) regulates blood and blood products under two statutes which overlap to a certain degree: the Federal Food, Drug and Cosmetic Act [FFDCA] and the Public Health Services Act (PHSA). Regulations are issued in order to implement the provisions of these statutes. Current statutory and regulatory law operates to govern the licensing, production, testing, distribution, labeling, review and approval of all drugs and biologics. Specifically, under the FFDCA, drugs, which include biologics such as blood and blood components or derivatives, which are intended to cure, mitigate, or prevent disease, are regulated. The enforcement and penalties provisions of the FFDCA can be applied to biological product manufacturers. Within the agency, the Center for Biologics Evaluation and Review has jurisdiction over the regulation of these articles.

Tort liability for injuries caused by defective blood or blood products is a form of products liability, which is governed primarily by state law. Products liability is strict liability, which means that, to recover, the plaintiff does not have to prove that the defendant was negligent, but need prove only that the defendant sold a defective product and that the plaintiff's injury resulted from the defect. However, all 50 states—48 through "blood shield" statutes—provide that blood transfusions are not subject to strict liability. The primary rationale for this is the belief that holding suppliers of blood or blood products strictly liable would make blood transfusions too expensive.

Part I of this report, by Diane Duffy, Legislative Attorney, provides an overview of the Federal government's regulation of blood

products. Part II, by Henry Cohen, Legislative Attorney, examines tort liability for injuries caused by defective blood or blood products.

PART I: FEDERAL REGULATION OF BLOOD PRODUCTS

Issues relating to the regulation of blood products have been raised in the context of individuals with hemophilia who contracted Human Immunodeficiency Virus (HIV), the virus which causes AIDS, through the use of contaminated blood products. In the 104th Congress, bills have been introduced by Rep. Goss and Sen. DeWine which would establish a trust fund to compensate hemophiliacs, their spouses or estates, who contracted HIV through tainted blood products. This part of the report summarizes Rep. Goss' bill (H.R. 1023, 104th Congress)[1]; discusses current Federal law that directs and authorizes the regulation of blood products; and discusses regulatory issues and events which are notable in this context. In particular, it focuses on issues which tend to indicate that the regulation of blood products has been different than the regulation of other articles which are within the jurisdiction of the Food and Drug Administration (FDA).

Summary: The Ricky Ray Hemophilia Relief Fund Act of 1995

H.R. 1023, 104th Congress, introduced by Rep. Goss, establishes procedures for claims for compassionate payments with regard to persons with blood clotting disorders, e.g., hemophilia, who contracted HIV due to contaminated blood products. The bill, entitled the Ricky Ray Hemophilia Relief Fund Act of 1995, states that about half of all individuals in the U.S. who suffer from blood clotting diseases like hemophilia, were exposed to HIV through the use of blood clotting agents. The bill finds that the Federal government has a shared responsibility with the blood products industry for protecting the safety of the blood supply and for regulating blood clotting agents. H.R. 1023 finds that people with blood clotting disorders were at a very high risk of contracting HIV during the period beginning in 1980 and ending in 1987, when the last mass recall of contaminated anti-hemophilic factor (AHF) occurred. The bill states that it was during this period that the Federal government did not require the blood products industry to use means to ensure safety of blood products that were marketed for sale to people with blood clotting disorders. Moreover, it finds that the government did not require that all available information about the risks of contamination be dispensed and failed to properly regulate the blood products industry. Based upon these and other findings, the bill establishes a fund to compensate individuals in this circumstance. The fund is named after a child born with hemophilia who, like his two younger brothers and others, became infected with HIV through the use of contaminated blood clotting products.[2]

Specifically, the fund provides for partial restitution to people who were infected with HIV after treatment, during the period of 1980–1987, with contaminated blood products. The fund is established in the Department of the Treasury, is to be administered by the Secretary, and is to remain viable for five years after the date of enactment. The bill authorizes to be appropriated to the fund $1,000,000,000, to be disbursed by the Attorney General. H.R. 1023 provides that any person who submits to the Attorney General written medical documentation that he has an HIV infection shall receive $125,000 if each of these conditions is met:

(A) 1. The person has any form of blood clotting disorder and was treated with blood clotting agency in the form of blood components or blood products at any time during the period of January 1, 1980 and ending December 31, 1987; or

2. The person is the lawful spouse of the infected person or is the former lawful spouse of the infected person at the time so described in the bill.

3. The person acquired HIV through perinatal transmission from a parent who is an individual described in the above paragraphs.

(B) A claim for payment is filed with the Attorney General.

(C) The Attorney General determines that the claim meets the requirements under this bill, if enacted.

The Attorney General is required to establish procedures for the claims and payments and must determine whether the claim meets all the requirements. Claims are to be assessed and paid, if appropriate, within 90 days of their filing. In the case of a deceased claimant, the payment is to be made to the deceased's estate or in the manner set forth in the bill. Payments made from the fund shall be in full satisfaction of all claims of or on behalf of the individual against the United States that arise out of both the HIV infection and treatment during the period of time noted. With regard to judicial review, any person whose claim is denied may seek judicial review in a district court of the U.S. The court shall review the denial on the administrative record and hold unlawful and set aside the denial if it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Regulation of blood products

The Food and Drug Administration (FDA) regulates blood and blood products under two statutes which overlap to a certain degree: the Federal Food, Drug and Cosmetic Act [FFDCA][3] and the Public Health Services Act (PHSA)[4] and implementing regulations.[5] Current statutory and regulatory law operates to govern the licensing, production, testing, distribution, labeling, review and approval of all drugs and biologics. Under the FFDCA, drugs intended for the cure, mitigation, or prevention of disease, which include biologics such as blood and blood components or derivatives, are regulated.[6] Biological products are regulated by the FDA's Center for Biologics Evaluation and Review under the authority of the FFDCA, PHSA and implementing regulations.[7] The FDA is the primary agency for protecting the nation's blood supply and it is directed and authorized to regulate blood-banking, the handling of source plasma, and the manufacturer of blood products. Investigations of a new biological product is done under investigational new drug procedures found in the drug section of the FFDCA because the PHSA specifically regulates after the product is in the stream of commerce, not before. The enforcement and penalties provisions of the FFDCA can be applied to biological product manufacturers.

Under section 351 of the PHSA[8], blood products are regulated under the category of biological products. Current law provides that no person may sell, barter, exchange or offer to sell, barter, exchange or conduct interstate commerce of the same or bring from a foreign country any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic products, or analogous products applicable to the prevention, treatment, or cure of diseases or injuries of man unless the same has been propagated or manufactured and prepared at an establishment holding an unsuspended or unrevoked license, issued by the Secretary, to propagate or manufacture and prepare the biological product.

Moreover, the law provides that each package of the product must be plainly marked with the proper name of the product, the name, address and license number of the manufacturer and the expiration date. The statute prohibits the false labeling or marking of any package or container containing the biological product and authorizes department officials to inspect establishments. Current law governs licensing for both the establishment and the product. For example, the statute provides that licenses for the maintenance of the establishment are issued after a showing that the establishment and the products meet standards designed to insure the continued safety, purity and potency of the products. Further authority is provided for suspending and revoking licenses. Also, when a batch, lot or other quantity of a licensed product presents an imminent or substantial hazard to the public health, the Secretary shall issue an order, under 5 U.S.C. §554, immediately ordering the recall of the quantity. The assessment of civil money penalties is authorized for violations. Any person who violates this section or aids in the violation of this section may be punished upon conviction by a fine or imprisonment or both. In sum, the agency is authorized to enforce the law through various enforcement tools including, seizure, application for recall, injunction, criminal prosecution, or administrative techniques, e.g. suspension, revocation of license.[9]

Implementing regulations governing blood and blood products provide further detail. For example, 21 C.F.R. Part 600 addresses general standards for establishments that manufacture a product subject to licensing as a blood product. It defines critical terms, e.g., biological product, sterility, purity, establishment, etc. These regulations state that with respect to an establishment, a person shall be designated as the "responsible head who shall exercise control of the establishment in all matters relating to compliance with the provisions" of these regulations.[10] This part governs inspections with respect to time of inspection, duties of inspectors and more. In addition, regulations require other actions, for instance, the postmarket reporting of adverse experiences.[11]

Part 601 governs two types of licensing: the establishment and the product.[12] The FDA is charged with issuing licenses only after all pertinent requirements and conditions are met. The agency is authorized to enforce provisions of current law through administrative measures to revoke or suspend a license. Provisions for review of the agency's decision regarding suspension or revocation are also addressed. Section 601.25 establishes the review procedures to determine that licensed biological products are safe and effective and not misbranded under prescribed, recommended or suggested conditions of use. Notably, Subpart E provides for the accelerated approval of biological products for serious or life threatening illnesses. This section permits the agency to approve products on a fast track to provide meaningful therapeutic benefit to patients over existing treatments, that is, to treat patients unresponsive to or intolerant of, available therapy.

To assist the agency in fulfilling its duty to evaluate the safety and effectiveness and labeling of biological products, Part 601 also

Footnotes at end of report.

authorizes the FDA to appoint advisory review panels to (1) evaluate the safety and effectiveness of biological products for which a license has been issued under §351 of the PHSA; (2) review the labeling of such biological products; and (3) advise the Commissioner on which of the biological products under review are safe, effective and not misbranded. The members of the panel shall be qualified experts, appointed by the Commissioner, and shall include persons from lists submitted by organizations representing professional, consumer, and industry interests. Such persons shall represent a wide divergence of responsible medical and scientific opinion. The Commissioner designates the chair of each panel (for each type of biological product) and minutes of all meetings must be made. Additionally, regulations provide that interested persons can participate in the advisory panels sessions to the extent that the FDA must publish a notice in the Federal Register requesting interested persons to submit, for review and evaluation by the advisory panel, published and unpublished data and information pertinent to the biological products.

To a certain extent, the industry regulates itself through the adherence to good manufacturing practices (GMPs). Part 606 sets forth these GMPs for blood[13] and blood components and provides uniform and industry-specific guidelines and requirements to insure safety, effectiveness, purity and other important features of blood products.[14] These regulations pertain to personnel of the establishment, e.g., requirement to designate person in control of establishment; facilities maintenance, e.g., adequate space, quarantine storage, orderly collection of blood, etc.; equipment, e.g., calibrated, properly maintained, etc.; and, supplies and reagents, e.g., storage in a safe, sanitary and orderly manner. The GMPs detail finished product controls, container labels, records and reporting procedures and importantly, the adverse reaction process.

Part 607 requires the registration of establishments which include human blood and plasma donor centers, blood banks, transfusion services, other blood product manufacturers and independent laboratories that engage in quality control and testing for registered blood product establishments. The regulations also provide special standards for human blood and blood products, some of which apply directly to those being treated for hemophilia. For example, Part 640 addresses the product known as Cryoprecipitated AHF, a preparation of antihemophilic factor which is obtained from a single unit of plasma collected and processed in a closed system. The source material for this product is plasma which may be obtained by whole blood collection or plasmapheresis.[16] The regulations establish procedures pertaining to the suitability of donors; the collection of source material; the testing of blood; processing; quality control; and further requirements. With specific regard to donor testing, the regulations provide that the blood from which the plasma is separated must be tested as prescribed in §§610.40 [Test for hepatitis B], 610.45 [Test for HIV] and 640.5 [Test for syphilis, blood group, and Rh factors]. The test must be conducted on a sample of the blood collected at the time of donation and the container must be properly labeled. Manufacturers of this product are responsible for testing and recordkeeping. Moreover, quality control tests for potency of the antihemophilic factor must be conducted each month on at least four representative containers of Cryoprecipitated AHF. The results must be maintained at the establishment for inspection and review by the FDA.

As soon from the above examination of statutory and regulatory law, the legal requirements and procedures, as well as industry GMPs, create a complex and far-reaching regulatory structure for biological products and blood products in particular. To a certain extent, under the FFDCA and the PHSA, the licensing of biologics is more restrictive than that for other regulated articles, e.g., new drug. For example, a new drug under the FFDCA needs an approved new drug application (NDA), however, a new biologic needs to fulfill higher requirements. A generic biological product such as a serum must be approved by the FDA under the PHSA for its purity, potency and effectiveness based upon data submissions.[16] The PHSA states that licenses for new products may be issued only upon a showing that meets these express standards.[17] Additionally, related regulations and GMPs must be fully satisfied to ensure compliance.

Second, manufacturers of the product are individually licensed as capable of making the product on the particular manufacturing site.[18] Regulations at Part 607, discussed above, must be fully met for each establishment and for each product. Enforcement and inspection authority under the Act may be triggered to address alleged violations of the law or regulations or to insure ongoing compliance. Inspectors are authorized to examine records of the licensed establishments while GMPs guide recordkeeping, facility and equipment management, personnel regulations and similar procedures. Moreover, the FDA inspectors are granted special inspection authority for biological products and special procedures apply. For instance, as noted above, a specific person must be designated as being in control of the facility for regulatory and compliance purposes.[19] Moreover, and particularly with regard to blood clotting agents for hemophilia, extensive and frequent testing of lots and batches is required after initial production. The FDA may exercise its enforcement authority under the FFDCA and PHSA to suspend or revoke the license for either the product or the establishment, to seize, to seek recalls, injunctions, assess penalties, and to exercise a range of impressive enforcement tools.[20]

The entire licensure process is complex and intended to insure purity, potency and prevent misbranding. Some view it as the functional equivalent to a NDA for a new drug. Regulation of biological products is more restrictive in scope and has appeared to evolve to meet the unique needs and characteristics of biological products. While there are many similarities in the regulation of the drugs, devices, and biological products during premarket and post-market phases, there appears to be a greater emphasis on regulatory standards and requirements for biologics at the manufacturing level. Commentators have noted that the unique and separate histories of the regulation of drugs and biologics may account for the difference in regulatory approach.[21] One reason may be attributed to the fact that the Biologics Act[22] predates the FFDCA and that it was not enforced by the FDA until 1972, when jurisdiction for these matters was transferred to the FDA from the National Institutes of Health. Extensive government involvement and regulation of the manufacturing process grew out of early tragic incidents when it was determined that microbes contaminated vaccines.[23] Thus, where the primary focus is on the final product for drugs and devices, for biologics, it was determined that government regulation was needed much earlier and more strictly than for other articles under the various pertinent statutes.

Additionally, blood and blood products are the subject of an articulated national policy. Other articles under the FFDCA and PHSA have not been focused upon nationally in such a way. In 1973, the National Blood Policy was announced and the Public Health Service, including the CDC, the FDA and NIH, was charged with responsibility for protecting the nation's blood supply. The Policy recognized that reliance on "commercial sources of blood and blood components for transfusion, therapy . . . contributed to significantly disproportionate incidence of hepatitis, since such blood is often collected from sectors of society in which transmissible hepatitis is more prevalent."[24] The Policy encouraged efforts to establish an all-volunteer blood donation system and to eliminate commercialized acquisition of blood and blood components.

The Policy listed four goals: to provide an adequate supply of blood; to ensure a higher quality of blood; to facilitate maximum accessibility to services; and to achieve total efficiency.[25] According to the Institute of Medicine's [IOM] 1995 study, the first actions under the policy included adoption of an all-volunteer blood collection system; coordination of costs; regionalization of blood collection and distribution; and, an examination of standards of care for hemophiliacs and other special groups. The Policy did not address the commercialization of plasma, the preparation and marketing of plasma derivatives, and the commercial acquisition of blood for diagnostic reagents.[26]

Contaminated blood products and brief overview of Government actions during the 1980's

In the context of blood products regulation and the government's focus on the nation's blood supply, events occurred in the 1980s which led hemophiliacs and others to contract HIV from contaminated blood and blood products. The IOM study indicates that in September of 1982, of the 593 cases of AIDs reported to the CDC, 3 were hemophiliacs. Later, the CDC noted that the hemophilia patients who had AIDS had all received large amounts of a commercially manufactured anticoagulant known as AHF (antihemophilic factor)[27] Evidence seemed to indicate that children with hemophilia were at risk for the disease.[28] As more cases were reported, the IOM report states that a national survey indicated that 30% or more of all hemophiliacs had abnormal immunological tests. By January 1983, evidence from CDC investigations strongly indicated that blood and blood products transmitted AIDS and that it could be transmitted through sexual contact. It appeared that AIDS was occurring in individuals with hemophilia who had received AHF concentrate.[29] In March, 1983, the PHS issued its first formal recommendations on the prevention of AIDS and with regard to hemophiliacs, the recommendation stated that work should continue toward development of safer blood products for use by hemophiliac patients.[30] H.R. 1023 states that thousands became infected with HIV through the use of contaminated blood clotting products.[31]

The IOM report indicates that numerous measures were publicized and taken with regard to blood and plasma donations, collection and use, e.g. quarantine and disposal. The FDA announced that it approved a heat treatment to inactivate viruses in AHF concentrate, which purported to help protect individuals with hemophilia from Hepatitis B,

and perhaps, AIDs.[32] The IOM report states that: "Government and private agencies identified, considered, and in some cases adopted strategies for dealing with the risk of transmitting AIDs through blood and blood products. The recommended safety measures were limited in scope. . . ."[33]

In 1983, the FDA's Blood Product Advisory Committee (BPAC) met to reconsider blood and blood products policies. One company recalled AHF concentrate when it determined that the concentrate was made from pools containing plasma from a person diagnosed with AIDs. However the IOM report notes that this recall was expressly not viewed as a recall of all such products and that the agency did not initially initiate a nationwide call of the concentrate.[34] The BPAC stated in mid-1983 that the criteria for deciding to withdraw lots of AHF concentrate should be based on evidence that plasma from a donor with AIDs had been present in the pooled plasma from which the lot was manufactured and recommended to the FDA a case-by-case decision regarding withdrawal for each lot that included plasma from a person who had AIDS or was suspected of having AIDS.[35] Some physicians switched from AHF concentrate to cryoprecipitate in those with less severe hemophilia. The IOM concluded "[b]lood safety policies changed very little during 1983 [and that there] were missed opportunities to learn from pilot tests to screen potentially infected donors or implement other control strategies that had been rejected as national policy."[36] Inaction relating to donor screening and surrogate marker testing was emphasized in the report.[37]

BPAC served as an advisory committee for the FDA and was the forum for industry and interested entities to participate in and influence the FDA's policy regarding blood products regulation.[38] According to the IOM report, BPAC's membership included blood and plasma organization representatives, scientists, and physicians.[39] The report concluded that valuable screening measures were not recommended by the BPAC due to uncertainties regarding scientific data, i.e., data from CDC, and "pressures from the blood industry and special interest groups."[40] Thus, options that could have reduced infection were not pursued. HIV testing and additional donor screening procedures were implemented in 1985. The IOM concluded that the FDA relied too heavily on BPAC and did not independently assess its recommendations and statements, and did not observe principles for proper management of advisory committees.[41] Moreover, IOM concluded that the membership of BPAC limited the information and points of view expressed to the agency and found possible issues relating to conflicts of interest. The report focused on the agency's role as being responsible for protecting the nation's blood supply, providing leadership and communication of information to those at risk.[42]

Conclusion to Part I

In sum, the blood and blood products regulation under the FFDCA and PHSA are restrictive and complex, governing primarily licensing of products and sites, as well as the final product, and authorize extensive enforcement actions. The FDA is the lead agency responsible for regulation of these articles and was charged with this responsibility in 1972. The products themselves seem to have been accorded special status, to a certain degree, under the statutes for regulation. Moreover, blood and blood products have been part of an articulated National Blood Policy. Events of the 1980s resulted in individuals with hemophilia, and many others, to contract HIV through the use of contaminated blood and blood products. This spurred intense examination of the FDA, its regulatory actions, and the use of its advisory committee BPAC, during this period. H.R. 1023, and S. 1189, were introduced to provide for payments from a trust fund to those with blood clotting disorders who contracted HIV at this time.

PART II: TORT LIABILITY FOR INJURIES CAUSED BY DEFECTIVE BLOOD OR BLOOD PRODUCTS

"Products liability" refers to the liability of a product manufacturer or subsequent seller for damages resulting from an injury caused by a product defect. Products liability is governed primarily by state common (i.e., court-made) law, as modified by state statute, although federal statutes occasionally preempt aspects of state products liability law. For example, prior to filing suit under state law for injuries caused by defective vaccines, one must file a claim under the National Children Vaccine Injury Act of 1986, as amended.[43]

Products liability differs from most other liability for non-intentional torts because products liability is strict liability, which means that, to recover, the plaintiff does not have to prove that the defendant was negligent (i.e., failed to exercise due care). All the plaintiff generally must prove in a products liability action is that the defendant sold a defective product and that the plaintiff's injury resulted from the defect.[44]

Products liability suits sometimes also allege a breach of warranty, on the theory that the fact that the product was defective constitutes a breach of the implied warranties that goods shall be merchantable (fit for ordinary purposes) and fit for any particular purpose for which they are required. These implied warranties arise under Uniform Commercial Code §§2-314 and 2-315, which has been enacted into law in every state but Louisiana. A suit for breach of warranty is similar to one for strict liability in tort in that in neither type of case need the plaintiff prove negligence. Breach of warranty suits predate strict tort liability suits, which came into being only in the 1960s.

One situation in which strict liability is generally not applied is in suits involving unavoidably unsafe products, among which, as noted below, some courts include blood. Restatement (Second) of Torts §402A comment k, which courts generally follow, provides: "There are some products which, in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use. This is especially common in the field of drugs. An outstanding example is the vaccine for the Pasteur treatment of rabies, which not uncommonly leads to very serious and damaging side effects when it is injected. Since the disease itself inevitably leads to a dreadful death, both the marketing and the use of the vaccine are fully justified, notwithstanding the unavoidable high degree of risk which they involve. Such a product, properly prepared, and accompanied by proper directions and warnings, is not defective, nor is it *unreasonably* dangerous" [emphasis in original].

Case law

The seminal products liability blood transfusion case was *Perlmutter* v. *Beth David Hospital*, decided by the New York Court of Appeals in 1954.[45] It was a breach of warranty case (as it predated strict tort liability), and the issue was whether a transfusion constituted the sale of a product, in which case a transfusion of contaminated blood would constitute a breach of warranty, or whether it constituted the provision of a medical service, in which case the plaintiff would have to prove negligence to recover. This distinction was critical because there was no means to detect the presence of the hepatitis virus in blood, nor a practical method to treat the blood to eliminate the danger of hepatitis. Therefore, if the court deemed the transfusion a sale, it would turn hospitals into insurers of the risk of contaminated blood, but if it deemed it a service, then plaintiffs in most cases would go uncompensated because of the difficulty in proving negligence.

The court held that the transfusion should be treated as a service, because, "when service predominates, and the transfer of personal property is but an incidental feature of the transaction, the transaction is not deemed a sale. . . ."[46] The *Perlmutter* decision was widely followed by the courts, and extended to blood banks as well as hospitals. In *Community Blood Bank, Inc.* v. *Russell*, however, a Florida court found it "a distortion to take what is, at least arguably, a sale, twist it into the shape of a service, and then employ this transformed material in erecting the framework of a major policy decision."[47] This policy decision, of course, is whether "the social utility of an abundant blood supply outweighs the risks to individuals"[48] The Florida court, needless to say, found the transfusion to be a sale, and a transfer of contaminated blood to be a breach of warranty.

"*Community Blood Bank* thus paved the way for the greatest assault on the *Perlmutter* citadel, which came in *Cunningham* v. *MacNeal Memorial Hospital*,[49] where the defendant once again was a hospital, not a blood bank."[50] The plaintiff, who had contracted serum hepatitis from defective blood supplied by the hospital during a transfusion, asserted a claim in strict liability and won, with the court refusing to allow the hospital the defense that there was no means to detect the existence of serum hepatitis in whole blood. The court wrote: "To allow a defense to strict liability on the ground that there is no way, either practical or theoretical, for a defendant to ascertain the existence of impurities in his product would be to emasculate the doctrine and in a very real sense return to a negligence theory."[51]

Some courts, even if they treated a transfusion as the sale of a product and not as a service, found for the defendant under Restatement (Second) of Torts §402A comment k, mentioned above. They "considered whether liability without fault was applicable in view of a claim that blood containing hepatitis is a product which is unavoidably unsafe and thus is not an unreasonably dangerous product for which the blood bank could be held liable without fault. With some authority to the contrary, the courts have reasoned that blood infected with hepatitis virus is such an unavoidably unsafe product, since there is a great need for blood for operations and surgical procedures, but the possibility of blood being infected with hepatitis cannot be totally eliminated despite due care being taken, and therefore they have held that a blood bank cannot be held liable without fault for injuries to a patient who contracted hepatitis from the blood it supplied."[52]

Blood shield statutes; negligence suits

The Illinois legislature responded to the *Cunningham* decision by enacting a statute that provides, in part: "The procuring, furnishing, donating, processing, distributing or using human whole blood, plasma, blood

products, blood derivatives and products, corneas, bones, or organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body is declared for purposes of liability in tort or contract [i.e., breach of warranty] to be the rendition of a service . . . and is declared not to be a sale of any such items and no warranties of any kind or description nor strict tort liability shall be applicable thereto, except as provided in Section 3 [which imposes liability for negligence]."[53]

A subsequent Illinois case upheld the constitutionality of this statute, writing: "[I]t was predicted at the time *Cunningham* was handed down that the imposition of liability without fault on the distributors of blood would cause the cost of transfusions to skyrocket. . . . Moreover, implicit in the legislature's declaration of public policy is the fear that the imposition of strict tort liability would cause the financial considerations arising out of increased exposure to tort litigation to impinge on the exercise of sound medial judgment in a field where an individual's life might be at stake."[54]

Illinois' approach is now the approach of all 50 states, with 48 states having enacted blood shield statutes, and Minnesota, New Jersey, and District of Columbia courts having reached the same result on their own.[55] Blood shield statues "expressly characterize blood transfusions as services or explicitly state that blood transfusions will not be subject to strict liability."[56] A 1990 Washington case articulated the policy justifications for blood shield statutes: "First, the societal need to ensure an affordable, adequate bloody supply furnishes a persuasive reason for distinguishing between victims of defective blood and victims of other defective products. Second, strict liability cannot provide an incentive to promote all possible means of screening the blood for HIV. Third, although the producers may be in a better position to spread the costs, it is not in society's best interest to have the price of a transfusion reflect its true costs."[57]

Blood shield statutes do not preclude all lawsuits alleging injuries caused by contaminated blood. Even in a state with a blood shield statute, one commentator notes, "It seems likely that an action in express warranty or innocent tortious misrepresentation would lie if a supplier of a blood product misrepresented the product's safety, and a plaintiff relied on the misrepresentation to his detriment in the purchase of use of the product."[58]

Another commentator addresses a different situation in which strict liability may remain: "So blood shield statutes were expressly enacted to address only the threat of serum hepatitis, and it was not until after it was discovered that the HIV virus was transmittable through blood that legislatures amended these statutes to deal with potential AIDS liability. Courts have held that these amendments are not to be applied retroactively. Consequently, plaintiffs who received contaminated transfusions before the amendment are not barred by the blood shield statutes from bring strict liability actions."[59]

A blood shield statute was also held inapplicable in a suit against a pharmaceutical company where the relevant statute (Indiana Code 16-41-12-11) applied to the distribution of blood by a "bank, storage facility, or hospital." The Indian Court of Appeals wrote: "[W]e simply cannot conclude that our legislature intended to include a pharmaceutical company, which commercially produces blood products for mass distribution, as an entity within the same class described as an organ or a blood "bank or storage facility." The manufacture and distribution of blood products by pharmaceutical companies is better characterized as the sale of a product rather than the provision of a service. . . . It is quite unlikely that our legislature intended to include pharmaceutical companies in its definition of "bank or storage facility" simply because the manufacture or production of blood products incidentally involves their storage."[60]

Finally, blood shield statutes do not, of course, preclude suits for damages caused by negligence, and, "[w]ith strict liability effectively eliminated as a possible remedy [in transfusion cases], negligence remains the only viable alternative."[61] "To recover under a negligence cause of action a transfusion-related AIDS victim must prove that a standard of care existed, that the defendant's conduct fell below that standards, and that this conduct was the proximate cause of the plaintiff's injury. Plaintiffs who have contracted AIDS through transfusions of blood and blood products have alleged negligence in both blood testing and donor screening."[62]

It is relevant to note here that, in 1985, the Food and Drug Administration (FDA) licensed the enzyme-linked immunsorbent assay (ELISA) test, which "has proven 98.6% effective in detecting exposure to AIDS [in blood], and when coupled with a second test, the Western Blot Analysis, the rate of detection rises to 100%."[63] The existence of this test enables plaintiffs to argue that a failure to use this test constitutes negligence. A federal court of appeals wrote: "We believe that the FDA's recommendation of February 19, 1985, that blood facilities begin testing all donated blood as soon as testing supplies become commercially available imposed a duty on [the blood bank] to test all its blood supplies for antibodies to the AIDS virus."[64]

One commentator reports: "As the rampant spread of AIDS continues and its devastating effects, both socially as well as personally, are being publicized, courts are weighing the consequences of the AIDS epidemic against the necessity of assuring an adequate supply of blood. . . . In the past several years, courts have started to rethink their position on denying recovery to victims of AIDS-tainted transfusions. Several approaches [to proving negligence] have been utilized with some success. These approaches include: (1) failure of the blood supplier or doctor to adequately warn the blood recipient of the inherent dangers associated with a blood transfusion [thus denying] the patient the opportunity to make an informed choice; (2) inadequate screening of blood donors [thus] allowing high-risk individuals to continue donating blood; and (3) using a blood transfusion when an alternate, safer method of sustaining life was available."[65]

Selected recommendations in the legal literature; The National Childhood Vaccine Injury Act of 1986

One commentator writes: "Although absolute protection for these entities [blood banks and blood product manufacturers] may have been logical or desirable when the HIV virus was undetectable in blood, the better view based on current medical and scientific knowledge would be to allow post-1985 recipients of contaminated transfusions to recover under the theories of strict liability and breach of warranty. This would place the burden on the blood banks and blood products manufacturers to ensure the safety of the products they distribute."[66]

The same writer adds: "Moreover, court and legislatures should distinguish between hospitals, blood banks, and blood products manufacturers. Blood banks, and especially blood products manufacturers, are active players in the economic marketplace, selling goods rather than providing services."[67]

These views are echoed by another commentator: "While hospitals may be characterized as service-providers, it is merely a legal fiction to so characterize blood and blood products providers. To hold them liable only in negligence—and then to allow the blood industry itself to set the standard of care accepted in the community, thus requiring innocent plaintiffs to shoulder an extraordinary burden of proof—violates all notions of fair play. It is time that blood products purchased for a price, and particularly manufactured blood derivative products, be recognized for the products they are. Even under the 402A comment k exception for "unavoidably unsafe" products, it would be unthinkable to term blood contaminated by the HIV virus as not "unreasonably dangerous." It would be hard to think of anything more unreasonably dangerous."[68]

An advocate of the blood shield statutes could respond to these arguments by quoting the justifications various courts have proffered for the statutes.[69]

Finally, one commentator proposes: "The National Childhood Vaccine Injury Act (NCVIA) should serve as the structural model for "alternative legislation." . . . [P]otential claimants should seek capped [no-fault] compensation in a court of claims on waiver of potential tort claims against blood products manufacturers. Petitions should receive compensation from a fund financed by both congressional appropriations and revenue raised through an industry tax based on the sale of blood products."[70]

The National Childhood Vaccine Injury Act of 1986,[71] was enacted because Congress feared that some vaccine manufacturers might leave the market, which could create a genuine health hazard in the United States. The Act provides federal no-fault compensation to persons who suffer injury or death from specified vaccines. It allows more limited recovery than is generally allowed against manufacturers under state tort law, but it was hoped that "the relative certainty and generosity of the system's awards will divert a significant number of potential plaintiffs from litigation."[72]

The Act established a National Vaccine Injury Compensation Program funded by a manufacturers' excise tax on certain vaccines. Persons injured by a vaccine administered after October 1, 1988, with claims of more than $1,000, may not sue the vaccine administrator or manufacturer unless they first file a petition in the United States Court of Federal Claims for compensation under the Program. Upon the filing of a petition, the court must issue a decision within a specified period. Under the Program, compensation is limited to actual reimbursable expenses, up to $250,000 for pain and suffering and emotional distress, $250,000 in the event of a vaccine-related death, actual and anticipated loss of earnings, and attorney's fees and other costs, but no punitive damages.

A petitioner dissatisfied with his recovery under the Program may reject it and file a tort suit (state statutes of limitations are stayed during the pendency of the federal petition), which is governed by state law, with some limitations, such as that there are rebuttable presumptions that manufacturers who comply with federal regulations are not subject to failure to warn suits or to punitive damages.

Treatment of blood and blood products in 104th Congress products liability legislation

On May 2, 1996, President Clinton vetoed H.R. 956, 104th Congress, the Common Sense Product Liability Legal Reform Act of 1996. On May 9, the House failed to override the veto.[73] The vetoed bill had been agreed upon in a House-Senate conference, which adopted the Senate version of the provision that dealt with blood and blood products.

Both the House and Senate versions addressed blood and blood products in their respective definitions of "product." Section 108(8)(B) of the House-passed bill provided: "The term ["product"] does not include . . . "human tissue, human organs, human blood, and human blood products."

Section 101(13)(B) of the Senate-passed bill, by contrast, provided: "The term 'products' does not include . . . tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof), are subject, under applicable State law, to a standard of liability other than negligence. . . ."

The Senate bill, in others words, did apply to blood and blood products in strict liability and breach of warranty actions, although these actions are precluded by all state laws, except apparently in the limited instances noted on page 15 of this report.[74] The Senate-passed bill did not apply in blood and blood products that are the subject of negligence actions. The House-passed bill did not apply in any suits involving blood or blood products.

The committee report that accompanied the House bill states merely, with respect to the exclusion: "Tissue, organs, blood, and blood products—that are human in origin— . . . are explicitly excluded from the product definition."[75] The committee report that accompanied the Senate bill goes into more detail:[76] "Claims for harm caused by tissue, organs, blood and blood products used for therapeutic or medical purposes are, in the view of most courts, claims for negligently performed services and are not subject to strict product liability.[77] The Act thus respects state law by providing that, in those states, the law with respect to harms caused by these substances will not be changed.[78] In the past, however, a few states have held that claims for these substances are subject to a standard of liability other than negligence, and this Act does not prevent them from doing so.[79] See, e.g., *Cunningham* v. *MacNeal Memorial Hosp.*, 266 N.E.2d 897 (Ill. 1970) (overturned by Ill. Ann. Stat. Ch. 111½, sections 2 and 3).[80] Such actions would be governed by the Act. . . ."[81]

The conference committee version of H.R. 956, as noted, adopted the Senate provision that dealt with blood and blood products (renumbered as §101(14)(B)). The joint explanatory statement of the conference committee, did not, however, discuss the provision.[82]

Recent settlement[83]

On August 14, 1996, a federal judge gave preliminary approval to a settlement between hemophiliacs infected with AIDS and four pharmaceutical companies that allegedly had manufactured blood clotting products contaminated with HIV.[84] Judge John F. Grady of the U.S. District Court for the Northern District of Illinois tentatively certified a settlement class, preliminarily approved the settlement agreement, and authorized the parties to begin notifying class members.

The plaintiffs contended that the companies sold tainted blood clotting products from 1978 until 1985, when new heat sterilization procedures came into practice. Under the settlement, each class member would receive $100,000, regardless of the number of class members; the total number of class members reportedly could range as high as 10,000. A fairness hearing is scheduled before Judge Grady on November 25, 1996.

FOOTNOTES

[1] Sen. DeWine's bill is substantially similar to H.R. 1023.

[2] The bill indicates that Ricky Ray died at age 15 of hemophilia-associated AIDS.

[3] 21 U.S.C. §§301 et seq.

[4] 42 U.S.C. §262.

[5] FDA regulations pertaining to blood products are set forth at 21 C.F.R. Parts 600 [Biological products; general]; 601 [Licensing]; 606 [Good manufacturing practices for blood and blood products]; 607 [Establishment registration and product listing for manufacturers of human blood and blood products]; 610 [General biological products standards]; and, 640 [Additional standards for human blood and blood products].

[6] 21 U.S.C. §321(g)(1) [Definitions; drug].

[7] According to an intra-agency agreement that differentiates drugs and biologics, biologics include: vaccines, allergens and in vivo diagnostic allergenic products; human blood and blood derived products; immunoglobulin products; products composed of or intended to contact intact cells or intact microorganisms including viruses, bacteria, fungi, etc.; non-antibiotic products that are proteins, peptides, or carbohydrate products produced by cell culture; protein products produced in animal body fluids by genetic alteration of the animal; venoms and their constituents; synthetically produced allergenic products intended to specifically alter the immune response to a specific antigen or allergen; and certain drugs used in conjunction with blood banking or transfusion. "FDA's Intercenter Agreement," Treatise on Food and Drug Administration, James O'Reilly, §13.21 [Biological Products].

[8] 42 U.S.C. §262.

[9] The FDA is not authorized to mandate recalls.

[10] 21 C.F.R. §600.10.

[11] 21 C.F.R. §600.80.

[12] This also includes the licensing of foreign establishments and products.

[13] Blood means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

[14] Component means that part of a single donor unit of blood separated by physical or mechanical means.

[15] Subpart F; 21 C.F.R. §640.50.

[16] 42 U.S.C. §262(d).

[17] Id.

[18] Id.; Food and Drug Regulation, James O'Reilly, §13.22.

[19] 21 C.F.R. Part 606.

[20] The FDA is authorized to act via the misbranding and adulteration sections of the FFDCA and can take various actions for enforcement under 21 U.S.C. §357.

[21] See, for example, Regulation of Biologics Manufacturing: Questioning the Premise, Food and Drug Law Journal, Vol. 49, No. 1, 1994, pp. 213, 216.

[22] The Act was originally enacted in 1902 and reenacted in 1944 when the PHSA was enacted; codified at 42 U.S.C. §262.

[23] FDLJ, infra, at 216.

[24] Reprinted in the Institute of Medicine's [IOM] "HIV and the Blood Supply," National Academy of Sciences, 1995, p. 41.

[25] Id.

[26] Id.

[27] IOM, at p. 68.

[28] Id.

[29] Id., at p. 70. AHF concentrate is manufactured from pools containing plasma from donors.

[30] Id., at p. 73.

[31] H.R. 1023, §2 (10).

[32] Id., at p. 73.

[33] Id., at pp. 73–4.

[34] Id., at p. 74.

[35] Id., at p. 75.

[36] Id., at p. 75–6.

[37] IOM, at pp. 101–133.

[38] The FDA is authorized, or at times directed, to use advisory committees. The Federal Advisory Committee Act, FACA, is applicable to the FDA and defines "advisory committee" as any committee, board, commission, counsel, conference, panel task force or, other similar group . . . which is established by a statute, established or used by the President, or established or utilized by the one or more agencies in the interest of obtaining advice or recommendations." 5 U.S.C. App. §3. As discussed above, FDA regulations provide additional and specific requirements for advisory committees, how they are constituted, meetings, participation by interested persons, and similar issues.

[39] IOM, at p. 121.

[40] Id., at p. 127.

[41] IOM, at p. 213.

[42] Id., at p. 215.

[43] 42 U.S.C. §§300aa et seq., discussed infra, at pp. 18–19.

[44] To recover in a products liability suit, the plaintiff must prove that the defect was present at the time it left the hands of the defendant. If a defect was present at the time of manufacture, but a plaintiff sues a seller instead of the manufacturer, then the seller may recover from the manufacturer any damages it pays to the plaintiff. In the past decade, almost half the states have enacted statutes making product sellers other than manufacturers strictly liable only when the manufacturer cannot be sued or would be unable to satisfy a judgment. See Fifty-State Surveys of Selected Products Liability Issues (CRS Report No. 95–300 A).

[45] 123 N.E.2d 792 (N.Y. 1954).

[46] Id. at 794.

[47] 185 So.2d 749 (Fla. Dist. Ct. App. 1966), aff'd as modified, 196 So.2d 115 (Fla. 1967).

[48] Terri S. Hall, Bad Blood: Blood Industry's Immunity From Liability For Transfusion-Borne Disease, 12 Journal of Products Liability 25, 33 (1989).

[49] 266 N.E.2d 897 (Ill. 1970).

[50] Hall, supra note 48.

[51] Cunningham, supra note 49, at 902.

[52] Annotation, Liability of Blood Supplier or Donor for Injury or Death Resulting from Blood Transfusion, 34 ALR4th 508, 513.

[53] 745 Ill. Compiled Stat. Ann. 40/2 (Smith-Hurd).

[54] Glass v. Ingalls Memorial Hospital, 336 N.E.2d 495, 499 (Ill. 1975).

[55] Andrew R. Klein, Beyond DES: Rejecting the Application of Market Share Liability in Blood Products Litigation, 68 Tulane Law Review 883, 915 (1994). The citations to 44 of the 48 state blood shield statutes appear in M. Stuart Madden, PRODUCTS LIABILITY (2d ed. 1988 & Supp. 1993) §6.19 n.1. Minnesota repealed its statute, Minn. Stat. §525.928, in 1991.

[56] Dana J. Finberg, Blood Bank and Blood Products Manufacturer Liability in Transfusion-Related AIDS Cases, 26 University of Richmond Law Review 519, 524 (1992).

[57] Howell v. Spokane & Inland Empire Blood Bank, 785 P.2d 815, 817 (Wash. 1990).

[58] Robert E. Cartwright and Jerry J. Phillips, PRODUCTS LIABILITY (1986 & Supp. 1992) at §4.03 (Supp. p. 127). Of course, a blood supplier may avoid this liability simply by not making warranties or representations as to a product's safety.

[59] Finberg, supra note 56, at 525–526.

[60] JKB, SR., and VB v. Armour Pharmaceutical Company, 660 N.E.2d 602 (Ind. App. 1996).

[61] Kathryn Glasgow Lofti, Suppliers of AIDS-Contaminated Blood Now Face Liability, 34 Howard Law Review 183, 196 (1991).

[62] Finberg, supra note 56, at 533.

[63] Id. at 521.

[64] Kirkendall v. Harbor Insurance Co., 887 F.2d 857, 861 (8th Cir. 1989).

[65] Lofti, supra note 61, at 200, 197.

[66] Finberg, supra note 56, at 537.

[67] Id.

[68] Hall supra note 48, at 43.

[69] See, text accompanying notes 54 and 57, supra.

[70] Klein, supra note 55, at 931, 932–933. The author of this proposal, however, would not allow a petitioner to use the no-fault compensation scheme unless he first "demonstrate[d] a diligent, but unsuccessful, effort to prove which manufacturer produced the product that caused his infection. Thus, only plaintiffs unable to prove traditional cause in fact would use alternative legislation." Id. at 933.

[71] 42 U.S.C. §§300aa et seq. The summary of the Act that follows draws heavily from Lester S. Jayson, Handling Federal Tort Claims: Administrative and Judicial Remedies §1.25 (1996).

[72] H.R. Rep. No. 99–908, Part 1, 99th Cong., 2d Sess. 13 (1986).

[73] For additional information see The Products Liability Conference Committee Bill (CRS Rep. No. 96–276 A).

[74] See, text accompanying note 48, supra.

[75] H.R. Rep. No. 104–64, Part 1, 104th Cong., 1st Sess. 30 (1995).

[76] The footnotes that accompany the following quotation are all by the author of this memorandum; they do not appear in the Senate report.

[77] This, of course, is because the blood shield statutes generally preclude suits except in negligence.

[78] This statement does not explain the reluctance to change negligence actions involving tissue, organs, blood, and blood products, when there is no reluctance to change negligence actions involving other products. Section 102(a)(1) of the bill provides that the bill would apply to any product liability action (with exceptions not relevant here), and section 101(14) defines "product liability action" as "a civil action brought under any theory [i.e., including negligence] for harm caused by a product."

[79] This is true, but does not explain why the bill would apply to strict liability actions involving tissue, organs, blood, and blood products, but not to negligence actions involving those products. Whether the bill would apply to a particular type of suit is unrelated to the question of whether that type of suit may be brought. This is because the bill would affect only particular aspects of products liability suit; it would not alter their nature as negligence, breach of warranty, or strict liability suits.

[80] This statute was renumbered as indicated in note 53, supra.

[81] S. Rep. No. 104-69, 104th Cong., 1st Sess. 24 n.86 (1995).

[82] H.R. Rep. No. 104-481, 104th Cong., 2d Sess. (1996).

[83] The following is based on an article in 24 Products Safety & Liability Reporter 761 (Aug. 16, 1996).

[84] Walker v. Bayer AG (N.D. Ill., MDL No. 93-C-7452).

[From the Committee to Study HIV Transmission Through Blood and Blood Products, Division of Health Promotion and Disease Prevention, Institute of Medicine, National Academy Press, Washington, D.C., 1995]

HIV AND THE BLOOD SUPPLY: AN ANALYSIS OF CRISIS DECISIONMAKING

(By Lauren B. Leveton, Harold C. Sox, Jr., and Michael A. Stoto)

EXECUTIVE SUMMARY

A nation's blood supply is a unique, life-giving resource and an expression of its sense of community. In 1993, voluntary donors gave over 14 million units of blood in the United States (Wallace, et al. 1993). However, the characteristic that makes donated blood an expression of the highest motives also makes it a threat to health. Derived from human tissue, blood and blood products can effectively transmit infections such as hepatitis, cytomegalovirus, syphilis, and malaria from person to person (IOM 1992). In the early 1980s blood became a vector for HIV infection and transmitted a fatal illness to more than half of the 16,000 hemophiliacs in the United States and over 12,000 blood transfusion recipients (CDC, MMWR; July 1993).

Each year, approximately four million patients in the United States receive transfusions of approximately 20 million units of whole blood and blood components. The blood for these products is collected from voluntary donors through a network of nonprofit community and hospital blood banks. Individuals with hemophilia depend upon blood coagulation products, called antihemophilic factor (AHF) concentrate, to alleviate the effect of an inherited deficiency in a protein that is necessary for normal blood clotting. The AHF concentrate is manufactured from blood plasma derived from 1,000 to 20,000 or more donors, exposing individuals with hemophilia to a high risk of infection by blood-borne viruses.

The safety of the blood supply is a shared responsibility of many organizations including the plasma fractionation industry, community blood banks, the federal government, and others. The Food and Drug Administration (FDA) has regulatory authority over plasma collection establishments, blood banks, and all blood products. Since 1973, the FDA has established standards for plasma collection and plasma product manufacture and a system for licensing those who met standards. The Centers for Disease Control and Prevention (CDC) has responsibility for surveillance, detection, and warning of potential public health risks within the blood supply. The National Institutes of Health (NIH) supports these efforts through fundamental research. During the 1950s and 1960s, blood shield laws were adopted by 47 states. These laws exempt blood and blood products from strict liability or implied warranty claims on the grounds that they are a service rather than a product. The laws were developed on the premise that given the inherently risky nature of blood and blood products, those providing them required protection if the blood system was to be a reliable resource.

As a whole, this system works effectively to supply the nation with necessary blood and blood products, and its quality control mechanisms check most human safety threats. The events of the early 1980s, however, revealed an important weakness in the system—in its ability to deal with a new threat that was characterized by substantial uncertainty. With intent to prepare the guardians of the blood supply for future threats concerning blood safety, the Department of Health and Human Services commissioned the Institute of Medicine to study the transmission of HIV through the blood supply. The Committee to Study HIV Transmission Through Blood and Blood Products undertook this assignment fully aware of the advantages and dangers of hindsight. Hindsight offers an opportunity to gain the understanding needed to confront the next threat to the blood supply. The danger of hindsight is unfairly finding fault with decisions that were made in the context of great uncertainty.

HISTORY

The Risk of AIDS

Starting with the identification of 26 homosexual men with opportunistic diseases in June 1981, the CDC's *Morbidity and Mortality Weekly Report* became the source for reports of the epidemic. By July 1982, enough cases had occurred with common symptomatology to name the new disease "acquired immune deficiency syndrome" (AIDS). By January 1983, epidemiological evidence from CDC's investigations strongly suggested that blood and blood products transmitted the agent causing AIDS and that the disease could also be transmitted through intimate heterosexual contact. The conclusion that the AIDS agent was blood-borne was based on two findings. First, AIDS was occurring in transfusion recipients and individuals with hemophilia who had received AHF concentrate; these patients did not belong to any previously defined group at risk for contracting AIDS. Second, the epidemiologic pattern of AIDS was similar to hepatitis B, another blood-borne disease.

Immediate Responses to Evidence of Blood-Borne AIDS Transmission

In the first months of 1983, the epidemiological evidence that the AIDS agent was blood-borne led to meetings and public and private decisions that set the pattern of the blood industry's response to AIDS, starting with a public meeting convened by the CDC in Atlanta on January 4, 1983. Later that month, the leading blood bank organizations, and, separately, the National Hemophilia Foundation (NHF) and the blood products industry, issued statements about preventing exposure to AIDS. In March 1983, the Assistant Secretary for Health promulgated the first official Public Health Services (PHS) recommendations for preventing AIDS, and the FDA codified safe practices for blood and plasma collection.

The government and private agencies quickly identified, considered, and in some cases adopted strategies for dealing with the risk of transmitting AIDS through blood and blood products. The recommended safety measures, however, were limited in scope. Examples include: questions to eliminate high-risk groups such as intravenous drug users, recent immigrants from Haiti, and those with early symptoms of AIDS or exposure to patients with AIDS; direct questions about high-risk sexual practices were generally not used. These questions reflected a lack of consensus about the magnitude of the threat, especially among physicians and public health officials who had trouble interpreting the unique epidemiological pattern of AIDS. The recommendations also reflected uncertainty about the benefits of identifying and deferring potentially infected blood and plasma donors, treatment of blood products to inactivate viruses, recall of products derived from donors known to have or suspected of having AIDS, and changes in transfusion practice and blood product usage. The costs, risks, and benefits of these and other potential control strategies were uncertain.

Opportunities to Reformulate Policy

In the interval between the decisions of early 1983 and the availability of a blood test for HIV in 1985, public health and blood industry officials became more certain that AIDS was a blood-borne disease as the number of reported cases of AIDS among hemophiliacs and transfused patients grew. As their knowledge grew, these officials had to decide about recall of contaminated blood products and possible implementation of a surrogate test for HIV. Meetings of the FDA's Blood Products Advisory Committee in January, February, July and December 1983 offered major opportunities to discuss, consider, and reconsider the limited tenor of the policies.

Despite these and other opportunities to review new evidence and to reconsider earlier decisions, blood safety policies changed very little during 1983. Many officials of the blood banks, the plasma fractionation industry, and the FDA accepted with little question estimates that the risk of AIDS was low ("one in a million transfusions"), and they accepted advice that control strategies (such as automatic withdrawal of AHF concentrate lots containing blood from donors suspected of having AIDS, or a switch from AHF concentrate to cryoprecipitate in mild or moderate hemophiliacs) would be ineffective, too costly, or too risky. During this period, there were missed opportunities to learn from local attempts to screen potentially infected donors or implement other control strategies that had been rejected as national policy.

Research Activities

From 1983 through 1985, research on AIDS included epidemiological analysis to understand patterns of spread and etiology, the search for methods to control or eliminate the disease, and evaluation of the efficacy of potential safety measures such as surrogate tests for the infection. Related research on methods to inactivate hepatitis B virus in AHF concentrate had begun in the 1970s and came to fruition in the early 1980s.

Scientists at the Pasteur Institute in Paris first isolated the retrovirus now known as

HIV-1 in 1983. Investigators at the National Institutes of Health (NIH) provided convincing evidence that HIV-1 was the causative infectious agent of AIDS in 1984, and were also able to propagate HIV-1 in the laboratory, thus providing the basis for a blood test to identify individuals infected by the virus. Scientists at NIH isolated and characterized HIV in 1984. Viral inactivation methods for AHF concentrate were developed in laboratories of the plasma fractionators, and the FDA licensed the new processes quickly. Although the pace of viral inactivation research had been slow, it accelerated in the 1980s, largely in response to hepatitis, and had identified effective strategies by 1984. However, research into other potential ways to safeguard the blood supply such as the use of surrogate tests was not pursued vigorously, and there was relatively little research on blood safety issues per se.

FINDINGS

The Committee framed its approach by examining four topics that are essential components of a focused strategy for ensuring the safety of the blood supply: blood product treatment, donor screening and deferral, regulation of removal of contaminated products from the market, and communication to physicians and patients.

Product Treatment

Plasma products can be treated by a variety of physical and chemical processes to inactivate viruses and thus to produce a product free from contamination and relatively safe for transfusion. Shortly after the development of the technology to manufacture AHF concentrate, it was recognized that these products carried a substantial risk of transmitting hepatitis B. Although some blood derivative products had been treated with heat to destroy live viruses since the late 1940s, Factor VIII and IX concentrates in the United States were not subject to viral inactivation procedures until 1983 and 1984. If this technology had been developed and introduced before 1980 to inactivate hepatitis B virus and non-A, non-B hepatitis virus, fewer individuals with hemophilia might have been infected with HIV.

Overall, the record of the plasma fractionators and the FDA with respect to the development and implementation of heat treatment is mixed. The Committee's analysis focused on whether the basic knowledge and technology for inactivating viruses in AHF concentrate had been available before 1980 and whether industry had appropriate incentives (from FDA, NIH, NHF, or others) to develop viral inactivation procedures. In the Committee's judgment, heat treatment processes to prevent the transmission of hepatitis, an advance that would have prevented many cases of AIDS in individuals with hemophilia, might have been developed before 1980. For a variety of reasons (e.g., concern about possible development of inhibitors and higher costs), however, neither physicians caring for individuals with hemophilia nor the Public Health Service agencies actively encouraged the plasma fractionation companies to develop heat treatment measures earlier. The absence of incentives, as well as the lack of a countervailing force to advocate blood product safety, contributed to the plasma fractionation industry's slow rate of progress toward the development of heat-treated products. Once plasma fractionators developed inactivation methods, however, the FDA moved expeditiously to license them.

Donor Screening and Deferral Policies

The purpose of donor screening and deferral procedures is to minimize the possibility of transmitting an infectious agent from a unit of donated blood to the recipient of that unit, as well as to ensure the welfare of the donor. Donor screening includes the identification of suitable donors; the recruitment of donors; and the exclusion of high-risk individuals through methods and procedures used at the time of donation, such as questionnaires, interviews, medical exams, blood tests, and providing donors with the opportunity to self-defer. Donor deferral is the temporary or permanent rejection of a donor based on the results of the screening measures.

By January 1983, in addition to suggesting that the agent causing AIDS was transmitted through blood and blood products and could be sexually transmitted, the epidemiological evidence also demonstrated that there were several groups who had an increased risk of developing AIDS. The highest incidence of the disease was in male homosexuals, who donated blood frequently in some geographic regions. The Committee found that organizations implemented donor screening measures in different ways at different times. Plasma collection agencies had begun screening potential donors and excluding those in any of the known risk groups as early as December 1982, and CDC scientists suggested in January 1983 that blood banks do likewise. Also in January, the blood-banking organizations (the American Association of Blood Banks, the American Red Cross, and the Council of Community Blood Center) issued a joint statement that recommended the use of donor screening questions to detect early symptoms of AIDS or exposure to AIDS patients. The statement, however, did not advocate directly questioning donors about their sexual preferences. Blood banks did institute some screening measures in early 1983, but only a few asked potential donors questions about homosexual activities. At the same time, CDC scientists also suggested that all blood and plasma collection agencies employ an available surrogate test for hepatitis B core antigen (anti-HBc). Most blood and plasma collection agencies rejected this recommendation. Although the precise impact of these two actions is not known, earlier implementation of either probably would have reduced the number of individuals infected with HIV through blood and blood products. In March 1983 the PHS issued recommendations that identified high-risk individuals for AIDS and stated that these individuals should not donate plasma or blood.

Based on its review of the evidence, the Committee found that decisionmakers involved with donor screening and deferral acted with good intent in some instances. In other instances, however, preference for the status quo under the prevailing conditions of uncertainty and danger led decisionmakers to underestimate the threat of AIDS for blood recipients. The Committee concluded that when confronted with a range of options for using donor screening and deferral to reduce the probability of spreading HIV through the blood supply, blood bank officials and federal authorities consistently chose the least aggressive option that was justifiable. In adopting this limited approach, policymakers often passed over options that might have initially slowed the spread of HIV to individuals with hemophilia and other recipients of blood and blood products, for example, by screening male donors for a history of sexual activity with other males and screening donated blood for the anti-HBc antibody. The Committee believes that it was reasonable to require blood banks to implement these two screening procedures in January 1983. The FDA's failure to require this is evidence that the agency did not adequately use its regulatory authority and therefore missed opportunities to protect the public health.

Regulations and Recall

The FDA is the principal regulatory agency with authority for blood and blood products, but it exercises its authority largely through informal action. Recall—the removal of a product from the market—exemplifies the relationship between the FDA's potent formal powers and its informal modus operandi. Recall is a voluntary act undertaken by the manufacturer but overseen by the FDA, which has the authority to seize or revoke the license of a product. Regulation of blood and blood products has been generally based on establishing a scientific consensus. Because the FDA's resources are limited, it relies upon the blood industry and others for cooperation. The FDA's Blood Products Advisory Committee is a venue for consensus-building about blood regulatory policy. In an industry in which firm and product reputation is critical to market success, the FDA's collegial approach is usually effective.

The Committee analyzed the FDA's exercise of its regulatory powers by examining how it acted during four critical events: (1) letters issued by the FDA in March 1983 requiring particular practices related to donor screening and the segregation of high-risk plasma supplies; (2) a July 1983 decision not to recall plasma products "automatically" whenever they could be linked to individual donors who had been identified as having or as suspected of having AIDS; (3) a decision not to recall nontreated AHF concentrate when heat-treated AHF concentrate became available in 1983; and (4) a delay of years in the FDA's formal decision to recommend tracing recipients of transfusions from a donor who was later found to have HIV. For each of these, the Committee posed a series of hypotheses to explain the FDA's actions. These focused on the reach of the agency's legal powers, the information available at the time in relation to relevant public health considerations, the agency's resources, the FDA's institutional culture, the economic costs of particular actions, and the prevailing political climate.

The analysis of these four events led the Committee to identify several weaknesses in the FDA's regulatory approach to blood safety issues. The agency's March 1983 letters may have been unclear concerning whether all of their recommendations were required to be implemented by the addressed. Handling of the case-by-case recall decision suggested that the agency lacked both the capacity to structure its advisory process adequately and to analyze independently the recommendations that were made to it. In the Committee's judgment, these and other events indicate the need for a more systematic approach to blood safety regulation when there is uncertainty and danger to the public.

Communication to Physicians and Patients

As evidence accrued on the possibility that the blood supply was a vector for AIDS consumers of blood and blood products and their physicians found themselves in a complex dilemma about how to reduce the risk of infection. Restricting or abandoning the use of blood and blood products could lead to increased mortality and morbidity. On the other hand, continued use of these products apparently increased the risk of AIDS. The

Committee investigated the processes by which physicians and patients obtained information about the epidemic and the costs, risks, and benefits of their clinical options.

A wide range of clinical options were available by late 1982 and might, in some instances, have reduced or eliminated dependence on AHF concentrate and there by reduce the risk of HIV transmission. As often happens in times of intense scientific and medical uncertainty such as in the early 1980s, individuals with hemophilia and transfusion recipients had little information about risks, benefits, and clinical options for their use of blood and blood products.

The dramatic successes of treatment with AHF concentrate in the 1970s provided a context in which thresholds for abandoning or radically restricting the use of these products for individuals with severe hemophilia were high. both physicians and individuals with hemophilia express reluctance about returning to the era of clinical treatment before the introduction of AHF concentrate. The National Hemophilia Foundation (NHF) and physicians, in their effort to find the right balance between the risks and benefits of continued use of AHF concentrate, tended to overweight the well-established benefits of AHF concentrate and underestimate the risks of AIDS, which were still uncertain.

In addition, the Committee found that prevailing assumptions about medically acceptable risks, especially regarding hepatitis, led to complacency and a failure to act with sufficient concern upon reports of a new infectious risk. Ultimately, assumptions about medical decisionmaking practices in which patient played a relatively passive role led to failures to disclose completely the risk of using AHF concentrate and thereby did not enable individuals to make informed decisions of themselves. As the potential dimensions of the epidemic among individuals with hemophilia became clear, communication between physicians and patients was further compromised by physicians' reticence to discuss the dire implications of widespread infection with their patients and families.

Institutional barriers to patient-physician communications and relationships between relevant organizations also impeded the flow of information. If the NHF had received input from a wider group of scientific and medical experts, more explicit and systematic dissemination of a range of clinical options might well have been possible. In addition, the financial and other relationships between the NHF and the plasma fractionation industry created a conflict of interest that seriously compromised the perceived independence of NHF's recommendations.

No organization stepped forward to communicate widely the risks of blood transfusions to potential recipients. Many blood bank officials during this period publicly denied that AIDS posed any significant risk to blood recipients. In this context, and because many transfusions occurred on an emergency basis, patients were typically not apprised of the growing concerns about the contamination of the blood supply. For both individuals with hemophilia and recipients of blood transfusion, physicians concern that their patients might refuse care deemed a "medical necessity" further contributed to failure to inform them of the risks.

CONCLUSIONS

Decisionmaking Under Uncertainty

The events and decisions that the Committee has analyzed underscore the difficulty of personal and institutional decisionmaking when the stakes are high, when knowledge is imprecise and incomplete, and when decisionmakers may have personal or institutional biases. The Committee attempted to understand the complexities of the decisionmaking process during this uncertain period and to develop lessons to protect the blood supply in the future. In retrospect, the system did not deal well with contemporaneous blood safety issues such as hepatitis, and was not prepared to deal with the far greater challenge of AIDS.

Although enough epidemiological evidence has emerged by January 1983 to strongly suggest that the agent causing AIDS was transmitted through blood and blood products and could be sexually transmitted to sexual partners, the magnitude of the risk for transfusion and blood product recipients was not know at this time. Policymakers quickly developed several clinical and public health options to reduce the risk of AIDS transmission. There was, however, substantial scientific uncertainty about the costs and benefits of the available options. The result was a pattern of responses which, while not in conflict with the available scientific information, were very cautious and exposed the decisionmakers and their organizations to a minimum of criticism.

Blood safety is a shared responsibility of many diverse organizations. They include U.S. Public Health Service agencies such as the CDC, the FDA, and the NIH, and private-sector organizations such as community blood banks and the American Red Cross, blood and plasma collection agencies, blood product manufacturers, groups like the National Hemophilia Foundation, and others. The problems the Committee found indicated a failure of leadership and inadequate institutional decision making process in 1983 and 1984. No person or agency was able to coordinate all of the organizations sharing the public health responsibility for achieving a safe blood supply.

Bureaucratic Management of Potential Crises

Federal agencies had the primary responsibility for dealing with the national emergency posed by the AIDS epidemic. The Committee scrutinized bureaucratic function closely and came to the following conclusions about the management of potential crises.

First, unless someone from the top exerts strong leadership, legal and competitive concerns may inhibit effective action by agencies of the federal government. Similarly, when policymaking occurs against a backdrop of a great deal of scientific uncertainty, bureaucratic standard operating procedures designed for routine circumstances seem to take over unless there is a clear-cut decision-making hierarchy. An effective leader will insist upon coordinated planning and execution. Focusing efforts and responsibilities, setting timetables and agendas, and assuming accountability for expeditious action cannot be left to ordinary standard operating procedures. These actions are the responsibilities of the highest levels of the public health establishment.

Second, the FDA and other agencies in the early 1980s lacked a systematic approach to conducting advisory committee processes. These agencies should tell their advisory committees what it expects from them, keep attention focused on high-priority topics, and independently evaluate their advice. Because mistakes will always be made and opportunities missed, regulatory structures must organize and manage their advisory boards to assure both the reality and the continuous appearance of propriety.

Third, agencies should not rely upon the entities they regulate for analysis of data and modeling of decision problems.

Fourth, agencies need to think far ahead. They must monitor more systematically the long-term outcomes of blood transfusion and blood product infusion to anticipate both new technologies and new threats to the safety of the blood supply. The Committee believes that the Public Health Service should plan what it will do if there is a threat to the blood supply. It should specify actions that will occur once the level of concern passes a specified threshold. The Committee favors a series of criteria or triggers for taking regulatory or other public health actions in which the response is proportional to the magnitude of the risk and the quality of the information on which the risk estimate is based. Taking on small steps allows for careful reconsideration of options, particularly as information about uncertain risks unfolds. Not all triggering events need lead to drastic action; some may merely require careful reconsideration of the options or obtaining new information.

RECOMMENDATIONS

The Committee's charge was to learn from the events of the early 1980s to help the nation prepare for future threats to the blood supply. From the record assembled for this study, the Committee identified potential problems with the system in place at that time and has identified some changes that might have moderated some of the effects of the AIDS epidemic on recipients of blood and blood products. The federal and private organizations responsible for blood safety and the public health more generally will have to evaluate their current polices and procedures to see if they fully address the issues raised by these recommendations.

The Public Health Service

Several agencies necessarily play important, often differentiated, roles in managing a public health crisis such as the contamination of blood and blood products by the AIDS virus. The National Blood Policy of 1973 charged the PHS (including the CDC, the FDA, and the NIH) with responsibility for protecting the nation's blood supply.

The Committee has come to believe that a failure of leadership may have delayed effective action during the period from 1982 to 1984. This failure led to less than effective donor screening, weak regulatory actions, and insufficient communication to patients about the risks of AIDS. In the event of a threat to the blood supply, the Public Health Service must, as in any public health crisis, insist upon coordinated action. The Secretary of Health and Human Service is responsible for all the agencies of the Public Health Service,[1] and therefore the Committee makes—Recommendation 1: The Secretary of Health and Human Services should designate a Blood Safety Director, at the level of a deputy assistant secretary or higher, to be responsible for the federal government's efforts to maintain the safety of the nation's blood supply.

To be effective in coordinating the various agencies of the PHS, the Blood Safety Director should be at the level of a deputy assistant secretary or higher, and should not be a representative of any single PHS agency.

In considering the history of the contamination of the blood supply with HIV and the current surveillance, regulatory, and administrative structures for ensuring the safety of our nation's blood resources, the Committee became convinced that the nation needs a far more responsive and integrated process to ensure blood safety. To this end,

Footnotes appear at the end of article.

the Committee makes—Recommendation 2: The PHS should establish a Blood Safety Council to assess current and potential future threats to the blood supply, to propose strategies for overcoming these threats, to evaluate the response of the PHS to these proposals, and to monitor the implementation of these strategies. The Council should report to the Blood Safety Director (see Recommendation 1). The Council should also serve to alert scientists about the needs and opportunities for research to maximize the safety of blood and blood products. The Blood Safety Council should take the lead to ensure the education of public health officials, clinicians, and the public about the nature of threats to our nation's blood supply and the public health strategies for dealing with these threats.

The proposed Blood Safety Council would facilitate the timely transmission of information, assessment of risk, and initiation of appropriate action both during times of stability and during a crisis. The Council should report to the Blood Safety Director (see Recommendation 1). The Council would not replace the PHS agencies responsible for blood safety but would complement them by providing a forum for them to work together and with private organizations. The PHS agencies would be represented on the Council.

The Blood Safety Council should consider the following activities and issues: to deliberate the need for a system of active surveillance for adverse reactions in blood recipients; to establish a panel of experts to provide information about risks and benefits, alternative options for treatment, and recommended best practices (see Recommendation 13); and to investigate methods to make blood products safer, such as double inactivation processes and reduction of plasma pool size.

When a product or service provided for the public good has inherent risks, the common law tort system fails to protect the rightful interests of patients who suffer harms resulting from the use of those products and services. To address this deficiency, the Committee makes—Recommendation 3: The federal government should consider establishing a no-fault compensation system for individuals who suffer adverse consequences from the use of blood or blood products.[2]

For such a no-fault system to be effective, standards and procedures would have to be determined prospectively to guide its operations. There needs to be an objective, science-based process to decide which kinds of adverse outcomes are caused by blood-borne pathogens and which individual cases of these adverse outcomes deserve compensation. As with vaccines, such a system could be financed by a tax or fee paid by all manufacturers or by the ultimate recipients of blood products. However, had there been a no-fault compensation system in the early 1980s, it could have relieved much financial hardship suffered by many who became infected with HIV through blood and blood products in the United States. The no-fault principles outlined in this recommendation might serve to guide policymakers as they consider whether to implement a compensation system for those infected in the 1980s.

The Centers for Disease Control and Prevention

The CDC has an indispensable role in protecting our nation's health: to detect potential public health risks and sound the alert. In order to improve CDC's efficacy in this critical role, the Committee makes—Recommendation 4: Other federal agencies must understand, support, and respond to the CDC's responsibility to serve as the nation's early warning system for threats to the health of the public.

One way to begin to implement this recommendation is for the Secretary of Health and Human Services to insist that an agency that wishes to disregard a CDC alert should support its position with evidence that meets the same standard as that used by the CDC in raising the alert.

In order to carry out its early warning responsibility effectively, the CDC needs good surveillance systems. The Committee, believing that the degree of surveillance should be proportional to the level of risk inherent in blood and blood products and should include both immediate and delayed effects, makes Recommendation 5: The PHS should establish a surveillance system, lodged in the CDC, that will detect, monitor, and warn of adverse effects in the recipients of blood and blood products.

The Food and Drug Administration

The FDA has legal authority to protect the safety of the nation's blood supply, and it is the lead federal agency in regulating blood banking practice, the handling of source plasma, and the manufacture of blood products from plasma. The Committee's recommendations focus on decisionmaking and the role of advisory committees in formulating the FDA's response to crises.

In the Committee's judgment, a more systematic approach to blood safety regulation, one that is better suited to conditions of uncertainty, is needed. In particular, the Committee recommends (see Chapter 8) that the PHS develop a series of criteria or triggers for taking regulatory or other public health actions for which the response is proportional to the magnitude of the risk and the quality of the information on which the risk estimate is based. In order that the perfect not be the enemy of the good, the Committee makes—Recommendation 6: Where uncertainties or countervailing public health concerns preclude completely eliminating potential risks, the FDA should encourage, and where necessary require, the blood industry to implement partial solutions that have little risk of causing harm.

In all fields, decisionmaking under uncertainty requires an iterative process. As the knowledge base for a decision changes, the responsible agency should reexamine the facts and be prepared to change its decision. The agency should also assign specific responsibility for monitoring conditions and identifying opportunities for change. In order to implement these principles at the FDA, the Committee makes—Recommendation 7: The FDA should periodically review important decisions that it made when it was uncertain about the value of key decision variables.

Although the FDA has a great deal of regulatory power over the blood products industry, the agency appears to regulate by expressing its will in subtle, understated directives. Taking this into account, the Committee makes—Recommendation 8: Because regulators must rely heavily on the performance of the industry to accomplish blood safety goals, the FDA must articulate its requests or requirements in forms that are understandable and implementable by regulated entities. In particular, when issuing instructions to regulated entities, the FDA should specify clearly whether it is demanding specific compliance with legal requirements or is merely providing advice for careful consideration.

In the early 1980s, the FDA appeared too reliant upon analyses provided by industry-based members of the Blood Products Advisory Committee (BPAC). Thus the Committee arrived at—Recommendation 9: The FDA should ensure that the composition of the Blood Products Advisory Committee reflects a proper balance between members who are connected with the blood and blood products industry and members who are independent of industry.

An agency that is well-practiced in orderly decisionmaking procedures will be able to respond to the much greater requirements of a crisis. This consideration leads to—Recommendation 10: The FDA should tell its advisory committees what it expects from them and should independently evaluate their agendas and their performance.

Advisory committees provide scientific advice to the FDA, but they do not make regulatory decisions for the agency. The FDA's lack of independent information and an analytic capability of its own meant that it had little choice but to incorporate the advice of BPAC into its policy recommendations. To ensure the proper degree of independence between the FDA and the BPAC, the Committee makes—Recommendation 11: The FDA should develop reliable sources of the information that it needs to make decisions about the blood supply. The FDA should have its own capacity to analyze this information and to predict the effects of regulatory decisions.

Communication to Physicians and Patients

One of the crucial elements of the system for collecting blood and distributing blood products to patients is the means to convey concern about the risks inherent in blood products. In today's practice of medicine, in contrast to that of the early 1980s, patients and physicians each accept a share of responsibility for making decisions.

In instances of great uncertainty, it is crucial for patients to be fully apprised of the full range of options available and to become active participants in the consideration and evaluation of the relative risks and benefits of alternative treatments. To encourage better communication, the Committee makes—Recommendation 12: When faced with a decision in which the options all carry risk, especially if the amount of risk is uncertain, physicians and patients should take extra care to discuss a wide range of options.

Given the inherent risks and uncertainties in all blood products, the public and providers of care need expert, unbiased information about the blood supply. This information includes risks and benefits, alternatives to using blood products, and recommended best practices. In order to provide the public and providers of care with information they need, the Committee makes—Recommendation 13: The Department of Health and Human Services should convene a standing expert panel to inform the providers of care and the public about the risks associated with blood and blood products, about alternatives to using them, and about treatments that have the support of the scientific record.

One lesson of the AIDS crisis is that a well-established, orderly decisionmaking process is important for successfully managing a crisis. This applies as much to clinical decisionmaking as to the public health decision process addressed by earlier recommendations. As the narrative indicates, there are both public health and clinical approaches to reducing the risk of blood-borne diseases. The Blood Safety Council called for in Recommendation 2 would deal primarily with risk assessment and actions in the public health domain that would reduce the

chance that blood products could be vectors of infectious agents. The primary responsibility of the expert panel on best practices called for in Recommendation 13 would be to provide the clinical information that physicians and their patients need to guide their individual health care choices. To be most effective, this panel should be lodged in the Blood Safety Council (see Recommendation 2) so that both bodies can interact and coordinate their activities in order to share information about emerging risks and clinical options.

Recommendation 14: Voluntary organizations that make recommendations about using commercial products must avoid conflicts of interest, maintain independent judgment, and otherwise act so as to earn the confidence of the public and patients.

One of the difficulties with using experts to give advice is the interconnections that experts accumulate during their careers. As a result, an expert may have a history of relationships that raise concerns about whether he or she can be truly impartial when advising a course of action in a complex situation. One way to avoid these risks is to choose some panelists who are not expert in the subject of the panel's assignment but have a reputation for expertise in evaluating evidence, sound clinical judgment, and impartiality.

Financial conflicts of interest influence organizations as well as individuals. The standards for acknowledging, and in some cases avoiding, conflicts of interest are higher than they were 12 years ago. Public health officials, the medical professions, and private organizations must uphold this new, difficult standard. Failure to do so will threaten the fabric of trust that holds our society together.

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FOOTNOTES

[1] In the 1980s and now, the PHS agencies report to the Assistant Secretary of Health. As this report was being written, the Department of Health and Human Services has proposed to eliminate the office of the Assistant Secretary, so that the PHS agencies would report directly to the Secretary.

[2] One Committee member (Martha Derthick) abstains from this recommendation because she believes that it falls outside of the Committee's charge.

Mr. SCOTT. Madam Speaker, I yield such time as he may consume to the distinguished gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Madam Speaker, I thank the gentleman for yielding me the time.

Madam Speaker, I, too, rise in strong support of H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act. Before I begin my statement, I want to acknowledge and commend the fine work of my colleague, the gentleman from Florida (Mr. PORTER GOSS). He has truly provided outstanding leadership in this particular issue.

Let me ask Members to imagine that they are the parent of three fine sons, each of whom has inherited the gene for hemophilia. Now imagine, if you can, that each of your sons acquires the AIDS virus through a contaminated blood transfusion. Two brothers die before age 40, and the third is very sick. Among them, they have 9 children, your grandchildren, all of whom will be left fatherless.

At least one family in my district does not have to imagine what that would be like, Madam Speaker. They know, because this is precisely what is happening to them. Nor is their heartbreaking story, unfortunately, unique. I have received letters from people in Abington, Weymouth, Duxbury, and other towns throughout Massachusetts who have lost family members and friends to hemophilia-associated AIDS.

Every death from AIDS is a tragedy that touches many lives. Yet, who can fathom the sheer devastation that is visited on families such as these? The enormity of their experience becomes still more compelling when one learns that the government, our government, could have acted to prevent it.

In 1980 when the first Americans began to fall ill from the mysterious ailment that would ultimately be called AIDS, the technology became available to pasteurize blood-clotting agents. Yet, for 7 years the government failed to require the blood products industry to make use of this technology, nor did the government require the industry to inform the public about the risks of contamination with HIV and other blood-borne pathogens.

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As a result, at least 8,000 people with hemophilia and other blood-clotting disorders contracted HIV/AIDS from transfusions of contaminated antihemophilic factor or AHF between 1980 and 1987. This means that as many as 50 percent of all individuals who suffer from blood-clotting disorders were exposed to HIV through their use of AHF.

In 1995, an independent scientific review conducted by the Institute of Medicine concluded that this tragedy occurred because the government failed to take the steps that could have prevented it. Some might argue that we cannot afford to do anything about that, but I believe we have an obligation to acknowledge what happened and make restitution to the victims of this disaster and their families.

This bill will not compensate them for the terrible harm that was done to them, nor will it begin to cover their medical costs. But it will mean a great deal to them to know that their country has not abandoned them. I am proud to be an original cosponsor of this bill and urge all of my colleagues to join in supporting it today.

Mr. HYDE. Madam Speaker, I yield 1 minute and 30 seconds to the gentleman Arizona (Mr. HAYWORTH).

Mr. HAYWORTH. Madam Speaker, I thank my colleague, the gentleman from Florida (Mr. GOSS), for his hard work on this legislation.

I am pleased to come to the well today to speak in behalf of passage of this legislation because, Madam Speaker, I had a chance to listen to a young man from my State recount the very real difficulties that he confronted from receiving a transfusion of HIV-tainted blood. His name, Jeremy Storms.

Jeremy lived the Scriptures in which he so fervently believed. He let his light shine among men and, despite all the medical difficulties he encountered, many times he traveled here to Washington to tell us of the challenges he faced. He had a wisdom beyond his years. He would joke, you know, I used to be upset that I was a hemophiliac. Now I wish it was the only problem I had.

Jeremy passed away a few short months ago, but he did not live in vain. For his mother and father and family and for countless other families, this House on this day at this hour acknowledges the role of the Federal Government in public health and, yes, in personal responsibility.

I would urge this body, adopt this legislation in memory of Ricky Ray, Jeremy Storms and so many others.

Mr. SCOTT. Madam Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Madam Speaker, I rise in support of this bill. Having functioned as a registered professional nurse, I have observed over the years persons who are afflicted and need frequent transfusions are more subjected to the risk of HIV than others on a normal basis. This has been one of the viruses that has come along in our history that we have not found any way to conquer it. That we must always be mindful of.

Nothing is more important than assuring a family that when they have a loved one that needs a transfusion it is free of viruses and any other bacteria. We have gone a long way in that. We have had to deal with the virus of the 1930s for pneumonia and the virus of polio for the 1950s. Now we are having to deal with another major virus, the HIV virus.

So many people are so unaware of their risk for this disease, for the disease which the virus will cause. We must do all that we can to protect the general public, and this bill goes a long way in protecting the hemophiliacs because they can not get around having the transfusions.

I have observed too many families, heterosexual, intact families be destroyed by contamination from the young children and some young adults getting transfusions, blood transfusions. I do think, and I agree with the gentleman that there is a public health responsibility of our Federal Government, and this is one of those major issues that, until we find medical breakthroughs, we as a government need to take the responsibility of

ensuring the availability of safe, virus-free blood.

Mr. HYDE. Madam Speaker, I yield 3 minutes to the gentleman from Florida (Mr. BILIRAKIS).

Mr. BILIRAKIS. Madam Speaker, I, too, rise in strong support of H.R. 1023.

First and foremost, I want to commend my colleague, the gentleman from Florida (Mr. GOSS), for his tireless efforts to secure passage of this important measure.

As chairman of the Subcommittee on Health and Environment of the Committee on Commerce, I am pleased to be an original cosponsor of the bill.

As my colleagues have already noted, H.R. 1023 provides compassionate payments to individuals with blood-clotting disorders who contracted HIV due to contaminated blood products. The National Hemophilia Foundation estimates that nearly 8,000 individuals with hemophilia contracted HIV from the Nation's blood supply which became contaminated before the identification of and development of tests to detect its presence.

These individuals and their families were already burdened by the medical costs of treating their blood-clotting disorders, and many have been financially devastated by the costs associated with HIV infection. This is a tragedy, and I share the Foundation's view that passage of this bill will serve to rebuild trust in the Federal Government in its essential role of protecting the U.S. blood supply and blood products.

A number of my constituents, including Margie and Johnny Kellar of Palm Harbor, have contacted me to urge enactment of this critical legislation. I share the desire to secure prompt passage of the bill, and I am pleased that the House is considering it today under a suspension of the rules.

As Members know, provisions of H.R. 1023 which fall within the jurisdiction of the House Committee on Commerce were enacted last year as part of the balanced budget law. Those provisions exempted the private settlement funds from the calculation of income for the purposes of determining Medicaid eligibility. This language was designed to ensure that those who accepted the private settlement would not lose their eligibility under the Medicaid program.

My Subcommittee on Health and Environment has jurisdiction over the Medicaid provisions, and I was pleased to secure their enactment as part of the 1997 balanced budget law.

The measure before us today extends similar protections to recipients of Supplemental Security Income benefits.

Again, I want to commend the gentleman from Florida (Mr. GOSS) for his leadership on this issue and his diligent efforts in bringing H.R. 1023 to the floor. I urge all of my colleagues to lend their wholehearted support to passage of this important bill.

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

Mr. HYDE. Madam Speaker, may I inquire how much time remains?

The SPEAKER pro tempore (Mrs. EMERSON). The gentleman from Illinois (Mr. HYDE) has 5 minutes remaining.

Mr. HYDE. Madam Speaker, I yield 2 minutes to the gentleman from Florida (Mr. STEARNS).

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

I commend my colleague the gentleman from Florida (Mr. GOSS) for his vigilance in getting this legislation to the floor. I also am an original cosponsor of the Ricky Ray Relief Act. I am deeply committed to seeing this bill become public law.

Madam Speaker, my involvement in this issue began back in 1994 when I, too, was contacted by Gale and Randy Ellman. The Ellmans lost their son Eric Brandon when he was 14 years old. Eric died as a result of infusing a clotting factor that was tainted with HIV. His death is a double tragedy because it could have been avoided.

While we cannot bring back Ricky or Eric, we can try today to rectify this wrong. According to best estimates, about 8,000 hemophiliacs have been infected with HIV. This represents half the hemophiliacs in the country. By passing this bill we are simply saying that we acknowledge the government's failure, through the FDA, to protect our Nation's blood supply and regulate the sale of blood products.

Will $100,000 make up for the pain and suffering these families had to endure? The answer is no. But what it will do is say to thousands of people so deeply affected by this tragedy that your government wants to right the wrong.

The Ellmans called my office this morning to express their heartfelt gratitude for my support for this legislation and for my other colleagues' support. I say to the Ellmans and the many other families so devastated by what has happened to them, it is the very least we can do.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. SCOTT) has 11½ minutes remaining.

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

Mr. HYDE. Madam Speaker, I yield 2 minutes to the distinguished gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Madam Speaker, I rise today to voice my strong support for H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act.

As an original cosponsor in both this Congress and the 104th Congress, I am enormously proud that we have been able to bring this bill to the floor in a bipartisan manner with the support and cosponsorship of over 270 Members.

The gentleman from Florida (Mr. GOSS) has done a tremendous job in garnering support for the Ricky Ray Act and ensuring that it come before the full House today.

I also express my appreciation to the chairman of the Committee on the Judiciary, the gentleman from Illinois (Mr. HYDE), as well.

I also want to recognize the hard work of the students at the Robinson Secondary School in Fairfax, Virginia, on behalf of the thousands of hemophiliacs suffering from AIDS. They have dedicated themselves over the past couple of years to winning passage of this legislation and are now witnessing that democracy does work.

As my colleagues know, this legislation is named for Ricky Ray, a young boy from Florida who died in 1992 of hemophilia-related AIDS that he contracted through the use of blood-clotting products. Approximately one-half of all hemophilia sufferers were infected with HIV through the use of blood-clotting products between 1980 and 1987. The Federal Government has a shared responsibility for this tragedy because it failed to fulfill its responsibility to protect the Nation's blood supply and to regulate the safety of blood products.

The Ricky Ray bill gives a one-time payment of $100,000 each to about 7,200 hemophiliacs, about half of whom are still surviving, who were infected with the AIDS virus from blood-clotting agents between July 1, 1982, and December 31, 1987. It also implements a sunset provision after 5 years from the date of the bill's enactment.

Passage of this legislation will mark a defining and critical moment in the lives of many innocent AIDS sufferers, not because of the relatively small amount of money they receive but because of the peace they and their families will have in knowing that their government has taken responsibility for what happened to them and is attempting to compensate them for their suffering to the extent that we are able to do so.

I strongly urge all of my colleagues to vote in favor of the Ricky Ray bill.

Mr. SCOTT. Madam Speaker, I yield 4 minutes to the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Madam Speaker, I thank my colleague from Virginia for yielding me this time.

I rise in strong support of the Ricky Ray Hemophilia Relief Fund Act. I want to commend our colleague, the gentleman from Florida (Mr. GOSS), for his leadership and compassion in bringing this legislation to the floor as a sponsor of this bill.

The life of the boy who gave his name to this legislation should remind all of us of the many different tragedies and demonstrations of courage and compassion the AIDS epidemic has brought us.

In his short life, Ricky witnessed the prejudice and fear which surrounded hemophilia, AIDS particularly, in its first decade but which is still all too

common today. He had hemophilia, but he contracted AIDS and was the victim of much discrimination. He and his family watched their home burn down because neighbors were afraid of his illness.

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His family struggled with the tremendous financial burden of providing for a child with hemophilia and AIDS. Ricky's parents saw their son pass away as they confronted the limits of treatment to fight the HIV disease.

Each of these aspects of Ricky's life is important to remember today: The prejudice, the crushing financial burden, the hope for cures which have yet to come, and the inspiring courage and compassion of this young man, his family and friends. This was Ricky's story, and it is the story of thousands of other people, many of whom have died, many are living today with hemophilia, HIV and AIDS.

The resources that Congress can provide will not solve the tragedy of hemophilia and AIDS for Ricky Ray and others like him, but they will help individuals, families and communities begin to recover from the calamity that has befallen them. Whether the Federal Government acted appropriately to protect blood clotting products in the 1980s is not the issue today. At issue now is providing assistance to individuals and families who have been forced to confront a personal and financial crisis brought by two debilitating diseases.

The Federal Government must do many things to respond to the AIDS epidemic and to hemophilia. It must protect the Nation's blood supply; provide prevention interventions; in the case of HIV-AIDS, fund research to find a cure and a vaccine; and support health care and needed services for those who are ill.

But as with other major catastrophes, the Federal Government also must provide the resources which help families and communities take the first steps toward recovery. For that I am grateful to the gentleman from Florida (Mr. GOSS) for his leadership, to the gentleman from Virginia (Mr. SCOTT) for his participation in this, as well as the gentleman from Illinois (Mr. HYDE) and others, and I urge my colleagues to support H.R. 1023.

Mr. HYDE. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SCOTT. Madam Speaker, I yield myself such time as I may consume just to thank the gentleman from Florida (Mr. GOSS) for his hard work on this, the gentleman from Illinois (Mr. HYDE) for his leadership, and the gentleman from North Carolina (Mr. WATT), whose subcommittee considered this.

Ms. CHRISTIAN-GREEN. Madam Speaker, I rise today in strong support of H.R. 1023, a bill to provide compassionate payments to individuals with blood-clotting disorders such as Hemophilia, who contracted the HIV virus due to contaminated blood.

My colleagues, children, especially minority children, are one of the most rapidly increasing segments of our population being infected with HIV. And, in all cases they are the innocent victims. Any legislation which helps to improve the quality of life of these children is worthy of all of our support.

Prevention programs, while available to all, often do not reach out to the most needy populations. Where we most need to improve our effort in this regard, is in making sure that the treatments which have been developed and proven to improve lives and health, are made accessible to all who need it. This bill does it.

As a family physician who has treated several patients with hemophilia, I am pleased to support H.R. 1023 and urge all my colleagues to do so as well.

Ms. JACKSON-LEE of Texas. Madam Speaker, as Chair of the Children's Congressional Caucus, and a co-sponsor of this bill, I want to take a few minutes to speak about the importance of this issue and this bill.

H.R. 1023 is named after Ricky Ray, a child victim of hemophiliac associated AIDS. Like thousands of others, Ricky Ray became infected with HIV through the use of contaminated blood products. Ricky brought national attention to this tragedy before he died from AIDS at age 15, 1992.

The Ricky Ray Hemophilia Relief Fund Act will not only acknowledge the federal government's unique responsibility to protect the nation's blood supply, it will also provide recognition to and some small solace to those living with hemophilia related HIV and their families. Almost 50% of the U.S. hemophilia population has been infected with HIV through tainted blood products. This bill will also authorize a $750 million fund to provide compassionate assistance to individuals struggling with the emotional and financial costs of this disease.

In my home State of Texas, AIDS was the sixth leading cause of death among young people aged 13–24, and currently worldwide approximately 775,000 Americans are infected with the HIV virus.

Although we can never fully compensate the victims and families of those who are living with hemophilia related AIDS and HIV, we must show our compassion and our recognition of their plight, through the legislation here today.

Ms. FURSE. Madam Speaker, I rise today in support of H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act. I want to congratulate my colleague, Mr. GOSS, for his hard work and relentless efforts to pass this bill through the House.

In 1994, shortly after I was first elected to the House, a constituent of mine named Katherine Royer brought to my attention the plight of people with hemophilia who became infected with HIV through tainted blood products. Many of these people were children. Until I met Katherine, I had no idea that over 7,000 people with hemophilia had become infected with HIV, and their already complicated lives were getting even more difficult. Her family's story was powerful, and Katherine has relentlessly pursued this issue in her community and with her elected officials.

I strongly support H.R. 1023 because it acknowledges that the government must protect the nation's blood supply, and provides assistance to the victims of this tragedy. With yearly medical costs of over $150,000, and a lack of legal options, many of the affected families have been devastated financially. While this bill can not bring back loved ones, it can provide those who are still living with some degree of financial relief. In addition, it recognizes, finally, the tragedy that occurred and the impact it had on the entire hemophilia community.

I thank Katherine for bringing this issue to my attention, and am pleased that H.R. 1023 is finally on the floor of the House. I strongly urge all my colleagues to support it.

Mr. SHAW. Madam Speaker, I strongly support H.R. 1023, the "Ricky Ray Hemophilia Relief Fund Act of 1998."

H.R. 1023, sponsored by my friend PORTER GOSS, is named for Ricky Ray, a 15-year-old Florida hemophiliac who died in 1992. This bill represents the best of what government can do to help needy families struggling to overcome personal tragedy. For some, including the bill's namesake, H.R. 1023 comes too late to provide help. But for many others it will provide welcome relief, and I am proud not only to be an original cosponsor, but also to have helped H.R. 1023 progress through the Ways and Means Committee to the House floor today.

Even though the bill was first marked up by the Judiciary Committee, an important component is the promise H.R. 1023 would keep by continuing Supplemental Security Income (SSI) benefits to needy individuals, which falls under the jurisdiction of the Committee on Ways and Means and the Subcommittee on Human Resources that I chair. These critical benefits will remain available despite a recent settlement and also new federal funds that otherwise would disqualify hemophiliacs who contracted the AIDS virus through tainted blood products in the 1980s from continued SSI eligibility. There is ample precedent for SSI to ignore such payments, and I can scarcely think of a more worthy class than this limited number of hemophiliacs, many of them children at the time, who have been afflicted with the AIDS virus. The Congressional Budget Office has told us the cost is minimal, especially when compared with the tragedy these individuals and their families have already experienced.

Another important feature of the bill is that it would exempt the payments from federal income taxes. Chairman BILL ARCHER summarized the issue well when the Committee on Ways and Means unanimously approved H.R. 1023 last month: "No amount of money in the world can fix this tragedy, but we want to make sure that the federal payments are treated as tax-free, as they should be, and that SSI benefits stay unchanged for these innocent victims. They've been through enough as it is."

Madam Speaker, I commend Congressman GOSS for his diligence in pressing for passage of this important bill, and urge all of our colleagues to support it.

Mr. ARCHER. Madam Speaker, I rise today in support of H.R. 1023, the Ricky Ray Hemophilia Relief Act. As an original cosponsor to

the legislation introduced by my friend and colleague, PORTER GOSS, I believe that H.R. 1023 takes a positive step in addressing a great wrong that was committed affecting seven thousand Americans, over half of the hemophilia community.

In 1995, the Institute of Medicine conducted an independent review which concluded that the system designed to ensure the safety of blood and blood products had been ill-prepared to deal with the dangers of blood-borne viruses and had failed to protect the public health. As a result, thousands of Americans with hemophilia became infected with HIV through the use of these contaminated blood products.

The portion of the legislation that came before the Ways and Means Committee ensures that payments to people with hemophilia who contracted HIV from tainted blood products will be tax-free and not threaten benefits under the Supplemental Security Income (SSI) system. While no amount of money in the world can fix this tragedy, Congress must do all it can to make certain that the SSI benefits of these individuals living with two chronic and expensive diseases remain unchanged.

Finally, I want to commend: Congressman GOSS; Chairmen HYDE and BLILEY; the National Hemophilia Foundation (NHF); Ray Stenhope, a Houstonian who is Past-President of NHF; Dr. Keith Hoots and the folks at the Gulf States Hemophilia Treatment Center at Hermann Hospital in Houston; and everyone else who worked long and hard to bring this legislation before the House of Representatives. While I realize that these courageous individuals and their families will have to continue to live with the horrors of this tragedy, I hope that this bill will at least bring them some comfort.

Mr. SCOTT. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. EMERSON). The question is on the motion offered by the gentleman from Illinois (Mr. HYDE) that the House suspend the rules and pass the bill, H.R. 1023, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated antihemophilic factor, and for other purposes.".

A motion to reconsider was laid on the table.

VETERANS TRANSITIONAL HOUSING OPPORTUNITIES ACT OF 1998

Mr. STUMP. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 3039) to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to guarantee loans to provide multifamily transitional housing for homeless veterans, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3039

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Transitional Housing Opportunities Act of 1998".

SEC. 2. LOAN GUARANTEE FOR MULTIFAMILY TRANSITIONAL HOUSING FOR HOMELESS VETERANS.

(a) IN GENERAL.—Chapter 37 of title 38, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER VI—LOAN GUARANTEE FOR MULTIFAMILY TRANSITIONAL HOUSING FOR HOMELESS VETERANS

"§ 3771. Definitions

"For purposes of this subchapter—

"(1) the term 'veteran' has the meaning given such term by paragraph (2) of section 101;

"(2) the term 'homeless veteran' means a veteran who is a homeless individual; and

"(3) the term 'homeless individual' has the same meaning as such term has within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302).

"§ 3772. General authority

"(a) The Secretary may guarantee the full or partial repayment of a loan that meets the requirements of this subchapter.

"(b)(1) Not more than 15 loans may be guaranteed under subsection (a), of which not more than 5 such loans may be guaranteed during the 3-year period beginning on the date of enactment of the Veterans Transitional Housing Opportunities Act of 1998.

"(2) A guarantee of a loan under subsection (a) shall be in an amount that is not less than the amount necessary to sell the loan in a commercial market.

"(3) Not more than an aggregate amount of $100,000,000 in loans may be guaranteed under subsection (a).

"(c) A loan may not be guaranteed under this subchapter unless, prior to closing such loan, the Secretary has approved such loan.

"(d)(1) The Secretary shall enter into contracts with a qualified nonprofit organization to obtain advice in carrying out this subchapter, including advice on the terms and conditions necessary for a loan that meets the requirements of section 3773.

"(2) For purposes of paragraph (1), a qualified nonprofit organization is a nonprofit organization—

"(A) described in paragraph (3) or (4) of subsection (c) of section 501 of the Internal Revenue Code of 1986 and exempt from tax under subsection (a) of such section, and

"(B) that has experience in underwriting transitional housing projects.

"(e) The Secretary may carry out this subchapter in advance of the issuance of regulations for such purpose.

"(f) The Secretary may guarantee loans under this subchapter notwithstanding any requirement for prior appropriations for such purpose under any provision of law.

"§ 3773. Requirements

"(a) A loan referred to in section 3772 meets the requirements of this subchapter if—

"(1) the loan is for—

"(A) construction of, rehabilitation of, or acquisition of land for a multifamily transitional housing project described in subsection (b), or more than one of such purposes;

"(B) refinancing of an existing loan for such a project;

"(C) financing acquisition of furniture, equipment, supplies, or materials for such a project; or

"(D) in the case of a loan made for purposes of subparagraph (A), supplying such organization with working capital relative to such a project;

"(2) the loan is made in connection with funding or the provision of substantial property or services for such project by either a State or local government or a nongovernmental entity, or both;

"(3) the maximum loan amount does not exceed the lesser of—

"(A) that amount generally approved (utilizing prudent underwriting principles) in the consideration and approval of projects of similar nature and risk so as to assure repayment of the loan obligation; and

"(B) 90 percent of the total cost of the project;

"(4) the loan is of sound value, taking into account the creditworthiness of the entity (and the individual members of the entity) applying for such loan;

"(5) the loan is secured; and

"(6) the loan is subject to such terms and conditions as the Secretary determines are reasonable, taking into account other housing projects with similarities in size, location, population, and services provided.

"(b) For purposes of this subchapter, a multifamily transitional housing project referred to in subsection (a)(1) is a project that—

"(1)(A) provides transitional housing to homeless veterans, which housing may be single room occupancy (as defined in section 8(n) of the United States Housing Act of 1937 (42 U.S.C. 1437f(n)));

"(B) provides supportive services and counselling services (including job counselling) at the project site with the goal of making such veterans self-sufficient;

"(C) requires that the veteran seek to obtain and keep employment;

"(D) charges a reasonable fee for occupying a unit in such housing;

"(E) maintains strict guidelines regarding sobriety as a condition of occupying such unit; and

"(F) may include space for neighborhood retail services or job training programs; and

"(2) may provide transitional housing to veterans who are not homeless and to homeless individuals who are not veterans if—

"(A) at the time of taking occupancy by any such veteran or homeless individual, the transitional housing needs of homeless veterans in the project area have been met;

"(B) the housing needs of any such veteran or homeless individual can be met in a manner that is compatible with the manner in which the needs of homeless veterans are met under paragraph (1); and

"(C) the provisions of subparagraphs (D) and (E) of paragraph (1) are met.

"(c) In determining whether to guarantee a loan under this subchapter, the Secretary shall consider—

"(1) the availability of Department of Veterans Affairs medical services to residents of the multifamily transitional housing project; and

"(2) the extent to which needs of homeless veterans are met in a community, as assessed under section 107 of Public Law 102-405.

"§ 3774. Default

"(a) The Secretary shall take such steps as may be necessary to obtain repayment on any loan that is in default and that is guaranteed under this subchapter.

"(b) Upon default of a loan guaranteed under this subchapter and terminated pursuant to State law, a lender may file a claim under the guarantee for an amount not to exceed the lesser of—

"(1) the maximum guarantee; or

"(2) the difference between—

"(A) the total outstanding obligation on the loan, including principal, interest, and expenses authorized by the loan documents, through the date of the public sale (as authorized under such documents and State law); and

"(B) the amount realized at such sale.

"§ 3775. Audit

"During each of the first 3 years of operation of a multifamily transitional housing project with respect to which a loan is guaranteed under this subchapter, there shall be an annual, independent audit of such operation. Such audit shall include a detailed statement of the operations, activities, and accomplishments of such project during the year covered by such audit. The party responsible for obtaining such audit (and paying the costs therefor) shall be determined before the Secretary issues a guarantee under this subchapter.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 37 of title 38, United States Code, is amended by adding at the end the following new items:

"SUBCHAPTER VI—LOAN GUARANTEE FOR MULTIFAMILY TRANSITIONAL HOUSING FOR HOMELESS VETERANS

"3771. Definitions.
"3772. General authority.
"3773. Requirements.
"3774. Default.
"3775. Audit.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona (Mr. STUMP) and the gentleman from Illinois (Mr. EVANS) each will control 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. STUMP).

GENERAL LEAVE

Mr. STUMP. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous material on H.R. 3039, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

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

Madam Speaker, H.R. 3039 is the Veterans Transitional Housing Opportunity Act of 1998. It authorizes the VA to guarantee home loans for multi-unit transitional housing for homeless veterans. The bill also requires homeless projects using these loans to work with VA health care facilities as well as State and local authorities. Additionally, it requires residents to seek and obtain employment and maintain sobriety.

The bill is based on a model that stresses personal responsibility, addiction recovery and work. The project must provide supportive services, sobriety, personal and job counseling. Residents are required to pay a reasonable fee for their residence.

Many committee members have contributed to this bill from both sides of the aisle and we appreciate that very much.

Madam Speaker, I reserve the balance of my time.

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

I am pleased to be an original cosponsor of H.R. 3039, the Veterans Housing Opportunities Act of 1998. This bill will furnish yet another tool to meet the housing and supportive service needs of homeless veterans.

Many of these men and women, who once served their country with honor, can return to society as productive citizens if they are provided with an appropriate continuum of care. The program established under H.R. 3039 will provide the sanctuary, support and services necessary to achieve this goal.

I want to thank the chairman of the full committee, the gentleman from Ohio (Mr. STOKES) for his help in the development of this legislation. I also want to commend the chairman of the Subcommittee on Benefits of the Committee on Veterans' Affairs, the gentleman from New York (Mr. JACK QUINN), and the ranking Democrat on the committee, the gentleman from California (Mr. BOB FILNER), for their hard work on these issues. Their cooperative bipartisan efforts have resulted in a bill that is good for the veterans of this country. I urge my colleagues to support H.R. 3039.

Madam Speaker, I reserve the balance of my time.

Mr. STUMP. Madam Speaker, I yield such time as he may consume to the gentleman from New York (Mr. QUINN), the chairman of the Subcommittee on Benefits of the Committee on Veterans' Affairs.

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

H.R. 3039 is a bill to provide a VA loan guarantee for transitional housing for homeless veterans. In testimony before our Subcommittee on Benefits here in Washington, D.C., as well as testimony at a hearing held in Buffalo, New York, in my district, witness after witness said that the major stumbling block to providing services to homeless veterans is the inability to obtain stable funding. H.R. 3039 is intended to address this obstacle, thereby increasing the supply of transitional housing for homeless veterans.

It is fairly common knowledge that veterans comprise about one-third of homeless adults in this country, and that a high percentage of the homeless suffer from substance abuse and mental illness. Four years ago the Congress called for programs serving homeless veterans to receive a proportional share of funding for the homeless. Unfortunately, that has not happened.

Moreover, there appears to be a niche that is not being filled in the continuum of service necessary to move chronically affected veterans from being a drain on society to being productive citizens. That niche is transitional housing.

H.R. 3039 authorizes loans for transitional housing programs that will provide a supportive and structured environment for our homeless veterans. The bill has the following features:

The VA would be authorized to guarantee up to 15 loans for multi-unit transitional housing for homeless veterans, but the VA could not guarantee more than 5 loans in the first 3 years of the program. The aggregate value of the loans is capped at $100 million.

The bill requires VA to obtain advice in administering the program from a not-for-profit corporation experienced in developing these kinds of programs. This approach obviates the need for the VA to develop additional staff or expertise, and should enable the VA to manage the program within its existing resources.

The borrowers must work with VA health care facilities and State and local authorities to provide a full range of supportive services to maintain sobriety as well as personal counseling and employment services. Projects must work closely with the VA and non-VA sources as a means to reduce the project costs and enhance the effectiveness of the project and other related programs.

This bill requires residents to seek and obtain employment and to maintain sobriety. It is a tough love approach. While the bill does not require a zero tolerance approach to substance abuse for those enrolled in the program, the committee believes that the potential negative impact of those who continue to abuse drugs or alcohol on those wishing to remain clean and sober justifies the zero tolerance.

Finally, residents are required to pay a reasonable fee for their residence because it promotes personal responsibility. Along with staying clean and sober, part of taking personal responsibility is paying one's way in the world and is yet another step toward becoming a fully productive citizen.

I would like to thank all the members of the committee for the bipartisan manner in which we worked through this to bring the bill to the floor. The subcommittee and the gentleman from California (Mr. FILNER) and his staff worked very hard; the gentleman from Illinois (Mr. LANE EVANS), who traveled to Buffalo for the hearing we had, I am also appreciative to him, and especially thank the chairman of the committee, the gentleman from Arizona (Mr. STUMP) for his leadership on the issue.

Madam Speaker, it is a good bill. We believe it fills a void that now exists in the homeless programs, particularly for our veterans in this country, and I urge my colleagues to support H.R. 3039.

Mr. EVANS. Madam Speaker, I yield 3 minutes to the gentleman from California (Mr. FILNER).

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

Madam Speaker, as the ranking Democrat member of the Subcommittee on Benefits of the Committee on Veterans' Affairs, I want to also commend the chairman of the subcommittee, the gentleman from New York (Mr. QUINN), for his leadership on H.R. 3039, the Veterans Transitional Housing Opportunities Act for 1998.

This bill, as the gentleman has explained, will provide the transitional housing so desperately needed by the hundreds of thousands of veterans who sleep on America's streets each night. There is virtually no disagreement that one-third of the homeless men in this country are veterans. In my hometown of San Diego, it is estimated that 40 to 50 percent of the homeless are veterans.

I am very troubled that this very difficult problem never seems to get better. The number of homeless veterans never seems to decrease. I conclude from this that our approach must change. And although H.R. 3039 is not a panacea, I am convinced this program can provide the assistance and support necessary for homeless veterans to reestablish themselves as solid contributing citizens.

This program emphasizes self-sufficiency by requiring housing providers to make available job counseling to veteran residents and by requiring veterans to find and keep a job and to pay a reasonable fee for their housing. H.R. 3039 will provide a hand up, not a handout.

I want to thank the gentleman from New York (Mr. QUINN) for his willingness to reexamine the funding mechanism that was included in H.R. 3039 as introduced. Although the officials of the Veterans Administration did not fully articulate their concerns regarding this section of the bill until rather late in the process, the issues they raised were indeed important, and I am pleased we were able to come to an agreement on the funding issue.

H.R. 3039 is an excellent bill, and I urge my colleagues to vote in favor of this measure.

Mr. STUMP. Madam Speaker, I yield 2 minutes to the gentleman from New York (Mr. GILMAN), chairman of the Committee on International Relations.

Mr. GILMAN. Madam Speaker, I thank the gentleman for yielding me this time, and I am pleased to rise in strong support of H.R. 3039, the Veterans Transitional Housing Opportunities Act, creating a pilot program to allow the Department of Veterans Affairs to guarantee loans to community-based organizations providing services for homeless veterans.

I commend the distinguished chairman of our Committee on Veterans' Affairs, the gentleman from Arizona (Mr. STUMP), for his work on this bill, and the gentleman from New York (Mr. QUINN), and the gentleman from California (Mr. FILNER) for their work on this important legislation.

Homelessness, regrettably, is a widespread problem among our veterans. It is also unfortunate that many of those veterans who are homeless also require psychiatric care and rehabilitation treatment to recover from alcohol or substance abuse. Moreover, such veterans also often require training in marketable job skills to assist them in earning a living after they have recovered.

The duty of providing housing rehabilitation and job training for homeless veterans is expensive. Increasingly, the Department of Veterans Affairs, with its new drive towards efficiency and outpatient care, has been unable to meet those needs. This bill directs the VA to guarantee the full or partial repayment of 15 loans to community-based organizations, with a maximum guarantee amount of $100 million, to fulfill these needs.

Accordingly, Madam Speaker, I urge my colleagues to support this worthy legislation.

Mr. STUMP. Madam Speaker, I yield myself the balance of my time to thank the chairman of the subcommittee, the gentleman from New York (Mr. QUINN), and the gentleman from California (Mr. FILNER), the ranking member of the subcommittee, as well as the gentleman from Illinois (Mr. LANE EVANS), the ranking member of the full committee, for all their hard work in putting this bill together.

This is a bipartisan bill, and I would urge the Members to support it.

Mr. REYES. Madam Speaker, I rise today in strong support of H.R. 3039, the Veterans Transitional Housing Opportunities Act of 1998, and ask unanimous consent to revise and extend my remarks.

This bill will provide a much needed boost to improving the availability of safe and secure homes for our Veterans. I am proud to join the Chairman and Ranking Member of the Veterans' Affairs Committee as a co-sponsor of this important bill, which will provide a much needed boost to the pool of housing for our homeless veterans.

In America, where there is so much prosperity, it is a tragedy that so many of our citizens are homeless, day after day, night after night, looking for shelter. Moreover, it is disturbing that one third of our nation's homeless are men and women who admirably served our country as veterans. This legislation reaffirms our commitment to our veterans wherever they are, to provide them safe and secure shelter by authorizing $100 million in loan guarantees for the development of transitional housing, and by providing for support and counseling. I am proud to state that the Veterans' Affairs Committee has sought to bring these homeless veterans hope and independence. A home is the foundation of our country, and this legislation will bring our homeless veterans out from the cold.

Moreover, this legislation is good policy as it provides for partnerships with local communities to provide this housing. By requiring local and community involvement, we can ensure that the specialized needs of our nation's veterans are secured across the country.

As we take up this important legislation, we recommit ourselves to improving the lives of our nation's veterans. Today I stand with my colleagues on the Veterans Committee and the entire House in strongly supporting this bill. This legislation will truly begin to bring our dedicated and courageous veterans home. I encourage its unanimous passage.

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise before you today to express my support of the Veterans Transitional Housing Opportunities Act of 1998 (H.R. 3039). The statistic noting that one in three homeless Americans are military veterans is staggering. The shortage of transitional housing is a result of the difficulty of veterans in obtaining financing. This bill helps to address that problem. Our military is one of this country's strongest resources and I believe wholeheartedly, that we owe it to our servicemen and servicewomen to assist these protectors of our country and Constitution in their time of need.

This bill does not provide assistance without conditions. Those who are eligible to participate in the program must seek and subsequently maintain a job, pay a reasonable rent and remain drug and alcohol free. These safeguards in determining eligibility will protect the program from potential abuses.

In conclusion, I want to applaud Representative STUMP for introducing this bill and urge my colleagues to join me in supporting the Veterans Transitional Housing Opportunities Act of 1998. These quarter of a million veterans served this country when we needed them; it is now our turn to serve them.

Mr. STUMP. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. EVANS. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. STUMP) that the House suspend the rules and pass the bill, H.R. 3039, as amended.

The question was taken.

Mr. STUMP. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

□ 1300

AUTHORIZING MAJOR MEDICAL FACILITY PROJECTS AND MAJOR MEDICAL FACILITY LEASES FOR DEPARTMENT OF VETERANS AFFAIRS FOR FISCAL YEAR 1999

Mr. STUMP. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 3603) to authorize major medical

facility projects and major medical facility leases for the Department of Veterans Affairs for fiscal year 1999, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3603

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF MAJOR MEDICAL FACILITY PROJECTS.

(a) IN GENERAL.—The Secretary of Veterans Affairs may carry out the following major medical facility projects, with each project to be carried out in the amount specified for that project:

(1) Alterations to facilitate consolidation of services in buildings 126 and 150, and demolition of seismically unsafe building 122 at the Department of Veterans Affairs Medical Center, Long Beach, California, in an amount not to exceed $23,200,000.

(2) Construction and seismic work at the Department of Veterans Affairs Medical Center, San Juan, Puerto Rico, in an amount not to exceed $50,000,000.

(3) Outpatient clinic expansion at the Department of Veterans Affairs Medical Center, Washington, D.C., in an amount not to exceed $29,700,000.

(4) Construction of a psychogeriatric care building and demolition of seismically unsafe building 324 at the Department of Veterans Affairs Medical Center, Palo Alto, California, in an amount not to exceed $22,400,000.

(5) Construction of an ambulatory care addition and renovations for ambulatory care at the Department of Veterans Affairs Medical Center, Cleveland (Wade Park), Ohio, in an amount not to exceed $28,300,000, of which $7,500,000 shall be derived from funds appropriated for a fiscal year before fiscal year 1999 that remain available for obligation.

(6) Construction of an ambulatory care addition at the Department of Veterans Affairs Medical Center, Tucson, Arizona, in an amount not to exceed $35,000,000.

(7) Construction of an addition for psychiatric care at the Department of Veterans Affairs Medical Center, Dallas, Texas, in an amount not to exceed $24,200,000.

(8) Outpatient clinic projects at Auburn and Merced, California, as part of the Northern California Healthcare Systems Project, in an amount not to exceed $3,000,000, to be derived only from funds appropriated for Construction, Major Projects, for a fiscal year before fiscal year 1999 that remain available for obligation.

(b) CONSTRUCTION OF PARKING FACILITY.—The Secretary may construct a parking structure at the Department of Veterans Affairs Medical Center, Denver, Colorado, in an amount not to exceed $13,000,000, of which $11,900,000 shall be derived from funds in the Parking Revolving Fund.

SEC. 2. AUTHORIZATION OF MAJOR MEDICAL FACILITY LEASES.

The Secretary of Veterans Affairs may enter into leases for satellite outpatient clinics as follows:

(1) Baton Rouge, Louisiana, in an amount not to exceed $1,800,000.

(2) Daytona Beach, Florida, in an amount not to exceed $2,600,000.

(3) Oakland Park, Florida, in an amount not to exceed $4,100,000.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 1999—

(1) for the Construction, Major Projects, account $205,300,000 for the projects authorized in section 1(a); and

(2) for the Medical Care account, $8,500,000 for the leases authorized in section 2.

(b) LIMITATION.—(1) The projects authorized in section 1(a) may only be carried out using—

(A) funds appropriated for fiscal year 1999 pursuant to the authorization of appropriations in subsection (a);

(B) funds appropriated for Construction, Major Projects, for a fiscal year before fiscal year 1999 that remain available for obligation; and

(C) funds appropriated for Construction, Major Projects, for a fiscal year before fiscal year 1999 for a category of activity not specific to a project.

(2) The project authorized in section 1(b) may only be carried out using funds appropriated for a fiscal year before fiscal year 1999—

(A) for the Parking Revolving Fund; or

(B) for Construction, Major Projects, for a category of activity not specific to a project.

SEC. 4. THRESHOLD FOR TREATMENT OF PARKING FACILITY PROJECT AS A MAJOR MEDICAL FACILITY PROJECT.

Section 8109(i)(2) of title 38, United States Code, is amended by striking out "$3,000,000" and inserting "$4,000,000".

SEC. 5. PROCEDURES FOR NAMING OF PROPERTY BY SECRETARY OF VETERANS AFFAIRS.

(a) IN GENERAL.—Subchapter II of chapter 5 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 530. Procedures for naming property

"(a) If the Secretary proposes to designate the name of any property of the Department other than for the geographic area in which that property is located, the Secretary shall conduct a public hearing before making the designation. The hearing shall be conducted in the community in which the property is located. At the hearing, the Secretary shall receive the views of veterans service organizations and other interested parties regarding the proposed name of the property.

"(b) Before conducting such a hearing, the Secretary shall provide reasonable notice of the proposed designation and of the hearing. The notice shall include—

"(1) the time and place of the hearing;

"(2) identification of the property proposed to be named;

"(3) identification of the proposed name for the property;

"(c)(1) If after a hearing under subsection (a) the Secretary intends to name the property involved other than for the geographic area in which that property is located, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intention to so name the property and shall publish a notice of such intention in the Federal Register.

"(2) The Secretary may not designate the property with a name for which a notice was published in the Federal Register pursuant to paragraph (1) until the end of a 60-day period of continuous session of Congress following the date of the submission of notice under paragraph (1). For purposes of the preceding sentence, continuity of a session of Congress is broken only by an adjournment sine die, and there shall be excluded from the computation of such 60-day period any day during which either House of Congress is not in session during an adjournment of more than three days to a day certain.

"(3) Each notice under paragraph (1) shall include the following:

"(A) An identification of the property involved.

"(B) An explanation of the background of, and rationale for, the proposed name.

"(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed name, together with a summary of the Secretary's evaluation of those views.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 529 the following new item:

"530. Procedures for naming property.".

(c) EFFECTIVE DATE.—Section 530 of title 38, United States Code, as added by subsection (a), shall take effect as of January 1, 1998.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona (Mr. STUMP) and the gentleman from Illinois (Mr. EVANS) each will control 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. STUMP).

GENERAL LEAVE

Mr. STUMP. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3603, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

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

Madam Speaker, H.R. 3603 authorizes a total of $205 million in major medical construction projects throughout the United States. It also authorizes $8.5 million in VA's medical care account for leasing facilities. All of these projects will be funded from this increase at the top of the VA's priority list of construction projects.

Madam Speaker, let me mention one of the provisions contained in this bill. After the bill reported out of the Committee, we became aware of a controversy regarding the VA Secretary's authority to name VA facilities. In order to avoid circumstances like this in the future, we have added this provision establishing a public hearing procedure to be followed by the Secretary if he decides to name a facility other than for the geographic area in which it is located. This provision would be retroactive until January 1 of this year.

Madam Speaker, I reserve the balance of my time.

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

I am pleased to rise in support of H.R. 3603, a bill to authorize VA's major medical construction and lease projects for fiscal year 1999.

I want to commend my colleague, the gentleman from Arizona (Mr. STUMP), the Chairman of the Committee, for supporting a completely bipartisan process. The projects VA identified as the highest priorities comprise those we recommended for funding for fiscal year 1999.

I believe the bill will allow VA to fund projects that are consistent with VA's efforts to ensure patient safety and accommodate more care on an outpatient basis.

We have been cautious stewards, and the projects authorized in this bill are of vital importance to VA and the veterans that rely on them for their care. I recommend support for adoption of the major medical construction projects contained in H.R. 3603, as amended; and I urge my colleagues to support the resolution.

While VA has significantly reduced its reliance on outpatient bed care, VA providers will continue in the foreseeable future to need beds in a variety of settings. Remaining beds must be housed in modern, safe and accessible facilities. Two projects redress systemic, seismic problems in the San Juan, Puerto Rico and Long Beach, California facilities and both were requested by the Administration.

Other selected projects allow VA to continue moving more expensive hospital bed care to outpatient care settings. Some projects consolidate VA's activities and allow it to become more cost effective. In addition, the Committee is authorizing funds for three major leases for outpatient facilities. These leases will allow VA to take advantage of the community's excess capacity and become more accessible to its users. These projects are not only consistent with recent trends in VA health care, they are consistent with the direction of modern medicine.

Mr. STUMP. Madam Speaker, I yield 2 minutes to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Madam Speaker, I thank the gentleman from Arizona (Mr. STUMP) for yielding me the time.

Madam Speaker, I am pleased to rise in strong support of this measure, legislation authorizing major medical construction projects and facility leases for the VA in fiscal year 1999 throughout our country.

I commend the distinguished chairman, the gentleman from Arizona (Mr. STUMP), for his work in bringing this measure to the floor at this time and for his committee's work.

One of the most important responsibilities that we have as a Nation is to provide proper medical care for our veterans. As our veterans population ages, the need for medical care becomes even more acute. This legislation will allow the Department of Veterans Affairs to fund nine high-priority medical projects throughout our Nation and to lease three medical facilities.

Accordingly, I urge my colleagues to join in supporting this worthy legislation, which will provide improved health care for our veterans.

Mr. EVANS. Madam Speaker, I yield 2 minutes to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Madam Speaker, I thank the gentleman from Illinois (Mr. EVANS) for yielding me the time.

I rise today in support of this legislation because it addresses the critical needs of medical centers throughout the country. In Denver, for example, the need for a new parking structure has increased with the expansion of programs provided by the VA Medical Center, especially outpatient programs and the increasing employment necessitated by the programs.

Currently, the lack of available parking impedes access to care. Less than 400 parking spaces are available on the grounds; and many patients, some of whom it is difficult to walk far, have to park up to five blocks away from the medical center.

H.R. 3603 addresses this problem. It provides for construction of a multilevel structure to house 700 parking spaces, and it includes a horizontal connection to the existing medical center. Consequently, it will enhance our ability to provide timely, efficient health care to the veterans, the many veterans, in the Denver metropolitan area.

I thank the Ranking Member, the gentleman from Illinois (Mr. EVANS), and the Chairman of the Committee, the gentleman from Arizona (Mr. STUMP), for their leadership and assistance in providing this important funding.

Mr. STUMP. Madam Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. STEARNS), chairman of the Subcommittee on Health.

Mr. STEARNS. Madam Speaker, I thank the distinguished gentleman from Arizona (Mr. STUMP), chairman of our full committee, for yielding me the time.

I rise in support of H.R. 3603, which, of course, is the construction authorization bill.

Madam Speaker, the VA health care system is going through a period of needed change toward providing care more efficiently and improving veterans' access to care. With our encouragement, VA has opened many community-based clinics to bring medical care closer to all of our veterans.

Nevertheless, Congress expects VA to continue to provide hospital and nursing home care for veterans in VA medical centers across this country. Like the veterans themselves, many of these facilities are aging, are having problems in construction. We cannot turn our backs on our veterans, and we should not turn our backs on the hospitals on which they depend. We must face the fact that some of these facilities require major renovations to meet patient care, safety and, of course, privacy requirements.

The VA's major construction budget is the vehicle to address those needs. Yet, despite the fact that many VA hospitals need significant construction work, the administration's fiscal year 1999 budget proposes to fund construction work at only two VA medical centers. This is unclear to me why. The administration even failed to request any funding for three projects that VA itself has indicated is their top priority.

Madam Speaker, this bill will remedy this failure. In proposing $205 million for major medical construction, H.R. 3603 would authorize what the committee believes is both a more appropriate level of construction funding than the $84 million proposed by the President and a more appropriate mix of needed construction projects.

With this legislation, Congress would set a course towards remedying some of the most pressing construction needs in the entire VA system. These include projects to provide badly needed outpatient clinic capacity at some of VA busiest medical centers, improve psychiatric care and renovation of seismically unsafe facilities.

As Memorial Day approaches, we must not only remember our veterans but take steps, like the passage of this legislation this afternoon, to honor the commitments to our veterans. I urge my colleagues to support H.R. 3603.

Mr. EVANS. Madam Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

Ms. EDDIE BERNICE JOHNSON of Texas. Madam Speaker, I rise in support of this bill.

Much of my career was spent working with veterans at the Veterans Administration Medical Center in Dallas, and I know full well the strides that they have attempted to make to improve services.

The Veterans Integrated Service Network 17 serving North, Central and South Texas, has sought major construction assistance for over 10 years to replace its 58-year-old mental health facility at the Dallas VA Medical Center.

The North Texas VA Mental Health Enhancement Project was originally authorized in 1996, and I am very pleased that the Committee on Veterans' Affairs saw fit to include this vital project in the major construction authorization bill for 1999.

The Veterans Integrated Service Network 17 has the highest concentration of combat veterans in the U.S., as well as the highest proportion of POWs and Posttraumatic Stress Disorder treatment programs.

The Dallas Medical Center is the primary veterans' mental health provider in the network, serving approximately 7,000 veterans with mental health needs each year. The Dallas VA has done an extraordinary job streamlining its mental health programs to better serve Texas veterans with mental health needs. But the age, limited space, and poor physical condition of the 1930s-era mental health facilities have severely limited its ability to treat many veterans seeking mental health services. Some of these buildings are literally crumbling around our veterans. All are functionally obsolete.

Our veterans really do deserve better. The mental health enhancement project will consolidate all mental health inpatient and outpatient programs currently scattered around VA campus in makeshift sites into one new building located adjacent to the clinical building. This will allow the Dallas VA to expand its outpatient programs and reduce its inpatient nursing beds.

As important, veterans will be able to go to one location for mental health and medical services rather than being run all over the campus.

I urge my colleagues to vote for this bill.

I know that this project, as essential as it is and just beginning to get some attention, I know how important the rest of them are, and I hope we can support all of them.

Mr. EVANS. Madam Speaker, I yield 2 minutes to the gentleman from Puerto Rico (Mr. ROMERO-BARCELÓ).

Mr. ROMERO-BARCELÓ. Madam Speaker, I thank the distinguished ranking member, the gentleman from Illinois (Mr. EVANS), for yielding me the time.

I rise in support of H.R. 3603.

On February 9, 1971, the aftershocks of an earthquake in California were felt all the way to Washington. A shift in the San Andreas Fault caused the destruction of the San Fernando Veterans Administration Hospital in Sylmar, California, resulting in the death of 46 patients. With a great sense of urgency, the U.S. Congress convened hearings and eventually established the Chartered Committee on Safety.

The Veterans Administration initiated a comprehensive assessment of every VA medical center in the system. The studies revealed that 68 medical centers were located in at-risk geographic areas where major or moderate earthquakes may occur. Of these, 39 facilities were found to be in need of seismic strengthening and compliance with seismic codes.

Despite the fact that Puerto Rico is located in one of the most seismically active zones in the United States and that the potential for loss of life ranks very high in the event of an earthquake, seismic corrections and strengthening at the Puerto Rico VA Medical Center initially were not prioritized in the highest-risk group.

VA studies in 1990 confirmed the high seismicity of the site and urged that the San Juan Medical Center warranted inclusion in this group. San Juan was then added to the inventory of high-risk facilities and scheduled last.

VA studies anticipate that in an earthquake, without seismic corrections, Building 1, the main hospital, would sustain serious structural damage, possibly collapsing and resulting in a loss of life.

After a decade of delays, this center, which happens to be one of the busiest, if not the busiest, VA hospital centers in the United States, will finally receive the necessary funds in fiscal year 1999 to guarantee the safety of the American veterans in Puerto Rico.

San Juan's VA Medical Center is currently the only remaining hospital identified as the highest priority need that still remains in the at-risk inventory group. The President's budget for fiscal year 1999 requests $50 million for this project as part of the VA's major medical construction project. A two-story, 155-bed medical and surgical building that includes a 15-bed spinal cord injury center will be constructed to correct seismic deficiencies at the Medical Center.

I want to thank the Chairman, the gentleman from Arizona (Mr. STUMP), and the Ranking Member, the gentleman from Illinois (Mr. LANE), and all of the members of the Committee on Veterans' Affairs who have recommended that this project be authorized.

I urge the Members of the U.S. Congress to approve this much-needed VA construction bill without further delays. The American veterans and their families in Puerto Rico deserve to receive treatment in a healthy, safe environment that poses no unnecessary health, safety or life-threatening risks, just like any other veteran in any other State of the Union. I urge approval of this bill.

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

Mr. EVANS. Madam Speaker, I yield back the balance of my time.

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

In closing, let me thank the gentleman from Illinois (Mr. EVANS), the Ranking Member of the full committee, the gentleman from Florida (Mr. STEARNS) and the gentleman from Illinois (Mr. GUTIERREZ), the Chairman and Ranking Member of the subcommittee, for all their hard work in putting this bill together.

This is a bipartisan bill, and I urge all Members to support it.

Mr. HORN. Madam Speaker, I rise today in strong support of H.R. 3603, the VA Major Medical Facility Projects Authorization bill. This bill authorizes $205 million for major medical facility projects across the country, $140 million more than the President requested in his budget.

Along with the other worthy projects in this bill, $23 million is dedicated to the consolidation of clinical and administrative services into a seismically upgraded building at the Long Beach VA Medical Center. Providing a broad range of inpatient, outpatient, and home care services for veterans throughout Southern California, the Long Beach VA has been recognized for the integral role it plays in Southern California's health care system. The Long Beach Center has also achieved national prominence in the field of spinal cord injury and the rehabilitation of paraplegic and quadriplegic patients.

Given the seismically unstable location of the Medical Center, it is critical that all acute patient care facilities are located in seismically safe buildings. This legislation ensures that. Not only does this protect project the health and safety of the Long Beach VA employees and its patients, it also makes efficient use of scarce government funds. This project will avoid a cost of $34 million for additional seismic corrections and save $5.6 million in annual recurring operating expenses. Now that is a project worth investing in.

As we honor those who have served and sacrificed their lives for our country over the Memorial Day weekend, it is fitting that today the House is considering legislation to fulfill our continuing obligation to our nation's veterans. Their service on our nation's behalf stands as a model of courage and commitment. We cannot afford to forget them.

Mr. WELLER. Madam Speaker, I rise today to express my dismay at a provision that was slipped into H.R. 3603, the bill to authorize major medical facility projects for the Department of Veterans Affairs. This provision was included specifically to undo the naming of the Abraham Lincoln National Cemetery near Joliet, Illinois in my congressional district. It came to my attention today, that a section was added to the bill which would set up new procedures for the naming of national veterans cemeteries and other properties of the VA. I was appalled to learn that this provision is retroactive to January 1, 1998! This is obviously intended to invalidate the decision of Secretary Togo West to name the cemetery after Abraham Lincoln. This provision is an outrage! It is a direct assault on the wishes of the veterans in Illinois. I would like to note that the naming of the cemetery as the Abraham Lincoln National Cemetery was endorsed by the Illinois State American Legion, VFW, Amvets, Disabled American Legion and American Ex-POWs. Clearly the veterans—those who will be buried there—want this name. Clearly, this provision was inserted into the bill to go against the wishes of the veterans. Abraham Lincoln created the national cemetery system. Illinois is the "Land of Lincoln." This name is not only appropriate for the cemetery in Joliet, it is the only name endorsed by the veterans—those who sacrificed for their country. I will fight to have this retroactive provision changed. I submit a copy of my statement to appear in the CONGRESSIONAL RECORD.

VETERANS OF FOREIGN WARS,
DEPARTMENT OF ILLINOIS,
Springfield, IL, May 21, 1997.

Hon. JERRY WELLER,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN WELLER: The Department of Illinois, Veterans of Foreign Wars, takes great pride in supporting the introduction of legislation naming the new Veterans Cemetery at the former Joliet Arsenal the "Abraham Lincoln National Cemetery".

In naming the 982 acre site after President Abraham Lincoln, we not only acknowledge the role he played in creating the National Cemetery System, but also honor the memory of the courageous men and women who answered our nation's call to defend democracy and freedom.

The Department of Illinois, Veterans of Foreign Wars certainly commend the Department of Veterans Affairs, Department of Defense, Congress and the local communities

for their vision and initiatives in acquiring a portion of the former Joliet Army Ammunition Plant, and the beautiful Hoff Woods site for use as the new National Cemetery to serve the veterans and families of this midwest region.

We certainly appreciate your introducing this most important legislation in the House of Representatives and look forward to the passage of same.

With warmest personal regards and best wishes, I remain

Sincerely,

DONALD HARTENBERGER,
Department Commander.

THE AMERICAN LEGION,
DEPARTMENT OF ILLINOIS,
Bloomington, IL, April 10, 1997.

Hon. JERRY WELLER,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE WELLER: The American Legion, Department of Illinois, takes great pride in supporting the introduction of legislation naming the new veterans cemetery at the former Joliet Arsenal the "Abraham Lincoln National Cemetery."

On Saturday, April 5, 1997 at Normal, Illinois, our state Executive Committee approved a resolution commending the Department of Veterans Affairs, Department of Defense, Congress and the local communities for their vision and initiatives in acquiring a portion of the former Joliet Army Ammunition Plant, and the beautiful Hoff Woods site, for use as the new National Cemetery to serve the veterans and families of this midwest region.

A copy of the approved resolution is attached and we respectfully urge the Secretary of Veterans Affairs and the United States Congress to confirm the designation of the former Joliet Arsenal as the "Abraham Lincoln National Cemetery" to honor all veterans and President Abraham Lincoln, who first established the National Cemetery system.

Sincerely,

VINCENT A. SANZOTTA,
Department Adjutant.

AMVETS,
ILLINOIS STATE HEADQUARTERS,
Springfield, IL, September 26, 1997.

Hon. JERRY WELLER,
Cannon House Office Bldg.,
Washington, DC.

DEAR CONGRESSMAN WELLER: Our last State Executive Committee Meeting, held at the Hilton Hotel, Springfield, Illinois, on September 12-14, 1997. At this meeting it was voted unanimously to endorse your legislation to name the Joliet National Cemetery as the Abraham Lincoln National Cemetery.

Since Mr. Lincoln was instrumental in establishing the first National Cemetery, it is only befitting that he finally receives the honor of having a National Cemetery named after him.

Sincerely,

JERRY F. FOSTER,
Department Commander.

AMERICAN EX-PRISONERS OF WAR,
DEPARTMENT OF ILLINOIS,
Park Ridge, IL, October 21, 1997.

Hon. JERRY WELLER,
130 Cannon Building,
Washington, DC.

DEAR HONORABLE WELLER: We the American Ex-Prisoners of War of the State of Illinois all agree to the naming of the veterans cemetery in Joliet, Illinois to be called Abraham Lincoln Veterans Cemetery.

Thank you for the American Ex-P.O.W.'s for their opinion on this matter.

Sincerely,

DONALD MCCORMICK, *Commander.*

DISABLED AMERICAN VETERANS,
DEPARTMENT OF ILLINOIS,
Oak Park, IL, October 28, 1997.

Hon. JERRY WELLER,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN WELLER: The Department of Illinois, Disabled American Veterans, strongly supports the introduction of legislation naming the new Veterans Cemetery at the former Joliet Arsenal the "Abraham Lincoln National Cemetery."

Mr. Lincoln, as we all know, was instrumental in establishing the first National Cemetery and it is only befitting that he receives the honor of having a National Cemetery named after him.

We certainly appreciate your introducing this most important legislation in the House of Representatives because now the veterans and their families in this Midwest region will have a place to rest which they truly deserve and are entitled to.

Sincerely,

GEORGE M. ISDALE, JR.,
Department Adjutant.
TED BUCK,
Department Commander.

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise today to express my support for H.R. 3603, a bill to authorize major medical facility projects for the Veterans' Department.

The bill authorizes the Secretary of Veterans Affairs to carry out major medical facility projects at Department of Veterans Affairs medical centers or outpatient clinics in 8 locations, including one in my home state of Texas. This bill is a result of members from both parties working together to ensure that facilities with the greatest need for construction work will receive the resources necessary to provide high quality care to our veterans.

I'm particularly pleased with the emphasis this bill gives to projects that will increase the VA's ability to provide outpatient care to veterans.

This bill effectively balances our fiscal responsibilities with the needs of these facilities and the veterans who depend on them.

This legislation also stays focused on health care's shifting emphasis from inpatient to ambulatory care by including a number of outpatient projects.

I join my colleagues on both sides of the aisle in supporting this legislation so the men and women who fought for our freedom will be provided with the best possible medical care.

Mr. STUMP. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. EMERSON). The question is on the motion offered by the gentleman from Arizona (Mr. STUMP) that the House suspend the rules and pass the bill, H.R. 3603, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1315

COLLECTIONS OF INFORMATION ANTIPIRACY ACT

Mr. COBLE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 2652) to amend title 17, United States Code, to prevent the misappropriation of collections of information, as amended.

The Clerk read as follows:

H.R. 2652

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 "Collections of Information Antipiracy Act".

SEC. 2. MISAPPROPRIATION OF COLLECTIONS OF INFORMATION.

Title 17, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 12—MISAPPROPRIATION OF COLLECTIONS OF INFORMATION

"Sec.
"1201. Definitions.
"1202. Prohibition against misappropriation.
"1203. Permitted acts.
"1204. Exclusions.
"1205. Relationship to other laws.
"1206. Civil remedies.
"1207. Criminal offenses and penalties.
"1208. Limitations on actions.

"§ 1201. Definitions

"As used in this chapter:

"(1) COLLECTION OF INFORMATION.—The term 'collection of information' means information that has been collected and has been organized for the purpose of bringing discrete items of information together in one place or through one source so that users may access them.

"(2) INFORMATION.—The term 'information' means facts, data, works of authorship, or any other intangible material capable of being collected and organized in a systematic way.

"(3) POTENTIAL MARKET.—The term 'potential market' means any market that a person claiming protection under section 1202 has current and demonstrable plans to exploit or that is commonly exploited by persons offering similar products or services incorporating collections of information.

"(4) COMMERCE.—The term 'commerce' means all commerce which may be lawfully regulated by the Congress.

"(5) PRODUCT OR SERVICE.—A product or service incorporating a collection of information does not include a product or service incorporating a collection of information gathered, organized, or maintained to address, route, forward, transmit, or store digital online communications or provide or receive access to connections for digital online communications.

"§ 1202. Prohibition against misappropriation

"Any person who extracts, or uses in commerce, all or a substantial part, measured either quantitatively or qualitatively, of a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources, so as to cause harm to the actual or potential market of that other person, or a successor in interest of that other person, for a product or service that incorporates that collection of information and is offered or intended to be offered for sale or otherwise in commerce by that other person, or a successor in interest of that person, shall be

liable to that person or successor in interest for the remedies set forth in section 1206.

"§ 1203. Permitted acts

"(a) INDIVIDUAL ITEMS OF INFORMATION AND OTHER INSUBSTANTIAL PARTS.—Nothing in this chapter shall prevent the extraction or use of an individual item of information, or other insubstantial part of a collection of information, in itself. An individual item of information, including a work of authorship, shall not itself be considered a substantial part of a collection of information under section 1202. Nothing in this subsection shall permit the repeated or systematic extraction or use of individual items or insubstantial parts of a collection of information so as to circumvent the prohibition contained in section 1202.

"(b) GATHERING OR USE OF INFORMATION OBTAINED THROUGH OTHER MEANS.—Nothing in this chapter shall restrict any person from independently gathering information or using information obtained by means other than extracting it from a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources.

"(c) USE OF INFORMATION FOR VERIFICATION.—Nothing in this chapter shall restrict any person from extracting information, or from using information within any entity or organization, for the sole purpose of verifying the accuracy of information independently gathered, organized, or maintained by that person. Under no circumstances shall the information so extracted or used be made available to others in a manner that harms the actual or potential market for the collection of information from which it is extracted or used.

"(d) NONPROFIT EDUCATIONAL, SCIENTIFIC, OR RESEARCH USES.—Nothing in this chapter shall restrict any person from extracting or using information for nonprofit educational, scientific, or research purposes in a manner that does not harm the actual or potential market for the product or service referred to in section 1202.

"(e) NEWS REPORTING.—Nothing in this chapter shall restrict any person from extracting or using information for the sole purpose of news reporting, including news gathering, dissemination, and comment, unless the information so extracted or used is time sensitive, has been gathered by a news reporting entity for distribution to a particular market, and has not yet been distributed to that market, and the extraction or use is part of a consistent pattern engaged in for the purpose of direct competition in that market.

"(f) TRANSFER OF COPY.—Nothing in this chapter shall restrict the owner of a particular lawfully made copy of all or part of a collection of information from selling or otherwise disposing of the possession of that copy.

"§ 1204. Exclusions

"(a) GOVERNMENT COLLECTIONS OF INFORMATION.—

"(1) EXCLUSION.—Protection under this chapter shall not extend to collections of information gathered, organized, or maintained by or for a government entity, whether Federal, State, or local, including any employee or agent of such entity, or any person exclusively licensed by such entity, within the scope of the employment, agency, or license. Nothing in this subsection shall preclude protection under this chapter for information gathered, organized, or maintained by such an agent or licensee that is not within the scope of such agency or license, or by a Federal or State educational institution in the course of engaging in education or scholarship.

"(2) EXCEPTION.—The exclusion under paragraph (1) does not apply to any information required to be collected and disseminated—

"(A) under the Securities Exchange Act of 1934 by a national securities exchange, a registered securities association, or a registered securities information processor, subject to section 1205(g) of this title; or

"(B) under the Commodity Exchange Act by a contract market, subject to section 1205(g) of this title.

"(b) COMPUTER PROGRAMS.—

"(1) PROTECTION NOT EXTENDED.—Subject to paragraph (2), protection under this chapter shall not extend to computer programs, including, but not limited to, any computer program used in the manufacture, production, operation, or maintenance of a collection of information, or any element of a computer program necessary to its operation.

"(2) INCORPORATED COLLECTIONS OF INFORMATION.—A collection of information that is otherwise subject to protection under this chapter is not disqualified from such protection solely because it is incorporated into a computer program.

"§ 1205. Relationship to other laws

"(a) OTHER RIGHTS NOT AFFECTED.—Subject to subsection (b), nothing in this chapter shall affect rights, limitations, or remedies concerning copyright, or any other rights or obligations relating to information, including laws with respect to patent, trademark, design rights, antitrust, trade secrets, privacy, access to public documents, and the law of contract.

"(b) PREEMPTION OF STATE LAW.—On or after the effective date of this chapter, all rights that are equivalent to the rights specified in section 1202 with respect to the subject matter of this chapter shall be governed exclusively by Federal law, and no person is entitled to any equivalent right in such subject matter under the common law or statutes of any State. State laws with respect to trademark, design rights, antitrust, trade secrets, privacy, access to public documents, and the law of contract shall not be deemed to provide equivalent rights for purposes of this subsection.

"(c) RELATIONSHIP TO COPYRIGHT.—Protection under this chapter is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection or limitation, including, but not limited to, fair use, in any work of authorship that is contained in or consists in whole or part of a collection of information. This chapter does not provide any greater protection to a work of authorship contained in a collection of information, other than a work that is itself a collection of information, than is available to that work under any other chapter of this title.

"(d) ANTITRUST.—Nothing in this chapter shall limit in any way the constraints on the manner in which products and services may be provided to the public that are imposed by Federal and State antitrust laws, including those regarding single suppliers of products and services.

"(e) LICENSING.—Nothing in this chapter shall restrict the rights of parties freely to enter into licenses or any other contracts with respect to the use of collections of information.

"(f) COMMUNICATIONS ACT OF 1934.—Nothing in this chapter shall affect the operation of the provisions of the Communications Act of 1934 (47 U.S.C. 151 et seq.), or shall restrict any person from extracting or using subscriber list information, as such term is defined in section 222(f)(3) of the Communications Act of 1934 (47 U.S.C. 222(f)(3)), for the purpose of publishing telephone directories in any format.

"(g) SECURITIES EXCHANGE ACT OF 1934 AND COMMODITY EXCHANGE ACT.—Nothing in this chapter shall affect—

"(1) the operation of the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 58a et seq.) or the Commodity Exchange Act (7 U.S.C. 1 et seq.);

"(2) the public nature of information with respect to quotations for and transactions in securities that is collected, processed, distributed, or published pursuant to the requirements of the Securities Exchange Act of 1934;

"(3) the obligations of national securities exchanges, registered securities associations, or registered information processors under the Securities Exchange Act of 1934; or

"(4) the jurisdiction or authority of the Securities and Exchange Commission or the Commodity Futures Trading Commission.

"§ 1206. Civil remedies

"(a) CIVIL ACTIONS.—Any person who is injured by a violation of section 1202 may bring a civil action for such a violation in an appropriate United States district court without regard to the amount in controversy, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against such entity.

"(b) TEMPORARY AND PERMANENT INJUNCTIONS.—Any court having jurisdiction of a civil action under this section shall have the power to grant temporary and permanent injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent a violation of section 1202. Any such injunction may be served anywhere in the United States on the person enjoined, and may be enforced by proceedings in contempt or otherwise by any United States district court having jurisdiction over that person.

"(c) IMPOUNDMENT.—At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies of contents of a collection of information extracted or used in violation of section 1202, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced. The court may, as part of a final judgment or decree finding a violation of section 1202, order the remedial modification or destruction of all copies of contents of a collection of information extracted or used in violation of section 1202, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced.

"(d) MONETARY RELIEF.—When a violation of section 1202 has been established in any civil action arising under this section, the plaintiff shall be entitled to recover any damages sustained by the plaintiff and defendant's profits not taken into account in computing the damages sustained by the plaintiff. The court shall assess such profits or damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's gross revenue only; defendant must prove all elements of cost or deduction claims. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. The court

in its discretion may award reasonable costs and attorney's fees to the prevailing party and shall award such costs and fees where it determines that an action was brought under this chapter in bad faith against a nonprofit educational, scientific, or research institution, library, or archives, or an employee or agent of such an entity, acting within the scope of his or her employment.

"(e) REDUCTION OR REMISSION OF MONETARY RELIEF FOR NONPROFIT EDUCATIONAL, SCIENTIFIC, OR RESEARCH INSTITUTIONS.—The court shall reduce or remit entirely monetary relief under subsection (d) in any case in which a defendant believed and had reasonable grounds for believing that his or her conduct was permissible under this chapter, if the defendant was an employee or agent of a nonprofit educational, scientific, or research institution, library, or archives acting within the scope of his or her employment.

"(f) ACTIONS AGAINST UNITED STATES GOVERNMENT.—Subsections (b) and (c) shall not apply to any action against the United States Government.

"(g) RELIEF AGAINST STATE ENTITIES.—The relief provided under this section shall be available against a State governmental entity to the extent permitted by applicable law.

"§ 1207. Criminal offenses and penalties

"(a) VIOLATION.—

"(1) IN GENERAL.—Any person who violates section 1202 willfully, and—

"(A) does so for direct or indirect commercial advantage or financial gain, or

"(B) causes loss or damage aggregating $10,000 or more in any 1-year period to the person who gathered, organized, or maintained the information concerned,

shall be punished as provided in subsection (b).

"(2) INAPPLICABILITY.—This section shall not apply to an employee or agent of a nonprofit educational, scientific, or research institution, library, or archives acting within the scope of his or her employment.

"(b) PENALTIES.—An offense under subsection (a) shall be punishable by a fine of not more than $250,000 or imprisonment for not more than 5 years, or both. A second or subsequent offense under subsection (a) shall be punishable by a fine of not more than $500,000 or imprisonment for not more than 10 years, or both.

"§ 1208. Limitations on actions

"(a) CRIMINAL PROCEEDINGS.—No criminal proceeding shall be maintained under this chapter unless it is commenced within three years after the cause of action arises.

"(b) CIVIL ACTIONS.—No civil action shall be maintained under this chapter unless it is commenced within three years after the cause of action arises or claim accrues.

"(c) ADDITIONAL LIMITATION.—No criminal or civil action shall be maintained under this chapter for the extraction or use of all or a substantial part of a collection of information that occurs more than 15 years after the investment of resources that qualified the portion of the collection of information for protection under this chapter that is extracted or used.".

SEC. 3. CONFORMING AMENDMENT.

The table of chapters for title 17, United States Code, is amended by adding at the end the following:

"12. Misappropriation of Collections of Information ..... 1201".

SEC. 4. CONFORMING AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) DISTRICT COURT JURISDICTION.—Section 1338 of title 28, United States Code, is amended—

(1) in the section heading by inserting "**misappropriations of collections of information,**" after "**trade-marks,**"; and

(2) by adding at the end the following:

"(d) The district courts shall have original jurisdiction of any civil action arising under chapter 12 of title 17, relating to misappropriation of collections of information. Such jurisdiction shall be exclusive of the courts of the States, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against such entity.".

(b) CONFORMING AMENDMENT.—The item relating to section 1338 in the table of sections for chapter 85 of title 28, United States Code, is amended by inserting "misappropriations of collections of information," after "trademarks,".

(c) COURT OF FEDERAL CLAIMS JURISDICTION.—Section 1498(e) of title 28, United States Code, is amended by inserting "and to protections afforded collections of information under chapter 12 of title 17" after "chapter 9 of title 17".

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act, and shall apply to acts committed on or after that date.

(b) PRIOR ACTS NOT AFFECTED.—No person shall be liable under chapter 12 of title 17, United States Code, as added by section 2 of this Act, for the use of information lawfully extracted from a collection of information prior to the effective date of this Act, by that person or by that person's predecessor in interest.

The SPEAKER pro tempore (Mrs. EMERSON). Pursuant to the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Massachusetts (Mr. FRANK) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

GENERAL LEAVE

Mr. COBLE. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

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

Madam Speaker, I rise in support of H.R. 2652, the Collections of Information Antipiracy Act, and urge my colleagues to support this important bill. Developing, compiling, distributing, and maintaining commercially significant collections of information requires substantial investments of time, personnel, and money. Information companies, especially small businesses, must dedicate massive resources when gathering and verifying factual material, presenting it in a user-friendly way, and keeping it current for and useful to customers.

H.R. 2652, Madam Speaker, prohibits the misappropriation of valuable commercial collections by unscrupulous competitors who grab data collected by others, repackage it, and market a product that threatens competitive injury to the original collection.

This protection is modeled in part on the Lanham Act, which already makes similar kinds of unfair competition a civil wrong under Federal law. Importantly, this bill maintains existing protection for collections of information afforded by copyright and contract rights. It is intended to supplement these legal rights, not to replace them.

The Collections of Information Antipiracy Act is a balanced proposal. It is aimed at actual or threatened competitive injury for misappropriation of collections of information, not at noncompetitive uses. The goal is to stimulate the creation of even more collections and to encourage even more competition among them. The bill avoids conferring any monopoly on facts or taking any other steps that might be inconsistent with these goals.

The version under consideration today contains several noncontroversial technical amendments. The legislation is necessary, in my opinion, and well-balanced, and I urge my colleagues to support it.

Madam Speaker, I would be remiss if I did not mention this. Much information has been disseminated about this bill, and I want to advise the Members of a couple facts that I think are pertinent.

Last February, in fact, the afternoon of the hearing that was conducted, we met with representatives of the university community and asked them for specific instances where they would be concerned about this bill, that we might be able to correct some problems or concerns. None was forthcoming.

As recently as yesterday, a representative from the university community made it clear that he could not give one specific instance where detriment would result, but that he felt that maybe some future unforeseen circumstance might crop up. Madam Speaker, that could happen with any legislation.

I will be doggone if I am going to stand in the path of small businesses and perhaps encourage their bankruptcy ultimately in the fear of a prospective unforeseen circumstance. If that circumstance does arise, then we will repair it and correct it at the time.

The libraries, we met with our friends from the American Library Association, again, last February, asking them, tell us what is wrong and we will fix it. A total of 10 amendments have been made a part of this bill, 10 amendments that were forthcoming from earlier opponents of the bill.

I think we have done all we can do. I think we have a good piece of legislation here. I urge my colleagues to support it.

Madam Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of this bill. The principle is very straightforward. The Supreme Court decided a while ago that people who put together the phone book could not have a property interest in the phone numbers. We do not actually deal with that decision here. That particular decision is not overturned.

But it did leave at risk work that people do to collect information. Essentially the state of the law now, opponents to this bill want the state of the law to remain such that you can go through considerable work to compile data. People who have been in the data compilation business know that it is often not fun. It can be very hard work. It can be unexciting work. But it could give you a very useful work product.

What we are being asked to do by those who simply want to defeat this bill is to leave that work totally unprotected legally as far as the Federal government is concerned. You do the work, you do all the research, and you come up with a significantly useful collection of information. This law says anybody else who wants to can go and take that and do whatever they want with it.

We do in this bill, to the extent that we were capable of doing it, make a distinction. Nothing in this bill in any way retards the intellectual use of that data. A scoundrel who wants to do research and publish some of it as part of his or her study, if you want to go to the data collection and usurp from it so you can prove your point, you can do it. If you want to go to the data collection and reproduce it and get paid for reproducing somebody else's work, this bill says you cannot.

So that is the distinction we have tried to draw between making the intellectual product here fully accessible but protecting it commercially. If in fact you leave it unprotected commercially, you will almost certainly have less work done.

The notion that people should go and do this, do all this data collection, with their work product totally unprotected from anybody else who wants to use it for any purpose, including passing it on, selling it to somebody else, seems to me to be in error.

One of the things we have done, we have had hearings, and we are told, Madam Speaker, that this is too quickly being done and we should pull this bill. Yes, the people who do not want to deal with it now argue to pull the bill.

Why do people say, let us pull the bill? There are two circumstances in which those of us in the legislative body argue that a bill should be pulled. One, it really did come up too quickly, and we really have not had a chance to look at it.

This bill had its first public hearing in October of last year and then a second public hearing in February of this year. It was voted on in subcommittee two months ago. The number of people who have been prevented from studying this bill by time is zero. People have had months to look at it.

Since we have had two public hearings on the bill, a markup two months ago in subcommittee and then a markup in full committee, and then we were going to be on the calendar last week. One of those terrible legislative diseases known as turfitis, which is particularly virulent at the Subcommittee on Energy and Power; you have got to be careful when you are walking on the first floor past the Subcommittee on Energy and Power. You have got a vicious case of "It is mine, and nobody else can look at it." That will break out. That held us off a week.

At any rate, we have had a lot of time that people are aware of this bill. Still, what is their complaint? We have got to study this some more. They are lucky that this bill is not covered by the data collection, I suppose. They would have a long time to study it.

The point is, Madam Speaker, that you say pull the bill when you do not have any substantive arguments. We all say let us delay it. We all say we are not sure what it does. That is when you do not have substantive arguments. I say that because we have asked for substantive arguments.

I very much agree that full use should be there intellectually. I do not want to interfere with researchers who use those data collections.

I have yet to hear a specific instance of how the legislation we are bringing forward prevents people from doing research, from reading the data and using it in that reasonable way.

We have tried in various ways. People said, well, what about the concept of fair use? It does not technically apply, but it could interfere with figures. We said it does not. We have said this bill specifically allows you to do research, allows you to reproduce some parts of it to make your argument. It does not allow you to simply take other people's work product and sell it and get paid for it.

We have had a series of cases, of meetings and hearings, and no one has come forward with specifics. Look at the literature that has been put out. Various organizations have said this is not a good bill, stop it. But I have not been able to find in any of this literature a specific example of how this legislation will interfere with legitimate intellectual activity.

We make a distinction here in this bill between commercial use of someone else's property and the intellectual use. If people think we have not done the balance perfectly, I would be willing to listen, but they do not want to come forward with specifics.

I want to talk also about my friends, the libraries. Some of my friends are librarians. My chief of staff in Massachusetts was the head of a library board and built a beautiful library building. I think libraries are very important.

To the extent that librarians come and say to us, you are going to prevent our readers from being able to read this, do research with this, write a paper based on it, I would be opposed to the bill if it did that. That is not what they are saying. Essentially what they are saying is, some of the people who have done all this work might charge us more than we want to pay.

We underfund libraries. I think we do. If I were in charge, we would give libraries more money than other places. The answer, however, to a public sector inadequately funding libraries is not to empower libraries to take other people's work product for nothing. The answer is further and better to fund libraries.

So I will await the end of this debate, and thereafter I will still be waiting for specifics. I am available. If people will show myself, the chairman, our very able staffs how this interferes with free and open exchange of information, with intellectual use for this, we will try to change that.

I do not think that is the problem. I think people have been able to get some of this information for free. I suppose, as between paying for it and getting it for free, most of us would rather get it for free, if you assume that there is an endless supply of it coming, and if you assume that people who have to give it to you for free and allow you to reuse it will not stop this kind of work.

I think if we do not pass this, you will begin to see a diminution in the kind of data that is available. Nothing in this bill will interfere with the intellectual use of it, so I hope the bill is passed.

Mr. COBLE. Madam Speaker, I have no speaker, but I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Speaker, I yield 5 minutes to the very distinguished but not infallible gentleman from California (Mr. BROWN), the ranking member of the Committee on Science.

Mr. BROWN of California. Madam Speaker, I thank the distinguished gentleman for allowing me to express myself on this bill. I acknowledge that I am distinguished but not infallible. Sometimes I even wonder if I am distinguished.

But let me tell you that without pretending to understand all of the implications of this bill, I found out very quickly, when it was placed on the schedule, that there are a lot of extremely worried people out there who should know what they are talking about or who, on the other hand, may be totally paranoid. It may well be that there are a lot of paranoid people out there.

I suspect that what has happened here is that those organizations, and I have circulated a "Dear Colleague" letter which lists these, and they include

some of the most distinguished organizations in this country, beginning with the library associations and the AAAS, American Association for the Advancement of Science, and many others are worried about this bill.

They may be worried because they do not understand it, and I will confess that. Their tactics seem to be not necessarily to kill the bill, but to allow more time for these scholars and academics and so forth to see if they can find flaws in it and to present those flaws for protection.

These individuals and organizations are notoriously slow in their ability to act promptly on legislation and sometimes other things, but that does not mean that they are wrong. When I see a compilation of organizations as broad as have taken a stand in opposition to this bill, I would like to alert a broader audience to the fact that there could be some flaws.

Knowing the distinguished chairman of the subcommittee and the ranking member and having heard their statements, as the gentleman from North Carolina (Mr. COBLE) says, tell us what is wrong and we will fix it, the gentleman from Massachusetts (Mr. FRANK) said the same thing, and similar language, and I have faith that we would do that.

I would like to have my own little laundry list of the things that need to be done here; but, frankly, I do not have the competence to come up with that kind of a list. What I am trying to accomplish here, and I hope that my motives are understood, is to put on the record the concern of some of these groups which I have known and worked with for many, many years. They are all respectable. They all think they know what they are talking about. And put their concerns on the record so that we may get a broader analysis of this.

I would have hoped that this could have been done in the normal legislative process, and that we could have considered this bill, not on suspension, but with an opportunity to debate it and amend it on the floor. Unfortunately, that is not a possibility at this point.

□ 1330

But it may be. If we defeat it on suspension, we may be able to bring it back, or we may be able to take corrective action in the Senate. This is my whole purpose, and I confess it quite willingly.

It is my understanding that H.R. 2652 addresses only one aspect of the complex subject of adjusting intellectual property protection laws to meet the demands of the new digital age. Unfortunately, as I have indicated, it may be a flawed and controversial attempt, which should have not come up on the suspension calendar.

The problem is that the bill has not found yet a proper balance between protecting original investments in data bases and the economic and social cost of unduly restricting and discouraging downstream application of these data bases, particularly in regard to uses for basic research or education.

Some of these scientific data bases are extremely large and complex. For example, we are spending billions on an effort to characterize the human genome, and we have thousands of scientists working on it. A portion of that work only, and it may be a small portion, is either patentable or protected under copyright laws. The rest of it is going to be freely available. It may be that this legislation is going to cause considerable problem with that massive collection of research data. I hope that that is not the case, but I do not think anyone can tell you at this point whether it or is not.

Progress in science requires full and open availability of scientific data. New knowledge is built on previous findings and unfettered access and use of factual information. This bill will impede research by restricting the ability of scientists to draw on data, facts and even mathematical formulas from previous scientific work for the production of new and innovative work.

It is for this reason, Madam Speaker, that I ask that the bill be defeated on suspension, and, hopefully, brought back after further study.

H.R. 2652 addresses one aspect of the complex subject of adjusting intellectual property protection laws to meet the demands of the digital age. Unfortunately it is a flawed and controversial attempt, which should not have come to the Floor on the Suspension Calendar.

The problem is that the bill has not found a proper balance between protecting original investments in databases and the economic and social costs of unduly restricting and discouraging downstream applications of these databases—particularly in regard to uses for basic research and education.

Progress in science requires full and open availability of scientific data. New knowledge is built on previous findings and unfettered access and use of factual information.

The bill will impede research by restricting the ability of scientists to draw on data, facts, and even mathematical formulas from previous scientific work for the production of new, innovative works. To date, these types of activities have not only been permissible, but expressly protected under copyright law and the fair use concept.

By granting unprecedented rights to ownership of facts—not just rights to the expression of facts and information, as is the case for copyright—the bill will certainly increase the costs of research, but more importantly, reduce the openness of exchange of scientific data and information and also reduce collaboration among scientists.

The provisions in the bill that purport to give exceptions for research and education uses are illusory—triggered only if users can show that the use will not harm actual or potential markets. This is far less "fair use" than under copyright law.

Also, there is no language for mandatory legal licenses, or other limitations, that would require providers of sole source databases to make data available for research, education, and other public interest uses on fair and equitable terms.

Many fields of inquiry that involve statistical compilations and analysis of raw data would be restricted by this bill, such as climate modeling and economic forecasting. Also, research activities involving collaborative sharing of large data bases, such as the sequencing of the human genome, would be adversely affected.

The stated objective of the bill is to protect against individuals stealing non-copyrightable commercial databases, and then taking away the market of the original compiler of the data. The reach of the bill goes far beyond this goal.

Alternative draft legislation that is narrowly based on misappropriation case law is being worked out by the communities with reservations about H.R. 2652. Such an approach would leave existing research and education uses of databases unchanged, while providing added protections for commercial, noncopyrightable databases.

Any legislative action to protect the contents of databases should proceed using a cautious, minimalist approach that balances the interests of creators, publishers, and users, and of society as a whole.

This is not the approach that was taken in developing H.R. 2652.

Despite concerns raised by libraries, research and educational institutions, commercial database companies, and computer and telecommunications companies, the bill has been brought to the floor as a non-controversial measure under suspension of the rules.

This procedure is inappropriate since it affords no opportunity for Members to offer amendments or present alternative approaches to address the many concerns that have been raised about the bill.

The House should reject H.R. 2652 in its current form, and work toward a compromise, such as the alternative I referred to, that will balance the concerns of the various communities of interest.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume to make two points.

First, with regard to the human genome, I am glad the gentleman brought that point up. Let me say, I fully respect the gentleman's motives. He performs a very useful service as the leading Democratic member on the Committee on Science, and it is entirely valid for him to be bringing these concerns forward.

The point I would make, not to him, but to those on whose behalf he is quite legitimately speaking here, is that this has been pending business since hearings last October. We have had it before us. At various stages people say we have a problem; we say, fine, let us hear it. Two months ago we had a subcommittee markup. We had a subsequent committee markup. A week ago

this bill was pulled off the floor, and tomorrow never comes.

I think it will come, if we in fact vote this bill out of here. By the way, it will not go from here to the President's desk. It will go from here to that august wonderful chamber on the other side of this building, which, under the House rules, is the beneficiary of all of our good comments, and they will have some time to work on it, and I do not think they are likely to speed it through.

I do believe that if we do not get a bill over there, it is kind of late in the session, measured by the amount of time that has passed, not the amount of bills that have passed, but it is late in the session, and if we do not get it over there, they will never get to the point. And we look forward to the discussion.

Just to give one example, by the way, on the human genome project, that is Federally funded, page 6 of the bill:

> Protection shall not extend to collections of information gathered, organized or maintained by or for a government entity, Federal, State or local, including any employee or agent of such entity or any person exclusively licensed by such entity within the scope of the employment agency licensed.

Indeed, one difference between our version and the European version is they do not exempt, as we do, government information.

Mr. BROWN of California. Madam Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. BROWN of California. Madam Speaker, I am glad the gentleman made this point. As the gentleman probably knows, there has been considerable publicity within the last few weeks about a private research organization which has stated it can do the remainder of the human genome project faster and quicker than the government-funded projects. I have no idea what the impact of this legislation will be.

Mr. FRANK of Massachusetts. Madam Speaker, reclaiming my time, I will tell the gentleman what the impact is. If we go forward with the government funded proposal, and he has more to say about that than I do, and I have a suggestion, which is cancel that wasteful space station and do that instead with this money and do it quicker, with the shortfall from the Russians that you are going to have to make up, but if we go ahead and do this governmentally funded, that work will not be protectable and it will remain fully open. The fact that some other privately funded entity has chosen to do the work will have no negative effect on people's access to the work that is government funded.

Mr. BROWN of California. Madam Speaker, I am glad for that assurance.

Mr. FRANK of Massachusetts. Madam Speaker, I yield 3 minutes to the distinguished gentlewoman from the District of Columbia (Ms. NORTON)

Ms. NORTON. Madam Speaker, I thank my good friend, the distinguished ranking member, for yielding time to me, and I thank both the distinguished chair and the distinguished ranking member for pressing forward with such persistence in the wake of some considerable resistance, and not "Waiting for Godot" in the absence of anything concrete.

Madam Speaker, I am very afraid that Federal copyright law is in danger of becoming a dinosaur if we do not learn to keep up with the technology. I would be the first, as a First Amendment lawyer in my early days, to stand on the other side if I thought there were a real danger here.

But in fact there is another kind of danger, Madam Speaker; there is a new kind of plagiarism, much of it coming out of the new technology. The new plagiarism robs companies who, by the sweat of their proverbial brows, develop collections that we all need and use every day.

These data base providers have no rights that pirates are bound to respect. Some of the victims, are familiar names, such as NASDAQ, based here in the district. Many more of them are small businesses like Warren Publishing, a company also located in this city. Georgia pirates copied Warren Publishing's unique and original cable system Factbook and sold it under their own name for very little because the pirates did not have to invest the hundreds of thousands of dollars in human, technical and financial resources that Warren Publishing put in to research, to update and to verify the product. Nevertheless, the 11th Circuit discarded Warren Publishing's original contributions altogether simply because the company had worked from a larger and less well-defined listing.

As one known for paying close attention to First Amendment issues, I have felt an obligation to inspect the bill carefully to make sure that educational institutions and researchers are not deterred in the marketplace of free exchange of information and ideas.

I am still an academic, a tenured professor of law at Georgetown University law school who teaches a course there every year and who is working on a book. I would not want to be part and parcel of deterring other researchers. But in an age of instant communication, Federal copyright law must keep up with technology, or risk stifling the development of usable information and the creative entrepreneurship that the new technology allows, not to mention the increase in jobs that businesses like Warren Publishing and NASDAQ are creating every day.

Mr. FRANK of Massachusetts. Madam Speaker, I yield back the balance of my time.

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

Madam Speaker, I will sum up very briefly. My friend the gentleman from Massachusetts (Mr. FRANK) and the gentlewoman from the District of Columbia (Ms. NORTON) have pretty well touched it.

I say to my friend the gentleman from California (Mr. BROWN), I am not talking about you, but some people in this fray have inserted paranoia, deception and fear into this message, and then they are very cleverly targeting that message to a select group. Well, if you do that, chances are you are going to get some attention.

But as the gentleman from Massachusetts said and as I said, this has been before us since last October. It has been on the table. We have begged people to come forward, and some did come forward, and we took their amendments and worked them into the bill.

This is a good bill, Madam Speaker, and I urge my colleagues to support it.

Mr. DELAHUNT. Madam Speaker, I rise in strong support of H.R. 2652, the Collections of Information Antipiracy Act.

Collections of information—"databases"—have become an indispensable feature of today's information society. By organizing billions of bits of raw data into retrievable form, databases enable medical researchers, travel writers, legal professionals, historians, business managers and consumers to navigate the expanding universe of human knowledge to find the information they need.

The creation and maintenance of an electronic database is a labor-intensive process that requires an enormous investment of time and resources. Yet thanks to digital technology, the end product can be copied and distributed by unscrupulous competitors with only a few clicks of a mouse.

Under current law, there is little the creator of the database can do to prevent this. For many years, federal courts afforded copyright protection to compilations developed through significant investments of time and hard work—the "sweat of the brow." But in a 1991 decision, *Feist Publications* v. *Rural Telephone Service Co.,* the Supreme Court discarded the "sweat of the brow" doctrine, and announced that compilations would henceforth merit copyright protection only if the arrangement of the information displays a sufficient degree of originality—a standard which, by their nature, few databases are likely to meet.

Without effective legal protection against piracy, companies will have little incentive to continue to invest their time and money in database development. Should they fail to do so, it is the public that will be the poorer for it.

The Collections of Information Antipiracy Act will address this problem by prohibiting the misappropriation for commercial purposes of collections of information whose compilation has required the investment of substantial time and resources.

At the same time, the bill is drafted so as not to inhibit free access to information for non-profit, educational, scientific or research purposes.

Mr. Speaker, this is a balanced and sensible response to the problem of database piracy, and I urge my colleagues to give it their support.

Mr. COBLE. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. EMERSON). The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the bill, H.R. 2652, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

LIMITING JURISDICTION OF FEDERAL COURTS WITH RESPECT TO PRISON RELEASE ORDERS

Mr. COBLE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 3718) to limit the jurisdiction of the Federal courts with respect to prison release orders.

The Clerk read as follows:

H.R. 3718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON PRISONER RELEASE ORDERS.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1632. Limitation on prisoner release orders

"(a) LIMITATION.—Notwithstanding section 3626(a)(3) of title 18 or any other provision of law, in a civil action with respect to prison conditions, no court of the United States or other court listed in section 610 shall have jurisdiction to enter or carry out any prisoner release order that would result in the release from or nonadmission to a prison, on the basis of prison conditions, of any person subject to incarceration, detention, or admission to a facility because of a conviction of a felony under the laws of the relevant jurisdiction, or a violation of the terms or conditions of parole, probation, pretrial release, or a diversionary program, relating to the commission of a felony under the laws of the relevant jurisdiction.

"(b) DEFINITIONS.—As used in this section—

"(1) the terms 'civil action with respect to prison conditions', 'prisoner', 'prisoner release order', and 'prison' have the meanings given those terms in section 3626(g) of title 18; and

"(2) the term 'prison conditions' means conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

"1632. Limitation on prisoner release orders.".

(c) CONSENT DECREES.—

(1) TERMINATION OF EXISTING CONSENT DECREES.—Any consent decree that was entered into before the date of the enactment of the Prison Litigation Reform Act of 1995, that is in effect on the day before the date of the enactment of this Act, and that provides for remedies relating to prison conditions shall cease to be effective on the date of the enactment of this Act.

(2) DEFINITIONS.—As used in this subsection—

(A) the term "consent decree" has the meaning given that term in section 3626(g) of title 18, United States Code; and

(B) the term "prison conditions" has the meaning given that term in section 1632(c) of title 28, United States Code, as added by subsection (a) of this section.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

GENERAL LEAVE

Mr. COBLE. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3718.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Madam Speaker, I yield such time as he may consume to the author of the bill, the gentleman from Texas (Mr. DELAY), the distinguished majority whip.

Mr. DELAY. Madam Speaker, I thank the gentleman from North Carolina for yielding me this time.

Madam Speaker, I rise today in support of my bill, H.R. 3718. This bill is simple. It ends forever the early release of violent felons and convicted drug dealers by judges who care more about the ACLU's prisoners rights wish-list than about the Constitution and the safety of our towns and communities and fellow citizens.

Under the threat of Federal courts, states are being forced to prematurely release convicts because of what activist judges call "prison overcrowding." In Philadelphia, for instance, Federal Judge Norma Shapiro has used complaints filed by individual inmates to gain control over the prison system and established a cap on the number of prisoners. To meet that cap, she ordered the release of 500 prisoners per week.

In an 18 month period alone, 9,732 arrestees out on the streets of Philadelphia on pretrial release because of her prison caps were arrested on second charges, including 79 murders, 90 rapes, 701 burglaries, 959 robberies, 1,113 assaults, 2,215 drug offenses and 2,748 thefts.

How does she sleep at night? Each one of these crimes was committed against a person with a family dreaming of a safe and peaceful future, a future that was snuffed out by a judge who has a perverted view of the Constitution.

Of course, Judge Shapiro is not alone. There are many other examples. In a Texas case that dates back to 1972, Federal Judge William Wayne Justice took control of the Texas prison system and dictated changes in basic inmate disciplinary practices that wrested administrative authority from staff and resulted in rampant violence behind bars.

Under the threats of Judge Justice, Texas was forced to adopt what is known as the "nutty release" law that mandates good time credit for prisoners. Murderers and drug dealers who should be behind bars are now walking the streets of our Texas neighborhoods, thanks to Judge Justice.

Wesley Wayne Miller was convicted in 1982 of a brutal murder. He served only 9 years of a 25 year sentence for butchering a 18-year-old Fort Worth girl. Now, after another crime spree, he was rearrested.

Huey Meaux was sentenced to 15 years for molesting a teenage girl. He was eligible for parole this September, after serving only 2 years in prison.

Kenneth McDuff was on death row for murder when his sentence was commuted. He ended up murdering someone else.

In addition to the cost to society of Judge Justice's activism, Texas is reeling from the financial impact of Judge Justice's sweeping order.

I remember back when I was in the State legislature, the State of Texas spent about $8 per prisoner per day keeping prisoners. By 1994, when the full force of Judge Justice's edict was finally being felt, the State was spending more than $40 every day for each prisoner. Now, that is a five-fold increase over a period when the State's prison population barely doubled.

The truth is, no matter how Congress and State legislatures try to get tough on crime, we will not be effective until we deal with the judicial activism. The courts have undone almost every major anti-crime initiative passed by the Legislative Branch. In the 1980's, as many states passed mandatory minimum sentencing laws, the judges checkmated the public by imposing prison caps.

□ 1345

When this Congress mandated the end of consent decrees regarding prison overcrowding in 1995, some courts just ignored our mandate.

There is an activist judge behind each of the most perverse failures of today's justice system: violent offenders serving barely 40 percent of their sentences; 3½ million criminals, most of them repeat offenders, on the streets, on probation or parole; 35 percent of all persons arrested for violent crime on probation, parole, or pretrial release at the time of their arrest.

The Constitution of the United States gives us the power to take back our streets. Article III allows the Congress of the United States to set jurisdictional restraints on the courts, and my bill will set such restraints.

I presume we will hear cries of court-stripping by opponents of my bill. These cries, however, will come from the same people who voted to limit the jurisdiction of Federal courts in the 1990 civil rights bill.

Let us not forget the pleas of our current Chief Justice of the United States, William Rehnquist. In his 1997 year-end report on the Federal judiciary, he said, "I therefore call on Congress to consider legislative proposals that would reduce the jurisdiction of Federal courts." We should heed Justice Rehnquist's call right here, right now, today.

Madam Speaker, this bill is identical to the amendment that I offered several weeks ago to H.R. 1252, the Judicial Reform Act. My amendment passed at that time 367 to 52. That is right, 367 yeas and 52 nays.

While that is an overwhelming victory, it is not enough. I am saddened, I am saddened that 52 Members of this body could so callously vote against protecting the families they represent.

Despite the fact that the liberal legal establishment will fight against my bill and the families it will help protect, many of my liberal Democrat colleagues voted for my amendment, and I greatly appreciate their vote. They could not afford not to. How can any Member of this body go home to their district and face a mother whose son or daughter has been savagely beaten and killed by some violent felon, a felon let out of prison early to satisfy the legal community's liberal agenda, to satisfy prison overcrowding or prison conditions? Nothing in my bill takes away the ability to change prison overcrowding and prison conditions. We are just saying, one cannot use early release to satisfy that condition.

Judicial activism threatens our safety and the safety of our children if, in the name of justice, murderers and rapists are allowed to prowl our streets before they serve their time. I say it is time to return some sanity to our justice system and keep violent offenders in jail.

I strongly urge my colleagues, for the sake of the families they represent, to support my bill.

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

Madam Speaker, I rise in opposition to H.R. 3718, which would unconstitutionally limit the authority of Federal judges to remedy inhumane prison conditions. This bill also improperly interferes with the work of the judicial branch of our constitutional system of government.

H.R. 3718 is a radical and dangerous proposal with two impermissible goals. First, it would terminate ongoing consent decrees in prison condition cases. Second, it would prohibit judges from issuing prisoner release orders to remedy unconstitutional overcrowding.

The effort to terminate consent decrees is totally unwarranted. This amendment only affects those consent decrees that State and local governments want to remain in effect or that are necessary because of current and ongoing violations of Federal rights. The Prison Litigation Reform Act of 1995 eliminated all other consent decrees, so the only ones left are those that State and local governments want to remain in effect or are necessary because of current and ongoing violations of the Constitution.

A consent decree is a voluntary contract between two parties to end the active phase of litigation. This legislation does not close the case; it simply prohibits States from negotiating a resolution of the case. Therefore, it requires States to expend substantial sums of money to litigate issues for which there is no dispute and for which there is an agreement for the proper resolution of the case.

Congress has no business dictating to States how they should resolve litigation involving State institutions. If a State has decided that a consent decree meets the State's needs and is preferable to costly litigation, Congress should stay out of it.

Furthermore, Madam Speaker, the Federal termination of prisoner release orders is unnecessary. Most court orders in jail and prison cases do not include prison population caps, and the 1995 Prison Litigation Reform Act already requires a three-judge court before any population cap is imposed. And even if there is a cap, prisoners are released only if State officials elect to meet the cap through releases rather than building new facilities or adopting sentencing alternatives.

This bill will effectively prohibit courts from enforcing constitutional rights of prisoners by agreement and will only be able to enforce those rights with a full-blown court trial that may result in even more draconian resolutions than a consent decree would have resulted in.

Madam Speaker, this legislation is a recipe for chaos. We passed a Prison Litigation Reform Act less than 2 years ago. It eliminated all consent decrees without ongoing violations. The courts are only beginning to address the complicated, practical and constitutional issues raised by this act. Hundreds of cases are pending in trial and appellate courts. The Supreme Court is likely to have a review in the near future. The passage of this bill will only add confusion, delay resolution of pending cases, raise difficult issues of retroactivity, and actually create new litigation.

This amendment is counterproductive for all of those who want to streamline prison lawsuits. The 1995 act already strips courts of authority to enforce the Constitution in certain cases. H.R. 3718 takes us further down that dangerous path.

Court-stripping threatens the role of the judiciary and our system of checks and balances and should not be expanded. Today, court-stripping hurts prisoners, but tomorrow, it may affect others in our society who rely on courts to administer justice and enforce their rights.

I strongly oppose this legislation and urge my colleagues to do the same.

Madam Speaker, there are a few cases that I just want to cite that may be affected by this legislation. It has already been pointed out that we passed legislation creating more prisoners, and if we are going to pass that legislation, it is incumbent upon us to build the prisons to accommodate those prisoners. Let me just list a few consent decrees that this bill will terminate.

A consent decree was entered in the Virgin Islands in 1994 because prisoners were locked up for 23 hours a day in overcrowded, filthy, rat- and roach-infested cells. One-man cells were used to house four or five prisoners with mattresses on the floor, frequently soaked by overflowing toilets; drinking water was contaminated with sewage.

The consent decree remains in effect today, because an evidentiary hearing found many of the problems still persisted. There is no screening for new prisoners for tuberculosis, and mentally ill prisoners are still being housed with the general population and suffering abuse. Several of the mentally ill were badly beaten, and one died. That consent decree would be set aside by this legislation.

Another in Hawaii, 1987, to remedy dangerously inadequate medical and mental health care and environmental conditions. The consent decree remains in effect today because the problem still exists. Today, the facility is very overcrowded, with men sleeping on the floor in cells where there are backed-up toilets spilling sewage. Because of the overcrowding, mentally ill and dangerous populations are mixed together with potential risk to both groups.

Madam Speaker, there are other cases that would be affected by this. The consent decrees would be eliminated if this bill were to be passed.

Prison staff in Louisiana, a Louisiana case, 1995, prison staff were found to be engaging in sexual abuse of women prisoners ranging from vulgar and obscene sexual comments to forcible sexual rape. Prison staff were not only accused of participating in the sexual misconduct but allowing male prisoners to enter female prisons to engage in forcible intercourse with women prisoners. That consent decree would be set aside by this legislation.

Juveniles held in New Orleans. Juveniles held in Conchetta facility in New Orleans Parish Prison lack such supplies as sheets, underwear and shoes. They are at risk because of inadequate mental, dental and mental health care facilities and unsafe environmental

conditions. Children are regularly beaten by staff. That consent decree would be set aside by this legislation.

In the State of Georgia, more than 200 women, some as young as 16 years old, were coerced into having sex with prison guards, maintenance workers, teachers and even a prison chaplain. The sexual abuse comes to light when women became pregnant and were required to undergo abortions. That consent decree would be set aside.

So, Madam Speaker, I would hope that we would not expand the prison litigation court-stripping that we passed in 1995, and that we would defeat this bill.

Mr. COBLE. Mr. Speaker, I yield 6 minutes to the gentleman from Florida (Mr. FOLEY).

Mr. FOLEY. Mr. Speaker, let me strongly support the efforts of the Majority Whip, the gentleman from Texas (Mr. DELAY), to pass this legislation. We supported it as an amendment to the Judicial Reform Act, and I would hope my colleagues will overwhelmingly support it as a free-standing measure.

This bill goes right to the heart of a horrible situation we in Florida have faced. In 1993, the Florida Department of Corrections reported that between January 1, 1987, and October 10, 1991, some 127,486 prisoners were released early from Florida prisons. Within a few years of their early release, they committed over 15,000 violent and property crimes, including 346 murders and 185 sex offenses.

Now, Florida tried to stop the early release program last year, the "gain time" provision, which was a tool used by the legislature back in the 1980s to avert overcrowding, but the judge said, no, cannot do it. It is part of their sentence now. Even though it was not applied at the beginning of their sentence, the "gain time" provision now acts as a part of their sentence and reduces the amount of time that the prisoner is held in custody.

Now, let me ask all in America who are listening to think about this for a minute. Who is paying for the kind of policy that we are trying to prevent? One involves a 21-year-old convicted burglar who got out of prison last October on early release. A month later, he was charged with kidnapping and murdering a 78-year-old woman in Avon Park near my district. He abducted her from her home, forced her into the trunk of her car, and killed her in an orange grove about 20 miles away.

Then there is the 30-year-old man jailed in 1989 on grand theft and armed burglary charges who was released early in 1992 because of prison overcrowding. Four years later, he was charged with murdering the owner of a convenience store in West Palm Beach, Florida.

Now, Mr. Speaker, last month a 30-year-old drifter jailed in 1986 for kidnapping and brutally beating a British tourist in Hollywood, Florida, was released early in 1986, was charged with first degree murder of a teenager after her partially mutilated corpse was found in a bathtub in Miami Beach.

In 1991, and it is sad that I have to continue to report these statistics, but it goes to the heart of the argument that I just heard a moment ago. In St. Lucie County, which I represent, a Fort Pierce police officer, Danny Parrish, was murdered by an ex-convict who had been released after serving less than a third of a prison term for auto burglary. Officer Parrish stopped him for driving the wrong way on a one-way street. The ex-convict, who admitted later he did not want to go back to prison for violating probation, disarmed Officer Parrish and killed him with his own gun.

□ 1400

When are we going to wake up in America to the problems that are occurring in our community because of this type of behavior?

The gentleman who argues against the bill suggests the problems that are in prison today, and suggests rape in prison, dirty conditions; they suggest a lot of things. But what happens when they are out on the streets? Who speaks for the victims? Who speaks for the families?

I often think at times maybe we should encourage a judge who has provided an early release waiver for a prisoner who ultimately causes a family member to be killed, maybe the judge should come to the funeral and give condolences to the family, to recognize what is going on.

Time and time again I hear in our prison systems that a judge has intervened and allows cigarette smoking, video machines, weight lifting, because we have to coddle and provide for the criminal. What about the victim? Is it not a prison, after all? Is it not a prison sentence? Is it not serving time for bad behavior?

But somehow, through this debate, it is all about the prisoner. It is all about somebody who has devastated another family, another life, who has raped another individual. So we tell our society and we tell our children, do not worry about it, because if you are sentenced to 10 years, with early release and gained time, you will be out in 2. There is no crime you will ever pay for. There is no serious consequence for your behavior. There is no serious consequences for your action. Some person's loved one has to die, and the person who commits the crime is out shortly thereafter.

A friend of mine in Lakewood, Florida, their daughter was killed by an illegal immigrant who was sentenced to 7 years for murder, which is regrettable that we only have 7 years prison time for a murder of another human being, and was released in 2½ years. Immigration says we cannot deport him.

Mr. Speaker, this bill is about doing what is right for society. It is about doing what is right for the American public. It is about maintaining order in our streets, and about making certain that prisoners who are in fact sentenced, who are the criminals, who are the bad guys, people who actually commit the crimes are treated like the prisoners they are; no happy time, no gained time, no judge intervening.

When the court rules and issues a sentence, the sentence should be fulfilled. It should be carried out. If it takes political courage to build the additional jail cells, then I say, talk to the politicians and get them to do that, but do not let one life be in jeopardy. Do not let one life be in jeopardy because of the continued persistence of judicial activists who insist that somehow these people have extraordinary rights, and those of the victims are often neglected.

So I again urge my colleagues, as they have in the past, by an overwhelming vote, to support H.R. 3718, the bill offered by the gentleman from Texas (Mr. DELAY) limiting Federal court jurisdictions over Federal prison release orders, and urge its passage today. It is the most important piece of legislation we will see in the House this week, and possibly this year.

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

Mr. Speaker, violating the Constitution and constitutional violations are not the solution to prison overcrowding. The Constitution is not violated when we deny someone weight training or access to a color television. If we are going to pass legislation like three-strikes-and-you-are-out, or mandatory minimums, if we are going to try to pass those slogans, three-strikes-and-you-are-out has been studied and has been determined to be just a waste of money. Mandatory minimums result in high-risk prisoners getting not enough time and the low-risk prisoners getting too much time.

Mr. Speaker, if we are going to pass that legislation, we have to fund the prisons. These violations are not just weight training and color TV. They include rapes, assaults, living in sewer- and rat-infested conditions. We need to fund those prisons and keep these within the constitutional constraints if we are going to pass that legislation.

I think there are a lot of easier ways to deal with the prison problem. That is to prevent more crimes before they occur. But if we are going to pass legislation like this, Mr. Speaker, we have to pay the bill. We have very serious, ongoing constitutional violations.

We have situations where the consent decrees are the easiest ways for the States to deal with this, if they want. They do not have to agree to a consent decree. We should not tie their hands

and force them into litigation, where they may end up in more draconian sanctions than the consent decrees they have agreed to.

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

Mr. COBLE. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. DELAY).

Mr. DELAY. I appreciate the remarks of the gentleman from Virginia, Mr. Speaker. The problem is nothing in my bill changes the concerns that he has. It does not eliminate the ability for courts to enter into consent decrees, it does not have anything to do with prisoners filing claims that prison conditions are cruel and unusual. I just feel that it is cruel and unusual to turn violent criminals out on the streets for prison conditions.

It is very simple. We are just saying that they cannot turn violent criminals out on the streets because of prison conditions. They can do anything else to correct bad prison conditions, and the cases that the gentleman cites are horrible. They should be corrected.

What we are saying is that we cannot turn them back out on the street to prey on our constituents because of prison conditions. Correct them in a different way. We can also renegotiate consent decrees, those consent decrees that this legislation may affect. Article 3 of the Constitution allows us to do it and precedent allows us to do it.

We are just saying, do not turn violent criminals out on the street because of prison overcrowding and prison conditions.

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

Mr. Speaker, I would just like to read the bottom of page 2 of the bill. It says

Termination of existing consent decrees. Any consent decree that was entered into before the date of the enactment of the Prison Litigation Reform Act of 1995, that is in effect on the day before the date of the enactment of this Act, and that provides for remedies relating to prison conditions shall cease to be effective on the date of the enactment of this Act.

That eliminates all consent decrees, not just those that have as a remedy the release of prisoners. So all of those cases where there are rapes, assaults, and everything else are included.

Mr. DELAY. Mr. Speaker, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Speaker, the gentleman is right, reading from the bill, that eliminates all consent decrees, but it does not preclude anybody from renegotiating consent decrees, and leaving out the fact that they are turning violent criminals out on the streets.

Mr. SCOTT. Mr. Speaker, I would point out that in the beginning of the bill, as is indicated, it would eliminate any consent decree that provides for remedies relating to prison conditions.

The beginning of the bill says that notwithstanding that section, no court "* * * shall have jurisdiction to enter or carry out any prisoner release order that would result in the release from or nonadmission to a prison on the basis of prison conditions of the person subject to incarceration, detention, or admission."

That has essentially eliminated a lot of the jurisdiction the court had in the beginning. If someone were only to provide for unconstitutional violations, at the prison, I am not sure what the court could do. They have been essentially eliminated from anything other than consent decrees. If the locality does not agree to it, the court would essentially be, because of this bill, without remedy to remedy constitutional violations.

The law that passed 2 years ago is now being litigated. This bill just takes away the authority from the courts to enforce the constitutional rights of the citizens. I think it should not be passed.

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

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

Mr. Speaker, H.R. 3718, as we know, is a freestanding version of an amendment which the gentleman from Texas (Mr. DELAY) offered to H.R. 1252, the Judicial Reform Act of 1998, last month; April 23rd, to be exact. The House at that time overwhelmingly adopted the DeLay amendment by a vote of 367 to 52.

I think it is a good bill. I think it will help keep convicted felons off the streets, which of course is the intent, in a constitutionally permissible manner.

Mr. SCOTT. Mr. Speaker, I yield back the balance of my time.

Mr. COBLE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the bill, H.R. 3718.

The question was taken.

Mr. SCOTT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

DRUG FREE BORDERS ACT OF 1998

Mr. ARCHER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3809) to authorize appropriations for the United States Customs Service for fiscal years 1999 and 2000, and for other purposees, as amended.

The Clerk read as follows:

H.R. 3809

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 "Drug Free Borders Act of 1998".

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR UNITED STATES CUSTOMS SERVICE FOR DRUG INTERDICTION AND OTHER PURPOSES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

(a) DRUG ENFORCEMENT AND OTHER NONCOMMERCIAL OPERATIONS.—Subparagraphs (A) and (B) of section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A) and (B)) are amended to read as follows:

"(A) $964,587,584 for fiscal year 1999.

"(B) $1,072,928,328 for fiscal year 2000.".

(b) COMMERCIAL OPERATIONS.—Clauses (i) and (ii) of section 301(b)(2)(A) of such Act (19 U.S.C. 2075(b)(2)(A)(i) and (ii)) are amended to read as follows:

"(i) $970,838,000 for fiscal year 1999.

"(ii) $999,963,000 for fiscal year 2000.".

(c) AIR INTERDICTION.—Subparagraphs (A) and (B) of section 301(b)(3) of such Act (19 U.S.C. 2075(b)(3)(A) and (B)) are amended to read as follows:

"(A) $98,488,000 for fiscal year 1999.

"(B) $101,443,000 for fiscal year 2000.".

(d) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 301(a) of such Act (19 U.S.C. 2075(a)) is amended by adding at the end the following:

"(3) By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).".

SEC. 102. NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS.

(a) FISCAL YEAR 1999.—Of the amounts made available for fiscal year 1999 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 101(a) of this Act, $90,244,000 shall be available until expended for acquisition and other expenses associated with implementation and deployment of narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf Coast seaports, as follows:

(1) UNITED STATES-MEXICO BORDER.—For the United States-Mexico border, the following:

(A) $6,000,000 for 8 Vehicle and Container Inspection Systems (VACIS).

(B) $11,000,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) $12,000,000 for the upgrade of 8 fixed-site truck x-rays from the present energy level of 450,000 electron volts to 1,000,000 electron volts (1–MeV).

(D) $7,200,000 for 8 1–MeV pallet x-rays.

(E) $1,000,000 for 200 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(F) $600,000 for 50 contraband detection kits to be distributed among all southwest border ports based on traffic volume.

(G) $500,000 for 25 ultrasonic container inspection units to be distributed among all

ports receiving liquid-filled cargo and to ports with a hazardous material inspection facility.

(H) $2,450,000 for 7 automated targeting systems.

(I) $360,000 for 30 rapid tire deflator systems to be distributed to those ports where port runners are a threat.

(J) $480,000 for 20 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(K) $1,000,000 for 20 remote watch surveillance camera systems at ports where there are suspicious activities at loading docks, vehicle queues, secondary inspection lanes, or areas where visual surveillance or observation is obscured.

(L) $1,254,000 for 57 weigh-in-motion sensors to be distributed among the ports with the greatest volume of outbound traffic.

(M) $180,000 for 36 AM traffic information radio stations, with 1 station to be located at each border crossing.

(N) $1,040,000 for 260 inbound vehicle counters to be installed at every inbound vehicle lane.

(O) $950,000 for 38 spotter camera systems to counter the surveillance of customs inspection activities by persons outside the boundaries of ports where such surveillance activities are occurring.

(P) $390,000 for 60 inbound commercial truck transponders to be distributed to all ports of entry.

(Q) $1,600,000 for 40 narcotics vapor and particle detectors to be distributed to each border crossing.

(R) $400,000 for license plate reader automatic targeting software to be installed at each port to target inbound vehicles.

(S) $1,000,000 for a demonstration site for a high-energy relocatable rail car inspection system with an x-ray source switchable from 2,000,000 electron volts (2-MeV) to 6,000,000 electron volts (6-MeV) at a shared Department of Defense testing facility for a two-month testing period.

(2) UNITED STATES-CANADA BORDER.—For the United States-Canada border, the following:

(A) $3,000,000 for 4 Vehicle and Container Inspection Systems (VACIS).

(B) $8,800,000 for 4 mobile truck x-rays with transmission and backscatter imaging.

(C) $3,600,000 for 4 1-MeV pallet x-rays.

(D) $250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) $300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(F) $240,000 for 10 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(G) $400,000 for 10 narcotics vapor and particle detectors to be distributed to each border crossing based on traffic volume.

(3) FLORIDA AND GULF COAST SEAPORTS.—For Florida and the Gulf Coast seaports, the following:

(A) $4,500,000 for 6 Vehicle and Container Inspection Systems (VACIS).

(B) $11,800,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) $7,200,000 for 8 1-MeV pallet x-rays.

(D) $250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) $300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(b) FISCAL YEAR 2000.—Of the amounts made available for fiscal year 2000 under section 301(b)(1)(B) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(B)), as amended by section 101(a) of this Act, $8,924,500 shall be for the maintenance and support of the equipment and training of personnel to maintain and support the equipment described in subsection (a).

(c) ACQUISITION OF TECHNOLOGICALLY SUPERIOR EQUIPMENT; TRANSFER OF FUNDS.—

(1) IN GENERAL.—The Commissioner of Customs may use amounts made available for fiscal year 1999 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 101(a) of this Act, for the acquisition of equipment other than the equipment described in subsection (a) if such other equipment—

(A)(i) is technologically superior to the equipment described in subsection (a); and

(ii) will achieve at least the same results at a cost that is the same or less than the equipment described in subsection (a); or

(B) can be obtained at a lower cost than the equipment described in subsection (a).

(2) TRANSFER OF FUNDS.—Notwithstanding any other provision of this section, the Commissioner of Customs may reallocate an amount not to exceed 10 percent of—

(A) the amount specified in any of subparagraphs (A) through (R) of subsection (a)(1) for equipment specified in any other of such subparagraphs (A) through (R);

(B) the amount specified in any of subparagraphs (A) through (G) of subsection (a)(2) for equipment specified in any other of such subparagraphs (A) through (G); and

(C) the amount specified in any of subparagraphs (A) through (E) of subsection (a)(3) for equipment specified in any other of such subparagraphs (A) through (E).

SEC. 103. PEAK HOURS AND INVESTIGATIVE RESOURCE ENHANCEMENT FOR THE UNITED STATES-MEXICO AND UNITED STATES-CANADA BORDERS.

Of the amounts made available for fiscal years 1999 and 2000 under subparagraphs (A) and (B) of section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A) and (B)), as amended by section 101(a) of this Act, $117,644,584 for fiscal year 1999 and $184,110,928 for fiscal year 2000 shall be available for the following:

(1) A net increase of 535 inspectors, 120 special agents, and 10 intelligence analysts for the United States-Mexico border and 375 inspectors for the United States-Canada border, in order to open all primary lanes on such borders during peak hours and enhance investigative resources.

(2) A net increase of 285 inspectors and canine enforcement officers to be distributed at large cargo facilities as needed to process and screen cargo (including rail cargo) and reduce commercial waiting times on the United States-Mexico border.

(3) A net increase of 40 inspectors at sea ports in southeast Florida to process and screen cargo.

(4) A net increase of 300 special agents, 30 intelligence analysts, and additional resources to be distributed among offices that have jurisdiction over major metropolitan drug or narcotics distribution and transportation centers for intensification of efforts against drug smuggling and money-laundering organizations.

(5) A net increase of 50 positions and additional resources to the Office of Internal Affairs to enhance investigative resources for anticorruption efforts.

(6) The costs incurred as a result of the increase in personnel hired pursuant to this section.

SEC. 104. COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS.

As part of the annual performance plan for each of the fiscal years 1999 and 2000 covering each program activity set forth in the budget of the United States Customs Service, as required under section 1115 of title 31, United States Code, the Commissioner of the Customs Service shall establish performance goals, performance indicators, and comply with all other requirements contained in paragraphs (1) through (6) of subsection (a) of such section with respect to each of the activities to be carried out pursuant to sections 102 and 103 of this Act.

TITLE II—OVERTIME AND PREMIUM PAY OF OFFICERS OF THE UNITED STATES CUSTOMS SERVICE; MISCELLANEOUS PROVISIONS

Subtitle A—Overtime Pay and Premium Pay of Officers of the United States Customs Service

SEC. 201. CORRECTION RELATING TO FISCAL YEAR CAP.

Section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) is amended to read as follows:

"(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) that a customs officer may be paid in any fiscal year may not exceed $30,000, except that—

"(A) the Commissioner of Customs or his or her designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service; and

"(B) upon certification by the Commissioner of Customs to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that the Customs Service has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to customs officers, the Commissioner is authorized to pay any customs officer for one work assignment that would result in the overtime pay of that officer exceeding the $30,000 limitation imposed by this paragraph, in addition to any overtime pay that may be received pursuant to a waiver under subparagraph (A).".

SEC. 202. CORRECTION RELATING TO OVERTIME PAY.

Section 5(a)(1) of the Act of February 13, 1911 (19 U.S.C. 267(a)(1)), is amended by inserting after the first sentence the following new sentence: "Overtime pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such overtime pay.".

SEC. 203. CORRECTION RELATING TO PREMIUM PAY.

(a) IN GENERAL.—Section 5(b)(4) of the Act of February 13, 1911 (19 U.S.C. 267(b)(4)), is amended by adding after the first sentence the following new sentence: "Premium pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such premium pay.".

(b) CORRECTIONS TO NIGHT WORK DIFFERENTIAL PROVISIONS.—Section 5(b)(1) of such Act (19 U.S.C. 267(b)(1)) is amended to read as follows:

"(1) NIGHT WORK DIFFERENTIAL.—

"(A) 6 P.M. TO MIDNIGHT.—If any hours of regularly scheduled work of a customs officer occur during the hours of 6 p.m. and 12

a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

"(B) MIDNIGHT TO 6 A.M.—If any hours of regularly scheduled work of a customs officer occur during the hours of 12 a.m. and 6 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

"(C) MIDNIGHT TO 8 A.M.—If the regularly scheduled work assignment of a customs officer is 12 a.m. to 8:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.".

SEC. 204. USE OF SAVINGS FROM PAYMENT OF OVERTIME AND PREMIUM PAY FOR ADDITIONAL OVERTIME ENFORCEMENT ACTIVITIES OF THE CUSTOMS SERVICE.

Section 5 of the Act of February 13, 1911 (19 U.S.C. 267), is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e) USE OF SAVINGS FROM PAYMENT OF OVERTIME AND PREMIUM PAY FOR ADDITIONAL OVERTIME ENFORCEMENT ACTIVITIES.—

"(1) USE OF AMOUNTS.—For fiscal year 1999 and each subsequent fiscal year, the Secretary of the Treasury—

"(A) shall determine under paragraph (2) the amount of savings from the payment of overtime and premium pay to customs officers; and

"(B) shall use an amount from the Customs User Fee Account equal to such amount determined under paragraph (2) for additional overtime enforcement activities of the Customs Service.

"(2) DETERMINATION OF SAVINGS AMOUNT.—For each fiscal year, the Secretary shall calculate an amount equal to the difference between—

"(A) the estimated cost for overtime and premium pay that would have been incurred during that fiscal year if this section, as in effect on the day before the date of the enactment of sections 202 and 203 of the Drug Free Borders Act of 1998, had governed such costs; and

"(B) the actual cost for overtime and premium pay that is incurred during that fiscal year under this section, as amended by sections 202 and 203 of the Drug Free Borders Act of 1998.".

SEC. 205. EFFECTIVE DATE.

This subtitle, and the amendments made by this subtitle, shall apply with respect to pay periods beginning on or after 15 days after the date of the enactment of this Act.

Subtitle B—MISCELLANEOUS PROVISIONS

SEC. 211. ROTATION OF DUTY STATIONS AND TEMPORARY DUTY ASSIGNMENTS OF OFFICERS OF THE UNITED STATES CUSTOMS SERVICE TO PROMOTE INTEGRITY.

(a) IN GENERAL.—Section 5 of the Act of February 13, 1911 (19 U.S.C. 267), as amended by this Act, is further amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

"(f) ROTATION OF DUTY STATIONS AND TEMPORARY DUTY ASSIGNMENTS OF CUSTOMS OFFICERS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, bargaining agreement, or Executive order, in order to ensure the integrity of the United States Customs Service, the Secretary of the Treasury—

"(A) may transfer up to 5 percent of the customs officers employed as of the beginning of each fiscal year to new duty stations in that fiscal year on a permanent basis; and

"(B) may transfer customs officers to temporary duty assignments for not more than 90 days.

"(2) VOLUNTARY AND OTHER TRANSFERS.—A transfer of a customs officer to a new duty station or a temporary duty assignment under paragraph (1) is in addition to any voluntary transfer or transfer for other reasons.

"(3) ADDITIONAL REQUIREMENT.—The requirements of this subsection, including any regulations established by the Secretary to carry out this subsection, are not subject to collective bargaining.

"(4) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There are authorized to be appropriated for fiscal year 2000 $25,000,000 to carry out this subsection.

"(B) AVAILABILITY OF AMOUNTS.—Amounts authorized to be appropriated under subparagraph (A) are authorized to remain available until expended.

"(5) RULE OF CONSTRUCTION.—The authority provided by this subsection may be exercised only to the extent that in the applicable appropriations Act (or in the committee report or joint statement of managers to such Act) an account is specifically established for the authority provided by this subsection.".

(b) EFFECTIVE DATE.—Section 5(f) of the Act of February 13, 1911, as added by subsection (a), shall take effect on October 1, 1999.

SEC. 212. EFFECT OF COLLECTIVE BARGAINING AGREEMENTS ON ABILITY OF UNITED STATES CUSTOMS SERVICE TO INTERDICT CONTRABAND.

Section 5 of the Act of February 13, 1911 (19 U.S.C. 267), as amended by this Act, is further amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following:

"(g) EFFECT OF COLLECTIVE BARGAINING AGREEMENTS ON ABILITY OF CUSTOMS SERVICE TO INTERDICT CONTRABAND.—

"(1) SENSE OF THE CONGRESS.—It is the sense of the Congress that collective bargaining agreements should not have any adverse impact on the ability of the United States Customs Service to interdict contraband, including controlled substances.

"(2) PROVISIONS CAUSING ADVERSE IMPACT TO INTERDICT CONTRABAND.—

"(A) REQUIREMENT TO MEET.—If the Commissioner of the Customs Service determines that any collective bargaining agreement with the recognized bargaining representative of its employees has an adverse impact upon the interdiction of contraband, including controlled substances, the parties shall meet to eliminate the provision causing the adverse impact from the agreement.

"(B) FAILURE TO REACH AGREEMENT.—If the parties do not reach agreement within 90 days of the date that the Commissioner of Customs made the determination of adverse impact, the negotiations shall be considered at impasse and the Commissioner of Customs may immediately implement the last offer of the Customs Service. Such implementation shall not result in an unfair labor practice or, except as may be provided under the following sentence, the imposition of any status quo ante remedy against the Customs Service. Either party may then pursue the impasse to the Federal Service Impasses Panel pursuant to section 7119(c) of title 5, United States Code, for ultimate resolution.

"(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Commissioner of Customs to implement immediately any proposed changes without waiting 90 days, if exigent circumstances warrant such immediate implementation, or if an impasse is reached in less than 90 days.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. ARCHER) and the gentleman from California (Mr. MATSUI) each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARCHER).

GENERAL LEAVE

Mr. ARCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3809.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

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

Mr. Speaker, as my colleagues know, drug use among teenagers is now skyrocketing. This Congress is dedicated to winning the war on drugs because our very children's lives are at stake.

Last week Anthony Butler, a 17-year-old from Annapolis, Maryland, told the Congress that he started smoking marijuana when he was 12 years old, age 12. At age 13 he was sentenced to juvenile life after being found guilty of several crimes. He said drugs were, and I quote, "* * * easy to get. They were everywhere." During those years they were available even in his juvenile detention center, Boys Village in Prince Georges County.

This young man could be anyone's son, grandson, nephew, or little brother. The point is, we are losing the war on drugs, and the statistics are grim. More kids are using marijuana, more kids are using cocaine, more kids are using heroin, more kids are risking their lives, and more kids are dying.

Mr. Speaker, this bill will help keep drugs out of our children's hands and out of their lives. We must stop drugs from coming across our borders. Last year the Customs Service seized 1 million pounds of narcotics, and impressive as that is, Anthony Butler still was able to get drugs at the drop of a hat, and that, Mr. Speaker, is frightening.

Mr. Speaker, the reasons to step up the war on drugs are clear, yet the U.S. Customs service and the Clinton administration support for this bill has been anything but unwavering. Last Tuesday at the subcommittee markup of this legislation, the U.S. Customs Service said they supported each and every provision of this bill, including

provisions that I expect will be heatedly debated today.

But sadly, it appears as though Washington's labor bosses have tightened their grips on the Clinton administration, and even on its drug czar. Politics, unfortunately, has entered into the decision-making process of the administration, because by last Thursday, U.S. Customs had reversed its position and no longer supports this bill to beef up our borders against drugs.

Today the administration is backtracking. It now supports the bill, but opposes one of its most significant elements because of labor opposition, and an element, I must say, that was encouraged to be put in the bill by the Customs Department itself to enable it to do a better job.

I am deeply disappointed in the administration's change of heart, driven by politics, to put the interests of Washington's labor bosses above the well-being of children like Anthony Butler from Annapolis, Maryland.

Let me make clear the provisions do one thing and one thing only: They help win the war on drugs. One provision gives Customs the flexibility to deploy personnel where they are needed most. Drug smugglers do not work 9 to 5, and our Nation's front line of defense in the war on drugs cannot work 9 to 5, either.

Another says if a group of employees under the collective bargaining agreement refuses to work with Customs on drug interdiction, thus undermanning the war on drugs, Customs must bring the matter to negotiations for 90 days. If there is no resolution, Customs may implement its last offer, so that Customs can stop drugs from crossing our border while the union pursues its remedies.

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One procedure that is being blocked today by a local union is used everywhere else along the U.S.-Mexico border, resulting in 50 percent seizure of all drugs in one site, San Ysidro, California. We need to join together to protect our children from the scourge of drugs. This is not a time for partisan politics or for special interest influence in either party. We must put our children first.

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

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

H.R. 3809 poses an unfortunate dilemma for many Members. On the one hand, it authorizes additional resources needed by the United States Customs Service for antidrug enforcement. On the other hand, it contains provisions affecting Customs employees and their collective bargaining rights in particular, which are controversial and do not have bipartisan support.

Title I of the bill authorizes appropriations for the Customs Service for fiscal years 1999 and 2000, as requested by the President, plus additional funds authorized specifically for additional equipment and personnel to strengthen enforcement along our borders against illegal drugs and other contraband.

The $90 million earmarked for the latest equipment and technology and the $301 million earmarked over 2 prior years for an additional 1,745 Customs inspectors, special agents and other personnel are necessary for additional resources to detect and interdict illegal drugs.

Mr. Speaker, the problem with this bill, however, is two provisions in the bill which Democrats opposed in the Committee on Ways and Means, sections 211 and 212. These two sections would allow Customs managers to abrogate unilaterally collective bargaining agreements between Customs management and Customs employees and to regulate the collective bargaining process as it applies to the temporary reassignment of Customs inspectors and the interdiction of contraband.

Specifically, section 211 authorized Customs management to reassign its employees without regard to any existing executive order, Federal law or collective bargaining agreement. Section 212 authorizes Customs to determine whether a collective bargaining agreement has an adverse impact on the interdiction of contraband and to implement a management action if agreement is not reached within 90 days with the union. Under exigent circumstances, whatever Customs basically determines them to be, management action may be implemented immediately.

In short, Mr. Speaker, Customs is being authorized to ignore and abrogate collective bargaining agreements negotiated in good faith. That is the major problem with this legislation.

I might just point out to the chairman of the Committee on Ways and Means that the administration is not opposing this provision because of special interests or because of labor. It is because the administration believes that contracts should not be abrogated.

I think it is about time that the majority begin to stop considering it a conspiracy every time something that they disagree with happens. They should stop looking under the bed or opening up closets. Maybe they might then come to the realization that sometimes these decisions are made based upon good faith and certainly upon good policy and good judgment.

Most of the Members on our committee did support this legislation. It is my hope that when this matter goes to the House-Senate conference that we can correct section 211 and section 212, which certainly need major revisions, if, in fact, this bill is eventually to get to the President and certainly before the President will sign this legislation.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. MATSUI. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding to me and certainly want to associate my comments with his.

Section 203 also is of some concern in that it impacts on the premium pay that is earned by Customs employees. I would say to my friend from Florida, who is managing the bill, and my friend from California, I intend to vote for this bill when it comes up for a vote, voice vote or however it will be. But I will be watching very closely, as the gentleman from California indicates, what happens in conference.

Very frankly, what was done as it relates to the employees and to the integrity of the contracts that they have negotiated and entered into gives me great concern. That is not the thrust of this bill, but it is one of the tangential impacts that I think should give everybody in this House concern. I hope that in conference these concerns will be addressed, this facet of it will be fixed, so that the very positive aspects of this bill can go forward.

I thank the gentleman for yielding to me.

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

The SPEAKER pro tempore (Mr. SHIMKUS). Without objection, the gentleman from Florida (Mr. SHAW) is recognized to control the time.

There was no objection.

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

I would point out to my friend from California that the vote in the Committee on Ways and Means was unanimous; all that were there voted for it with, I believe, one Member voting present. There were no negative votes. It is a very well-thought-out bill.

I would also tell my friend from Maryland that we believe that we took care of the problem with regard to the existing contract in that the provision that was talked about as abrogating the rights of a contract does not take place until the existing contract expires in 1999. Also, there is a provision within that contract that very specifically states that if the law should change during the period of the labor contract, that the law would certainly prevail.

Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. HASTERT).

Mr. HASTERT. Mr. Speaker, I thank the gentleman from Florida for yielding me the time.

This bill has been a long time coming. I have taken about four or five trips to the border myself to try to look at the problems, understand what is going on.

If we go to Tijuana, the crossing there, if we go to Laramie, if we go to El Paso, if we go to Nogales, what they

tell us time after time is, Congressman, we have a problem. Because if this lane of traffic has an INS inspector and this lane of traffic has a Customs inspector and, in fact, in El Paso they sit up on the bridge over in Mexico and they look with their binoculars and they say, with their telephones, go into lane 3 because an INS inspector is there and they cannot lift the trunk because that is in the contract. And we know that the drug smugglers know who these people are. They know what lane they are in. They said, we cannot get everything we should get because these union contracts stand in our way.

When I talk about that to my folks back home, they say, well, that is a common-sense thing. Why do we not change things that should be changed?

The other problem, part of this problem, if we have a Customs agent who has been on a job and, according to their contract, they can bid on a job and they can live on the border for 20 years, the same place, their brother-in-law can live across the border. It is common sense that maybe the potential for corruption happens when somebody is too long in one place and too close to situations. Maybe we ought to change that; and when the contract comes up to be renewed, maybe those are the things that ought to be renegotiated.

So I take my hat off to the gentleman from Illinois (Mr. CRANE), the gentleman from Texas (Mr. ARCHER), and the gentleman from Florida (Mr. SHAW) for coming forward with a good, common-sense bill.

That is not all this bill does. It also brings in 1700 new officers so that we can attack smuggling from Florida, the Gulf Coast and our southwest and Canadian borders. This bill puts some teeth into what we need to do.

I support it and ask for Members' positive vote.

Mr. MATSUI. Mr. Speaker, I yield 3 minutes and 30 seconds to the gentleman from Michigan (Mr. LEVIN).

Mr. LEVIN. Mr. Speaker, if there is any domestic issue that deserves action across party lines, this is it, drugs. My staff and I have worked actively in this fight against drugs as a number one priority in Washington and at home.

At home, we have worked building antidrug coalitions, always nonpartisan, always across all kinds of lines involving parents and students and teachers, leaders in the business community, law enforcement and religious communities.

The administration announced a 10-year national drug strategy, and it addresses supply and demand factors, both of them. The strategy calls for an enhanced border effort.

When some of us were in Chile with the President at the summit of the Presidents of the Americas, we met with the President and discussed especially this border problem. And he said to us, a bipartisan group, will you work with me to enhance border efforts on a bipartisan basis? And the answer from all of us on a bipartisan basis was yes.

The main part of this bill embodies that spirit, an enhanced effort at the border. It was worked out on a bipartisan basis.

That is not true of subtitle B of title II, so-called miscellaneous provisions. The gentleman from Illinois says this bill has been a long time in coming, but these provisions, abrogation of contract provisions, were sprung without a hearing at the last minute last Tuesday without any bipartisan discussion whatsoever. Those are the facts.

The chairman of the committee has talked that we should not politicize drugs, and how true it is; but that is exactly what the majority does when they raise provisions without talking to us for one second, at the last minute, without any hearings on a bill that is a long time in coming.

These provisions may not go into effect this year, but when they go into effect, they give a government agency the power to abrogate a collective bargaining agreement, a contract, without any standards; and it seems to me that those of us who believe in the contract provisions, who believe in the contract process in this country, that they would hesitate before setting this kind of a precedent.

I am going to vote for this bill. I am hoping that the Senate will look at these provisions. They already have a bill that authorizes the Customs Department. It does not contain these contract abrogation provisions.

Let us pass this along to the Senate, hoping that they will keep what is necessary here, the fight against drugs, and remove the political parts of this bill.

Mr. SHAW. Mr. Speaker, I yield myself 15 seconds to reply to the gentleman from Michigan.

The provision that he is claiming that is politicized came from the administration. We did not jump this or spring this on the Democrats. This was requested by the Customs Department themselves.

Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Speaker, as we debate this bill today to tighten up the border and clamp down on drugs coming into this country, I think it is probably appropriate to pause and remember why we are here.

We do have an increasing drug problem in this country. We have had a doubling of teenage drug use in the last 5 years in this country. Prices are down; volumes are up. We have a crisis.

I have focused more on the demand side, on the prevention/education side, because I think that is ultimately how we are going to solve this problem. We also have to acknowledge that to the degree to which we have high volumes and low prices on the street, we are going to have an increasing problem on the demand side. So they are linked. That point has been made to me a lot by my colleagues, and I am a believer.

Today, 70 percent of high school seniors tell us they can get drugs within 24 hours. Given where we are, given the situation, I think that this legislation is a good balance. I think it is a good way to be sure that we are doing a much better job on the border, which we have to do.

There are a series of changes in here. It increases the number of inspectors and special agents. It increases resources at the border, something the gentleman from Michigan (Mr. LEVIN) said the President is in favor of.

We are doing this on a bipartisan basis. It enhances the technology available to them. Others are going to talk more about this, but it is amazing the degree to which these Customs officers are now asked to work with poor technology, dealing with thousands and thousands of drugs coming across busy border crossings made busier by NAFTA, which I supported and many other Members on both sides did. We need to give them the technology to check these trucks.

□ 1430

Finally, the flexibility to be able to deploy these resources where they are needed. If we are to have a real war on drugs, we have to fight it like a war. We have to give the Customs Service the flexibility to put personnel where they are needed, and that includes rotations, and that includes nighttime service, and that includes the ability to be flexible to respond to ever-changing border situations, because the smugglers will find a new way to come in every chance they get.

So to me this is kind of a basic commonsense response. If we are serious about drugs, we have to do it. It is a reasonable response to a crisis situation.

Mr. MATSUI. Mr. Speaker, I yield ½ minute to the gentleman from Michigan (Mr. LEVIN).

Mr. LEVIN. Mr. Speaker, I just wanted to say to my friend from Florida that we discussed this in the Committee on Ways and Means and it was clear that the staff of the majority discussed this and helped initiate this. Maybe discussed it with the administration. We are waiting for the evidence. But there was not the full discussion with the minority. There was no discussion with us.

And maybe this is part of what was described in the Washington Post, an effort by the Republicans to politicize this issue instead of coming together. So I urge we move ahead with this bill but look at the bad provisions in conference.

Mr. MATSUI. Mr. Speaker, I yield 3½ minutes to the gentleman from Texas (Mr. REYES).

Mr. REYES. Mr. Speaker, I thank the gentleman for yielding me this time. I appreciate he does not have a lot of time, and in 3½ minutes I cannot tell my colleagues the frustration of working in this body.

The reason I rise in strong opposition to this bill, among many, is the information that we hear here about one agency being able to open trunks and the other agency not being able to open trunks. To suggest that a collective bargaining contract leads to corruption is ridiculous.

I patrolled our border for more than 26 years with the Border Patrol and also served as an inspector at our ports of entry for 4 years. I know what the men and women of our borders are asked to do on a daily basis. I know the dedication they pour into their work each and every day to keep our communities safe.

I do not understand how this body can vote on a bill which will send many of our customs inspectors home to their families with less pay and will take away their current negotiating rights. I do not understand how we can be so hypocritical as to ask our inspectors to do more but give up their rights while serving as a first line of defense on our borders.

I think I do understand how we work in this House but I do not agree with it. The reason that our borders and our fight against drugs does not work is because too often in this House we make it a political issue. I make it a practice to act in the best interest of our border and do not politicize the needs of our border.

I am a cosponsor of the bill offered by the gentleman from California (Mr. HUNTER), which increases our Border Patrol presence and gives our agents more flexibility while doing their jobs because it is the right thing to do. He is a cosponsor of my bill to separate the enforcement functions of the INS and create a new agency, again because it is the right thing to do. It serves the needs of our communities, not the needs of our political agendas.

I stand here today deeply disturbed with this body, because the legislation that is pending before us has nothing to do with the border, it has nothing to do with fighting drugs; it has everything to do with politics. When are we going to act in the best interest of our border communities and pass legislation which addresses the needs of our drug enforcement agencies?

We should not use the issue to push political agendas. If this bill is designed to make some Members look bad and choose between much-needed personnel and technology and the rights of our agents and inspectors who enforce our narcotics and immigration laws, then shame on us for politicizing the security and the integrity of our borders and misusing the trust and faith placed in us by our communities.

No one in this body today should fall into this trap. I refuse to compromise the security of our Nation and the rights of our hard working and dedicated agents and inspectors. We all owe it to our men and women who stand on the border of this great country, keeping our families and our communities safe, and ask nothing in return except the fundamental right of fair treatment.

I ask all my colleagues, based on 26½ years of experience in fighting drugs, in fighting illegal immigration on our borders, to oppose this bill. There were no hearings held. This is a mishmash and a missed opportunity to do what is right.

Mr. SHAW. Mr. Speaker, may I inquire as to the time remaining on either side?

The SPEAKER pro tempore (Mr. SHIMKUS). The gentleman from Florida (Mr. SHAW) has 9¾ minutes remaining, and the gentleman from California (Mr. MATSUI) has 8¼ minutes remaining.

Mr. SHAW. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. HAYWORTH), a distinguished member of the Committee on Ways and Means.

Mr. HAYWORTH. Mr. Speaker, I thank my colleague from Florida for yielding me this time.

I listened with great interest to my friend from Texas and his very unique perspective, and he raises an interesting question that I think we should all take into account: workers' rights versus workers' responsibilities. I was intrigued to hear many Members of the minority even offering that predictable cacophony of complaints prompted by the Washington union bosses, and I have a couple of letters here urging opposition to this legislation.

But I think it is a fair question to ask: Do workers' responsibilities ever rank preeminently as opposed to coexisting with workers' rights? Because what we have, my colleagues, is a full-fledged crisis. And even though our drug czar, General McCaffery, today would criticize us for using the term "war on drugs," Mr. Speaker, that is exactly what we should be committed to do.

If we are serious about stopping this flow of drugs, that means that all available personnel should be called into action to do their jobs. And when it comes to collective bargaining, though I am pleased to admit the JD in my name does not stand for Juris Doctor, I am not a lawyer and never played one on TV, and I consider that an asset, but it is a well-held legal fact that this body can change the terms of any agreement involving Federal workers and workers' agreements.

What we have, Mr. Speaker, is a chance to go on record. What do we hold in higher esteem: A collective bargaining agreement or the future of our children and interdicting drugs? This should be all about drug interdiction and it has very little to do with workers' rights.

Mr. Speaker, I urge passage of the legislation.

Mr. MATSUI. Mr. Speaker, I yield 2½ minutes to the gentleman from California (Mr. FILNER).

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

Yes, we must be relentless, Mr. Speaker, in our war on drugs, but not at the expense of the soldiers whom we must rely on to fight that battle. H.R. 3809 gives us tools in this tough battle but puts those who will use the tools into straightjackets.

Provisions of this bill will rob Customs employees, who are the frontline drug enforcement personnel, of both their hazard pay to work essential nighttime shifts and their negotiating rights. This makes no sense at a time when we are asking these soldiers to work harder and smarter with new high-tech equipment.

I say to the distinguished chairman of this committee and to the distinguished gentleman from Arizona (Mr. HAYWORTH) that we are not talking here about union bosses, we are not talking about special interests, we are talking about the men and women who are fighting the war on drugs.

This bill would allow Customs Service management to back out of agreements made with rank-and-file employees. And because armies are dependent on the loyalty and respect between soldiers and officers, we cannot win the war on drugs if management makes agreements with employees but then has the congressional approval to break them at will.

Congress will waste taxpayers' money if it authorizes expensive cutting-edge equipment while at the same time undermining employee morale and labor standards. A drug interdiction program for the century depends on 21st century equipment and a 21st century work force. The Customs Service will not be able to retain or attract the high quality employees needed to operate upgraded equipment if it downgrades the labor standards.

This bill should not be passed in its present form, Mr. Speaker. The aim of this bill is good, but it has not gone through the normal legislative process to fix the problems. Let us defeat this bill today, fix the problems, bring it back under regular order for a unanimous vote of support.

Let us make this war on drugs, I say to my friends on the other side of the aisle, unanimous. Let us not politicize it with this kind of bill that was brought with only a few days' notice, that undermines the men and women who are going to fight this war.

Mr. SHAW. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida (Mr. MCCOLLUM),

the chairman of the Subcommittee on Crime of the Committee on the Judiciary.

Mr. MCCOLLUM. Mr. Speaker, I thank the gentleman for yielding me this time, and I want to commend the gentleman from Florida (Mr. SHAW) and the others who sponsored this bill. It is a terrific piece in the puzzle to get us back to the point where we are actually fighting a war against drugs; where we are putting the full energy of this country where it needs to be.

With double the teenage drug use in the last six years in this country, it is very apparent we have a big time problem. We need education, we need training, we need drug treatment, but we also have to stop the flow of drugs coming into this country. This is one piece in that puzzle that deals with the Customs Service, and it is a very good piece in that puzzle.

In order to stop the flow of drugs from coming in here, or at least to cut back about 80 percent, which is what is necessary for us to increase the price of drugs on the streets and reduce the amount that is available, that is flooding our streets, and make the job of demand easier, then we have to do things in the source countries to reduce the flow of drugs out of Colombia, Peru, Bolivia, places like that, Mexico, and we have to stop the drugs when they are coming across our coastal waters, but we also have to stop them at our borders.

That is where the Border Patrol comes in, the Coast Guard comes in, DOD, DEA, everybody, but Customs is a very important part of that. This bill would put $960 million of new money at this effort through Customs. It is a 31 percent increase over the President's request for Customs. It would mean 1,705 new personnel and all kinds of new equipment, including x-ray equipment at our borders, not only the borders with Mexico and the United States but Canada and the United States and along the coast of Florida, which is very important to our State in the region where I come from.

This is a very, very important bill to beef up the Customs portion and to put us on track where we can actually have the right personnel, the right equipment at every level, in source countries, transit and at the border, to really fight a true war against drugs. And I urge the adoption of this drug border enforcement, Drug-Free Border Act that the gentleman from Florida (Mr. SHAW), the gentleman from Illinois (Mr. CRANE) and others are sponsoring today.

Mr. MATSUI. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Speaker, I rise in support of this bill to support U.S. Customs' interdiction efforts with the latest high-tech equipment for detecting narcotics coming through commercial trade, although I am going to work to remove the anti-worker provisions the Republican leadership has stuck in this bill.

The eradication of illegal drugs in our society is a number one priority of the Congressional Black Caucus. We put it in our priority statement over two years ago and we have been working very hard. I am pleased that the Republican leadership has finally gotten around to calling for funding the sophisticated antidrug technology that we possess. I was calling for this during the debate over fast track, when I put out a major report on the effect of NAFTA and other trade treaties on the increase of drug trade through commercial trucks and ships.

Unfortunately, neither the Republican leadership nor the drug czar wanted to address the drugs and trade then. I could not even get the Republican Members of this House to accept a copy of the report that I put together talking about what was going on.

I also introduced my legislation January 27, 1998, that calls for funding sophisticated high energy container x-ray systems and automated targeting systems for inspection of cargo at major border checkpoints. I am pleased that this bill will authorize these inspection systems. Some would say the Republicans stole my legislation, but whether they did or not, I am glad that they finally caught up.

I must say I do have reservations about some of the provisions that have been stuck in the bill. I think it was in there because it was supposed to scare away people who are friends to organized labor, but we are not running from this. We will straighten it out in conference. The Senate put it in. They did it right. This provision that my colleagues on the other side have put in is just a poison pill, but I will support the bill and work to take that out.

I want my colleagues to know we must commend this administration for the big money-laundering bust that just took place. I am going to know my colleagues are serious when they join me on the money laundering bill that takes some of the American banks into the 21st century.

Mr. SHAW. Mr. Speaker, I yield 2½ minutes to the gentleman from Iowa (Mr. NUSSLE), a distinguished member of the Committee on Ways and Means.

Mr. NUSSLE. Mr. Speaker, I thank the gentleman for yielding me this time. By the way, that was bipartisanship. I am glad that there are at least some folks that are coming down here in a very bipartisan way talking about drugs but, unfortunately, that is not happening all the way across the board.

Just to clear up a couple of things that have been discussed here today. I was at a meeting. It was not staff that had the meeting with Customs about whether or not to put these changes in in section B. I was at the meeting. They asked for it. They are part of the administration. It has been a bipartisan effort to make these changes from the beginning. If somebody did not happen to be at the meeting, that is not my fault.

□ 1445

That is not Customs' fault. But this has been going on for a long time. And I realize that there are a few people that have got their noses out of joint. But it is not because, I do not believe, they believe we should not be doing things about drugs. It is for other reasons.

Let me just tell my colleagues a little bit about this bill that I think we need to consider. One is that there is no abrogation of contract. All right? There is no such thing as that in this bill. What there is is that there is a time limit, and it says, "If you cannot get your ducks in order within 90 days," and we have had examples that have been pointed out that have been as long as 4 years and running where opportunities to make agreements between the union members and management have not been worked out, "exigent circumstances can be grounds for making these changes."

Let me just give my colleagues an example of what exigent circumstance might be. Back this last year, in March of 1997, the FBI intelligence discovered that there was a drug smuggling ring on the border of California that was going to use extreme measures in retaliation for lost shipments of drugs; and, so, what the Customs Service did was they said to their workers, "You are ordered to wear bullet-proof vests and body armor." And so what happened? Union representatives said, "That is not in our contract. We don't have to."

Well, body armor and bullet-proof vests are not just there for the protection of the one person who wears it or a union member. It is there to protect the border. And it in that kind of exigent circumstance that the Customs Department needs to be able to suggest that current union contracts do not stand in the way of bullets flying at the border. Body armor stands in the way, possibly.

So not contracts, not union organizations, but exigent circumstances in this instance needed to be the grounds for this extreme measure. It needs to be part of this bill. The Customs Service has asked for it. It has been bipartisan. Let us vote for this bill.

Mr. MATSUI. Mr. Speaker, I yield 2½ minutes to the gentleman from Ohio (Mr. KUCINICH).

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

Mr. Speaker, like all working families in this country and Members of this body, I am committed to the fight against illegal drugs flowing into our country across our borders. We need to

strengthen our efforts to halt the flood of drugs to our cities and suburbs and States. This is the context, Mr. Speaker, in which I rise to oppose H.R. 3809.

I believe that the drug issue is too important to clot it with anti-Customs Service worker provisions, wherever those provisions came from. This measure is far too controversial to be considered under the suspension calendar. It needs to be sent back to the Committee on Rules for full consideration.

This bill has a number of laudable aspects. It increases funds authorized for Customs Service to use for drug interdiction activities, earmarks money for the hiring of more than 1,700 new Customs inspectors, special agents, K–9 enforcement officers, provides for a variety of new high-tech equipment.

But illegal drugs will not be stopped by technology or money alone. Drugs will be halted by the motivated and dedicated people who work for the Customs Service. These civil servants are the first line of defense against the drugs flowing into our country. Why attack them? They did not create the drug problem. This is where H.R. 3809 becomes an extreme and radical measure.

Customs agents have freely chosen to belong to a union, and they worked with Customs management to establish one of our Nation's most innovative labor-management partnerships. This bill would punish them for their efforts. This bill would allow the Commissioner of the Customs Service to unilaterally cancel any aspects of the collective bargaining agreement. The bill would destroy the collective bargaining process in the Customs Service.

This is wrong. Government workers have rights. Why, in the name of the fight against drugs, do we have legislation in front of us which attacks the rights of working people? Mr. Speaker, I submit that there ought to be rehabilitation for those who want to knock down wages and benefits of workers in the name of fighting drugs.

Mr. MATSUI. Mr. Speaker, may I inquire of the amount of time we have on our side?

The SPEAKER pro tempore (Mr. SHIMKUS). The gentleman from California (Mr. MATSUI) has 1¾ minutes remaining.

Mr. MATSUI. Mr. Speaker, I yield the balance of my time to the gentleman from California (Mr. BECERRA).

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

Let me begin by saying that I fully support the funding increases in this bill for drug interdiction. That should have and could have been the focus of this debate. Unfortunately, at the last moment, provisions were added to this bill which changes character and also made it an anti-worker bill. Why this bill takes a swipe at workers I do not understand, but it does.

Sections 221 and 222 of title II of this bill would remove the negotiating rights for front-line drug enforcement personnel, the very people that we are asking to take on this risky task of stopping drugs from coming through.

On one day in April of last year, two U.S. Customs Inspectors were shot. At the same time that same day, there was a bomb threat in a cross-border pedestrian tunnel, and there was a 100-mile pursuit of a truck filled with immigrants who had no right to be in this country, this truck barreling through a border checkpoint and almost running down a Border Patrol agent. Those are the kinds of things that happen.

Those employees put their life on the line. They should have every right to decide under what conditions they would work.

Now, management does not have to agree to everything; and that is what the collective bargaining process is for. If we allow the process to work, it would work very well. Unfortunately, even in this own House, we do not follow process.

This bill was introduced on May 7. We had a hearing on April 20 on Customs' issues. So at the hearing itself on these issues, we never took up this bill nor those anti-worker provisions. May 12, this went before the subcommittee; May 14, it went before the subcommittee; and today it is on the floor.

Never once have we had a chance to discuss these anti-worker provisions. We would all probably be standing supporting this bill if it were not for the fact that, at the last moment, anti-worker provisions were added. It is a way to cloak those ugly provisions and get this bill passed. We should really be voting no on this bill until those provisions are removed.

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

Mr. Speaker, I would say to those that said that there have not been hearings on this bill, there have been over the years. Last year, we had a hearing on it. We had a couple hearings this year.

And I would like to also say to those and particularly the gentleman from Ohio, who spoke before the gentleman from California, in talking about a poison pill and the gentlewoman from California talking about a poison pill, the provisions that they are complaining about were written by the administration and given to us for insertion in the bill.

I am pleased to speak today on the merits of H.R. 3809, the Drug Free Borders Act of 1998. H.R. 3809 was reported by the Committee on Ways and Means last Thursday, May 14, by a bipartisan vote of 29–0. We have heard so much about fighting the war on drugs, and I am here to tell my colleagues that H.R. 3809 is absolutely essential to this cause.

This bill proposes an additional $232 million in Customs authorizations over the President's request for fiscal 1999. I can think of no better reason to support this bill than its ability to provide for 1,745 additional Customs officers and special agents to protect our borders. Yes, that is 1,745 additional Customs people. This authorization will specifically target those areas that have been identified as major drug smuggling and transportation and distribution networks in our country.

I would like to bring to the attention of my colleagues an example of what these resources would add to the outstanding performance of our Customs officers. In what Treasury Secretary Robert Rubin and Attorney General Janet Reno have referred to as the largest, most comprehensive drug money laundering case in the history of the United States law enforcement, Customs just this past weekend seized over four tons of cocaine and marijuana, conducted over 70 arrests, and made over $155 million in illegal laundered drug money in Los Angeles.

H.R. 3809 would also correct the problems with the overtime and nighttime pay of Customs officers that has proven to be disturbingly flawed. Overtime payment for work not even performed should stop. Who can argue with that? Night pay at noontime should stop. Who can argue with that? Any savings resulting from the elimination of these problems should fund additional drug enforcement efforts. Who can argue with that?

To ensure the integrity of the United States Customs Service, H.R. 3809 would allow the Secretary of the Treasury to rotate up to 5 percent of the Customs officers as of October 1, 1999. This provision would become effective after the conclusion of the current contract between Customs and its union to ensure that it does not abrogate the terms of a national contract, contrary to what has been argued here on this floor today.

Finally, H.R. 3809 seeks to eliminate many of the factors that inhibit the Customs officers from performing their drug interdiction effort.

Currently, labor negotiations have been cited as a major impediment to these vital efforts. In my state of Florida, for instance, one labor negotiation in Miami has dragged on for almost four years at one of the most critical ports in the country. This bill would allow the Commissioner of Customs to limit any additional negotiations to 90 days.

H.R. 3809 simply seeks to give Customs the tools it needs to fight the war on drugs without delay. We cannot afford delay in this war . . . for delay means more drugs getting into the hands of our children.

The U.S. Customs Service deserves our praise, my colleagues, but most importantly today, they deserve our support by voting yes to H.R. 3809, in allowing them to do even more in fighting for our nation's future and the future of our children. We must join together to protect our children from the scourge of drugs, without partisanship or special interests. Vote Yes to put our Children first.

Mr. GOSS. Mr. Speaker, our borders are the last line of defense between our Nation's cities and towns and the organized drug smugglers who market their poisons. We must make the United States border a perilous obstacle for those engaging in this destructive trade. That means stepping up border enforcement and keeping one pace ahead of the traffickers. The Drug Free Borders Act represents the first step toward that end by providing for new special agents and inspectors at the U.S. Department of Customs, as well as for the purchase of valuable new detection technologies.

Troubling trends like an 85% drop in customs drug seizures in the past year, declining prices and increasing availability, clearly show we are losing the battle to stop these poisons at our borders. There are miles upon miles of American border which we actively encourage people to cross every day for trade and tourism and the criminals we are fighting have the deftness to exploit any weak link in our defenses. Therefore, in stopping the drug supply we must create a barrier that extends from our shores out to the original source of the drugs.

Keeping ahead of the drug smugglers is a daunting task and requires reliance on the eyes and ears of a strong intelligence capability. To win this war we need to know where the traffickers are headed before they get there and the networks they use to move their contraband.

This is doable if we make the commitment. The end result will be to make involvement with drug trade a dangerous occupation from the fields where the drugs are produced to the street corners of our cities and neighborhoods, and all points between.

Mr. GILMAN. Mr. Speaker, I rise today in strong support of H.R. 3809, the Drug Free Borders Act. This legislation provides a much needed increase in the authorization for the U.S. Customs Service to fight the entry of illegal drugs at our borders.

The last four years have shown a steady increase in the number of drug users, particularly in adolescents. Teenage drug use has sharply risen every year since 1993, and shows no sign of abating soon.

This rise in drug use has paralleled an emphasis on the part of the Federal Government with regard to interdiction and with regard to treatment. The end result today is a readily available supply of drugs that is both inexpensive and of the highest purity in history.

If our Nation wants to successfully reduce teenage drug use, we need to adopt a bilateral approach of simultaneously reducing both supply and demand. This bill beefs up our interdiction efforts on our borders, particularly with Mexico.

Mr. Speaker, it is time for our Nation to get serious on the issue of reducing drug use. We have given treatment a chance over the last five years, and the results have shown that treatment alone is not enough. Unless our interdiction efforts are increased and improved, no treatment program will be able to avoid being overwhelmed in the deluge of cheap, highly pure drugs that currently exists.

Accordingly, I urge my colleagues to support this worthwhile legislation.

Mr. METCALF. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

Mr. Speaker, I would like to congratulate Chairman CRANE and Chairman ARCHER on a much needed piece of legislation. However, I would like to voice my concerns over two specific sections in the legislation.

Section 211 and Section 212 of the legislation contain provisions that are of concern to me and my constituents who are employed as customs agents on the northern border, Mr. Speaker.

The first concern I have is that the legislation allows for the involuntary transfer of up to 5% of the customs service personnel. This will potentially exacerbate the situation on the northern border that has left our customs agents out manned in their fight to prevent the importation of drugs as the Administration continually emphasizes the southern border by transferring agents south and not providing replacements.

The second concern I have deals with the rights of the union. This legislation allows the customs service, when faced with provisions of a collective bargaining agreement that impede drug interdiction to eliminate the provision. While this is important, I question the method used in the bill to implement this.

The provision allows the Customs Service to eliminate the provision after 90 days and implement their last offer. This gives the Customs Service very little motivation to negotiate in good faith when they know that if they hold out for 90 days their way will be the policy. I hope that this situation can be corrected in the conference on this legislation.

Mr. Speaker, this legislation does do many important things. It provides the necessary resources to purchase materials that will dramatically improve the ability of customs agents to utilize modern technology in their interdiction efforts. It authorizes new agents at the borders to address the dramatic shortfall that is present today. All of these things are necessary, vital and long overdue.

Mr. ORTIZ. Mr. Speaker, I rise today in opposition to H.R. 3809, the Drug Free Borders Act of 1998. I do so reluctantly, because this bill contains a significant funding increase for the Customs Service and their efforts to stop drugs from entering this country. Unfortunately, it does so at the expense of the men and women who are on the front line, the Customs agents themselves. Let me be clear, I fully support increasing funding for the Customs Service's counter-drug efforts. However, this bill would completely eliminate the worker rights and protections that I have supported and worked to protect throughout my service in the Congress.

H.R. 3809 has the right idea, but unquestionably the wrong methods. The labor provisions of this bill void any and all collective bargaining agreements that have been crafted so carefully to keep Customs agents working at peak effectiveness. By allowing the unilateral suspension of these agreements, we jeopardize the morale of the very people we rely on to protect our children from drug smugglers and pushers.

Mr. Speaker, I question the philosophy of this bill, which seems to increase the effort against drugs by punishing the people doing the work. I think this is a bad idea. Instead, we need to support our Customs agents, not demoralize them. Yes, increase funding. Yes, buy more equipment. Yes, put more agents along the border. But support these people. If we create an environment that demoralizes our Customs agents, how can we expect to attract and keep good agents?

Again, I think the aim of this bill is good. But the way it treats the people on the front lines leaves me no alternative but to reluctantly oppose it. It is my hope that a new bill will come forward. A bill that contains the funding that Customs so desperately needs, but also supports the people who wear the uniform of the Customs Service.

Mr. POSHARD. Mr. Speaker, it is with great regret that I rise today to register my opposition to H.R. 3809, the "Drug Free Borders Act." Once again, an important and well-intentioned piece of legislation has become a vehicle for an underhanded attack on working men and women, and I urge my colleagues to resist the majority's misguided effort and vote no on this bill.

I strongly support increased authorization levels for drug interdiction activities of the U.S. Customs Service. I am sure that no member of this body would argue that the flow of drugs into this country is an urgent crisis which requires our unflagging attention. I applaud the efforts of my colleagues to recognize and combat this problem with increased funding, additional inspectors and new drug detection equipment.

Unfortunately, I cannot ignore other provisions which seek to alter the fundamental labor rights of Customs Service employees. First, the bill would allow the Customs Service to break collective bargaining agreements already in place, stripping America's front-line drug enforcement personnel of their negotiating rights. In addition, H.R. 3809 seeks to make major changes to the rules governing overtime pay to Customs employees, creating the likelihood of pay cuts for those who work non-traditional shifts. As troubling as the provisions themselves is the fact that, despite the seriousness of the issues involved, no hearings were held on this anti-worker language, no committee report was issued, and now the measure is brought up under suspension, limiting the time for debate and eliminating any possibility of amendment.

Mr. Speaker, I would like very much to be able to cast a vote in support of increased drug interdiction efforts, and I will certainly do so if anti-worker provisions are removed from this bill during conference. However, I cannot stand by as the rights of America's Customs workers, who risk their lives to keep our borders free of drugs, are attacked. I will oppose this bill, and I urge my colleagues to do the same.

Mrs. McCARTHY of New York. Mr. Speaker, there are many good provisions in H.R. 3809 that I strongly support, especially provisions in Title I that provide the U.S. Customs Service with significant resources to combat the flow of illegal drugs over our borders. However, I have serious concerns about other provisions of the bill which will deny Customs Service personnel their hard-earned rights and benefits.

There are few activities which are more important to the health and safety of our nation, and to the future of our young people, than drug interdiction. The men and women of the

Customs Service should be commended for their courage and tireless efforts to keep drugs from entering our country. In FY 1996 alone, the Customs Service seized over 1 million pounds of narcotics, including 33,000 pounds of cocaine, 545,000 pounds of marijuana and almost 460 pounds of heroin along the Southwest border. This has not been easy, and many Customs Service personnel have risked their lives and their safety to seize illegal drugs.

Of course, we cannot stop these activities until we stop the flow of drugs into our country altogether. While Title I of H.R. 3809 moves us toward that goal, I am afraid that two provisions of Title I will actually move us backward. Section 203 of the bill would reduce or deny premium pay that many Customs Service personnel receive for working long shifts at off-hours. And Sections 211 and 212 could let the Customs Service undermine the collective bargaining agreement worked out between the Service and its personnel.

If the goal of this legislation is to make the Customs Service more productive and efficient at stopping drugs, then it makes no sense to roll back the rights and benefits that attract the best people. Worse, we should not deny benefits to the very men and women who have sacrificed so much to keep our country safe. I am particularly concerned that these provisions are being voted on by the House with a minimum of debate and deliberation, and under a procedure that will not allow Members to strike these provisions. Nevertheless, we must remove these provisions from the bill.

I am committed to working with my colleagues in the other body to pass a Customs Service authorization bill that strengthens the Service and helps its dedicated personnel stop illegal drugs.

Mr. RODRIGUEZ. Mr. Speaker, I am deeply disturbed by the way the Drug Free Borders Act of 1998 came to the floor. Instead of fashioning a bipartisan bill to help the U.S. Customs Service protect our borders from contraband such as illicit drugs, child pornography, money laundering and counterfeit merchandise, a partisan group which clearly does not understand the dynamics of our nation's Southwest border has decided to attack the people on the front lines of the war on drugs.

Outside the partisan efforts to cripple federal employees, I support this bill. I have three international ports in my district on the Texas-Mexico border. My constituents want those ports to have the best equipment and personnel possible to keep illegal drugs out and to facilitate legal trade. I have traveled the border with U.S. Customs employees and seen the challenges they face. I have also seen the pride Customs employees have for their jobs. I have shared the excitement they experience when a truck filled with drugs is caught. There are few things I want more than to end this nation's drug epidemic. But we cannot end the problem by busting labor agreements and demoralizing U.S. Customs agents and inspectors.

The majority leadership is stooping to a familiar low by bringing this bill to the floor under a suspended rule. We have no opportunity for full debate; all amendments are prohibited. This bill is take it or leave it. The majority leadership wants this bill to fail and blame the Administration or pass without any input from the minority. The majority leaders should be ashamed of their partisan games at the expense of our Nation's war on drugs. If the majority leadership wanted to pass effective legislation they should have allowed Members of Congress the chance to amend the labor portions of this bill and pass effective drug fighting legislation. I urge Members to oppose this legislation.

Ms. JACKSON-LEE of Texas. Mr. Speaker, even though I rise today in support of the Drug Free Borders Act, H.R. 3809, I do believe that there are yet still unresolved difficulties in the language of the bill that must be addressed. In particular, sections 211 and 212 raise some serious labor issues and need to be explored further.

These provisions nullify the collective bargaining process by authorizing Customs managers to abrogate unilaterally collective bargaining and partnership agreements. These agreements were developed to aid the efforts of Customs managers and employees in stopping the flow of drugs into our streets. I find it troubling to ask these men and women to put their lives on the line to fight in the war on drugs, when we allow their managers to ignore their collective voice. Sections 211 and 212 have the potential to strip Customs employees of their morale.

In addition, these provisions would establish a very dangerous precedent. The Customs collective bargaining agreement is no different from those of other Federal agencies; these provisions will render this process meaningless.

In conclusion, I urge my colleagues to voice concerns about sections 211 and 212 and to reconsider the statement that these provisions make. If it is truly the primary goal of Congress to stop illegal drugs from invading our country, we must show support for these very important players in that fight.

Mr. ABERCROMBIE. Mr. Speaker, I rise to express my reluctant support of H.R. 3809.

There are many good provisions in the bill which mark an escalation in our war against drug smuggling and our fight against the use of illegal drugs in our society. I support the war against drugs. However, I am very concerned about the harmful provisions contained in this bill that can be counterproductive in that they erode the working conditions of the Customs employees who are on the front lines of this war.

It is very unfortunate that this bill contains language that would permit the Customs Commissioner to abrogate the collective bargaining agreements his agency has reached with employees and which are currently in effect. Not only is the provision blatantly unfair to the employees of the Customs Service, but it is an attempt to set a precedent for undermining labor-management relations between the federal government and its unions. This can have a serious detrimental effect on the morale, and consequently the effectiveness, of the people who fight on the front lines of this war against drugs. Congress should not, except perhaps under the most extraordinary circumstances, enact legislation to alter collective bargaining agreements. Although wanting to make our borders more secure against illegal drug importation is a highly desirable goal, it should not be used to disguise a political attack on dedicated Customs Service personnel. If the Customs Service needs additional resources to successfully accomplish its mission, I am willing to help find additional funds for that purpose.

If we are serious about curbing drug smuggling and illegal drug usage in this country, we must dedicate the necessary federal resources instead of undercutting the personnel we depend on to carry out these policies.

I will support H.R. 3809 to move it along in the legislative process, but I strongly urge that the anti-collective bargaining provisions be dropped from this bill. Congress needs to get into the business of passing legislation that will keep drugs out of this country, not assault those who are the principal soldiers in the battle.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. ARCHER) that the House suspend the rules and pass the bill, H.R. 3809, as amended.

The question was taken.

Mr. SHAW. Mr. Speaker, on that, I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule 1 and the Chair's prior announcement, further proceedings on this motion will be postponed.

NATIONAL HISTORIC PRESERVATION FUND AUTHORIZATION

Mr. HANSEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1522) to extend the authorization for the National Historic Preservation Fund, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF NATIONAL HISTORIC PRESERVATION ACT.

The National Historic Preservation Act (16 U.S.C. 470 and following; Public Law 89–665) is amended as follows:

(1) In the third sentence of section 101(a)(6) (16 U.S.C. 470a(a)(6)) by striking "shall review" and inserting "may review" and by striking "shall determine" and inserting "determine".

(2) Section 101(e)(2) (16 U.S.C. 470a(e)(2)) is amended to read as follows:

"(2) The Secretary may administer grants to the National Trust for Historic Preservation in the United States, chartered by an Act of Congress approved October 26, 1949 (63 Stat. 947), consistent with the purposes of its charter and this Act.".

(3) Section 102 (16 U.S.C. 470b) is amended by redesignating subsection (e) as subsection (f) and by redesignating subsection (d), as added by section 4009(3) of Public Law 102–575, as subsection (e).

(4) Section 101(b)(1) (16 U.S.C. 470a(b)(1)) is amended by adding the following at the end thereof:

"For purposes of subparagraph (A), the State and Indian tribe shall be solely responsible for determining which professional employees, are necessary to carry out the duties of

the State or tribe, consistent with standards developed by the Secretary.".

(5) Section 107 (16 U.S.C. 470g) is amended to read as follows:

"SEC. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds as depicted on the map entitled 'Map Showing Properties Under the Jurisdiction of the Architect of the Capitol' and dated November 6, 1996, which shall be on file in the office of the Secretary of the Interior.".

(6) Section 108 (16 U.S.C. 470h) is amended by striking "1997" and inserting "2004".

(7) Section 110(a)(1) (16 U.S.C. 470h-2(a)(1)) is amended by inserting the following before the period at the end of the second sentence: ", especially those located in central business areas. When locating Federal facilities, Federal agencies shall give first consideration to historic properties in historic districts. If no such property is operationally appropriate and economically prudent, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Any rehabilitation or construction that is undertaken pursuant to this Act must be architecturally compatible with the character of the surrounding historic district or properties".

(8) The first sentence of section 110(l) (16 U.S.C. 470h-2(l)) is amended by striking "with the Council" and inserting "pursuant to regulations issued by the Council".

(9) The last sentence of section 212(a) (16 U.S.C. 470t(a)) is amended by striking "2000" and inserting "2004".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Utah (Mr. HANSEN) and the gentleman from American Samoa (Mr. FALEOMAVAEGA) each will control 20 minutes.

The Chair recognizes the gentleman from Utah (Mr. HANSEN).

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

Mr. Speaker, H.R. 1522 is a bill introduced by my colleague, the gentleman from Colorado (Mr. HEFLEY). He is to be commended for the hard work he has done to craft a bill that addresses needed changes in current law and which continues funding for a program that is appreciated by all Americans.

H.R. 1522 reauthorizes the National Historic Preservation Fund through the year 2004. This fund has been used to protect many of our most cherished historical sites around the country. This bill also makes many changes to the National Historic Preservation Act in order that it can function better in protecting our priceless national historic treasures.

I want to add, however, that the protection of our national treasures, which this bill provides, nearly did not make it to the floor today because of an eleventh hour concern by OMB, who suddenly opposed this bill, even though the agency had months and months to comment on it on any problems they may have had.

Nevertheless, everyone worked hard last night to address the concerns of OMB, and we now have a bill which we can agree with and the Administration can support.

□ 1500

Mr. Speaker, this is an important bill, and the National Historic Preservation Fund needs to be reauthorized. I urge my colleagues to support H.R. 1522.

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

Mr. Speaker, I want to thank and commend the gentleman from Utah (Mr. HANSEN), the chairman of the Subcommittee on National Parks and Public Lands for his leadership in the management of this legislation before the House today.

Mr. Speaker, H.R. 1522 amends the National Historic Preservation Act of 1966. Through this act, historically significant buildings, sites and districts have been preserved, keeping America's history alive.

The primary purpose of the bill before us today is to reauthorize the National Historic Preservation Fund. Monies from the fund are derived from the Land and Water Conservation Fund, and Congress set the authorization level at $150 million per year.

Authorization for the fund expired on September 30, 1997. This bill extends authorization of the fund through the year 2004. As I have stated throughout our consideration of this bill, I would prefer the bill end there. In fact, the bill that was first introduced or the one that we brought to the floor today, I would not be able to support its passage.

However, the bill's chief sponsor, the gentleman from Colorado (Mr. HEFLEY) brought many sides together and has put together a bill that I believe is worthy of our support. I do want to commend the gentleman from Colorado for his leadership and for his ability to bring everyone together at the table and to come out with a consensus as we have now. He worked even this morning to address concerns raised by the administration.

Mr. Speaker, even with all the changes made to the bill since its introduction, concerns over certain provisions still exist. In particular, the Office of Management and Budget is concerned with the provision which takes away the mandatory requirement for the Keeper of the Register to make a determination of whether or not his site is eligible to be listed on the Register of Historic Places when property owners oppose the designation.

The Office of Management and Budget and the National Park Service fear this language could require the Keeper to act only in the most contentious of issues, thereby politicizing the process.

Regardless of this language, Mr. Speaker, however, the current practice whereby no site is placed on the Register while owners oppose such a designation remains intact. The statement of administration policy of this legislation states that the administration has no objection to the passage of H.R. 1522 but will work to have the discretionary language removed during Senate consideration of the legislation.

Another provision that remains a concern to some is one that contains language providing that States and Indian tribes will be responsible for determining which professional employees are needed to carry out the preservation duties within their jurisdiction.

Debate on professional standards continue within the preservation community, and any changes to this area I believe are best handled after that debate is concluded and agreement is reached.

Mr. Speaker, the bill will also allow States and Indian tribes to decide which professional positions are needed to address their specific needs.

Mr. Speaker, I urge my colleagues to support this legislation.

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

Mr. HANSEN. Mr. Speaker, I am pleased to yield whatever time he may consume to the distinguished gentleman from Colorado (Mr. HEFLEY), the sponsor of this bill.

Mr. HEFLEY. Mr. Speaker, to both the Chairman and the Ranking Member, I extend my appreciation for their help as we worked through this process and did try to bring all the groups together.

Mr. Speaker, it seems to me that one of the roles of government is the preservation of our historic values. To paraphrase one historian, we are unlikely to deal well with our future if we do not understand our past.

Since 1966, the Historic Preservation Fund has been part of the way this Nation seeks to accomplish that. The bill before us today reflects the success and maturity of that program. Rather than a set of sweeping reforms, H.R. 1522 attempts to fine-tune what is a mature program.

The bill reauthorizes the Historic Preservation Fund at its existing level through the year 2004. I should point out that, despite the authorization level, actual appropriations have never exceeded $50 million, and, in the last 7 years, have only twice exceeded $40 million.

The 2004 end date is intended to bring into sync budget deadlines for this program, the Advisory Council on Historic Preservation, and the budget agreement.

The bill also makes a number of changes to reflect what is happening in the States.

It reemphasizes this Congress' commitment to the rights of private property owners.

It gives State and tribal historic preservation offices greater flexibility in the hiring of their employees.

The provision recognizes Interior's ongoing work at developing standards for these employees, but gives States and tribes the right to make the call on what professionals they need.

It allows the Federal Government, through the National Trust for Historic Preservation, to respond to emergencies such as the Mississippi floods of 1994.

The bill also codifies an executive order directing government agencies to give consideration to the use of historic buildings in historic districts and central business areas.

This is not only something Federal agencies should do as a matter of course, it may help blunt the erosion of downtown areas.

The bill also contains a provision backed by strong report language which signals the Committee on Resources' intent that government agencies in Washington should honor the intent of preservation laws in their dealings with local preservation agencies.

Too often, the law has been observed only as an afterthought.

As I said, this should not be a controversial bill. There are areas where the involved parties simply agree to disagree. We do not agree on everything in it.

But it has the backing of the Nation's five major preservation groups, the Preservation Action, National Trust for Historic Preservation, American Cultural Resources Association, National Alliance of Preservation Commissions, National Conference of State Historic Preservation Offices. So it does have a broad base of support.

Mr. Speaker, I will close and encourage passage of this piece of legislation.

Mr. FALEOMAVAEGA. Mr. Speaker, I yield 5½ minutes to my good friend, the gentleman from West Virginia (Mr. WISE).

Mr. WISE. Mr. Speaker, I thank the gentleman very much for yielding to me.

First, let me say to those of you who brought this bill to the floor, I appreciate what you are doing and the sincerity. I am going to be the skunk at the picnic because I am not a fan, based upon personal experience, and I guess that is what we bring to the floor a lot.

I am not a fan of the National Keeper's office, nor how it is conducted. Let me just say, as I unfold this tale for a second, that as this bill moves forward, I hope that some of my concerns will be incorporated in deliberations, particularly as you discuss this with the other body.

Yes, the project I am about to relate to you is a controversial highway project. Those in the environmental community have opposed it assiduously for many years. Their only problem is 75 percent of everybody in an affected county supports it. Their problem is every elected official from the town council to whatever office you want to point to supports this project.

So what we have done, then, over time, is we have gone through all the hurdles. We have gone through the executive branch. We have gone through the Federal Highway Administration. We have gone through the West Virginia Department of Transportation. We have gone through Federal court and won against environmentalists who want to oppose it. We have gone to the Congress, and the Congress has approved money. Every branch, I thought.

And then who pops up just as we are going to bid? The Keeper of the National Historic Registry to declare a community in Hardy County, West Virginia, which is appropriately named, I guess, "Old Fields" as a historic district. She could have identified farm buildings and designated them. She did not. She made it a historic district, which then brings this highway project to a halt within that area.

So I call and I say, to whom do we appeal to? I call the Secretary of the Interior's office. We do not know. Do I have to go back to court now?

So the history of this particular situation is replete with bureaucratic abuse, deadlines that have been passed for review, which, of course, if you pass a deadline, it means your highway department and your contractors and your engineers cannot move forward. We have probably cost the taxpayers millions of dollars in simply delays by this delay.

Oh, yes, yes, one other factor, the State involvement. The State Historic Preservation Officer, about as competent a person as I have met and a true professional, recommended against the Keeper taking this action. Then the night after the action was announced, I get a call from the Hardy County preservation officer who lives where, in Old Fields, West Virginia, who says, what is going on? We never recommended that this be declared a historic district.

That is my tale.

Mr. Speaker, to those moving this bill, I am interested in historic preservation, but I am not interested in historic preservation that denies a future. I guess what I would ask is, as we move forward we closely monitor the discretion that this official has. Because whether it is her office or her personality, and I am not sure which, but whichever one it is, there is clear need to put some teeth in here and to put in some oversight.

I would just urge us not to move forward and to give the directive that you shall declare areas historic areas. I hope we would at least keep it at bay so we can continue to review this discretion and, when appropriate, abuses.

Mr. HEFLEY. Mr. Speaker, will the gentleman yield?

Mr. WISE. I yield to the gentleman from Colorado.

Mr. HEFLEY. Mr. Speaker, we share the gentleman's concerns, too, and we want it to work. What we are trying to do with the reauthorization to make it work, let me just share with you the report language of what we intend here.

H.R. 1522 modifies the existing Secretarial review of nominations to the National Historic Register as an option of appeal, rather than a mandatory stage in the nominating process as it currently exists, which speaks to what you just spoke to. This legislation intends that most of the decision making would take place at the State and local level, which is also what you want.

Mr. WISE. Yes, Mr. Speaker.

Mr. HEFLEY. I think we share the same kind of goals. You have had a very bad experience with it, and I think a lot of us have. We want to make it work right. We do not want to throw it out, because I think it does have merit, but I want it to work.

Mr. WISE. Mr. Speaker, if I may say to the gentleman from Colorado (Mr. HEFLEY) and the gentleman from Utah (Mr. HANSEN), I never thought of either of you friends of overarching and overreaching government, so I am quite confident and I am pleased you are moving in that direction. But I think this is a situation that I would hope that, on both sides of the aisle, you would be looking at in your deliberations.

Mr. FALEOMAVAEGA. Mr. Speaker, would the gentleman yield to me?

Mr. WISE. I yield to the gentleman from American Samoa.

Mr. FALEOMAVAEGA. Mr. Speaker, I would say to the gentleman from West Virginia that his eloquent statement has been well taken. I am sure my good friend from the other side of the aisle, the chairman of the subcommittee, and the gentleman from Colorado (Mr. HEFLEY) and myself will definitely look into the wordage of not only the report but the language itself to make sure that it does not reflect the kind of example that you have just shared with us this afternoon.

Mr. WISE. Mr. Speaker, I thank the gentleman for his time and his consideration.

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

Mr. FALEOMAVAEGA. Mr. Speaker, I yield 3 minutes to my good friend, the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I thank the gentleman for yielding and for all his hard and skillful work on the bill. In a moment, I am going to ask the chairman of the subcommittee, the gentleman from Utah (Mr. HANSEN), if he would engage in a brief colloquy with me.

Before I do so, I want to thank the gentleman from Utah (Mr. HANSEN) and

the gentleman from Colorado (Mr. HEFLEY) for really quite exemplary work on this bill. I am aware of the balance that must be achieved here and how difficult a bill like this is to get through the committee while bearing in mind the necessary balance.

I am, of course, a strong supporter of the Historic Preservation Act. I represent a historic city, a city that was born with the Nation itself, with much to preserve on the Federal side and on the local side.

I want to thank the gentlemen, also, for the faith they have kept to the Congressional Accountability Act because of the way they have brought our own agent, the Architect of the Capitol, under the Act, while giving him full latitude to accomplish his job.

As we may recall, the Congressional Accountability Act indicated that Congress would submit itself to the same laws as everyone else. We have done that and kept faith with that. We have brought ourselves into account with this promise in this Act.

I want to express my appreciation to both the gentleman from Colorado and the gentleman from Utah for the kind consideration and the sensitive way in which they have dealt with the special historic preservation issues in the District of Columbia.

We have had an unfortunate experience involving a historic property in the District of Columbia. I believe that this language will guarantee that that experience will not be repeated.

I do want to say to the gentleman from Colorado and the gentleman from Utah that we have begun to work with the Architect of the Capitol and so believe that he also understands the intent. But to make certain of that, I ask the gentleman from Utah if he would engage in a colloquy with me.

Mr. HANSEN. Mr. Speaker, if the gentlewoman would yield, I am happy to.

□ 1515

Ms. NORTON. Is it the gentleman's understanding that by restricting the application of the exemption in section 107 of the Act, it is the intent of the Congress that the Architect of the Capitol at a minimum give public notice to the abutters and the surrounding neighborhood prior to undertaking a restoration or renovation project on a historic building?

Mr. HANSEN. Mr. Speaker, if the gentlewoman will yield, that is what we expect, with the exceptions that are in the bill. I think we have covered that.

Ms. NORTON. I appreciate the colloquy, and I thank the gentleman.

Mr. VENTO. Mr. Speaker, I rise in strong support of H.R. 1522, which will reauthorize the National Historic Preservation Act.

One of the many things that makes our nation great is our strong, collective sense of history. We teach our children from an early age about our past triumphs and failures and the lessons we've learned from them. This tradition enables America to grow better with each passing day: as we improve our understanding of the past, we increase our chances of mastering the future.

That is why I am such a strong supporter of the National Historic Preservation Act, passed by Congress and signed by the President in 1966. The Historic Preservation Act authorizes the Department of the Interior to manage the National Register of Historic Places, encourages State-level efforts to preserve these important locations, and provides grants and expertise to the many individuals and associations across America who have dedicated their lives to protecting and preserving these treasures.

Mr. Speaker, my home State of Minnesota has a long legacy of historic preservation. Established in 1849, the Minnesota Historical Society preserves the history of Minnesota through a variety of activities while overseeing a number of libraries, collections and historic sites. One needs only to walk down beautiful Summit Avenue, a historic district in Saint Paul, to appreciate how interested Minnesotans are to preserving the jewels of our past. Indeed, since 1966, when Congress passed the Historic Preservation Act, the State Historic Preservation Office of Minnesota has inventoried more than 45,000 properties in all 87 counties of the State. And at the end of 1996, the National Register of Historic Places contained more than 1,460 Minnesota listings. For that, the Minnesota Historical Society deserves the appreciation of not just Minnesotans, but all Americans.

Our State Historic Preservation Office (S.H.P.O.) is not just the mansions of Summit Ave., St. Paul, but the common housing and work places that need sound historic preservation efforts and understanding the culture and people means understanding where we came from. But the S.H.P.O. doesn't and can't do it alone. Congress appropriated $36 million for the Historic Preservation Fund in 1997.

That money provides funding for State offices like the S.H.P.O. as I described in Minnesota. $36 million is not nearly enough and this measure continues the past authorization of $150 million per year. We could accomplish even more with that kind of money. These dollars are multiplied many times over but every day we are losing historic fabric—our connection to our past.

I have attached to my statement an article from the Minneapolis Star-Tribune that details the ten most endangered historic properties in Minnesota this year. The properties are in urban areas such as my St. Paul district and rural areas in Northern Minnesota such as Itasca County. With additional funding, the talented and hard-working folks at the Minnesota Historical Society could work to acquire, protect and preserve these important places. Hopefully we could in future years meet the promise of authorization closer to the amount dedicated to this purpose.

So I support this bill, Mr. Speaker. It continues and hopefully will build upon Congress' important role in the protection of America's treasures, ensuring the protection of our historic legacy for future generations.

10 ENDANGERED PROPERTIES FOR '98—THE PRESERVATION ALLIANCE OF MINNESOTA LISTS STRUCTURES THREATENED BY STORMS, DEMOLITION OR NEGLECT

(By Linda Mack)

The entire city of St. Peter, "ma and pa" resorts up north, boarded-up buildings at Fort Snelling and a former dairy farm near Brainerd are listed among Minnesota's 10 most endangered properties of 1998.

Threatened by demolition, neglect or storm damage, the 10 buildings or groups of buildings have been selected by the Preservation Alliance of Minnesota, a statewide nonprofit membership group, to draw attention to the state's historic resources and the need for their preservation.

George Edwards, who moved to Minneapolis recently from Atlanta, GA, to head the Preservation Alliance, said Minnesota's endangered buildings "face the same threats that we're seeing around the country—under-appreciation of our heritage, neglect and a shift in priorities."

Apart from the tornado-ravaged buildings of St. Peter, many of which will be rebuilt, the challenge for most of the communities is finding new uses for old buildings whose original purpose has been lost, such as the old City Hall in Nashwauk or the Hotel Lac qui Parle in Madison. Or, in the case of the small resorts built in the early 20th century, the key to preservation may be building a coalition of historic resorts to do joint marketing. The list, said Edwards, is just a start.

The update on last year's 10 most endangered properties is mixed.

The Stillwater Bridge may have a better chance of surviving because of a recent ruling by a federal judge that a new bridge across the St. Croix River would adversely affect the scenic riverway. Historic buildings at the University of Minnesota's Twin Cities campus are being studied for reuse rather than slated for demolition. The Washburn Crosby "A" Mill on the Minneapolis riverfront has been stabilized and the Utility Building next to it will be redeveloped for housing. Red Wing's Washington School was demolished, but the city's Central High School is being studied for reuse and is still being used.

The future of other properties on last year's list—such as the Mannheimer-Goodkind House in St. Paul, the Handicraft Building in downtown Minneapolis and Albert Lea's downtown commercial buildings—remains uncertain.

DEPARTMENT OF THE DAKOTA BUILDINGS, FORT SNELLING, HENNEPIN COUNTY

Built between 1879 and 1905, the 28 buildings on 141 acres of land overlooking the Minnesota River form a familiar landmark near the Minneapolis-St Paul International Airport, but they are now mostly empty and boarded-up. Competing interests of state and federal agencies have stalled resolution of their future. The Minnesota Department of Natural Resources is now sponsoring a re-use study. The buildings were on the list of endangered buildings last year as well.

ANOKA AMPHITHEATER, ANOKA, ANOKA COUNTY

This little-known but charming open air theater overlooking the Mississippi River was designed by Prairie School architects Purcell and Elmslie in 1914. Unused for many years and in need of work, the amphitheater sits in the way of a road widening planned by the Minnesota Department of Transportation. The road wouldn't take the whole theater, but it would lop off the back of it. Other alternatives should be pursued, say preservationists, and the amphitheater kept as part of a park.

ARMSTRONG-QUINLAN HOUSE, ST. PAUL, RAMSEY COUNTY

The 1886 red brick Romanesque house sits in literal and metaphorical limbo surrounded by parking lots on the edge of downtown St. Paul. Owned by the state of Minnesota, it is a lonely reminder of an earlier grand era of residential buildings in downtown St. Paul. It's unlikely the construction of a new hockey arena nearby will help resolve its future.

EARLY 20TH CENTURY RESORTS, CASS COUNTY AND ELSEWHERE

The small rustic resorts run by owner-operators grew up in the early automobile era and make up a charming part of the northern Minnesota landscape. But bigger, fancier resorts, often with centralized operations, are the wave of the future. And the rise in property values and taxes makes it harder and harder for "ma and pa" operators to survive.

DISTRICT NO. 5 SCHOOLHOUSE, BERGEN TOWNSHIP, MCLEOD COUNTY

Rural schoolhouses are fast disappearing, and this red brick one built about 1910 is among the most endangered of a number nominated for the list. Their original use is outmoded, but they form a significant part of the rural landscape.

HOTEL LAC QUI PARLE, MADISON, LAC QUI PARLE COUNTY

The city of Madison owns the small hotel on a downtown corner and says there's no reuse. Local citizens argue the building forms an important anchor to downtown's character and have persuaded the city to do a structural analysis. Madison has already lost one landmark, a tiny but ornate Prairie School bank designed by architects Purcell and Elmslie in 1913 and demolished in 1968.

NASHWAUK CITY HALL, NASHWAUK, ITASCA COUNTY

Built in 1915, this solid and graceful civic building is one of three intact city halls constructed in company towns during the boom period of the western Mesabi Iron Range. But the city moved out in 1977, and the building faces demolition because of neglect.

ECHO DAIRY FARM, BRAINERD, CROW WING COUNTY

This impressive complex of high-roofed dairy barns just south of Brainerd was built in the early 1920s as one of Minnesota's first corporate agricultural operations and operated until 1971. The city of Brainerd has bought the complex for expansion of an industrial park.

STONE BUILDINGS OF OTTAWA TOWNSHIP, OTTAWA TOWNSHIP, LE SUEUR COUNTY

Built during the 1850s to 1870s, seven native limestone buildings—houses, churches and a town hall—form a charming remnant of a Minnesota River village that was once a center of stone quarrying. Their future may not be so charming: They stand on land that is a prime target for an advancing silica sand mining operation.

Mr. FALEOMAVAEGA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HANSEN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Utah (Mr. HANSEN) that the House suspend the rules and pass the bill, H.R. 1522, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1522, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

WETLANDS AND WILDLIFE ENHANCEMENT ACT OF 1998

Mr. HEFLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2556) to reauthorize the North American Wetlands Conservation Act and the Partnerships for Wildlife Act, as amended.

The Clerk read as follows:

H.R. 2556

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 "Wetlands and Wildlife Enhancement Act of 1998".

SEC. 2. REAUTHORIZATION OF NORTH AMERICAN WETLANDS CONSERVATION ACT.

Section 7(c) of the North American Wetlands Conservation Act (16 U.S.C. 4406(c)) is amended by striking "not to exceed" and all that follows through the end of the sentence and inserting "not to exceed $30,000,000 for each of fiscal years 1999 through 2001.".

SEC. 3. REAUTHORIZATION OF PARTNERSHIPS FOR WILDLIFE ACT.

Section 7105(h) of the Partnerships for Wildlife Act (16 U.S.C. 3744(h)) is amended by striking "for each of fiscal years" and all that follows through the end of the sentence and inserting "not to exceed $3,000,000 for each of fiscal years 1999 through 2001.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Colorado (Mr. HEFLEY) and the gentleman from New Jersey (Mr. PALLONE) each will control 20 minutes.

The Chair recognizes the gentleman from Colorado (Mr. HEFLEY).

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

Mr. Speaker, today we are voting on H.R. 2556, which authorizes the North American Wetlands Conservation Act and the Partnerships for Wildlife Act.

The North American Wetlands Conservation Act is one of several programs devoted to improving wetlands protection in the United States, Canada and Mexico. It matches Federal dollars with contributions from State, local and private organizations for wetland conservation projects in the U.S., Canada and Mexico that support the North American Wildlife Management plan. The program has resulted in the protection of more than 3 million acres of wetlands in the U.S. and Canada over the past seven years.

The population of most species of migratory ducks and geese in North America have been increasing for the past several years. It is impossible to say whether or not any single program has caused this increase, but habitat conservation is certainly making an important contribution. There is widespread agreement that the North American Wetlands Conservation Act is a critical part of this effort. The bill, as amended at subcommittee, is strongly supported by Ducks Unlimited and the International Association of Fish and Wildlife Agencies.

The Partnerships for Wildlife Act was enacted to ensure that nongame, nonendangered wildlife did not slip through the cracks between existing conservation programs. It also matches Federal dollars with State and local funds to support a wide variety of wildlife conservation and appreciation projects.

H.R. 2556 reauthorizes the North American Wetlands Conservation Act at its current authorization levels for three years. I urge Members to vote aye on this important environmental bill.

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

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

Mr. Speaker, I rise in strong support of H.R. 2556. This bill helps protect wildlife habitat and will enhance the management of nongame wildlife. I want to thank the subcommittee chairman, the gentleman from New Jersey (Mr. SAXTON) for bringing this legislation before the House. The bill reauthorizes the highly successful North American Wetlands Conservation Act and will improve the management of nongame species of wildlife by reauthorizing the program of Federal matching grants for such activities.

In the seven years of its existence, the North American Wetlands Conservation Act has resulted in the protection of millions of acres of wetlands in the United States, Canada and Mexico. $244 million in North American wetlands programs grants for this voluntarily, non-regulatory program have been matched by more than $510 million in funding by conservation partners, conserving valuable habitat for migratory birds and many non-migratory species as well.

The amendment also reauthorizes the Partnerships for Wildlife Act, which provides matching grants for nongame wildlife conservation and appreciation. Unfortunately, we do not have a dedicated source of funding like the Wallop-Breaux Fund for nongame conservation. Lacking a dedicated source of funding, conservation needs for these species are mounting. For example, the states currently estimate their unmet needs for management and conservation of nongame species at over $300 million annually.

Mr. Speaker, I hope we have the opportunity to give permanent funding for nongame species serious consideration in the near future. But, in the meantime, we will continue doing what we can under the Partnerships for Wildlife Program.

In summary, this is sound legislation to benefit wildlife through non-regulatory programs that leverage scarce Federal resources, and I urge the House to support H.R. 2556.

Mr. SAXTON. Mr. Speaker, the North American Wetlands Conservation Act is a program that has proven itself in many ways. The law was designed to be a catalyst for partnerships between various levels of government and the private sector to accomplish incentive-based wetlands conservation. It demanded a non-federal match in order to level federal dollars and the match that has been produced has more than doubled that required threshold. This high match level is one evidence of the success of partnership the Act intended and delivered.

Another group of very important partners are the members of the North American Wetlands Council. These unpaid volunteers contribute incredible numbers of man hours to this process. Ducks Unlimited is an excellent example of a Wetlands Council member. From the beginning of the program DU has volunteered to serve. They not only commit the equivalent of a full time staff member to assist in carrying out Council business, they play a key role in communicating support for the program on Capitol Hill. They have contributed by far and away more match funding continentally for these projects than any other partner group. It is partners like DU with a demonstrated level of commitment that the Act envisions should serve on the North American Wetlands Conservation Council. That kind of commitment is what creates this program's level of success.

Mr. PALLONE. Mr. Speaker, I yield back the balance of my time.

Mr. HEFLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado (Mr. HEFLEY) that the House suspend the rules and pass the bill, H.R. 2556, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HEFLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2556, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

NEW WILDLIFE REFUGE AUTHORIZATION ACT

Mr. POMBO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 512) to prohibit the expenditure of funds from the Land and Water Conservation Fund for the creation of new National Wildlife Refuges without specific authorization from Congress pursuant to a recommendation from the United States Fish and Wildlife Service to create the refuge, as amended.

The Clerk read as follows:

H.R. 512

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 "New Wildlife Refuge Authorization Act".

SEC. 2. REQUIREMENTS RELATING TO DESIGNATION OF NEW REFUGES.

(a) LIMITATION ON APPROPRIATIONS FROM LAND AND WATER CONSERVATION FUND.—

(1) IN GENERAL.—No funds are authorized to be appropriated from the land and water conservation fund for designation of a unit of the National Wildlife Refuge System, unless the Secretary of the Interior has—

(A) completed all actions pertaining to environmental review that are required for that designation under the National Environmental Policy Act of 1969;

(B) provided notice to each Member of and each Delegate and Resident Commissioner to the Congress elected to represent an area included in the boundaries of the proposed unit, upon the completion of the preliminary project proposal for the designation; and

(C) provided a copy of each final environmental impact statement or each environmental assessment resulting from that environmental review, and a summary of all public comments received by the Secretary on the proposed unit, to—

(i) the Committee on Resources and the Committee on Appropriations of the House of Representatives;

(ii) the Committee on Environment and Public Works and the Committee on Appropriations of the Senate; and

(iii) each Member of or Delegate or Resident Commissioner to the Congress elected to represent an area included in the boundaries of the proposed unit.

(2) LIMITATION ON APPLICATION.—Paragraph (1) shall not apply to appropriation of amounts for a unit of the National Wildlife Refuge System that is designated, or specifically authorized to be designated, by law.

(b) NOTICE OF SCOPING.—The Secretary shall publish a notice of each scoping meeting held for the purpose of receiving input from persons affected by the designation of a proposed unit of the National Wildlife Refuge System. The notice shall be published in a newspaper distributed in each county in which the refuge will be located, by not later than 15 days before the date of the meeting. The notice shall clearly state that the purpose of the meeting is to discuss the designation of a new unit of the National Wildlife Refuge System.

(c) LIMITATION ON APPLICATION OF FEDERAL LAND USE RESTRICTIONS.—Land located within the boundaries (or proposed boundaries) of a unit of the National Wildlife Refuge System designated after the date of the enactment of this Act shall not be subject to any restriction on use of the lands under Federal law or regulation based solely on a determination of the boundaries, until an interest in the land has been acquired by the United States.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. POMBO) and the gentleman from New Jersey (Mr. PALLONE) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. POMBO).

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

Mr. Speaker, a little history on this particular legislation. I introduced this legislation four years ago in Congress in response a problem that had arisen and come to my attention over the creation of a new wildlife refuge.

Over the past several years, Congress has authorized 70 new wildlife refuges throughout this country of the 513 current. The rest of the 443 refuges were created with little or no oversight by Congress. I feel it is very important that Congress fulfill its responsibility as a watchdog of the taxpayer money in the creation of a new wildlife refuge.

Currently, the refuge system is suffering a construction and maintenance backlog of over $600 million. At the same time, every single year we create new wildlife refuges throughout the country.

During the effort that has been made over the past year to bring this legislation to the floor, compromise legislation was reached with the gentleman from Michigan (Mr. DINGELL) and the chairman of the Committee on Resources, the gentleman from Alaska (Mr. YOUNG), that we believe everyone has agreed to at this point.

What it does is it in essence requires that upon the creation of a new wildlife refuge, that Members must be notified if a refuge is being created in their district; that all the environmental documents, the environmental assessment, the environmental impact statement and a summary of the public comments relating to the proposed new refuge must be given to the Congressional committee of authority, as well as the appropriating committee; and that notices of scope and meetings required under the NEPA process are published in local newspapers notifying the people who live in that particular area that there is the possibility of creation of the new wildlife refuge in that area.

Mr. Speaker, we also clarify, and I believe this is very important, that the determination of the boundary for a new refuge does not impose any additional Federal land use restrictions as a result of simply determining the proposed boundary until the land is acquired by the Federal Government.

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

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

Mr. Speaker, I rise in support of the substitute amendment to H.R. 512. I opposed the bill as it was reported from the Committee on Resources because it

imposed unjustified restrictions on the use of the Land and Water Conservation Fund to establish national wildlife refuges. This issue was debated on several occasions within the committee and on the floor over the last two years and, in my opinion, the supporters of this proposal never made a convincing case that there was something fundamentally flawed with the process used to establish new wildlife refuges.

Increasingly, land and water fund monies are used to acquire refuge lands to protect endangered species or threatened wetlands. In fact, Federal ownership of habitat for threatened and endangered species is one of the best ways to relieve the burden on landowners of endangered species protection and to avoid costly controversial endangered species listings. Further, there is often a need to act expeditiously to acquire land to prevent harmful development. Yet, because of the Fish and Wildlife Service's policy of acquiring only from willing sellers, property rights are respected. In summary, the bill, as reported from the Committee on Resources, was unnecessary and harmful in my opinion to the National Wildlife Refuge System.

We have now, however, worked out a compromise that addresses concerns about public notice of and Congressional oversight over new refuge designations without unduly hampering the designation process. Through NEPA and at the Administrative Procedures Act, there is already a process for providing public notice and soliciting input into the establishment of a new refuge. In addition, Congress has control over refuge land acquisition through appropriations from the Land and Water Conservation Fund.

Mr. Speaker, no process is perfect and there is always room for improvement. The bill before the House today provides for even better public notice and input, as well as making sure that any Member of Congress whose district includes lands being considered for inclusion in the new refuge will be amply notified.

It also explicitly states what is already the case under current law, that the designation of a proposed refuge boundary does not give the Fish and Wildlife Service any regulatory authority over private lands within the proposed boundary unless and until that land is acquired by the government. In other words, the proposed boundary is a wish-list for acquisition, and nothing more.

By ensuring that the local community is fully vested in any new refuge and by laying to rest landowners' fears that their property rights will be compromised, it is hoped that H.R. 512 will actually facilitate the establishment of new refuges.

So, Mr. Speaker, I support the substitute. I commend the chairman of the Committee on Resources, the gentleman from Alaska (Mr. YOUNG) for working with the minority and the administration to craft such a reasonable compromise, and I urge the House to support the bill.

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

Mr. YOUNG of Alaska. Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. HASTINGS).

Mr. HASTINGS of Washington. Mr. Speaker, I am in full agreement with the original intent of this measure. In fact, I wish the bill even went further toward making Federal agencies accountable for their actions.

Mr. Speaker, I think it would surprise many people to know that current law allows Federal bureaucrats to create national wildlife refuges at will without the consent of Congress and without thorough public debate that should accompany any allocation of taxpayer money. The creation of wildlife refuges is particularly important in my district, where we are currently debating the future management of a stretch of the Columbia River called the Hanford Reach.

The Department of Energy, which currently owns the land on both sides of the river where the Hanford Reach is, has stated that it no longer needs to own, manage or maintain the land on the opposite side of the river from the Hanford nuclear reservation. However, back in 1971, the Department of Energy had already decided that they did not need to manage their own lands and signed a lease agreement with the U.S. Fish and Wildlife Service to manage a portion of the lands as a national wildlife refuge. No act of Congress, no public commented, no discussion whatever. Instead, the Saddle Mountain National Wildlife Refuge was created through a simple lease agreement with the Department of Energy.

Now, I am not suggesting that the national wildlife refuge system has not benefitted our wildlife, and I am not suggesting that this particular refuge has not been important to our area. In fact, far from it. However, continuing to allow the purchase of private property by the Federal Government without thorough and open discussion and the involvement of Congress really belies the national nature of these refuges.

The American people must have some level of confidence that our national wildlife refuges are created not only for scientific reasons, but with the appropriate consideration of local concerns and priorities.

Because I know that the distinguished chairman of the Committee on Resources shares my concerns on refuge designations, I would like to engage in a colloquy with the gentleman so he might indicate whether the committee plans to address this issue in the future.

□ 1530

Mr. YOUNG of Alaska. Mr. Speaker, if the gentleman will yield, I am pleased to respond to that inquiry.

I certainly understand the gentleman's concern, and I can assure the gentleman that the committee is fully committed to strengthening the congressional role on national wildlife refuge systems as well as designations and other what we call acquisition of lands by any other Federal agency.

Mr. HASTINGS of Washington. Mr. Speaker, I appreciate the Chairman's strong leadership on national resource issues generally and, in particular, on his commitment to focus further committee action on the increasing issues of concern to the West. I look forward to helping in any way that I can.

Mr. PALLONE. Mr. Speaker, I yield back the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume to say that I speak in support of H.R. 512, and I can only suggest that this is just a small step forward in the right direction.

I often suggest in this legislative work that nothing happens without a reason. The reason I introduced this bill, we did have cases where the Fish and Wildlife Department, especially in the district of the gentleman from California (Mr. POMBO), there is another one in another district, one of the Members came to me the other day where they do it by action of the agency without any input from the Congress. Under our Constitution, we are the only ones that should have the authority to make designation of lands.

This is a small step forward and requires the agencies to go forth and at least identify the representative of that area and also have consultation with public input and then having to come back to the Congress for the identification of those refuges that would take place. I think it is important that we must keep the integrity for the refuge system in place, and I hold no second place to anyone when it comes to refuge creations by act of Congress.

The gentleman from Michigan (Mr. DINGELL), a dear friend of mine, and I worked on this legislation for over 28 years. So I am confident that this is the right step. But I will, as the gentleman from Washington asked me, continue, as chairman of the committee, to watch what the agencies are doing. How does this affect the community? Is the community supportive? And, really, who is asking for this refuge? If it is scientifically backed up, people back it up, then it ought to go forward and go through the congressional action.

I rise in support of this modified version of H.R. 512, which is the product of successful negotiations between the Department of the Interior, our colleagues, JOHN DINGELL, GEORGE MILLER, RICHARD POMBO, and me.

While this compromise is not as comprehensive as a Congressional authorization, it will

improve the refuge land acquisition process and establish additional safeguards for private property owners.

Under the terms of this proposal, no money can be authorized to be appropriated from the Land and Water Conservation Fund to create a new refuge unless: The environmental reviews required by the National Environmental Policy Act are completed; a copy of the final environmental impact statement or environmental assessment and a summary of all public comments on the proposed refuge are provided to the House and Senate authorizing and appropriations committees; and the Department of the Interior provides notice to each Member of Congress representing a district in which the proposed wildlife refuge will be located when a preliminary project proposal is completed.

The bill also requires that notice be provided in the local newspapers of an affected community of any public meetings to discuss the scope of a proposed new refuge. In fact, according to NEPA regulations (40 CFR 1501.7), "There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to proposed action. This process shall be termed scoping."

Finally, H.R. 512 clarifies that no additional land use restrictions shall be imposed on property included within the acquisition boundary of a National Wildlife Refuge until that land is purchased by the Federal Government.

This compromise does not provide the same level of oversight that is afforded to Bureau of Land Management lands, National Forests, Parks, or Scenic Rivers. It does, however, provide an increased opportunity for Congressional review when necessary, fairness to property owners who are waiting to sell their land to the government, better notice to the public when new refuges are proposed, and statutory protection to private landowners whose property is located within a refuge boundary.

With a $600 million backlog of critical resource management needs, reasonable people can ask why the U.S. Fish and Wildlife Service is obsessed with buying more private land, which by their own admission they are incapable of managing effectively. Nevertheless, I recognize that many members of this body want additional land acquisitions and because of their support, this process is likely to continue in the future. At the same time, there are thousands of Americans who want to keep and use their private property without the shadow of Federal land control. This measure strikes a balance between those groups.

It allows the creation of new wildlife refuges while ensuring that the local community and its elected representatives in Congress are informed of the Service's plans for new refuges. Finally, this institution will have a full and complete record of information in order to assess the merits of the various land acquisition requests.

I urge an "aye" vote on this important legislation.

Mr. DINGELL. Mr. Speaker, I rise today in support of this legislation, as amended in response to an agreement between Chairman YOUNG, the gentleman from Tennessee (Mr. TANNER), the gentleman from California (Mr. POMBO) and myself.

As agreed to, H.R. 512 will codify several existing practices of the Fish and Wildlife Service to make absolutely certain that property owners, local governments, concerned citizens, and Members of Congress are brought into the public comment and review process when a new wildlife refuge is added to our National Wildlife Refuge System using Land and Water Conservation Act funds.

The compromise before us today is substantially different than the bill as reported by Committee. Had the reported measure been presented here for debate without amendment, I would have fought vigorously against its enactment. However, I am pleased to report to my colleagues that the bill as presented today does not create needless roadblocks in creating new refuges, will not tie the hands of the Fish and Wildlife Service in proceeding with land acquisition, and does not establish a new Congressional review and approval process for the creation of new wildlife refuges.

Instead, H.R. 512 would enact a requirement that all environmental analysis required under the National Environmental Policy Act (NEPA) be completed prior to acquisitions of new LWCF refuges, and that Members of Congress in affected areas be notified early in the acquisition process.

Last year, through the sustained efforts of my dear friend, Chairman YOUNG, Ranking Member GEORGE MILLER and Interior Secretary Bruce Babbitt, Congress approved long-overdue legislation to specify the mission and management direction of the Refuge System. The original text of H.R. 512 was deliberately left out of the National Wildlife Refuge System Improvement Act because of intense and broad opposition to what was rightly viewed as tying the hands of our Nation's refuge managers.

However, the Fish and Wildlife Service has acknowledged isolated cases in which its personnel could have acted with more sensitivity and accountability to the local citizens and property owners within refuge acquisition boundaries. The Service has indicated to me that it has strong public participation policies in place when new wildlife refuges are created. I urge the Director and her subordinates to place a high priority on responsiveness in such cases, so that answers are provided, fears are allayed, and property owners can count on a positive relationship with their refuge system neighbors.

Mr. Speaker, while the legislation before us today will not prevent every future complaint or problem, it will hopefully be a gentle reminder that citizens have every right and expectation to fair, prompt and just treatment by the Federal agencies that serve them.

I hope that the passage of this bill will eliminate the need some have felt to legislate solutions to rather confined sets of problems on our National Wildlife Refuge System. As a Member of the Migratory Bird Conservation Commission, I take great pride in serving this body to assure that our wildlife refuges live up to the vision of their founder, President Theodore Roosevelt, when he created the first refuge almost a century ago. When writing legislation, we must keep the best interests of the whole system in mind.

Finally, I want to remind my colleagues that the Fish and Wildlife Service is a modest-sized agency with a large and important mission, and that we are fortunate it provides the American taxpayers with a group of highly skilled, dedicated and motivated employees who take pride in preserving our Nation's ecological heritage. To my colleagues who never have visited a wildlife refuge in your home states, I urge you to do so, to meet your refuge managers and express your interest in helping form a strong partnership between your constituents and those who manage their wildlife refuges.

Mr. UNDERWOOD. Mr. Speaker, today I rise in support of the substitute to H.R. 512, the New Wildlife Refuge Reauthorization Act. I feel that it is appropriate for the Congress to be a part of the process in the purchasing of land by the United States Fish & Wildlife Service. I fully support the requirement in the bill that the Congressional member, whose district is directly affected by the decision to establish a wildlife refuge, be notified in advance of the transaction.

I understand that we are here today to improve upon a procedure which has existed since the establishment of the Land and Water Conservation Fund by Congress in 1965. I caution my fellow colleagues, however, that as we seek to become active participants we are still neglected in other processes that the Fish & Wildlife Service can and has exploited.

The reacquisition in Guam, by the United States, at the close of WWII resulted in large tracts of land condemned at the expense of landowners on Guam. U.S. officials reasoned with locals that the condemnations were in the interest of National Security. At that time, approximately one-half of Guam's land mass was taken. Today, one-third is still held by the Department of Defense. The people of Guam have lived with this reality for the better part of this century.

Though this situation has been one in which the people of Guam have had to endure, it was not widely questioned. After all, the security of your liberators is important to the security of yourself and at the time, threats to democracy were still clearly visible in the era of the Cold War. With the close of the Cold War era, however, the mindsets of individuals and families began to change. It was logical to think that if land takings were a result of National Security, and the threats to American democracy ceased to exist as another world power, then maybe someday the United States may give some land back to the people of Guam.

Perhaps this logic was too simple, but it was not far off. The focus of U.S. demilitarization and transition to opening up America to a global economy prompted downsizing of America's military services. Each of us here with a military base in their district are all too familiar with the Base Realignment and Closure Commission, which was created to close military installations based on need and not want.

In my district of Guam, this news was difficult for civil service employees who designed their careers around military presence on our island. After all, the military's years of presence and integration with the local community was accepted and welcomed. For landowners and their descendants, the news of base closures was a glimmer of hope that military land would be returned to anxious families.

Aside from being second-class citizens or regularly put-off in aspirations to seek a new political relationship, Guam does have something in common with other states of the Union. Not all the lands acquired by the Fish & Wildlife Service, for purposes of establishing a Wildlife Refuge, come from tapping the Land and Water Conservation Fund or the Migratory Bird Conservation Fund, nor does all the land come from private donations. My colleagues, our commonality is that the Fish & Wildlife Service can take lands from our districts without our knowledge, without our consultation, even without notice to our respective local governments.

In the case of my island of Guam, the Fish & Wildlife Service seized more than 300 acres of land to be deemed excess by the US Air Force. This figure may seem small upon first hearing but if added to the additional 28,000 acres designated as an overlay for the refuge, proportionately, this is akin to condemning 12 states and making them off limits. Fish & Wildlife arranged for this possession to occur with no notice to myself or any other local government leader. Fish and Wildlife hid behind procedural nonsense which leaves for no consideration to any entity other than themselves.

Often, Mr. Speaker, I express to the Congress circumstances that are unique to Guam's situation. In many cases, the experiences of my island and people have not and will not be duplicated or relived in any other territory or state, or by any other American citizen. I must remind my colleagues, however, that this is not the case in this case.

In light of these concerns, I am in agreement with the substitute to H.R. 512 and am appreciative that we are working to correct problems with current land acquisition procedures. In the future, I am hopeful that the issues I raised can be addressed in discussions with my colleagues.

We want to protect our resources; we want to protect the endangered species. But we must do so in a collaborative manner and in a way which takes into account local leadership and concerns.

Mr. YOUNG of Alaska. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from California (Mr. POMBO) that the House suspend the rules and pass the bill, H.R. 512, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to establish requirements relating to the designation of new units of the National Wildlife Refuge System.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YOUNG of Alaska. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill just passed and just debated.

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

There was no objection.

NATIONAL EMERGENCY MEDICAL SERVICES MEMORIAL SERVICE

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 171) declaring the memorial service sponsored by the National Emergency Medical Services (EMS) Memorial Service Board of Directors to honor emergency medical services personnel to be the "National Emergency Medical Services Memorial Service," as amended.

The Clerk read as follows:

H. CON. RES. 171

Whereas in 1928 Julian Stanley Wise founded the first volunteer rescue squad in the United States, the Roanoke Life Saving and First Aid Crew, and Virginia has subsequently taken the lead in honoring the thousands of people nationwide who give their time and energy to community rescue squads through the establishment of To The Rescue, a museum located in Roanoke devoted to emergency medical services (EMS) personnel;

Whereas to further recognize the selfless contributions of EMS personnel nationwide, the Virginia Association of Volunteer Rescue Squads, Inc., and the Julian Stanley Wise Foundation, in conjunction with To The Rescue, in 1993 organized the first annual National Emergency Medical Services (EMS) Memorial Service at Greene Memorial United Methodist Church in Roanoke, Virginia, to honor EMS personnel from across the country who have died in the line of duty;

Whereas the annual National EMS Memorial Service has captured national attention by honoring 119 providers of emergency medical services from 35 States;

Whereas the singular devotion of EMS personnel to the safety and welfare of their fellow citizens is worthy of the highest praise;

Whereas the annual National EMS Memorial Service is a fitting reminder of the bravery and sacrifice of EMS personnel nationwide;

Whereas according to the Department of Health and Human Services, 170,000 Americans require emergency medical services on an average day, a number which projects to over 60,000,000 people annually; and

Whereas the life of every American will be affected, directly or indirectly, by the uniquely skilled and dedicated efforts of EMS personnel who work bravely and tirelessly to preserve America's greatest resource—people: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring),

SECTION 1. OFFICIAL SITE OF NATIONAL MEMORIAL SERVICE.

The Congress declares the City of Roanoke, Virginia, to be the official site of the National Emergency Medical Services Memorial Service to honor emergency medical services personnel who have died in the line of duty.

SEC. 2. RULE OF CONSTRUCTION.

Nothing in this resolution shall be construed to place the National Emergency Medical Services Memorial Service under Federal authority or to require any expenditure of Federal funds.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Con. Res. 171, the resolution now being considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

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

Mr. Speaker, I encourage my colleagues to approve H. Con. Res. 171 introduced by the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Virginia (Mr. GOODE), which designates the city of Roanoke, Virginia, to be the official site of the National Emergency Medical Services Memorial Service.

H. Con. Res. 171, Mr. Speaker, does honor to the memory of 119 emergency medical services personnel in 35 States who laid down their lives for their fellow Americans in the line of duty. I urge my colleagues to support this measure to bring greater public acclaim to the many men and women who have sacrificed their time, and even their lives, for the health and safety of others.

Mr. Speaker, I would communicate to my fellow Members that this passed through our subcommittee and full committee on a voice vote unanimously.

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

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the legislation we are considering today, the National Emergency Services Memorial Service. I strongly support this effort to honor the dedicated men and women in our emergency medical service and rescue squads who have laid down their lives in the line of duty.

All across the country, municipal and volunteer EMS and rescue squads saves thousands of lives each year. In this capacity, these brave women and men often place their lives in grave danger to save the lives of their fellow citizens.

In my district in northeast Ohio, rescue squads in communities like Medina and Brunswick and Sheffield Lake are on call night and day, utilizing their well-honed skills to meet the needs of citizens whom they serve.

This legislation, which pays homage to EMS personnel who have died in the line of duty by recognizing an annual

national memorial service in their honor, was unanimously passed by the Committee on Commerce.

I would like to thank my Chairman, the gentleman from Florida (Mr. BILIRAKIS), for his leadership on this issue in honor of the thousands of dedicated EMS and rescue squad professionals around the country and those who have died in the line of duty saving lives. I urge my colleagues to support this legislation.

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

Mr. BILIRAKIS. Mr. Speaker, I thank the ranking member of our subcommittee, the gentleman from Ohio (Mr. BROWN), for his great cooperation and the work done by both staffs, majority and minority.

Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Speaker, I especially want to give my thanks to the gentleman from Florida (Mr. BILIRAKIS) for moving this legislation through his subcommittee and the gentleman from Virginia (Mr. BLILEY) for moving it through the full Committee on Commerce, and I also want to thank the gentleman from Ohio (Mr. BROWN) for his assistance as well.

Mr. Speaker, I rise today along with my good friend and colleague from Virginia (Mr. GOODE) in supporting House Concurrent Resolution 171 which I have introduced to honor emergency medical services personnel and, in particular, those who have given their lives in the line of duty and also to name Roanoke, Virginia, as the official site of the National Emergency Medical Services Memorial Service held each year to honor those fallen EMS personnel.

In 1928, an aptly-named gentleman from Roanoke, Virginia, Julian Stanley Wise, founded the first volunteer rescue squad in America, the Roanoke Life Saving and First Aid Crew. This organization was the forerunner of today's emergency medical services programs. Today, thousands of dedicated citizens give their time and energy to community rescue squads across the country as EMS personnel, and many have made the ultimate sacrifice by giving their lives for the safety and welfare of their fellow citizens.

To further recognize the contributions of both Julian Wise and countless EMS personnel nationwide, a museum was established in Roanoke to pay tribute to both volunteer and career EMS personnel. This museum called, To the Rescue, includes a memorial "Tree of Life," which includes a bronze oak leaf that has inscribed on it the names of all those who have been recognized. A national EMS Memorial Book, located beside the Tree of Life, contains a picture and brief biography of each person recognized.

In 1993, to honor EMS personnel from across the country who have died in the line of duty, the Virginia Association of Volunteer Rescue Squads, Incorporated, and the Julian Stanley Wise Foundation, in conjunction with To the Rescue, organized the first annual National Emergency Medical Services Memorial Service in Roanoke. Since then, the National Emergency Medical Services Memorial Service has captured national attention by honoring 119 providers of emergency medical services from 35 States who have given their lives in the line of duty.

The life of every American will be affected directly or indirectly by the uniquely skilled and dedicated efforts of the EMS personnel who work bravely and tirelessly to preserve America's greatest resource: her people. Because the memorial service held in Roanoke is a fitting reminder of that bravery and sacrifice, it is only appropriate that Congress recognize the City of Roanoke as the official site of the National Emergency Medical Services Memorial Service.

Similar legislation has been introduced in the Senate by Senator GREGG of New Hampshire, as well as Senators WARNER and ROBB of Virginia. I join my colleague from Virginia (Mr. GOODE) today in urging my colleagues to support this resolution, and I also would urge the Senate to act swiftly to pass this important resolution and recognize the important role that EMS personnel play in the life of every American citizen.

Mr. BROWN of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. GOODE).

Mr. GOODE. Mr. Speaker, I want to say a special word of thanks to the gentleman from Virginia (Mr. GOODLATTE) for his leadership on this measure and to thank the committee for their prompt action and for doing it right before the Memorial Day recess.

Over the course of a number of years, I have had the opportunity to come to know many members of the Virginia Association of Volunteer Rescue Squads. I have seen their experiences in many different avenues and the work that they have done. I also know the hard work that they did in the Virginia general assembly over many years. I know of the kindnesses personally that they extended to my mother when she was ill and needed their assistance on many occasions.

So, at the outset, I want to commend the Members of the Virginia Association of Volunteer Rescue Squads on originating the National EMS Memorial Service in Roanoke, Virginia, and in continuing to be one of its major supporters. Now, the service takes in squads, emergency medical services teams and other units from all across the Nation. In the past few years, they have been as far away as the State of Washington and the State of California.

In closing, I simply want to say it is indeed fitting that Congress spend a few minutes to honor the men and women who have given their lives in this honorable pursuit and to declare the memorial service held in Roanoke, Virginia and sponsored by the National Emergency Medical Services Memorial Service board to honor emergency medical service personnel who have died in the line of duty.

Mr. RODRIGUEZ. Mr. Speaker, a little over a year ago, on the night of May 3, 1997, Jessie F. Bricker, Jr., a brave fire fighter from San Antonio, Texas, responded to a four-alarm fire. After joining in a battle that lasted over 7 hours, soon after he returned to the station, Mr. Bricker succumbed to smoke inhalation and died. Over 100 others like Mr. Bricker have paid the ultimate price for their service to our communities. Let us stand here today and convey to the loved ones of these fallen personnel that these sacrifices do not go unnoticed. I rise in strong support of H. Con. Res. 171, which recognizes the sacrifices of the men and women who risk their lives each day to protect us in cities and towns all across the country.

We cannot bring back those brave emergency personnel like Jessie Bricker who gave their lives to protect us. But we can take action today to recognize the risks that our fire fighters face each day. This bill would honor the National Emergency Medical Service Memorial Service which each year recognizes those who have fallen in the line of duty. Furthermore, this legislation expresses the gratitude that we show for the dedication of volunteer and career emergency personnel, who each day leave the security of their homes and families to serve those in need all across America.

Mr. OXLEY. Mr. Speaker, today the House will consider legislation, H. Con. Res. 171, to declare that the memorial service held each year in Roanoke, Virginia to honor emergency medical services personnel who have died in the line of duty be designated as the "National Emergency Medical Services Memorial Service". As the House debates this thoughtful legislation, I would like to take a moment to honor one of my constituents, a dedicated and heroic paramedic who was killed in the line of duty.

On June 6th of last year Mr. Robert Good, of Marion Ohio, was responding to a motor vehicle accident involving live downed power lines. Knowing of the danger, Mr. Good and several other rescue workers extracted the accident victim from the automobile. While Robert Good was able to save the lives of two people, a bystander whom he pushed out of the way of live power lines and his partner whom he directed to stay clear of the accident, he was, unfortunately, not able to save himself. Mr. Good, the motor vehicle accident victim, and two rescue volunteers were killed in the courageous rescue attempt.

Since this is National Emergency Medical Services Week, it is fitting that today the House is passing legislation honoring those emergency medical services personnel, like Mr. Good, who have died while saving the lives of those in need. We all owe a debt of gratitude to these highly skilled professionals.

This week, Mr. Good will also be honored posthumously as part of a program that pays

tribute to the men and women of the emergency medical service profession. During the ceremony, Mr. Good's partner will accept the appropriately named Stars of Life award on his behalf. I believe this is a fitting award for his selfless actions to save the lives of others. At this time, allow me to personally add my praise and tribute to the memory of Mr. Good for his courageous actions. Robert Good was truly a hero to all who knew him and benefited from his valiant and noble work.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I would like to take advantage of this great opportunity to personally thank the emergency medical personnel of our nation.

This resolution specifically memorializes our fallen emergency workers through the recognition of the National Emergency Medical Services Memorial Service held every year in Roanoke, Virginia. It is only appropriate since Roanoke is the site of the first-ever volunteer rescue squad in the United States, the "Roanoke Life Saving and First Aid Crew". The members of that crew helped establish a tradition of selflessness and virtue that lives on today through our emergency health care workers.

Although we live in a nation of relative prosperity and health, over 170,000 people require some sort of emergency medical assistance every day. That amounts to 60 million Americans during the course of the year. As staggering an amount as that is, even more impressive is the fact that the great majority of those people will survive and be treated for their ailments successfully. By passing this resolution, we commend the workers who maintain that standard of excellence, at the risk of their own lives.

I also understand that to limit the extent of our praise to the quantity of injuries our emergency medical personnel treat would be a great disservice. We note that these heroes and heroines often go beyond their job descriptions and perform with expertise, technique, and compassion. Colleagues, I assure you, without them, life as we enjoy it would be substantially different.

I implore my colleagues to support this celebration of the unrecognized daily deeds done by our fellow Americans. There can be no higher praise for any of these individuals, who are oftentimes placed in harm's way, yet almost always reach beyond the realm of good samaritanship and into the province of heroism.

Mr. BILIRAKIS. Mr. Speaker, I would like to acknowledge committee staffers John Ford and Marc Wheat.

Having done that, I have no further requests for time, and I yield back the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and agree to the concurrent resolution (H. Con. Res. 171), as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The title was amended so as to read: "Concurrent resolution declaring the city of Roanoke, Virginia, to be the official site of the National Emergency Medical Services Memorial Service."

A motion to reconsider was laid on the table.

NATIONAL BONE MARROW REGISTRY REAUTHORIZATION ACT OF 1998

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2202) to amend the Public Health Service Act to revise and extend the bone marrow donor program, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2202

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Bone Marrow Registry Reauthorization Act of 1998".

SEC. 2. REAUTHORIZATION.

(a) ESTABLISHMENT OF REGISTRY.—Section 379(a) of the Public Health Service Act (42 U.S.C. 274k(a)) is amended—

(1) by striking "(referred to in this part as the 'Registry') that meets" and inserting "(referred to in this part as the 'Registry') that has the purpose of increasing the number of transplants for recipients suitably matched to biologically unrelated donors of bone marrow, and that meets";

(2) by striking "under the direction of a board of directors that shall include representatives of" and all that follows and inserting the following: "under the direction of a board of directors meeting the following requirements:

"(1) Each member of the board shall serve for a term of two years, and each such member may serve as many as three consecutive two-year terms, except that such limitations shall not apply to the Chair of the board (or the Chair-elect) or to the member of the board who most recently served as the Chair.

"(2) A member of the board may continue to serve after the expiration of the term of such member until a successor is appointed.

"(3) In order to ensure the continuity of the board, the board shall be appointed so that each year the terms of approximately ⅓ of the members of the board expire.

"(4) The membership of the board shall include representatives of marrow donor centers and marrow transplant centers; recipients of a bone marrow transplant; persons who require or have required such a transplant; family members of such a recipient or family members of a patient who has requested the assistance of the Registry in searching for an unrelated donor of bone marrow; persons with expertise in the social sciences; and members of the general public; and in addition nonvoting representatives from the Naval Medical Research and Development Command and from the Division of Organ Transplantation of the Health Resources and Services Administration.".

(b) PROGRAM FOR UNRELATED MARROW TRANSPLANTS.—

(1) IN GENERAL.—Section 379(b) of the Public Health Service Act (42 U.S.C. 274k(b)) is amended by redesignating paragraph (7) as paragraph (8), and by striking paragraphs (2) through (6) and inserting the following:

"(2) carry out a program for the recruitment of bone marrow donors in accordance with subsection (c), including with respect to increasing the representation of racial and ethnic minority groups (including persons of mixed ancestry) in the enrollment of the Registry;

"(3) carry out informational and educational activities in accordance with subsection (c);

"(4) annually update information to account for changes in the status of individuals as potential donors of bone marrow;

"(5) provide for a system of patient advocacy through the office established under subsection (d);

"(6) provide case management services for any potential donor of bone marrow to whom the Registry has provided a notice that the potential donor may be suitably matched to a particular patient (which services shall be provided through a mechanism other than the system of patient advocacy under subsection (d)), and conduct surveys of donors and potential donors to determine the extent of satisfaction with such services and to identify ways in which the services can be improved;

"(7) with respect to searches for unrelated donors of bone marrow that are conducted through the system under paragraph (1), collect and analyze and publish data on the number and percentage of patients at each of the various stages of the search process, including data regarding the furthest stage reached; the number and percentage of patients who are unable to complete the search process, and the reasons underlying such circumstances; and comparisons of transplant centers regarding search and other costs that prior to transplantation are charged to patients by transplant centers; and".

(2) REPORT OF INSPECTOR GENERAL; PLAN REGARDING RELATIONSHIP BETWEEN REGISTRY AND DONOR CENTERS.—The Secretary of Health and Human Services shall ensure that, not later than one year after the date of the enactment of this Act, the National Bone Marrow Donor Registry (under section 379 of the Public Health Service Act) develops, evaluates, and implements a plan to effectuate efficiencies in the relationship between such Registry and donor centers. The plan shall incorporate, to the extent practicable, the findings and recommendations made in the inspection conducted by the Office of the Inspector General (Department of Health and Human Services) as of January 1997 and known as the Bone Marrow Program Inspection.

(c) PROGRAM FOR INFORMATION AND EDUCATION.—Section 379 of the Public Health Service Act (42 U.S.C. 274k) is amended by striking subsection (j), by redesignating subsections (c) through (i) as subsections (e) through (k), respectively, and by inserting after subsection (b) the following subsection:

"(c) RECRUITMENT; PRIORITIES; INFORMATION AND EDUCATION.—

"(1) RECRUITMENT; PRIORITIES.—The Registry shall carry out a program for the recruitment of bone marrow donors. Such program shall identify populations that are underrepresented among potential donors enrolled with the Registry. In the case of populations that are identified under the preceding sentence:

"(A) The Registry shall give priority to carrying out activities under this part to increase representation for such populations in order to enable a member of such a population, to the extent practicable, to have a probability of finding a suitable unrelated donor that is comparable to the probability that an individual who is not a member of an underrepresented population would have.

"(B) The Registry shall consider racial and ethnic minority groups (including persons of mixed ancestry) to be populations that have been identified for purposes of this paragraph, and shall carry out subparagraph (A) with respect to such populations.

"(2) INFORMATION AND EDUCATION REGARDING RECRUITMENT; TESTING AND ENROLLMENT.—

"(A) IN GENERAL.—In carrying out the program under paragraph (1), the Registry shall carry out informational and educational activities for purposes of recruiting individuals to

serve as donors of bone marrow, and shall test and enroll with the Registry potential donors. Such information and educational activities shall include the following:

"(i) Making information available to the general public, including information describing the needs of patients with respect to donors of bone marrow.

"(ii) Educating and providing information to individuals who are willing to serve as potential donors, including providing updates.

"(iii) Training individuals in requesting individuals to serve as potential donors.

"(B) PRIORITIES.—In carrying out informational and educational activities under subparagraph (A), the Registry shall give priority to recruiting individuals to serve as donors of bone marrow for populations that are identified under paragraph (1).

"(3) TRANSPLANTATION AS TREATMENT OPTION.—In addition to activities regarding recruitment, the program under paragraph (1) shall provide information to physicians, other health care professionals, and the public regarding the availability, as a potential treatment option, of receiving a transplant of bone marrow from an unrelated donor.".

(d) PATIENT ADVOCACY AND CASE MANAGEMENT.—Section 379 of the Public Health Service Act (42 U.S.C. 274k), as amended by subsection (c) of this section, is amended by inserting after subsection (c) the following subsection:

"(d) PATIENT ADVOCACY; CASE MANAGEMENT.—

"(1) IN GENERAL.—The Registry shall establish and maintain an office of patient advocacy (in this subsection referred to as the 'Office').

"(2) GENERAL FUNCTIONS.—The Office shall meet the following requirements:

"(A) The Office shall be headed by a director.

"(B) The Office shall operate a system for patient advocacy, which shall be separate from mechanisms for donor advocacy, and which shall serve patients for whom the Registry is conducting, or has been requested to conduct, a search for an unrelated donor of bone marrow.

"(C) In the case of such a patient, the Office shall serve as an advocate for the patient by directly providing to the patient (or family members, physicians, or other individuals acting on behalf of the patient) individualized services with respect to efficiently utilizing the system under subsection (b)(1) to conduct an ongoing search for a donor.

"(D) In carrying out subparagraph (C), the Office shall monitor the system under subsection (b)(1) to determine whether the search needs of the patient involved are being met, including with respect to the following:

"(i) Periodically providing to the patient (or an individual acting on behalf of the patient) information regarding donors who are suitability matched to the patient, and other information regarding the progress being made in the search.

"(ii) Informing the patient (or such other individual) if the search has been interrupted or discontinued.

"(iii) Identifying and resolving problems in the search, to the extent practicable.

"(E) In carrying out subparagraph (C), the Office shall monitor the system under subsection (b)(1) to determine whether the Registry, donor centers, transplant centers, and other entities participating in the Registry program are complying with standards issued under subsection (e)(4) for the system for patient advocacy under this subsection.

"(F) The Office shall ensure that the following data are made available to patients:

"(i) The resources available through the Registry.

"(ii) A comparison of transplant centers regarding search and other costs that prior to transplantation are charged to patients by transplant centers.

"(iii) A list of donor registries, transplant centers, and other entities that meet the applicable standards, criteria, and procedures under subsection (e).

"(iv) The posttransplant outcomes for individual transplant centers.

"(v) Such other information as the Registry determines to be appropriate.

"(G) The Office shall conduct surveys of patients (or family members, physicians, or other individuals acting on behalf of patients) to determine the extent of satisfaction with the system for patient advocacy under this subsection, and to identify ways in which the system can be improved.

"(3) CASE MANAGEMENT.—

"(A) IN GENERAL.—In serving as an advocate for a patient under paragraph (2), the Office shall provide individualized case management services directly to the patient (or family members, physicians, or other individuals acting on behalf of the patient), including—

"(i) individualized case assessment; and

"(ii) the functions described in paragraph (2)(D) (relating to progress in the search process).

"(B) POSTSEARCH FUNCTIONS.—In addition to the case management services described in paragraph (1) for patients, the Office may, on behalf of patients who have completed the search for an unrelated donor, provide information and education on the process of receiving a transplant of bone marrow, including the posttransplant process.".

(e) CRITERIA, STANDARDS, AND PROCEDURES.—Section 379(e) of the Public Health Service Act (42 U.S.C. 274k), as redesignated by subsection (c) of this section, is amended by striking paragraph (4) and inserting the following:

"(4) standards for the system for patient advocacy operated under subsection (d), including standards requiring the provision of appropriate information (at the start of the search process and throughout the process) to patients and their families and physicians;".

(f) REPORT.—Section 379 of the Public Health Service Act, as amended by subsection (c) of this section, is amended by adding at the end the following subsection:

"(l) ANNUAL REPORT REGARDING PRETRANSPLANT COSTS.—The Registry shall annually submit to the Secretary the data collected under subsection (b)(7) on comparisons of transplant centers regarding search and other costs that prior to transplantation are charged to patients by transplant centers. The data shall be submitted to the Secretary through inclusion in the annual report required in section 379A(c).".

(g) CONFORMING AMENDMENTS.—Section 379 of the Public Health Service Act, as amended by subsection (c) of this section, is amended—

(1) in subsection (f), by striking "subsection (c)" and inserting "subsection (e)"; and

(2) in subsection (k), by striking "subsection (c)(5)(A)" and inserting "subsection (e)(5)(A)" and by striking "subsection (c)(5)(B)" and inserting "subsection (e)(5)(B)".

SEC. 3. RECIPIENT REGISTRY.

Part I of title III of the Public Health Service Act (42 U.S.C. 274k et seq.) is amended by striking section 379A and inserting the following:

"SEC. 379A. BONE MARROW SCIENTIFIC REGISTRY.

"(a) ESTABLISHMENT OF RECIPIENT REGISTRY.—The Secretary, acting through the Registry under section 379 (in this section referred to as the 'Registry'), shall establish and maintain a scientific registry of information relating to patients who have been recipients of a transplant of bone marrow from a biologically unrelated donor.

"(b) INFORMATION.—The scientific registry under subsection (a) shall include information with respect to patients described in subsection (a), transplant procedures, and such other information as the Secretary determines to be appropriate to conduct an ongoing evaluation of the scientific and clinical status of transplantation involving recipients of bone marrow from biologically unrelated donors.

"(c) ANNUAL REPORT ON PATIENT OUTCOMES.—The Registry shall annually submit to the Secretary a report concerning patient outcomes with respect to each transplant center. Each such report shall use data collected and maintained by the scientific registry under subsection (a). Each such report shall in addition include the data required in section 379(l) (relating to pretransplant costs).".

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended—

(1) by transferring section 378 from the current placement of the section and inserting the section after section 377; and

(2) in part I, by inserting after section 379A the following section:

"SEC. 379B. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of carrying out this part, there are authorized to be appropriated $18,000,000 for fiscal year 1999, and such sums as may be necessary for each of the fiscal years 2000 through 2003.".

SEC. 5. STUDY BY GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—During the period indicated pursuant to subsection (b), the Comptroller General of the United States shall conduct a study of the National Bone Marrow Donor Registry under section 379 of the Public Health Service Act for purposes of making determinations of the following:

(1) The extent to which, relative to the effective date of this Act, such Registry has increased the representation of racial and ethnic minority groups (including persons of mixed ancestry) among potential donors of bone marrow who are enrolled with the Registry, and whether the extent of increase results in a level of representation that meets the standard established in subsection (c)(1)(A) of such section 379 (as added by section 2(c) of this Act).

(2) The extent to which patients in need of a transplant of bone marrow from a biologically unrelated donor, and the physicians of such patients, have been utilizing the Registry in the search for such a donor.

(3) The number of such patients for whom the Registry began a preliminary search but for whom the full search process was not completed, and the reasons underlying such circumstances.

(4) The extent to which the plan required in section 2(b)(2) of this Act (relating to the relationship between the Registry and donor centers) has been implemented.

(5) The extent to which the Registry, donor centers, donor registries, collection centers, transplant centers, and other appropriate entities have been complying with the standards, criteria, and procedures under subsection (e) of such section 379 (as redesignated by section 2(c) of this Act).

(b) REPORT.—A report describing the findings of the study under subsection (a) shall be submitted to the Congress not later than October 1, 2001. The report may not be submitted before January 1, 2001.

SEC. 6. COMPLIANCE WITH NEW REQUIREMENTS FOR OFFICE OF PATIENT ADVOCACY.

With respect to requirements for the office of patient advocacy under section 379(d) of the Public Health Service Act, the Secretary of Health and Human Services shall ensure that, not later than 180 days after the effective date of this Act, such office is in compliance with all requirements (established pursuant to the

amendment made by section 2(d)) that are additional to the requirements that under section 379 of such Act were in effect with respect to patient advocacy on the day before the date of the enactment of this Act.

SEC. 7. EFFECTIVE DATE.

This Act takes effect October 1, 1998, or upon the date of the enactment of this Act, whichever occurs later.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2202 and to insert extraneous material on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

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

Mr. Speaker, I am delighted this afternoon, truly delighted, to ask my colleagues in the House to support H.R. 2202, the National Bone Marrow Registry Reauthorization Act of 1998. I would acknowledge the hard work of Mr. Marc Wheat of the Majority staff, Mr. John Ford of the Minority staff, and other staffers from Mr. YOUNG'S office and staffers in the Senate in the process of working out this legislation.

I know that many of my colleagues in the House have heard from individuals whose lives were saved by this program, but many Members may not know that this legislation has been championed by a man whose own daughter was saved by the program. Coincidentally, if that is a proper word, he decided to go forward with this program quite a few years ago, and it was after he decided to go through with this program and put it into effect that his daughter was saved by the program.

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That, of course, I am referring to my friend and colleague, the gentleman from Florida (Mr. BILL YOUNG).

The gentleman from Florida (Mr. YOUNG) secured the original appropriation which established this important program in early 1987 through a grant to the Department of the Navy. In this Congress he has worked tirelessly to secure reauthorization of the program, and I was pleased to support his effort as a cosponsor of H.R. 2202.

In 1997 the National Marrow Donor Program was responsible for facilitating 1,280 unrelated marrow transplants, men and women who never met each other but knew that through the simple procedure of marrow donation a life would be saved.

There are approximately 5,000 to 7,000 Americans who could benefit from potentially lifesaving unrelated donor transplants, and yet for many, matches cannot be found yet. But thanks to the great work of the men and women in this program, over 3 million Americans have volunteered to be listed confidentially in a registry of the national marrow donor program.

Through innovative cooperation with programs in other countries, including Germany, France, Israel, South Africa, Greece, among others, patients can search for their tissue type through a worldwide network of 37 registries in 29 countries. Through this network the National Marrow Donor Program has direct access to over 4 million volunteer donors worldwide.

The language in the bill under consideration today is identical to an amendment approved by voice vote in the Subcommittee on Health and Environment which I chair. My substitute amendment represented a consensus position developed through long negotiations between the majority and minority of the Committee on Commerce and the Committee on Labor and Human Resources in the other body, the Department of Health and Human Resources, the Food and Drug Administration, the National Institutes of Health, the National Bone Marrow Donor Program itself, and many associations and interested parties who want to see this authorization pass this year.

Mr. Speaker, I want to again express my great appreciation on behalf of all of us, and on behalf of the many people out there who have benefited from this program and who will continue to benefit, and to the gentleman from Florida (Mr. YOUNG) for his efforts to secure this reauthorization.

Mr. Speaker, I urge all of my colleagues to join me in expressing their strong support for passage of this important legislation.

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

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the legislation we are considering today to reauthorize the National Bone Marrow Donor Registry Program. This program has given thousands of patients suffering from diseases like leukemia a second chance at life.

I would like to recognize the work of my chairman, the gentleman from Florida (Mr. MIKE BILIRAKIS) and the sponsor of this legislation, the gentleman from Florida (Mr. BILL YOUNG), in moving this important bill to the floor.

I extend a special thanks to the gentlewoman from Southern California (Ms. JUANITA MILLENDER-MCDONALD), who has worked tirelessly to include provisions in the bill to help meet the needs of minority and mixed-race patients. For patients who suffer from terminal diseases, such as cancer and blood and immune system disorders, the transplantation of bone marrow offers their only hope for a cure.

In 1987, with a small grant to the Department of the Navy, the National Marrow Donor Program was established to help facilitate bone marrow matches between patients and donors and maintain a registry of individuals willing to donate marrow. I am pleased that since its inception 12 years ago NMDP has facilitated over 6,500 marrow transplants between unrelated patients and donors around the world. Further, the annual number of transplants has increased by 53 percent between 1994 and 1997, since NMDP was transferred to Health Resources Services Administration.

I am pleased the legislation we are considering today builds upon this success by fully funding current and new innovative educational campaigns to increase the number of willing donors which will obviously, in turn, increase the number of successful transplantations. Working with patients and physicians, NMDP and its partners can improve outreach and increase awareness of the importance of marrow donation. This work is especially important if we are going to continue to increase the number of minorities, such as African Americans and Latinos, who are successfully matched with willing donors.

Mr. Speaker, we can all take pride in the accomplishments of this lifesaving program. I am hopeful we can work together to ensure that more sick patients have access to these lifesaving therapies by passing this legislation today.

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

Mr. BILIRAKIS. Mr. Speaker, I gladly yield such time as he may consume to the gentleman from Florida (Mr. BILL YOUNG), my friend, neighbor, and colleague.

Mr. YOUNG of Florida. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I would have to say this is an exciting moment. This legislation, we have worked long and hard to get it in a condition that everybody could support. The basic idea here is that it extends the authorization for the National Marrow Donor Program, which, as my distinguished friends the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) have said, is a lifesaver.

It is actually a miracle. This process allows people who really had no chance for life, there was no outlook, they were not going to survive, but when the opportunity to have a bone marrow transplant came about and we were able to find enough donors to create a registry, peoples' lives have been saved. People have had a second chance for life where none existed before.

Mr. Speaker, I want to thank the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) as the ranking minority member, and every Member of this Congress. This program, from when we began in 1985, we began to try to create this program, and we hit a lot of doors that were not open to us. We were told by people high up in the realm of medical research that this would never work. In fact, one of our committees was told in testimony, well, you will be lucky if you could ever get 50,000 people willing to be a bone marrow donor.

Mr. Speaker, as we speak today, there are more than 3 million Americans who are in that registry with their marrow typed and ready to be a donor. In addition, as the gentleman from Florida (Mr. BILIRAKIS) has pointed out, we have agreements with many other nations, and we are exchanging patients and exchanging bone marrow across the ocean itself, saving lives around the world.

I want to thank the many people in the Congress who have made it possible to keep this program going. I want to thank the many people in the medical community who have been heroes in this effort. I want to thank the millions of donors who have been willing to give another person a second chance for life. This Nation of ours is full of heroes, and the list is lengthy. I wish we had time to mention all of them by name, but obviously we do not.

Mr. BROWN of Ohio. Mr. Speaker, I yield 4 minutes to my friend, the gentlewoman from California (Ms. MILLENDER-MCDONALD), who has shown great leadership in coming to our committee and on the floor on this issue.

Ms. MILLENDER-MCDONALD. Mr. Speaker, I thank the gentleman for yielding me the time, and for his comments.

Mr. Speaker, I am so proud to be able to stand before the Members today, a day when the House will finally vote on one of the most important pieces of legislation affecting the health of minorities and their families. For more than a year now I have been working to increase the number of minorities and people of mixed ancestry on the National Bone Marrow Registry, not only through legislation but through coordinated outreach efforts throughout this country.

I would like to thank the gentleman from Florida for working so closely with me to make sure that when we reauthorize this program, we do everything possible to increase the number of minorities and people of mixed ancestry.

Every year, Mr. Speaker, more than 30,000 people are diagnosed with one of the 60 diseases that can be cured with a bone marrow transplant. Of those, only 30 percent will have a family member who is a marrow match. That means 20,000 people each year need to find an unrelated marrow donor.

There are almost 2 million registered donors in this country, an increase of more than 260 percent since the beginning of 1993. But of these impressive numbers of transplants, Mr. Speaker, minorities continue to receive far fewer transplants.

In fact, in 1997, only 65 African Americans received transplants, 105 Hispanic Americans received transplants, and approximately 37 people of mixed ancestry received transplants. During that same year, however, 1,021 caucasians received transplants; so we can see, Mr. Speaker, the critical need for this.

Again, let me thank the gentleman from Florida (Mr. YOUNG) for his leadership on this issue. I urge all of my colleagues to join me in voting yes for H.R. 2202. The day has finally come to close the gap on this critical minority health care disparity.

Mr. YOUNG of Florida. Mr. Speaker, will the gentlewoman yield?

Ms. MILLENDER-MCDONALD. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. I just wanted to express to the Speaker and the Members, Mr. Speaker, my appreciation for the really hard work that the gentlewoman has done in this effort.

We introduced the bill almost a year ago, as the gentlewoman is well aware, and because of the bureaucracy involved, it has taken a while, but the gentlewoman has stayed right there on track and helped keep it moving. I mentioned many of the heroes, and the gentlewoman is one of the heroes at the top of the list.

Ms. MILLENDER-MCDONALD. Mr. Speaker, I thank the gentlemen from Florida, Mr. YOUNG and Mr. BILIRAKIS, for their leadership.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. Mr. Speaker, I rise this afternoon in strong support of H.R. 2202, the National Bone Marrow Registry Reauthorization Act of 1998.

I want to also commend my good friend and colleague, the gentleman from Florida (Mr. YOUNG) for introducing and working hard and diligently for the consideration of this legislation, and my subcommittee chairman, the gentleman from Florida (Mr. BILIRAKIS) and his ranking member, the gentleman from Ohio (Mr. BROWN), for the smooth passage through the committee process.

Mr. Speaker, this program is a vital one. This holds out promise for nearly the approximately 12,000 people each year who are diagnosed with diseases for which bone marrow transplantation may offer the possibility of a cure.

The National Bone Marrow Donor Registry established by this program provides for a central registry of bone marrow donors, linking a network of 100 donor centers, 111 transplant centers, and 11 recruitment groups across the country.

The registry is also a research organization, studying the effectiveness of unrelated marrow transplants. This program has been effective in increasing the availability of unrelated bone marrow transplants, which have grown in number from 200 in 1989 to almost 1,300 in 1997 last year.

In my State of Michigan our donor centers have, as of March of this year, registered over 92,000 donors and facilitated some 291 transplants. However, estimates suggest that those who could benefit from bone marrow transplants far outnumber the actual recipients by a 2- or 3-to-1 margin. All of us have individuals in our districts hoping desperately that they will be successfully matched with a volunteer donor. For too many, that hope will not be realized.

Mr. Speaker, this is particularly true for minority individuals, who are underrepresented in the donor registry. This legislation that we are considering this afternoon strengthens the program's focus on minority recruitment.

I encourage all of us here to register as a volunteer donor. I did, because of my relationship with the gentleman from Florida (Mr. YOUNG). The process is very simple. You have to go to a donor center and give a blood sample. That is all it is. You can literally give the gift of life to another individual through this simple act.

Mr. DELAHUNT. Mr. Speaker, I rise in strong support of H.R. 2202, the National Bone Marrow Registry Reauthorization Act of 1998.

For over a decade, the National Bone Marrow Program has brought hope to the over 30,000 patients diagnosed each year with leukemia and more than 60 otherwise fatal blood disorders. From modest beginnings, the program now maintains a registry of millions of potential donors.

H.R. 2202 will expand and improve the National Bone Marrow Registry, establishing new services to help patients locate donors, redoubling efforts to recruit donors within underserved populations, and encouraging continued advances in the science of marrow transplantation.

For me, this bill has very personal meaning. It calls to mind a very special young woman and her family in Duxbury, Massachusetts, whom I have had the honor of knowing since I learned of their story in the local press.

The young woman is Brittany Lambert, who suffers from a rare blood disorder called myelodysplasia, for which she received a bone marrow transplant from an unrelated donor found through the registry. When Brittany's first transplant failed, she needed a second one. Through it all, she has shown qualities of courage and tenacity that would make any parent proud.

Brittany has been lucky in at least one respect: her parents, Jim and Linda Haehnel, and her sister, Brianne, have been with her every step of the way. In fact, when I met Jim Haehnel back in February of 1997, he was organizing a screening drive for Brittany at an

Air National Guard base in my district. I was among the 300 people who registered as potential donors on that occasion, and I promised Jim that I would do everything I could to see that more people have the opportunity to join in this effort.

The Haehnel family has shown tremendous fortitude in the face of repeated setbacks. They have continued to do everything they can to see that kids like Brittany get a second chance at life.

It is because of the heroism and selflessness of people like Brittany and her family that this program exists. And it is because of them that I feel so strongly about this effort. I am proud to join with my colleague, Mr. YOUNG, in cosponsoring this legislation, and I hope that all of my colleagues will give it their support.

Mr. PORTER. Mr. Speaker, I rise to commend my good friend, BILL YOUNG, for his tireless efforts to promote and strengthen the National Bone Marrow Donor Registry. There is no stronger advocate in the Congress for this vital public policy initiative than BILL. His work has provided a second chance at life for thousands of individuals who suffer from debilitating illness and fatal blood disease. Because of BILL's outstanding leadership, the registry has grown tremendously. I am proud to cosponsor this vital legislation and I will continue to support BILL's important efforts.

Mr. BROWN of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the bill, H.R. 2202, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

EXTENDING CERTAIN PROGRAMS UNDER THE ENERGY POLICY AND CONSERVATION ACT

Mr. DAN SCHAEFER of Colorado. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the House amendment to the Senate amendment to the bill (H.R. 2472) to extend certain programs under the Energy Policy and Conservation Act.

The Clerk read as follows:

Senate amendment to House amendment to Senate amendment:

In lieu of the matter proposed to be inserted by the House amendment, insert:

SECTION 1. ENERGY POLICY AND CONSERVATION ACT AMENDMENTS.

The Energy Policy and Conservation Act is amended—

(1) in section 166 (42 U.S.C. 6246) by striking "1997" and inserting in lieu thereof "1999";

(2) in section 181 (42 U.S.C. 6251) by striking "1997" both places it appears and inserting in lieu thereof "1999";

(3) by striking "section 252(l)(1)" in section 251(e)(1) (42 U.S.C. 6271(e)(1)) and inserting "section 252(k)(1)";

(4) in section 252 (42 U.S.C. 6272)—

(A) in subsections (a)(1) and (b), by striking "allocation and information provisions of the international energy program" and inserting "international emergency response provisions";

(B) in subsection (d)(3), by striking "known" and inserting after "circumstances" "known at the time of approval";

(C) in subsection (e)(2) by striking "shall" and inserting "may";

(D) in subsection (f)(2) by inserting "voluntary agreement or" after "approved";

(E) by amending subsection (h) to read as follows:

"(h) Section 708 of the Defense Production Act of 1950 shall not apply to any agreement or action undertaken for the purpose of developing or carrying out—

"(1) the international energy program, or

"(2) any allocation, price control, or similar program with respect to petroleum products under this Act.";

(F) in subsection (k) by amending paragraph (2) to read as follows:

"(2) The term 'international emergency response provisions' means—

"(A) the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in the program, and

"(B) the emergency response measures adopted by the Governing Board of the International Energy Agency (including the July 11, 1984, decision by the Governing Board on 'Stocks and Supply Disruptions') for—

"(i) the coordinated drawdown of stocks of petroleum products held or controlled by governments; and

"(ii) complementary actions taken by governments during an existing or impending international oil supply disruption."; and

(G) by amending subsection (l) to read as follows:

"(l) The antitrust defense under subsection (f) shall not extend to the international allocation of petroleum products unless allocation is required by chapters III and IV of the international energy program during an international energy supply emergency."; and

(5) in section 281 (42 U.S.C. 6285) by striking "1997" both places it appears and inserting in lieu thereof "1999".

(6) at the end of section 154 by adding the following new subsection:

"(f)(1) The drawdown and distribution of petroleum products from the Strategic Petroleum Reserve is authorized only under section 161 of this Act, and drawdown and distribution of petroleum products for purposes other than those described in section 161 of this Act shall be prohibited.

"(2) In the Secretary's annual budget submission, the Secretary shall request funds for acquisition, transportation, and injection of petroleum products for storage in the Reserve. If no requests for funds is made, the Secretary shall provide a written explanation of the reason therefore.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Colorado (Mr. DAN SCHAEFER) and the gentleman from Texas (Mr. HALL) each will control 20 minutes.

The Chair recognizes the gentleman from Colorado (Mr. DAN SCHAEFER).

GENERAL LEAVE

Mr. DAN SCHAEFER of Colorado. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 2472, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

□ 1600

Mr. DAN SCHAEFER of Colorado. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill reauthorizes provisions of the Energy Policy and Conservation Act relating to the Strategic Petroleum Reserve and U.S. participation in the International Energy Agreement through fiscal year 1999. These provisions, which expired on September 30, assure that if there is any emergency dealing with energy at all, the President's authority to draw down the Strategic Petroleum Reserve is preserved and the ability of U.S. oil companies to participate in the International Energy Agreement without violating the antitrust laws is expanded and extended.

Because of their importance to U.S. national energy security, I believe these programs should be reauthorized. And with the decision by the President and the appropriators to stop the budgetary sales of oil from the Strategic Petroleum Reserve, I believe it is now appropriate to pass a long-term extension. I certainly do appreciate that fact because that has been a long-standing problem that we have had selling off our oil.

In recent years, with respect to the Strategic Petroleum Reserve, this body has been penny wise and pound foolish. For the past 3 years, we have allowed our energy security, for which we paid for so dearly, to be sold at less than half of what it cost us. If the most recent sale had gone through with today's oil prices being so low, the taxpayers would have lost at least $175 million, but they would also have lost something even more important, the energy security in this country.

In the past decade of low oil prices and steady supply, we have become increasingly dependent on foreign oil. We now rely on oil imports to meet more than half of our daily petroleum needs. Moreover, we have become complacent about how vulnerable that dependence makes the United States.

When oil prices fell to record lows recently, OPEC and non-OPEC producing countries began to restrict production in order to boost the prices. While we are still a long way from the oil embargo of the 1970s, our vulnerability remains, and we must guard carefully the energy security we have built up with the Strategic Petroleum Reserve.

Mr. Speaker, the provisions contained in H.R. 2472 will help the United States preserve its energy security. It

is a good bill, and I endorse its adoption wholeheartedly.

Finally, there are several conservation-related programs contained in EPCA which were discussed at the subcommittee hearing that are not included in this bill that we are considering today, but we do have a bill coming up that would extend these programs as well. I intend to work with the interested parties to mark up that bill and reauthorize those programs in the near future.

Mr. Speaker, before I reserve the balance of my time, I would like to thank my good friend, the gentleman from Texas (Mr. HALL), for his continual support on this issue. I know that coming from the State of Texas it is very important to him.

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

Mr. HALL of Texas. Mr. Speaker, I yield myself such time as I may consume.

I will be brief because, as usual, the gentleman from Colorado (Mr. DAN SCHAEFER) has done a good job of laying out the reasons for supporting H.R. 2472. It simply reauthorizes the key sections of the Energy Policy and Conservation Act. The underlying House bill was handled in a bipartisan manner in the Committee on Commerce and passed on a voice vote.

Actually, the changes that are made herein are supported by both industry and the administration, of course supported by the subcommittee and the committee. I know of no objection to this legislation.

Last winter's instability in the Middle East pretty well underscored how quickly circumstances can change. It was a volatile situation that served as a reminder of the need for the United States to be energy independent.

This will ensure that the United States and the industry will be able to fulfill their duties in any oil-related emergency. For that reason I thank the gentleman from Virginia (Mr. BLILEY) and the gentleman from Colorado (Mr. DAN SCHAEFER) for bringing this important bill to the House floor. It is important to our country's economic and energy security, and I am pleased to support this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. DAN SCHAEFER of Colorado. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from Colorado (Mr. DAN SCHAEFER) that the House suspend the rules and concur in the Senate amendment to the House amendment to the Senate amendment to the bill, H.R. 2472.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment to the House amendment to the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

MANDATES INFORMATION ACT OF 1998

The SPEAKER pro tempore (Mr. KNOLLENBERG). Pursuant to House Resolution 426 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3534.

□ 1606

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 3534) to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes, with Mr. SHIMKUS (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on Wednesday, May 13, 1998, the amendment offered by the gentleman from Virginia (Mr. DAVIS) had been disposed of, and the bill was open for amendment at any point.

Are there further amendments to the bill?

Mr. MOAKLEY. Mr. Chairman, I move to strike the last word, and I rise to offer an amendment to H.R. 3534, the Unfunded Mandates Information Act of 1997.

Mr. Chairman, this amendment would strike from the bill language which was added in committee at the last minute by the gentleman from California (Mr. DREIER) to exempt tax revenue from the private sector point of order. The Dreier language ignores the spirit of this bill, which is to force Congress to think twice before we impose any burden on private companies.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I would like to inquire, is the amendment pending?

Mr. MOAKLEY. Mr. Chairman, I intend to offer the amendment. I have not offered the amendment.

Mr. DREIER. I thank the gentleman.

Mr. MOAKLEY. I thank the gentleman for noticing.

Mr. Chairman, the point of order triggers a debate and a vote on the question of consideration. It makes Congress take notice and make informed decisions about whether or not to proceed. The Dreier amendment changes the whole picture. It says we should ignore real costs to private companies and individuals as long as that revenue generated is fully spent in tax or tariff reductions. A tax on coal deserves debate on its own, but if it is coupled with a tax break for ethanol, it suddenly is not worth Congress' attention.

The Dreier language says that we have to know how the revenue was spent before we know whether a tax or a tariff is a burden. Consider what that means to excise taxes like taxes on gas and tobacco, where many people believe that the revenue generated should be dedicated only to certain spending programs. If a measure increases gas taxes and requires that the money be spent on highway repair only, the measure would be subject to an unfunded mandate point of order.

However, Mr. Chairman, if the same gas tax increase is completely offset by a provision to allow billionaires to avoid some kind of Federal tax liability, then the point of order just would not apply.

Consider also a tobacco bill, which we may be considering some day, that raises cigarette taxes and spends that money to prevent teenage smoking or on health care costs and health care research or on aid to the tobacco farmer, that bill will be subject to a point of order. But, Mr. Chairman, under the Dreier language, if that tobacco revenue is given away in tax cuts rather than these programs I just enumerated, then the point of order just does not apply.

I believe this approach is uneven. I believe it is arbitrary. It goes against the fundamental purpose of the bill, which is to make Congress reconsider whether it wants to impose any private sector burdens.

Therefore, Mr. Chairman, I urge my colleagues to support my amendment that I am about to file and strike this language to the bill and return it to the original intent of the sponsors.

Mr. DREIER. Mr. Chairman, I move to strike the last word. I would like to engage my colleague, if I could, with a question. Is there an amendment that we are considering here?

Mr. MOAKLEY. Mr. Chairman, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. Mr. Chairman, there is an amendment at the desk.

Mr. DREIER. I do not have anything to say, Mr. Chairman, until I know what it is.

Mr. MOAKLEY. Mr. Chairman, if the amendment is there, maybe the Clerk could read the amendment.

Mr. DREIER. Mr. Chairman, I guess the gentleman will be recognized then in support of his amendment and I would like to be heard in opposition to it.

AMENDMENT OFFERED BY MR. MOAKLEY

Mr. MOAKLEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MOAKLEY:

On page 5, line 13, strike "(3)" and all that follows through line 5, page 6.

Mr. MOAKLEY. Mr. Chairman, I know I just gave a vivid explanation of the amendment. I do not want to subject the House to it again. I know that the gentleman from California (Mr. DREIER) has good enough memory to remember what I said so we can address my amendment now.

□ 1615

Mr. DREIER. Mr. Speaker, I rise in opposition to the amendment, not surprisingly, and I have a prepared statement which I know the gentleman from Massachusetts (Mr. MOAKLEY) will understand very clearly.

Mr. Chairman, I oppose the Moakley amendment because it seeks to perpetuate a set of budget rules that have, for the past decade, dramatically shifted Federal policy in the direction of more Washington spending programs at the expense of tax relief for working families.

At a time when the Federal Government is raising $500 billion more in revenue than was projected in the Balanced Budget Act, it is unconscionable our colleagues in the minority would attempt to further rig the rule so that those revenues which belong to hard-working families can be used to tax and spend our way out of a balanced budget.

H.R. 3534 provides that if a measure contains private sector mandates exceeding $100 million, consideration of the measure may be subject to a point of order. An exception is made for legislation containing tax or tariff provisions which cause the $100 million threshold to be exceeded but result in an overall net reduction of tax or tariff revenue over a 5-year period, provided that the bill does not include other nonrevenue-related Federal private sector mandates that exceed that $100 million threshold. If a bill contains tax or tariff provisions which result in a net increase in revenues, or it contains nonrevenue related mandates, a point of order may still apply.

This language is necessary, Mr. Chairman, because in the universe of private sector mandates, our budget rules discriminate against tax cuts by requiring that they be paid for by increases in other tax revenues or reductions in mandatory spending. In other words, our budget rules require us to impose mandates on the private sector as a condition of providing tax relief to the American people.

In addition, given the dynamic effects of tax rate changes, I find it hard to believe that anyone would suggest that tax rate reductions that may actually raise revenue, such as the capital gains tax cut, we all know it has been a revenue raiser, should be treated as private sector mandates and subject to a point of order. Mr. Chairman, I find it ludicrous, but that is exactly what would happen if the Moakley amendment were to prevail.

Mr. Chairman, I also want to respond to some inaccuracies in the administration's policy statement on this bill. It states, and I quote,

> The administration is especially concerned about the amendment added to the bill that would establish a point of order on the use of user fees and revenues.

Mr. Chairman, someone did not read the amendment that was adopted in the Committee on Rules that I offered because the point of order was always in the bill. The amendment that I authored in the Committee on Rules makes an exception to that point of order.

The statement for the administration further goes on, and I quote,

> This amendment could delay or undermine funding for a number of well-established and important programs and laws that have traditionally received bipartisan support, including airline, air traffic and ground safety; the Superfund program; the Senate passed version of the Internal Revenue Service reform bill; and legislation under consideration that provides relief to tobacco farmers and additional resources for public health and health research.

Once again, Mr. Chairman, the person who wrote that statement obviously did not read the bill or my amendment. All H.R. 3534 says is that if a point of order is made, it is subject to 20 minutes of debate, after which the Members must vote on whether to proceed with consideration of the legislation. All we are doing is encouraging a deliberative process.

This mechanism was crafted to ensure that the House would have additional information and debate time on certain Federal mandates, but that legislation containing such mandates could continue to be considered by the House if a majority so desires. The Dreier amendment, adopted by the Committee on Rules, does nothing to change this process.

In other words, if Congress takes up legislation to raise tobacco taxes and uses that revenue to fund President Clinton's great budget blow-out proposals that he unveiled here in his State of the Union message, that legislation could be subject to a question of consideration. The Committee on Rules amendment did nothing to change that outcome. If, however, revenues from a tobacco tax increase are returned to working families in the form of tax relief, then the Committee on Rules amendment provides an exclusion from the point of order.

Mr. Chairman, the Moakley amendment seeks to strike this taxpayer protection and allows legislation providing a net tax reduction to be subject to a point of order if it contains loophole closers or tax rate cuts that actually raise revenue. This will further bias our procedures against tax cuts and seriously undermine our efforts to simplify the Tax Code and provide badly needed tax relief to working families.

For this reason and all of these reasons, Mr. Chairman, I am going to oppose the amendment.

Mr. MOAKLEY. Mr. Chairman, I ask unanimous consent to strike the last word.

The CHAIRMAN pro tempore (Mr. SHIMKUS). Without objection, the gentleman from Massachusetts (Mr. MOAKLEY) is recognized for 5 minutes.

There was no objection.

Mr. MOAKLEY. Mr. Chairman, I paid very close attention to my dear friend's explanation, but the provision of the Dreier amendment really distorts the underlying purpose of the unfunded mandate bill. It used to focus on whether or not there was a mandate. Now, under the Dreier amendment, it focuses on whether it is a tax bill and how the funds from the tax bill would be handled. If Members choose to give a tax break to someone else, the issue of a mandate on a private business does not get debated in the House.

The purpose of the unfunded mandate bill is very simple. It calls upon Congress to look and see how it affects that private business. And, therefore, if we raise a tax on that business and we do not use it to help those types of businesses, but give it back in tax relief, then it is not an unfunded mandate but it still hurts that private person who we are trying to protect. This is not a tax bill, it is an unfunded mandate bill.

Now, for instance, if an aviation tax increase faces a point of order, if money is spent to improve airports, so the aviation tax goes to build up the airports, put new towers in there, then a point of order can lie. But if this money from that aviation tax goes to the fat cats, no point of order.

Gasoline tax. If the gasoline tax is used to build roads, to improve safety factors; point of order lies. But if we take that tax money and give it for some other purpose, no point of order.

Tobacco tax. If that money is used to educate children to stop smoking, if that money is used to show people through all kinds of means how bad tobacco is for them, point of order. But if we give that money back as a tax rebate to the big fat cats, no point of order.

Mr. Chairman, the Dreier amendment distorts the basis of this unfunded mandate bill.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. DREIER. I thank my friend for yielding, and I think the gentleman has really explained this very well once again. He is in favor of spending for a wide range of very well intentioned proposals, and I think a lot of these issues need to be addressed; whereas we, with my amendment, are focusing

on this whole question of reducing the tax burden on working families.

But, let me just say that I am a little confused at exactly what we have before us right now, because apparently, and the gentleman can correct me if I am wrong, but the amendment that has just been put forward goes much further than simply deleting the so-called Dreier language. It appears to me it guts the entire bill.

Now, my friend told me that he is no longer supportive of the bill as he might have been in the past when we were talking earlier, but the way this amendment has been crafted, I have just been informed that it basically strikes out all points of order that can be raised against private sector mandates. Is that the gentleman's intention?

Mr. MOAKLEY. Mr. Chairman, that is not my intention, no.

Mr. DREIER. So the gentleman's intention is to simply to delete the Dreier amendment?

Mr. MOAKLEY. That is all.

Mr. DREIER. I think, Mr. Chairman, I would just like to inquire, then, of the Chair, if it does go beyond simply deleting the Dreier amendment.

The CHAIRMAN pro tempore. The Chair cannot interpret the meaning of an amendment.

Mr. MOAKLEY. Reclaiming my time, Mr. Chairman, the gentleman just made my point for me. If we raise tobacco taxes to advertise to stop kids from smoking, a point of order would lie. But if we give tax rebates back, a point of order would not lie. This is not a tax bill; this is an unfunded mandate bill.

But the gentleman from California (Mr. DREIER) makes it a tax bill. And this is a great loophole that we can reward our big fat cats with tax breaks at the expense of those youngsters that do not get the proper education to stop smoking.

The CHAIRMAN pro tempore. The time of the gentleman from Massachusetts (Mr. MOAKLEY) has expired.

(On request of Mr. DREIER, and by unanimous consent, Mr. MOAKLEY was allowed to proceed for 2 additional minutes.)

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. DREIER. I think, once again, we are making each other's arguments. My friend is for tax and spend, we are for cutting the tax burden on working families. So we have clarified that.

But let me just ask this question once again. Does the gentleman's amendment go beyond simply deleting the Dreier language that was passed in Committee on Rules? He has just said that is what his intent is, but I am continually told by our crack staff assistants around here that it goes well beyond that.

Mr. MOAKLEY. Mr. Chairman, that is not my intent. If that is what this amendment does, I will pull it back and just eliminate the Dreier amendment. That is not my intent.

This is not a tax and spend bill.

Mr. DREIER. Could we clarify that before we proceed further with the debate?

Mr. MOAKLEY. But this is a bill that if we tax the tobacco industry, we should put it toward education.

Mr. DREIER. This is a big tax and spend bill, and I would just like to make sure we have the right amendment before us.

The CHAIRMAN pro tempore. The gentleman from California will suspend. The time is controlled by the gentleman from Massachusetts (Mr. MOAKLEY).

Mr. MOAKLEY. Which the gentleman kindly gave to me, Mr. Chairman.

As I said, this is not rewarding anybody, but if a private business has a tax put on it, it is very unfair to use that tax money to give it back in rebates to people in other businesses. If it is tax because of a certain reason, it should be used in the furtherance of that business.

This is an unfunded mandate. We should not persecute people by taking their tax money and putting it in other places. That is all I am trying to say.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. WAXMAN. I want to see if I understand the amendment, Mr. Chairman.

The underlying bill requires that the House pay special attention if there is a mandate on private enterprise.

Mr. MOAKLEY. The gentleman is correct.

Mr. WAXMAN. Now, that mandate can be a new regulatory requirement or it can be a tax. That is a mandate that they have to pay.

Mr. MOAKLEY. The gentleman is correct.

Mr. WAXMAN. As I understand the Dreier amendment, he would say it is all right to put a tax on a business if we give a tax break to another business.

Mr. MOAKLEY. The gentleman is exactly correct.

Mr. WAXMAN. It is still a mandate on the company that has the tax burden. On the other hand, as I understand the Dreier amendment, if we put a tax burden on one enterprise in order to spend the money on some worthwhile purpose, as the Congress sees fit, then that would be an unfunded mandate and require the operation of the underlying bill.

Mr. MOAKLEY. The gentleman is correct.

The CHAIRMAN pro tempore. The time of the gentleman from Massachusetts (Mr. MOAKLEY) has again expired.

(On request of Mr. DREIER, and by unanimous consent, Mr. MOAKLEY was allowed to proceed for 1 additional minute.)

Mr. MOAKLEY. Mr. Chairman, I am overwhelmed by the gentleman from California's generosity.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I think my friend from West Los Angeles has actually made a very good point. There are more than a few Members in this House, including the chairman of the Committee on Ways and Means, we have a couple of very distinguished members of the Ways and Means here who are looking at the idea of overhauling the Tax Code.

And I will tell my colleagues, I hear often from the people whom I am privileged to represent in California that they want us to certainly pare back, overhaul or possibly even eliminate the Internal Revenue Service. The gentleman from Texas (Mr. ARCHER) has a proposal, we have flat rate tax proposals, but it appears to me that if we were to proceed with the Moakley language deleting the amendment I offered in the Committee on Rules, we could not even consider a complete overhaul of the Tax Code, which the American people desperately want.

And so, as my friend from California (Mr. WAXMAN) has just indicated, we have a situation here that, yes, there could be some kind of modification, but I think it is very troubling this would tie the hands of a Congress that really wants to do these kinds of things.

Mr. MOAKLEY. Mr. Chairman, reclaiming my time, the gentleman has misstated the case. This does not stop any kind of tax refund from going over, but the gentleman, in effect, has admitted he is making a tax bill out of this unfunded mandate bill, is what he is doing.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. WAXMAN. I am perplexed by my friend from California's statement as well. As I understand the underlying bill, it does not stop the Congress from doing anything. It just simply says, wait a minute, we want to take a look at this.

And if we are going to put a burden on private enterprise, we want to have a special focus on that and make people have to debate it and vote on it. If we are going to put a tax increase on some business, that seems to me a sufficient burden that we are putting on them that we ought to stop and be sure that that is what we want to do.

As I understand the Dreier amendment, which the Moakley amendment would strike, it would have us ignore

what the burden is on a private business, a small business, particularly, if there is a tax break for someone else.

MODIFICATION TO AMENDMENT OFFERED BY MR. MOAKLEY

Mr. MOAKLEY. Mr. Chairman, I ask unanimous consent, because of the conversation with the gentleman from California (Mr. DREIER) and I had to make sure I do not go beyond eliminating the Dreier amendment, to modify my amendment.

The CHAIRMAN pro tempore. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment offered by Mr. MOAKLEY:

Page 5, line 23, strike the italized words through line 4, page 6.

The CHAIRMAN pro tempore. Is there objection to the modification to the amendment offered by the gentleman from Massachusetts?

There was no objection.

□ 1630

Mr. HAYWORTH. Mr. Chairman, I move to strike the requisite number of words.

I appreciate the opportunity to engage in this debate because I would echo what my colleague, the gentleman from California (Mr. DREIER), on this side of the aisle has had to say. Despite my deep personal affection for my friend, the gentleman from Massachusetts (Mr. MOAKLEY), the Ranking Minority Member of the Committee on Rules, what my colleague from California points out is quite true. What, in essence, the Moakley amendment allows to have happen is for this Chamber to continue the culture of spending and raise barriers to the American people hanging on to more of their hard-earned money.

Indeed, as a member of the Committee on Ways and Means, I am challenged and chagrined by the fact that our existing budgetary rules already raise so many hurdles, where if to offer tax cuts to one segment of the American population, we must have, in fact, revenue offsets.

What we should be about in this Chamber, my colleagues, when we strip away all the discussion of rules, all the inside baseball, all the legislative minutia with which we deal here, the fact is we should make it easier for the American people to hang on to what they earn; and we should reject any language, no matter its intent, that makes it tougher for the American people to hold on to their hard-earned money.

The American people are already overregulated and over taxed, and we must do all we can to preserve the notion that they should hold on to more of their money and send less of it here to Washington. Accordingly, my colleagues, I would ask that we reject the Moakley amendment, stand in favor of families, stand in favor of families holding on to more of their hard-earned money.

I could not help but note the difference to hear my colleague from Massachusetts refer to those who might receive a tax cut as "fat cats." I do not believe that the working family in Payson, Arizona, one of my friends who owns a print shop there who has a family of four who now, through our historic agreement to offer tax relief at a $400 per child tax credit this year that increases to $500 next year, can be called a "fat cat" because he and his wife hold on to $1,600 dollars of their income to spend on their families as they see fit.

So we are witnessing here in this Chamber, Mr. Chairman, a great cultural and philosophical divide among those who favor the culture of tax-and-spend and Washington-knows-best and those of us who believe that no matter how well-meaning a Washington bureaucrat may be, no matter how well-meaning my friend on the other side of the aisle may be, Mr. Chairman, when this comes to our pocketbook, no matter our economic station in life, no one knows better how to spend for their family and save for their future than they do.

That is the essence of this debate. That is why the Moakley amendment must be rejected, to reverse the culture of tax-and-spend and stick up for American families.

Mr. MORAN of Virginia. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am certainly sorry that my colleague is challenged and chagrined on this. But as an original sponsor of the unfunded Mandates Reform Act and as a strong supporter of the Mandates Information Act, I support the Moakley amendment. A vote for the Moakley amendment is a vote to strike language that would erode the intent of the Mandates Information Act. So, in other words, the Moakley amendment is an attempt to maintain the integrity of the Mandates Information Act.

It was not a part of the original Mandates Information Act, the language that the gentleman from Massachusetts (Mr. MOAKLEY) is attempting to strike. It is not supported by the business community or the bill's original sponsors. It was added at the last minute by the House leadership, apparently to serve a political objective.

I am opposed to this because it waives the right for anyone to challenge a private or a public sector mandate if the bill results in a net tax decrease.

So, in other words, it allows a bill to amass major tax increases as long as they can find some other, albeit unrelated, tax decrease to offset the major tax increases. That means, despite a number of tax increases and provisions that close tax loopholes in the 1997 Tax Relief Act, no one would have been able to raise a point of order on the revenue measures because the bill contained a net tax deduction.

This year's highway bill, however, would have been subject to a point of order since there was no net tax decrease but there was an extension of the current Federal gasoline excise tax. Do we really want to create two categories of tax bills, one that is exempt and another that is subject to the provisions that we fought hard to include in the Unfunded Mandate Reform Act and the Mandates Information Act? I think not. I would be surprised if my friend and colleague would not agree that we should not have two separate categories of tax increases.

So I urge my colleagues to support the Moakley amendment and restore the integrity and the intent of the Mandate Information Act. Let us be evenhanded when we deal with tax measures.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I would simply say, as has been made very clear, that the thrust of what this amendment that I have offered is designed to do is to decrease that extraordinary burden on working families.

I think that while there may be this view out there, my friend said he has been a long-time supporter of this measure, I would like to share with him and my colleagues a list of just a few of those people who have said that they support the bill as it was reported in the Committee with the Dreier language.

That includes the National Governors Association, the National Conference of State Legislatures, the National League of Cities, the National Association of Counties, the National Taxpayers Union, the U.S. Chamber of Commerce, the National Federation of Independent Business, the American Farm Bureau, Citizens for a Sound Economy, the National Restaurant Association, the National Retail Federation, Small Business Survival Committee, Associated Builders and Contractors, Associated General Contractors, American Subcontractors Association, National Association of Self-employed, National Association of Manufacturers, and on and on and on and on.

So virtually everyone is supportive of the language as has come out. My friend, who has been a supporter of the bill, I appreciate it, and he is welcome to stand alone in favor of tax increases over tax cuts.

Mr. MORAN of Virginia. Well, it just seems to me that we ought to spotlight it when there is any tax increase. And that is what the gentleman from Massachusetts (Mr. MOAKLEY) is attempting to do, and that is why I support the

Moakley amendment. I thank the gentleman for his input, though.

Mr. PORTMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to start by thanking the gentleman from Virginia (Mr. MORAN) for his unwavering support for the underlying legislation, H.R. 3534. I think what the gentleman from California (Mr. DREIER) has done is an improvement to the bill, and I hope that he will reconsider his opposition to the Dreier addition and then in the end support us on final passage once we are able to defeat the Moakley amendment.

I think this really comes down to a philosophical debate in some regards as to tax versus spend. But let me just make one distinction that has not been made clearly on the debate that I think is a logical distinction and the reason I think it is important to accept the Dreier language and not knock it out with this Moakley amendment.

Under the budget rules that we live under, we essentially discriminate against tax cuts. How do we do that? If we want to reduce taxes under our rules that we all live under, we have to mandate. In other words, we have to come up with tax increases somewhere else. The other choice is to increase entitlement spending, which I do not think anyone on the floor tonight particularly wants to do, or decrease entitlement spending to offset those tax cuts.

So we are in a position now where if we want tax relief, let us say the capital gains differential that we put into place last year, we have got to go into the Tax Code and we have got to find loophole closures in that Tax Code that are essentially revenue raisers, which are, under the terms of this legislation, as was said earlier, new mandates. In other words, tax increases are new mandates.

So it would be, it seems to me, illogical to say every time we want to give any kind of tax relief we have to mandate, as rule number one; and then on the other hand step in and say, and if we mandate, we are then subject to this mandate exercise.

So I think this is important, and I think it makes sense. I would also say that we are hearing some scenarios, maybe on both sides but I want to focus on ones on the other side, that just are not true. The point has been made the other night and again today that this would somehow not enable us to move forward with the tobacco agreement. How does this change that?

Under the legislation without the Dreier language, there would be to difference with regard to the tobacco legislation than there would be having accepted the Dreier language. So it is not going to have any effect on the tobacco legislation and the possibility of a cigarette tax.

Mr. MOAKLEY. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. But this does change it. It does slant it. If we do not have a point of order prevail against it because it is going to go back to some program, talking about the tobacco, that is going to stop smoking, a point of order is going to lie upon it. But if we are going to take that money and give it back as tax rebates, a point of order does not lie against it. And the argument is not going to be on what it does, it is going to be on procedure.

Well, Mr. Chairman, this is not a mandate. This is not a point of order under the unfunded mandate because it says, if there is going to be a tax break, there is no point of order, Mr. Chairman, it gives a point of order.

It does slant the debate.

Mr. PORTMAN. Mr. Chairman, reclaiming my time, I would make two points.

One is that my colleague should like this amendment in that case because it is more likely that some kind of tobacco legislation I guess would not get through because the point of order would lie without the Dreier language in both of those scenarios. The point of order would lie in the case where there was more spending, and the point of order would lie in the case where there was a net tax decrease.

All the Dreier amendment is trying to do is, in the case where there is a net tax decrease, partly for philosophical reasons and partly because of this absurdity where we are told if we have tax decreases we have to mandate, so then why should the mandate be subject to this? So I really do not understand how it relates at all to the tobacco legislation.

If anything, I would hope that my colleague would stand up and support the gentleman from California (Mr. DREIER) because he might help him here. He is carving out at least some area where we would not subject it to this information requirement.

I would also say, to make the point that was made earlier by the gentleman from California (Mr. WAXMAN), if the majority of this House determines that they would like to spend that money, fine. This is an informational process; and if in the end, after a 20-minute debate, 10 minutes on each side, regarding this new private sector mandate or this new tax increase, this House determines that it is in the interest of the country to move forward with the legislation, we would simply vote by a majority vote, as we did with regard to minimum wage last year, to move forward with the legislation.

So I do not understand quite what the big concern is about this language. I think it is logical, given our budget rules that we have to live under; and I would support the language and oppose the Moakley amendment.

Mr. MOAKLEY. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. Mr. Chairman, actually, I think the gentleman from Ohio is disturbed with the budget act. I think we should amend the budget act. But do not try to straighten out the budget act with this amendment.

Mr. PORTMAN. Mr. Chairman, is the gentleman from Massachusetts offering an amendment to change the budget rules? Because I do not think it would be germane here. We have to live under these rules. They are the rules that we have.

Mr. DREIER. Mr. Chairman, I ask unanimous consent that the gentleman from Ohio (Mr. PORTMAN) be given an additional 2 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. PORTMAN. Mr. Chairman, I yield to the gentleman from Virginia.

Mr. MORAN of Virginia. I thank my friend, the gentleman from Ohio (Mr. PORTMAN).

□ 1645

Mr. MORAN of Virginia. Mr. Chairman, I thank both gentlemen. An additional point needs to be made, that while the administration opposes this bill in general, their principle objection seems to be to this particular provision.

Those who want the overall bill to pass, I think it makes enactment problematic when this particular provision is included. So I think that needs to be seriously considered within the context of whether we should pass this particular amendment.

Mr. WAXMAN. Mr. Chairman, would the gentleman yield?

Mr. PORTMAN. I am happy to yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I was trying to understand the point that you were making. You said that the budget rules require that there be a tax increase in order for there to be a tax decrease.

The budget rules also require that there be some kind of spending if there were going to be an increase in the amount for entitlements like Social Security or Medicare.

So what I do not understand is why, when we put a tax burden on a small business in order to raise money, that is not considered unfunded mandate in order to get some attention here in the House if the money taken from that small business is used to give, maybe, a big business a tax break, but it is considered unfunded mandate if you ask that businessman to pay more taxes and we use it to help Social Security or Medicare.

I do not understand why that distinction should hold. If it is a burden on a

business, then we ought to stop and take a look at it. Which is the purpose of the underlying bill?

Mr. PORTMAN. Mr. Chairman, reclaiming my time, I think what the gentleman is saying, in essence, is that there is discrimination in this legislation against new spending. I guess I would answer him by saying, getting back to this philosophical question, you are probably right. We have a $5.5 trillion debt in this country. I think the problem that we are trying to address here is not on the tax side in terms of tax increases. It is more in terms of spending being out of control and a need to begin it get some control over the mandates on the private sector. That is the bias here.

As I said earlier, there is a philosophical difference here.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. PORTMAN) has expired.

(By unanimous consent, Mr. PORTMAN was allowed to proceed for 1 additional minute.)

Mr. PORTMAN. Mr. Chairman, I would also say that if you look at the budget rules when we are talking about taxes, this is just a carve-out for taxes, it just has to do with situations where you have a net decrease in taxes in a tax package. Right now, we are living under rules that I think, despite what the gentleman from Massachusetts (Mr. MOAKLEY) may believe about those rules, we are going to continue to have to live under, which say that every time you want to give tax relief, you have to mandate. It seems to me, again, it would be absurd, then, to require those mandates to be subject to this if we are requiring ourselves to mandate.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield to me?

Mr. PORTMAN. I will be happy to yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I understand the distinction the gentleman is making, but if we imposed a tax on tobacco and wanted to use that money to help pay for Medicare, we would not have the opportunity to have a focus on that new tax increase.

If we had that tax on tobacco and wanted to give a tax break to growers of corn, then we would say, whoa, wait a minute, we are going to take a special look at that tax on tobacco. That just, to me, does not make a lot of sense.

Mr. PORTMAN. Mr. Chairman, I think it is the converse of what the gentleman just explained.

Mr. OBERSTAR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Moakley amendment, and I do so out of very grave concern for the effects of the underlying legislation on the Aviation Trust Fund.

The Moakley amendment would ensure that revenues raised from aviation users will continue to be dedicated to the purposes for which the Aviation Trust Fund was established, for investment in air traffic control, air traffic safety, air traffic security, equipment, and in airport capital needs. Revenues raised from aviation users under the concept of the Aviation Trust Fund are deposited in that trust fund. It is to be used solely for improvements in our air traffic control system and for operation and maintenance of the system.

Air traffic controllers, air traffic safety equipment, radars, terminal Doppler weather radar equipment that we need in our en route centers for control of aircraft at high altitudes, these are very costly systems. They need to be updated and maintained, and the upgrade needs to be planned out years in advance. That is why we have this concept of a trust fund with a dedicated revenue stream to these critical investments. We have tried to strengthen the Aviation Trust Fund in recent years.

There was a vote not too long ago in which we failed by only five votes of taking that trust fund entirely off the budget. Current legislation to take the trust fund off budget has 243 cosponsors; to make it more difficult, not less, to divert resources from protecting aviation safety for the American public. That is a bipartisan commitment.

The underlying bill, H.R. 3534, would undermine that commitment. Taxes raised on the concept of this bill from the aviation industry could more easily be spent on tax cuts for upper income Americans of the top 1 percent or 2 percent of millionaires in this country than they could be spent on aviation investments.

The underlying bill would mean that, if Congress moved to raise aviation excise taxes to improve our air traffic control system, for the modernization of the aircraft control system, for aviation security as we are now in the process of doing, a point of order could lie automatically against such legislation. That would be outrageous.

If we do not change this underlying bill, if it should become law, and I am confident the President will veto it, we will have moved backward, not forward, in our efforts to modernize the air traffic control system. We have made a 30-year almost commitment to improving aviation safety, security, expanding capacity to the Nation's airports through the Aviation Trust Fund. It is astonishing to me to see legislation come up here that makes it more difficult.

The Moakley amendment would stop that rollback, allow us to continue our efforts and modernize the air traffic control system, improve aviation safety. I urge its adoption.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I do not have any further time.

Mr. DREIER. I ask unanimous consent, Mr. Chairman, that the gentleman be given 2 additional minutes.

Mr. OBERSTAR. No, I do not seek additional time. The gentleman has had sufficient time to discuss the amendment.

Mr. DREIER. I wanted to clarify.

The SPEAKER pro tempore. The time is controlled by the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, I yield back the balance of my time.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this is a most curious exercise. We have a bill on the floor which says that any time we pass a law, we have to have a special vote in this House as to whether we are going to consider it if it is going to impose any unfunded mandates on any citizen.

That means if we are going to tighten the law with regard to protecting people under the Food and Drug Act from unsafe food, drugs, cosmetics, or if we are going to deal with the problems of Superfund or brownfields, or if we are going to deal with the problems of water pollution, because it is going to cost money, we are going to have to have a special vote before we can consider those questions.

It means any time that we do something that the people want that is going to protect their health, safety, or welfare, or any time we are going to do anything that is going to make life better for the people of this country, we are going to stop and have to have a special vote. Somebody over here, I think, assumes that this is going to be very helpful to them politically.

Then along comes this curious amendment which says if you are going to do that, you do not have to have the vote if you have a tax cut in the bill. That is very strange. It does not say the tax cut has to go to the people. We are going to pay the cost. All it says is you are going to have a tax cut of approximately the same amount. Hardly good sense. It sort of smells of blackmail or something of that kind.

But the hard fact of the matter is, it is not going to do anything that is going to be of any particular merit. It is just going to have another vote.

The practical result of this legislation is that, where something is necessary to be done, we will probably have the extra vote. The process will be delayed. We will have a point of order, and we will have a huge wrangle about it, but nobody is going to be better by the result of this.

The tax cut, which supposedly, if it is going to occur, can go to anybody. You give it to all the millionaires and say, millionaires, you do not have to pay any tax; and that way, we will have benefited the economy to offset a change in the food and drug laws to protect people from unsafe food, drugs, and cosmetics.

The gentleman from Massachusetts is smart enough to have recognized this and to have offered an amendment which would address this. I hope that the House is wise enough to accept the amendment offered by the gentleman from Massachusetts. It will benefit the legislation somewhat. The legislation will have less of a curiosity to it. It might even look a little better. But it is not going to benefit the operation of the House particularly, even as amended.

The practical result of the amendment is going to be simply to eliminate a little bit of the obfuscation and, quite honestly, the stupidity of the bill as amended. The practical result of all this is going to be, however, that we are still going to have a bad bill.

I know the House is probably going to vote for this because my Republican colleagues are going to go home and make speeches about it and tell everybody what a great job they did in amending the rules of the House by statute. That is a curious process, too, and I am sure they can explain that to their constituents, but I cannot.

I do not think that their constituents, if they really will reflect on this, are going to come to the conclusion that this kind of convoluted relationship of a tax cut to the public interest is something which, in fact, is going to benefit either the country or the procedures of the House of Representatives.

My counsel to the House, I know it is not going to be listened to on the Republican side of the aisle because they do not seem to listen to common sense on many days, but it is to simply observe that the amendment should be adopted, the bill should be rejected, and we should go about legislating in the fashion that hundreds of years of legislators have found serves the public interest without any nonsensical proposals of this type.

Mr. GILLMOR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from California (Mr. DREIER).

Mr. DREIER. Mr. Chairman, I thank my friend for yielding to me. I appreciate his courtesy, Mr. Chairman, and I rise simply to respond to the statements that were made by the distinguished ranking member of the Committee on Transportation and Infrastructure, and I am very, very sad that he would not yield to me for a clarification.

The statement that he made in the well was a very eloquent argument against the underlying unfunded mandates bill. He does not want us to in any way be able to zero in and target those mandates which are imposed by Washington, D.C. onto the private sector, small businessmen and women of our economy.

He tried to say that he simply was supporting the Moakley amendment in opposition to the amendment that I had offered in the Committee on Rules. But he went much, much further than that.

There are no tax increases in the ISTEA legislation that has moved forward. It seems to me that we should recognize that what the gentleman was trying to do was simply trying to oppose the entire language. What the gentleman argued would not in any way be addressed if we simply passed the Moakley amendment and then went ahead and passed the legislation.

Mr. Chairman, I thank my friend, the gentleman from Ohio, for yielding so I can clarify that.

Ms. LEE. Mr. Chairman, I rise to speak in strong support of the Moakley amendment to H.R. 3534. This amendment is essential in that it corrects several major defects that are now embedded in H.R. 3534. As a new Member to this House, I am acutely aware, as I know my colleagues are, of the ramifications of the actions that we take in this body. I have many problems with the main bill, H.R. 3534 and will vote against it. But the last minute provisions that were inserted by Mr. DREIER set up parliamentary procedure which favors tax cuts over using revenues for their intended purpose, like excise taxes, or for investing in national priorities.

The new language looks at the way revenues from a program are used, before applying the point of order. Revenues that are used for a tax cut are exempted from the point of order. This exempts a whole class of legislation from the need to raise the private sector mandate point of order. For instance: a bill which increases revenues, like the gas tax, and requires that the money be used to repair bridges or our infrastructure, would be subject to a point of order. But if this same tax is used to reduce taxes to a billionaire to avoid a tax obligation, a point of order would not apply, there would be no floor discussion allowed for this class of loophole.

I know that many of my constituents, our hard-pressed middle-class working people, know that the actual value of their wages have declined, during the same time that more billionaires and CEO's with unbelievably large salaries, have been created. These constituents would be very angry to learn, find it hard to believe that we would support a bill that does not allow discussion when tax breaks to the wealthy are given but forces a discussion if the tax obligation provides for improving the public good.

Further, my constituents would find it alarming that a point of order does not apply, in other words, no debate would be allowed, if a tax hike is used to give a tax break to someone, and the net effect is zero income.

My constituents would be enraged with another aspect of the Dreier amendment to H.R. 3534 that would not allow discussion if increased tax revenues from trust funds, like the Superfund revenues, are used on programs for the national welfare, but if increased tax revenues are used to create more loopholes which provide escape from taxes for a privileged few, no point of order applies.

My small business constituents would really feel attacked by another aspect of the Dreier amendment which would not allow debate on mandates which give a tax break to someone else but increases his, a small businessman's, costs.

The American people learned many lessons in the last few years. One of the lessons is that although we are upset by having to pay taxes, that taxes are essential in a complex, fast-paced country like ours. We value our leadership in the world; to maintain that leadership we must have a national Government that functions. We need to know that basic needs are taken care of, like our airports, our environment, our infrastructure. Many of these programs are paid for by special taxes with protected revenues, our trust accounts like Superfund, like airport taxes, like black lung. These trust funds would be severely effected by H.R. 3534 without the Moakley amendment. One of our abiding principles is that we must have representation with taxation. We must allow the same points of order to be raised when we give a tax break to the rich as when we promote a program for the rest of us. I urge my colleagues to vote for the Moakley amendment.

The CHAIRMAN pro tempore (Mr. SHIMKUS). The question is on the amendment offered by the gentleman from Massachusetts (Mr. MOAKLEY).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. MOAKLEY. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 426, further proceedings on the amendment offered by the gentleman from Massachusetts (Mr. MOAKLEY) will be postponed.

AMENDMENT OFFERED BY MR. WAXMAN

Mr. WAXMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WAXMAN:

Page 6, line 5, after "exceeded" insert "or that would remove, prevent the imposition of, prohibit the use of appropriated funds to implement, or make less stringent any such mandate established to protect human health, safety, or the environment".

Page 6, after line 5, insert the following new paragraph and renumber the succeeding paragraphs accordingly:

(4) MODIFICATION OR REMOVAL OF CERTAIN MANDATES.—(A) Section 424(b)(1) of such Act is amended by inserting "or if the Director finds the bill or joint resolution removes, prevents the imposition of, prohibits the use of appropriated funds to implement, or makes less stringent any Federal private sector mandate established to protect human health, safety, or the environment" after "such fiscal year" and by inserting "or identify any provision which removes, prevents the imposition of, prohibits the use of appropriated funds to implement, or makes less stringent any Federal private sector mandate established to protect human health, safety, or the environment" after "the estimate".

Page 6, lines 14, 16, 18, and 20, after "intergovernmental" insert "mandate" and after the closing quotation marks insert "and by inserting 'mandate or removing, preventing the imposition of, prohibiting the use of appropriated funds to implement, or making less stringent any such mandate established

to protect human health, safety, or the environment' ".

Page 6, line 18, strike "and".

Page 6, line 20, strike the period and insert"and".

Page 6, after line 20, insert the following:

(v) by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting "and" and by adding the following new clause after clause (iv):

(v) any provision in a bill or resolution, amendment, conference report, or amendments in disagreement referred to in clause (i), (ii), (iii), or (iv) that prohibits the use of appropriated funds to implement any Federal private sector mandate established to protect human health, safety, or the environment.".

Page 7, line 12, strike "one point" and insert "two points" and on line 14, insert after "(a)(2)" the following: "with only one point of order permitted for provisions which impose new Federal private sector mandates and only one point of order permitted for provisions which remove, prevent imposition of, prohibit the use of appropriated funds to implement, or make less stringent Federal private sector mandates.".

Mr. WAXMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Chairman, this amendment we call the "Defense of the Environment Amendment." It is based on the bill H.R. 1404, which is supported by every major environmental group and the AFL/CIO. It has been cosponsored by nearly 100 members.

Proponents of the underlying bill, H.R. 3534, have claimed that sometimes Congress does not sufficiently deliberate before enacting legislation. They say that sometimes an issue is so important that we need an extra procedural step. This procedural step or "point of order" allows any Member who identifies one of these important issues to immediately stop action here on the floor of the House of Representatives and call for a brief debate and then a vote.

The amendment I am offering is about an issue that I think deserves special procedural attention every bit as much as those singled out in this legislation and in previous legislation that we have adopted. Two years ago, we adopted this kind of procedure when it came to imposing an unfunded mandate on State, local, and tribal governments.

□ 1700

The bill before us would expand the application of these procedural protections to requirements on the private sector.

The "Defense of the Environment Amendment" would build on this legislation to offer special protection to issues of great importance to the American people, requirements established to protect public health, safety and the environment.

This amendment would help guard against Congress repealing current environmental and public health protections without adequate consideration. Over the years, we have seen that when Congress legislates in a deliberate, collegial, bipartisan fashion, we are able to enact public health and environmental laws that work well and are supported by environmental groups and by the business community.

However, sometimes the democratic, small "d," democratic process is obstructed and anti-environmental riders are attached to Appropriations bills or other "must-pass" pieces of legislation. Often this happens with absolutely no debate or consideration by the Committee of jurisdiction. These anti-environmental riders, some of which have become law, have increased clear-cut logging in our National Forests, crippled protection of endangered species, stalled the Superfund program, backslid on energy efficiency standards and blocked the regulation of radioactive contaminants in drinking water.

Those are some of the examples of riders that passed. Now let me give you some examples of riders that were attached to legislation that were later taken out. They were not made into law, but, nevertheless, we did not get a special opportunity to deliberate clearly and understand that we were going to reduce protection of the environment.

We have had riders that would have opened up the Arctic National Wildlife Refuge to oil drilling, without a chance for a separate vote. We have had a rider that prohibited the regulation of arsenic in drinking water without a separate vote. We have had riders that halted implementation of the Clean Air Act's operating permit program without a separate vote and terminated the environmental enforcement attorneys at the Department of Justice, with no special focus on this issue. We have had riders that exempted oil refineries and cement kilns from air toxic standards and exempted specific polluters from environmental laws, such as a rider that would have exempted an industrial facility in Kalamazoo, Michigan, from Federal water pollution control requirements, again without a separate opportunity to examine that issue.

What I am offering by way of an amendment to this bill is a procedure that is designed to shine light on these stealth attacks on our environmental laws. This amendment would not prohibit Congress from repealing or amending any environmental law, but would simply allow a debate and a vote before Congress acts. That is what the underlying bill does for new mandates on private enterprise, just as previous legislation called for this special sunshine for provisions that would mandate additional requirements on State, local, and tribal governments.

The CHAIRMAN pro tempore (Mr. SHIMKUS). The time of the gentleman from California (Mr. WAXMAN) has expired.

(By unanimous consent, Mr. WAXMAN was allowed to proceed for 30 additional seconds.)

Mr. WAXMAN. Mr. Chairman, the environment is just as important to the American people as unfunded mandates. The environment is just as important for special procedural attention as new requirements that raise taxes or otherwise place mandates on the private sector. Let us pass this amendment and ensure Congress thinks before repealing critical public health and environmental protections.

Mr. Chairman, I ask for an affirmative vote for this amendment.

Mr. DREIER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, let me begin by saying that like my friend, the gentleman from California (Mr. WAXMAN), I share representation of the Los Angeles area with him and I am very sensitive and concerned about environmental quality, both in California and throughout this country and throughout the world, and I will say that I would do nothing whatsoever that would in any way jeopardize or endanger environmental quality in this country.

All we are saying with the underlying language here is we would look at the perspective imposition of mandates on the private sector, and we will have a 20-minute debate and we will be able to look specifically at that mandate, and we will be able to then proceed with an up or down vote here.

I think it needs to be very clear, as the gentleman from Ohio (Mr. PORTMAN), the gentleman from Texas (Mr. STENHOLM), the gentleman from California (Mr. CONDIT) and I pointed out in a "Dear Colleague" the other day, that this underlying bill itself will not end private sector mandates, just as the Unfunded Mandates Reform Act which we passed has not ended public sector mandates.

It will, however, force the Congress to consider the effects of mandates on consumers, workers and small businesses, including any disparate impact on particular regions of the country or industries, and to work with the private sector to establish our public policies in the most efficient and cost effective manner. That is what the whole goal of this bill is designed to address.

This bill cannot be used to block a vote on environmental health and safety mandates. A point of order is subject, as I said, to the 20 minutes of debate, after which the Members must vote on whether to proceed with consideration of the legislation.

This mechanism was crafted to ensure that the House would have additional information and debate time on certain Federal mandates, but that legislation containing such mandates

could continue to be considered by the House, if a majority so desires.

This is clearly, Mr. Chairman, about having accurate information. There are some horror stories that have been brought to our attention here. In 1993, the Department of Transportation considered promulgating hazardous material regulations for the shipping of butter and salad oil. The plan would have required 24 hours of hazardous material classroom and field training for workers who responded to butter or salad oil spill emergencies. In November of 1995, Congress approved legislation requiring Federal agencies charged with the regulation of oil to treat animal fats and vegetable oils differently from toxic chemicals. Under the Waxman amendment, that legislation would have been subject to a point of order, which seems to me to be very preposterous.

Mr. Chairman, while the Clean Water Act requires a waste treatment facility to submit a simple form stating that a fence restricts access by the public, the Resource Conservation and Recovery Act requires an additional 25 pages detailing the fence design, the location of the posts and gates, a cross-section of the wire mesh and other minor technical matters. One facility had to submit a six-foot stack of supporting documents with its permit application. Under the amendment we are considering right now by the gentleman from California (Mr. WAXMAN), legislation to streamline this paperwork process and save hundreds of trees would be subject to a point of order.

So all we are saying, Mr. Chairman, is we want the House to deliberate, but we do not want to move ahead with this sort of tactic which, I think, would jeopardize the goal of the underlying legislation.

Mr. PALLONE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise today in strong support of the Waxman amendment and in strong opposition to the underlying bill.

The Republican majority has become quite adept over the last few years in carrying out their anti-environmental agenda by tacking riders on to appropriation measures and other unrelated bills. This stealth approach allows them to claim a clean environmental record without necessarily cleaning up the environment. In fact, in many instances, they are doing quite the opposite.

Just a couple of weeks ago, for example, the emergency supplemental appropriations bill was brought to the floor with at least three anti-environmental riders relating to paving our parks and allowing big oil companies to rob American taxpayers for the use of public lands for private financial gain.

The Waxman amendment would establish a point of order and allow for the opportunity for debate and a vote on provisions like these that would weaken current environmental law. In this way, we would be able to put an end to the stealth attack on the environment and instead debate these issues out in the open, as all business should be conducted in this House.

Unfortunately, however, even if the Waxman amendment passes, this is still an incredibly bad bill, and I would still urge my colleagues to vote against the bill. The bill is, again, just another attempt to block the open consideration of vital environmental worker safety and human health legislation.

An incredible concept, this bill establishes a new point of order against legislation based on the cost to the private sector. What this means is the cost of any legislation to private companies would be universally considered by Congress as more important than any benefits of that legislation to human health, worker safety or the environment.

For example, and I use the Clean Water Act because the gentleman from California used it, if we were to try to bring the Clean Water Act to the floor under the new rules established by this bill, it would be subject to a point of order. In order to avoid having to be recorded as voting against a good environmental bill like the Clean Water Act, under this bill Members could simply vote not to consider the Clean Water Act at all; or, even worse, in order to have the Clean Water Act considered, the American taxpayer would have to foot the bill for cleaning up our Nation's waters and not the polluters.

But it gets even crazier, and this goes back to the Moakley amendment. This bill makes it so revenues raised for a certain purpose cannot be used for that purpose unless there are equivalent tax cuts included in the bill, regardless of where those tax cuts are taken. That means, for example, that if a bill includes a tax on chemical and petroleum products, I will use the example of the Superfund tax, and the revenue created is to be used for cleaning up toxic waste sites, that bill would be subject to a point of order. However, if the same bill included an equivalent tax break for the wealthy, there would be no point of order. In my opinion, this makes no sense. It is obviously weighed heavily procedurally against any environmental initiatives.

For these reasons, I urge my colleagues to vote for the Waxman amendment. Even if the Waxman amendment passes, I still urge my colleagues to vote against the bill. It is bad, extremely unwarranted, and it would drastically change the way we do business in the House of Representatives.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. PALLONE. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, the gentleman obviously is against the bill. If someone supports this bill, because they think it makes sense to have a point of order and a focus and a debate and then a vote before we put a mandate on a private business, I think, for the same arguments, it is important to have a point of order, an opportunity for a debate and a vote when it comes to an environmental issue, especially if we are going to have something snuck into a bill that would remove some environmental protection.

So on the same logic for those who support the bill, for education, for an opportunity to have some sunshine about what we are to do and clear deliberation before we do it, I think we ought to have this amendment. It is consistent with the bill.

Whether one is against the bill, but also for those for the bill, I think this amendment goes well with this legislation.

Mr. GOSS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in very strong support of H.R. 3435, but equally strong support against the amendment of the distinguished gentleman from California (Mr. WAXMAN), which I think will seriously gut this particular piece of legislation.

Mr. Chairman, I used to be an independent businessman and I used to be a former local official with the local government, and I can tell you unfunded Federal mandates are real, they do have an impact, and generally they harm the folks back home.

I think that everybody understands these mandates are sort of a hidden tax. They fall on business, they fall on consumers, and I think we need an effective deterrent. In the 104th Congress we started this process, and we dealt with the public sector. After a lot of refinement, thanks to the gentleman from Ohio (Mr. PORTMAN) and the gentleman from California (Mr. CONDIT) and some others, we have got a much improved bill now for the private sector which will do the same thing.

I think that H.R. 3435 in its present form supplies more information to Members on the impact of what these mandates are all about without enabling those intent on dilatory mischief. I think that is where we are right now, frankly. Essentially it would permit the House to have a separate debate and vote on whether or not it wants to impose a private sector mandate greater than $100 million. That is reasonable, I think it is appropriate, it is good government, and I cannot see the problem.

Now, I have heard many environmental groups are opposed to this bill and support the Waxman amendment. I am an environmentalist. I have served on very distinguished environmental groups and boards, the National Audubon Society at the national level, and I have done local things and State things. I have my fingerprints all over

environmental legislation, in Florida and elsewhere. I am certainly not going to sell out on the environment.

But I think it is pretty clear that what we have got here is somehow we are trying to bring the environment into this, that it is going to be a casualty because we are going to deal with unfunded mandates in the private sector. By some great, long stretch, we are no longer going to be able to have environmental legislation, because, somehow or other, we are going to weaken benefits to health, safety or environmental standards.

I think H.R. 3435 establishes a mechanism for Members to receive objective cost information that CBO can provide, and then have a debate and a vote on that particular issue. That is what we tried to do in this.

As I say, it has been much crafted, and I think they have it right. I know they have a lot of good folks over at CBO that could do a lot of things, they are very talented, but I do not think they have anything in terms of structure or expertise to begin to quantify the nature of "benefits."

□ 1715

Balancing the merits of potential mandates with the overall benefits to Americans is important if we know what the benefits are. I think we have set up the normal debate process to do that in this particular legislation. I frankly think that transparency is great. We are going to let the sun shine in. We should welcome it.

I do not think the Waxman amendment, no matter how well intended, is really about protecting the environment. I think it tends more to be an obstruction and probably more in the line of going back to some other legislation we have seen which has been litmus test type legislation, which simply says one cannot do anything with private property rights because somehow or other it therefore makes all other environmental legislation unenforceable, too expensive, too extreme or something along those lines.

My line on the environment is this: This is a country that is going to take care of the environment, but this is also a country that is going to protect private property rights. It says so in the Constitution of the United States of America, which is where I am standing right now.

I do not believe either the private property people or the environmental people are ever going to win the whole battle. It is going to take working cooperation between the two. I think the working cooperation of the gentleman from California (Mr. CONDIT) and the gentleman from Ohio (Mr. PORTMAN) has shown that the environmental interests in this bill have been properly balanced. I am convinced, having sat on the Committee on Rules, that we got it right. I do not think the environment comes out second best anywhere along the line.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. GOSS. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I think the gentleman misunderstands the amendment. The underlying bill requires that we give a focus of attention before we go to mandate something on business, and that makes sense in and of itself, but we are saying before we do something like have an amendment that opens up the Arctic National Wildlife Refuge or halts the limitation of a Clean Air Act provision, that we also have a chance to look at that and vote on it separately.

Otherwise what I fear is that anti-environmental provisions will be wrapped up in a bill and we will not be able to have a chance to look at it and consider it and then vote on it. Just as I think a lot of people will worry that an unfunded requirement on business would be wrapped up in a bill.

The CHAIRMAN pro tempore (Mr. GILLMOR). The time of the gentleman from Florida (Mr. GOSS) has expired.

(By unanimous consent, Mr. GOSS was allowed to proceed for 1 additional minute.)

Mr. GOSS. Mr. Chairman, I understand what the distinguished gentleman is saying. I understand, and I do not want to get into opening up this whole debate because we could go on endlessly doing that and we only have a minute. The point I would simply make is that the gentleman is trying to shift the burden with his amendment.

I do not think the burden should be shifted. I think we have it right to say that the unfunded mandate should be recognized for what it is and dealt with for what it is in fair debate. The gentleman wishes, by his amendment, to shift the burden to prove the other part of that. I think the reason we are putting the legislation out is to get the burden the way we want it.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. GOSS. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, the point that I am making is that just as it is important to have a focus on an unfunded mandate and a chance for the House to consider it, it is just as important to have the focus on the environmental issue and give the House a chance to debate and vote on it separately. I want the two to be treated equally, and I do not think that they are at odds with each other.

Mr. GOSS. Mr. Chairman, reclaiming my time, I believe that the formula that the gentleman from Ohio (Mr. PORTMAN) and the gentleman from California (Mr. CONDIT) have come up with in fact does that. It just proves it shifts the burden in the debate, that is all.

Ms. FURSE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there are tremendous parts in H.R. 3534. I think we do need to look at all the information when we make decisions. But the only problem is that we have seen some really terrible examples where something came through on a rider. I want to speak about these riders.

Mr. Chairman, we had a terrible rider that went through on our forests, and we were told all sorts of things, but it was just stuck on a bill, 1030 one night. Here it came, nobody debated it, nobody had had a hearing on it, and some of us fought it, and we lost. And that rider has cost my district, it has cost the Northwest. It has cut trees on steep slopes, and from that cutting, again, nobody discussed it, nobody had a hearing on it, from that cutting we have had flooding, we have had deaths as a result of that clear-cutting on areas that were unstable.

So I want to talk a little bit about why it is important that we talk about the environment and we understand that it is great to get the costs from the CBO, it is great to know what the mandate will cost us. But I think what we do not get if we do not have full debate is we do not hear what the benefits will be from an environmental law. So I want to talk about the benefits.

Mr. Chairman, on the Columbia River we have lost hundreds and thousands of salmon, and it is going to cost us a lot of money, a lot of money to bring those salmon back. But what is the benefit if we spend that money? What is the benefit of the Federal laws that are going to require us to bring those salmon back? Well, let me tell my colleagues some of the benefits.

One of the benefits is that economists now predict that if we brought the runs back to the Columbia River, we could create 40,000 family wage jobs, 40,000 family wage jobs. Let us be able to discuss that. Let us not just say it is going to cost X millions of dollars to do something; let us say what is it going to do for that environment in that economy, to bring back certain jobs that the environmental laws are going to allow us to do.

So I think again the gentleman from California (Mr. WAXMAN) is right, that what we want to do is have full debate; we want to make sure that the cost and the benefits are reviewed.

We have heard that there is no way we can quantify benefits. I disagree with that. We know, we know that the Pacific Northwest has lost $13 billion because we have lost salmon. Finally we have some Federal laws that are going to make us rebuild those runs, and those fishing families in my district who have lost their boats, lost their homes, lost their livelihood, for a moment we are going to have a little look at the benefit, the benefit to our economy.

So I am going to support the Waxman amendment because it makes sense. Let us not in this body, the people's House, let us not pass laws in the dead of night, let us not do these quick fixes that really do not fix anything.

A recent poll in the Pacific Northwest has shown that the number one issue, not the number one environmental issue, the number one issue for the people of the Northwest is the environment and protection of the environment. So by golly, I say that my constituents deserve the right to hear that other side.

Mr. Chairman, I want to end by saying let us support the rider offered by the gentleman from California (Mr. WAXMAN). Let us not pass H.R. 3435 until we have some cost-benefit analysis.

Mr. PORTMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me just make a couple of points. First of all, this well-intended effort by the gentleman from California (Mr. WAXMAN) I think just does not work in the context of this legislation. I think it has very serious problems. CBO cannot do the analysis. The gentleman is in the Chamber, and I hope he will listen to some of my concerns and perhaps answer some of them.

Not only does it substantially increase CBO's workload, and we have talked to CBO about this, and also degrade its ability to do its core function, which its core function is budget analysis and mandate analysis. That is what they do. That is what the Congressional Budget Office is all about. But also, CBO just cannot add anything new to this debate. They cannot do the benefit analysis that the gentlewoman just talked about prior to my taking the mike. They analyze cost information. They do not do noneconomic benefit analysis.

If the goal here is to prevent efforts to weaken or remove mandates, then Members should simply vote against such proposals on the floor. I can recall very well those riders coming up and a lot of debate right here in the well of the House on that, and that is fine. The purpose of the point of order in the underlying legislation is to give Members the opportunity to consider private sector mandates, hidden mandates in the legislation, and to get information on those mandates from the experts at CBO that can objectively provide that information. This is an objective informational requirement. And these are mandates and information that we do not otherwise systematically consider.

That is the way this legislation has been drafted. If the gentleman from California (Mr. WAXMAN) and others would like to add some rider legislation, maybe they can spend the next year as we spent the last year, putting something together that makes sense on riders, but it does not fit with this legislation. It creates another point of order that I think is so vaguely defined that it could be used to hold practically any bill up. I have a lot of questions with it.

Let me just ask a few right now. The Waxman amendment, as drafted, has a lot of flaws that do not work with the underlying bill and it has some very serious implications that just have not been thought through. Who determines whether the mandate is weakened or not? Let me just go through these questions, if I might. Is that driven by reduction in direct or indirect costs to the private sector?

What if the private sector becomes more efficient in implementing mandates, which happens all the time. Look at all the environmental legislation that was talked about here earlier today. The private sector is learning to meet the same goals with fewer resources. With less of a burden on the private sector, is that a reduction in the mandate? The way I read the legislation, it would be, because it is a reduction in cost.

Does that trigger this legislation, even though the goals are still being met? Is there any credit given when the net costs are less because the private sector is being more efficient? Is that requirement lessened? I just think these questions have not been thought out.

The threshold. There is no threshold in this legislation. How much costs have to be reduced for this to apply? As I read the legislation, if the costs are reduced by $1, if it is $1 less, then that is somehow a reduction in the mandate and there is no threshold. As we know, in the underlying legislation we purposely worked through this. We have a $100 million threshold before the information requirement even applies on the private sector mandates.

I guess the bottom line is, this is a well-intended effort by the gentleman from California (Mr. WAXMAN) I am sure, and I know he is well-intended on the environment, but if there is any lesson we can draw from the Unfunded Mandate Relief Act of 1995, it is that we need to define the terms very carefully. The Parliamentarian's Office, the Congressional Budget Office will tell us that.

The reason it has worked over the last 3 years is we took our time, we defined the terms. I think in the estimation even of those who voted against the legislation, some of whom are here today, it has worked very well. Why? Because at the committee level, the committees have dealt with the mandates to try to lesson the mandates and come up with the most cost-effective way to meet the same targets. That is what is likely to happen on this legislation.

If we go ahead with the Waxman amendment, it is my concern, very, very strong concern, that we are going to essentially have an unworkable piece of legislation that will not work in the way that the Unfunded Mandate Relief Act of 1995 works and the way that this bill is intended after a year's worth of drafting.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. Mr. Chairman, I would be happy to yield to both of my colleagues from California. I will first yield to the gentleman from California (Mr. WAXMAN), who is standing.

Mr. WAXMAN. Mr. Chairman, I just wanted to point out to the gentleman that we removed the requirement that the gentleman has in his underlying bill to have the Congressional Budget Office analyze the costs.

All that the CBO would do would be to identify the provision, and in identifying that provision, it allows a Member to make the point of order for consideration. We do not block any actions, we only ask that they give consideration to that issue. There is no cost that CBO would have to incur in analyzing this provision.

Mr. PORTMAN. Mr. Chairman, reclaiming my time, I find that hard to believe. I do not know how the Congressional Budget Office is going to determine, in these complicated situations, whether in fact there has been a reduction in the requirement. I talked earlier about the lack of a threshold, for instance.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. PORTMAN) has expired.

(By unanimous consent, Mr. PORTMAN was allowed to proceed for 2 additional minutes.)

Mr. PORTMAN. Mr. Chairman, I ask for additional time simply to yield to my colleague from California (Mr. CONDIT).

Mr. CONDIT. Mr. Chairman, I rise today to oppose the Waxman amendment, but not the intent of my colleague and my friend.

The purpose of this bill is to provide an informed debate and to oversee often what are hidden costs to a new regulation. Should the same consideration be given to the impact on health, safety of workers and our environment? Absolutely. We ought to have all the facts before us before we make a decision as it relates to those issues.

But this amendment, frankly, goes a little bit too far in that I do not think that it is perfected and well thought out. The gentleman from Ohio (Mr. PORTMAN) mentioned that it does not have a threshold. That means that we could make any minor change and we could have a point of order. In the unfunded mandate part of this on the business or the private sector, we would at least have a $100 million threshold. It has to be some kind of significant action before one can make a point of order.

□ 1730

Under the amendment offered by the gentleman from California (Mr. WAXMAN), it could be anything, anything that they determine to have any kind of negative impact, they could have a debate and call for a point of order. I think that is unnecessary. I think that delays the process.

In addition to that, we were very careful. There was some consideration given whether or not you could have a point of order on every section of a bill, how many times you could do the point of order. It was the decision of the Committee on Rules, and I think a good one, that we do it one time, each bill. We did not want to be dilatory. We did not want to delay the process. This would create another point of order. I think that is unnecessary.

I think we ought to work on the suggestion of the gentleman from California (Mr. WAXMAN). I absolutely think we ought to take those things into consideration, but this is not the bill to do it on. This has not been thought out well enough for us to amend this bill, to change this bill and make it head in a little different direction. This is about information, and I would encourage my colleagues on this side of the aisle to vote against the Waxman amendment.

Ms. SLAUGHTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Waxman amendment, and I want to agree with my colleague, the gentleman from California (Mr. CONDIT), and I am pleased that he understands the wisdom of what the gentleman from California (Mr. WAXMAN) wants to do.

I think my colleague, the gentlewoman from Oregon (Ms. FURSE), made a wonderful point that I hope was not lost, that all mandates or anything else, any laws, are not just reckoned in costs in dollars. She pointed out loss of life and loss of things that are irreplaceable, priceless.

I think the gentleman from California (Mr. WAXMAN) is doing a good thing here, because he wants to protect the public health and the environment. I do not support the types of order that the underlying bill creates.

I understand what they are for. They are designed to sensitize Members to the effects of the proposed legislation, but I believe most of us in the House already understand the implications, and this type of emphasis is largely unneeded. In my district, my constituents keep me well-informed about how proposed private sector mandates will affect their business.

However, if we are going to expand this type of point of order, we should tag for Members bills that have the effect of reducing the protection of public health and the environment. The sick, the disabled, the young cannot be expected to monitor the legislation in the same fashion as large corporations. If public health protections for them are to be weakened, we ought to be sure that all the Members who vote for that weakening have that fact brought to their attention.

Similarly, our Nation's air, water, soil, forest, wilderness and wildlife cannot speak for themselves. Again, every Member should know when casting his or her own vote that environmental protections will be lessened.

Unhappily, over the last 3 years many bills would have been subject to that point of order. For example, in the last Congress I fought a bill that would have frozen new regulations that were designed to protect the public from bacteria-contaminated meat and poultry, from Cryptosporidium in drinking water, and from lead in imported foods. These issues are becoming more and more important to the American public.

Perhaps a specific point of order would have helped convince the majority in Congress that their votes against my amendment and for that bill put the health and lives of thousands of Americans at risk.

The current majority has led a relentless assault on the environment since taking over the Congress. Without regard to the impact on citizens and the environment, the full House of Representatives has approved measures designed to relax and to roll back existing environmental regulations and to halt Federal agency rulemaking designed to protect our national heritage.

The House went so far as to pass legislation to stop the listing of endangered species and passed a bill to weaken dramatically the Clean Water Act. Measures to allow clearcutting in our Federal forest lands led to a massacre of healthy trees with a so-called salvage rider, and the Congress continues to consider legislation to have taxpayers reimburse polluters for cleaning up the toxic waste sites and to cut the funding for Federal land acquisition.

The threat to our landmark environmental laws has been real. Perhaps this health, safety, and environmental point of order would have caused Members to take a second look at the bills that weakened these important provisions.

Mr. Chairman, if we are going to continue on this route of bringing special attention to the effect of certain kinds of bills, I believe that the degradation of public health, safety and environmental protections deserves this special attention, too. I urge my colleagues to support the Waxman amendment.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by our colleague, the gentleman from California (Mr. WAXMAN). I rise in strong support of the Waxman amendment. I think it is an important amendment, and I think it is consistent with the underlying debate that requires the Congress of the United States to pay particular attention to the cost of unfunded mandates and the cost of our actions around here. I think it is just as important and every bit as important that we do the same thing with respect to the environment.

The problem is that, time and again in this Congress, we have seen matters of the environment come before this Congress with little or no debate, and in some instances with no underlying hearings, to be thrust upon the House of Representatives, very often from the Senate, from time to time in the appropriations bills as matters of riders that deal with the fundamental and basic underlying environmental laws of this country, the Clean Water Act, the Clean Air Act, the questions of Superfund or brownfields cleanup, forest safeguards, the Forest Practices Act, the mining laws of this country, and multi-million dollar subsidy issues.

Time and again, these matters have been brought to this floor with no provisions in the rules for debate. Very often now, we find that they are hidden away in the report language, so we cannot even get at them on the floor of the House of Representatives. We cannot get a vote on these matters. We very often are limited in our time to discuss them. Yet, they have huge impacts on the environment of this country. That is why we need the Waxman amendment, so we will have an opportunity to discuss these in the daylight.

There is a reason why these changes in environmental law are not brought before the Congress in a freestanding bill that is brought out here under a rule so it can be debated and voted up-or-down. It is because the legislation cannot support that, or the majority party does not want to be identified in that action. But if you can tuck them away in a larger bill, if you can put them into a must-pass appropriations bill, if you can get them into a bill at the end of the session, fine, they are willing to do it, with total disregard for the impact to the environment and notice to our colleagues here in the House of Representatives.

That is why the Waxman legislation is so terribly important. This is not a contest between unfunded mandates and the environment. In many instances, these two situations rise separate of one another. But this is about whether or not, as we do the people's business here, we will have the opportunity to raise these issues and to have a free and fair and open debate.

In the history of this Congress over the last several years, that simply has not been the case. That is why we have to ask for this. Our colleague, the gentlewoman (Ms. FURSE) raised the issue

of the forest rider, a forest rider that went through this House with little or no debate, only to do a great deal of devastation.

We have seen on now three different occasions where similar riders have been approached, to be put on legislation coming before the House of Representatives. Our constituents are now spending billions of dollars a year to go back and to correct some of these incredible environmental insults that have taken place with respect to water quality, with respect to the cleanliness of water, with respect to the Forest Practices Act and to the Endangered Species Act.

In the committee on which I serve, the Committee on Resources, time and again we see legislation coming from that committee that wants to legislatively state that this piece of legislation or this action to be taken by the Federal Government, by a private party or somebody else is, in fact, sufficient under the Endangered Species Act, it is sufficient under the National Environmental Protection Act. They want to do that by fiat, with no debate, no discussion, just declare the action sufficient.

Historically, when we have done that, we have had to go back and spend millions of dollars to make up for the mistakes.

Now we see legislation on our committee where they want to seek waivers of the Clean Water Act, wholesale waivers of the Clean Water Act, and then they will be brought out here in suspension, they will be brought out with little or no debate. The Waxman amendment is an opportunity to give the environment the kind of priority that the American people attach to this subject.

As we know, in poll after poll after poll the overwhelming majority of Americans consider themselves environmentalists. They consider the environment very important. If we even ask them the question of comparing and contrasting it to the health of the economy, they want the environment taken care of. That is what the American people want. That is what most Members of this House say they want, but that is not what happens in the House of Representatives. That is what brings about the necessity of the Waxman amendment.

Mr. Chairman, I would hope my colleagues would support this amendment as part of the underlying legislation.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Waxman amendment.

Mr. Chairman, this is an important amendment, and certainly defense of the environment is something we all should be hailing. This Mandates Act of 1998 is a simple bill that extends to the private sector an information process currently employed to assist in understanding the impact of national policy upon State and local government that already is in law.

Currently, when Congress is considering a legislative provision that imposes unfunded mandates on State and local governments, we are required to subject that proposal to extensive study and open debate. This measure, H.R. 3534, extends the requirement to unfunded mandates imposed on the private sector.

For the record, Mr. Chairman, I note that this is opposed by some potent groups such as the AFL–CIO and a slew of environmental organizations. A concern clearly persists about whether advocates are interested in the information for good-faith analysis, or whether this is a clever means to tie the legislative process into knots and make it more difficult for Congress or for this legislative body to act.

This measure, however, is not flawed beyond repair. Our colleague, the gentleman from California (Mr. WAXMAN), who has impressive environmental credentials, is offering an important amendment. His defense of the environment amendment would extend the requirements of study and open debate to proposals in Congress that affect the environment.

While the amendment of the gentleman from California (Mr. WAXMAN) would only affect environmental proposals directly related to the work of the private sector, it would unquestionably benefit our constituents, our communities, and our children.

The fact of the matter is that Congress too often has a problem with special interests successfully attaching anti-environmental riders to appropriations bills and unrelated measures that must pass. This circumvents the deliberation and debate that is needed to understand the ramifications.

The fact is that deliberate consideration of policy has been homogenized these past years, to the point where we have budget, tax, authorization, appropriation, all in one measure, with no chance to debate, to discuss, no hearings, no public participation or understanding. It is a bad process, and it translates into bad policy.

Just the most recent emergency spending measure signed by the President includes provisions which would allow the construction of a six-lane highway through the congressionally designated Petroglyphs National Monument. There are other provisions that allow oil companies who have and will drill on public lands to avoid fair compensation to the American taxpayer.

In the past, our riders have been used to irresponsibly expand the anti-environmental salvage logging program that some of my colleagues spoke of, stall efforts to clean up toxic waste, and block regulation of radioactive contaminants in drinking water, and even derail studies that provide the information to craft environmental policy.

It is apparent, Mr. Chairman, why the advocates want to duck debating and voting upon these provisions. The reason is, they lose. They could not prevail on the merits. But that is just one of the kickers of working in a congressional circumstance, where the anti-environmental minority of the majority is able to forcefeed bad policy, special interest provisions, into must-pass legislation.

That is why the Waxman amendment would help check this. It would not place any burdens on business. It would not even prevent us from repealing environmental laws if that is the judgement of the majority. It just requires that we debate and vote on significant legislative provisions that are going to affect our environment.

Make no mistake about it, Mr. Chairman. Voting against this Waxman amendment sends our constituents around the Nation a very important message. It speaks louder than all the rhetoric. That message will be that the regular democratic process does not matter when Members of the House are making decisions that could affect our environment; if Members vote no, that they would not want to be held accountable for these riders but choose to remain handicapped by burying the controversy in the excuse that they had no choice.

Today we have a choice to empower ourselves. Let us stop the assault on the environment, let us stop the assault on the legislative process, let us stop making excuses, and support the Waxman amendment to H.R. 3534. It is good for democracy, the environment, and our stewardship, and the legacy we leave to future generations.

□ 1745

Mr. CONDIT. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I want to just bring up a point, I spoke a minute ago and I wanted to talk a little bit about the intent of this bill. The intent of this bill is to provide information to the Members about the cost of an unfunded mandate on the private sector.

Since I have been here, maybe it was different when some of the other Members, they have been here, maybe they found it a little bit different. But I have found that when someone introduces a piece of legislation and it goes through the process, that they are introducing that legislation and it is passed out of committee and gets to this floor because somebody thinks it has a benefit to this country. We clearly debate the benefit. I mean, the benefit is espoused by the author of the bill. If it gets out of committee, it is espoused by the committee members,

the chairman of the committee, everyone clearly understands that there is a so-called benefit.

Some Members may disagree and say, well, it really does not do that, but there is a debate. We do spend a lot of time talking about the benefit.

What we do not talk about and what we do not focus on is the hidden cost and who is going to pay that cost. And what the unfunded mandate bill does is focus on that. It requires this body to spend a little bit of time to take a look at what the cost is, who is going to pay the cost. It is sort of a cost-benefit analysis, and I think everything that we do should have a cost-benefit analysis to it. But that is what this bill does. It provides position. It focuses on that hidden cost that we do not talk about too much because we do not want the people to know that we are putting a mandate on that ultimately is going to cost them some money, cost a business some money. And we know who they are going to pass it on to, to the consumer and the taxpayer.

That is what this is about today. Do not let anyone else move us in a different direction. If we want to talk about the environmental and work programs and all of that, that is fine. We ought to do that. But we ought to do that in a thoughtful way and a comprehensive way, like we have done the unfunded mandates bill. We ought to go through the process.

Mr. Chairman, I yield to the gentleman from Ohio (Mr. PORTMAN), cosponsor of this bill.

Mr. PORTMAN. Mr. Chairman, I think the gentleman just made a great point, which is the underlying intent of this legislation in sunshine. It is trying to get at these private sector unfunded mandates. It is not about the merits or demerits of any new environmental legislation, any new civil rights legislation. It is about having information on something that is now a hidden tax on the American people, something we ought to know about.

As I said earlier, the gentleman from California (Mr. CONDIT) and I worked for a year on this, working with CBO, working with the Parliamentarian's office, working folks that actually have to make this place work day to day, as we did with the Unfunded Mandates Relief Act 3 years ago that dealt with State and local government mandates.

We have come up with what we think is a balanced approach that actually works because CBO can do this. They can assess the cost. What they cannot do and, again, to reiterate what my colleague from California just said, what they cannot do is they cannot assess the benefits. The Waxman legislation is well-intended. Again, he may want to spend some time putting together something more thoughtful that deals with riders, but this is not the right place or time for this legislation. It will not work. This amendment will not work in the context of the bill that the gentleman from California (Mr. CONDIT) just explained.

I just feel very strongly that it is time for us to be more accountable around here. It is time for us to have good government. It is time for us to know what we are doing. It is time for us to legislate with good information.

That is all this says. Just as in the case of the Unfunded Mandate Relief Act of 3 years ago, we will still continue to mandate when it is the will of this Congress and in the public interest to do so, but we will do so with information we do not have now. So I want to commend my colleague from California (Mr. CONDIT) for working on this legislation so hard over the last year. He is the lead sponsor of this legislation. I urge my colleagues to defeat the Waxman amendment and to move on to final passage.

The CHAIRMAN pro tempore (Mr. GILLMOR). The question is on the amendment offered by the gentleman from California (Mr. WAXMAN).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. WAXMAN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 426, further proceedings on the amendment offered by the gentleman from California (Mr. WAXMAN) will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. TRAFICANT:

Page 8, after line 11, add the following new subsection:

(d) ANNUAL CBO REPORTS.—Within 90 calendar days after the end of each fiscal year, the Director of the Congressional Budget Office shall transmit a report to each House of Congress of the economic impact of the amendments made by this Act to the Congressional Budget Act of 1974 on employment and businesses in the United States.

Mr. TRAFICANT. Mr. Chairman, there has been a lot of debate on each side of this issue. A lot of it makes sense. A lot of it is analytical on what may be, what might be, what could have, what should have.

My amendment is just a straightforward little piece of legislation that says, if this becomes law, what we are debating today, that we do not guess what the impact will be, that there shall be a report to the Congress explaining in detail what the impact of this legislation is on our business, industry and jobs. It is straightforward. It is not real fancy. But after it is over and we begin to compile all of the data subsequent to this legislation, we will have someone to report to us and give us the impact as it truly affects and if in fact at that point whether the Congress should either fine tune it, scrap it or enhance it. Very simple and straight forward, I would hope that the committee would accept it.

Mr. GOSS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would be very happy to advise the distinguished gentleman from Ohio, whose championship of workers rights is well known, that I see no reason not to accept this amendment. I think it causes no problem. I would not oppose it.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio (Mr. TRAFICANT).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BOEHLERT

Mr. BOEHLERT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BOEHLERT:

Page 5, line 21, strike "amendment".

Page 6, strike lines 15 and 16 and in lines 17 and 19 redesignated clauses (iii) and (iv) as (ii) and (iii) respectively.

Mr. BOEHLERT. Mr. Chairman, the purpose of this amendment is very simple. I want to preserve the ability of the House to have open debate.

H.R. 3534 is advertised as an effort to ensure that the House has adequate debate on important issues. But its actual effect in some cases would be just the opposite. This bill would ensure that no amendment that any segment of industry opposed could ever be debated for more than 20 minutes. That is right. No amendment that any segment of industry opposed could ever be debated for more than 20 minutes. There would never be such a thing as an open rule again.

Why do I say that? It is not just hyperbole. Under this bill, any Member could raise a point of order against any amendment because he or she believed that it would cost industry more than $100 million. No proof is necessary. It could just be a gut reaction. Simply raising the point of order would stop all debate and put the question before the House.

A point of order could also be raised if the Congressional Budget Office had not completed a mandate analysis of the amendment. Even though CBO virtually never does such an analysis, there simply is no time for this to happen.

But the sponsors of the bill will say that their free-ranging industry-based point of order creates no problem because the House can overrule it. But let us take a very real and typical example.

Three years ago during the Clean Water Act debate in 1995, the gentleman from New Jersey (Mr. SAXTON) and I offered a substitute. That substitute engendered a lengthy debate, it went over to the second day, that changed some views about the bill and

aired many concerns, even though the substitute eventually lost. I might point out that when we went into this, the initial check said we did not have 100 votes. We ended up with 185 votes. If the debate went longer, we might have prevailed.

Guess what would have happened under H.R. 3534? We would have had exactly 10 minutes to put forth our views on such a complicated, far ranging, important issue.

What is the excuse that is given for limiting debate so sharply? Why do we want to stifle discussion in a society that prides itself on a marketplace of ideas and in a body that the Constitution designed for maximum airing of issues? The reason is that some segments of industry do not win every single legislative battle. Guess what? No one does.

The sponsors say their concern is that industry's viewpoint is not heard. But does anyone actually believe that industry lacks political clout on Capitol Hill? Just take a look at H.R. 3534. We were interested in finding a compromise on this bill, and we worked very hard to effect a compromise. But some industry groups objected to compromise so the negotiations ended. So industry was able to block a compromise on a bill that is premised on the idea that industry has no clout on Capitol Hill. That is a rather telling irony.

With my amendment, the bill will still give industry additional tools to fight private mandates, tools that other interest groups lack. They will still have new points of order available against bills, conference reports, motions and resolutions. All my amendment does is remove the provision of the bill that creates a brand new point of order against amendments. As I have said, that provision of the bill will effectively shut down all debate.

I am not arguing that Congress never imposes mandates that are a bad idea. We do it on occasion and we should not do it. I am not arguing that industry is always wrong and that their adversaries are always right. Industry is oftentimes right and their adversaries are oftentimes wrong.

Indeed, I am a sponsor of a Superfund reform bill that business groups large and small have embraced and the environmental groups have questioned. But I do not believe that we should restructure the rules of the House so that one side has the upper hand in every single debate.

The CHAIRMAN pro tempore. The time of the gentleman from New York (Mr. BOEHLERT) has expired.

(By unanimous consent, Mr. BOEHLERT was allowed to proceed for 1 additional minute.)

Mr. BOEHLERT. Mr. Chairman, let me make two final points. First, private sector mandates are different from intergovernmental mandates in many ways but in one in particular. States and localities do not have the clout on Capitol Hill that industry does. States and localities needed new tools to get their views across. That is hardly the case with industry.

Finally, this is not just an environmental matter. Yes, the new rules set up under H.R. 3534 would have made it tougher to pass a Clean Air Act and the Clean Water Act and other landmark bills, but as the gentleman from Iowa (Mr. GANSKE) pointed out last week during debate on H.R. 3534, we will also make it hard to pass a bill to help HMO patients and to control big tobacco. Remember, the points of order in this bill are available if even just a single industry has a complaint with a bill or amendment.

I urge support for my amendment. It is reasonable. It is the middle ground. It will give industry additional clout on Capitol Hill without shutting down the amendment process. If you believe in open debate, vote for my amendment.

Mr. DAVIS of Virginia. Mr. Chairman, I move to strike the last word. I would like to ask my colleague from New York, if this amendment were to pass, would the bill be acceptable to the gentleman?

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. DAVIS of Virginia. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, no, as a matter of fact, I have some complaints with the bill.

Mr. DAVIS of Virginia. So this would not make the bill acceptable to the gentleman?

Mr. BOEHLERT. It would not. It would improve the bill, but it would not make it acceptable in its present form.

Mr. DAVIS of Virginia. Mr. Chairman, I think the gentleman has some merit with this, although the experience on this legislation with unfunded mandates, as it pertains to State and local government, has not raised the specter of problems that the gentleman from New York suggests in his comments here where we have had the opportunities, through amendment, to raise these objections.

I think over a total of five times this was raised in the last Congress, and it has not been dilatory, has not deprived this body of the opportunity to debate fully the merits and allow the House to debate the particular mandate on the merits.

The theory of this bill, the actual practice we have seen in the unfunded mandates bill that has worked well, is to give committees an incentive to do their work up front before bills ever reach the floor. By making points of order not apply to amendments sends the message that it is all well and good to do the work on the floor and not in the committee. That is a concern.

I think the gentleman does raise some interesting points that have intrigued me, that, should we accept this amendment, that in point of fact in a number of instances we might be able to have a more full and straightforward debate on the amendment.

The question is, if this is a gutting amendment, which is what I am afraid the gentleman is indicating to me, I would be prone to be against it.

Mr. BOEHLERT. Mr. Chairman, if the gentleman will continue to yield, it is not a gutting amendment. I would classify it as a perfecting amendment because I really think that we should have full and open debate on some sensitive issues here on the floor of the House. We should not limit debate to 10 minutes simply because one Member might have a gut feeling. Sometimes gut feelings are correct. I agree with that.

□ 1800

Mr. DAVIS of Virginia. But the burden would be on the Member who raises the objection to show the $100 million threshold as being met. They would have to come armed with those costs and do their homework ahead of time.

This could not be raised in a willy-nilly fashion without the appropriate substantive work showing that this would have a $100 million cost impact on American businesses.

Mr. BOEHLERT. We would not have scoring of amendments. That is the problem. We would not have the time to do that. When we have extended debate on a very controversial item, sometimes during the debate, in the course of that debate proponents or opponents bring out something that prompts an individual to draft an amendment that might be an amendment to improve a bill.

But the fact of the matter is, if someone has the gut feeling, as I pointed out, and not facts but just a gut feeling that it might, might, have the imposition of a new mandate on business, they could just raise a point of order. We would debate it for 10 minutes and 10 minutes only and that would be the end of it, and then the House would vote up and down based on very limited debate.

Mr. DAVIS of Virginia. I share the gentleman's concern. That has not been our experience, of course, with the unfunded mandates bill as it applies to State and local government.

Mr. BOEHLERT. But it is a different set of issues.

Mr. DAVIS of Virginia. It is very much the same set of issues, but it does not mean that it could not happen and this body would be deprived of that. And so, for that reason, at this point I am trying to draw the gentleman out a little bit further in terms of his other concerns with this bill that could be perfected in a way that he could address this and support the legislation.

Mr. BOEHLERT. Well, I think we should have more balance in this whole approach to things. I think if we have mandates on the one side, we should have mandates on the other, if we run that risk.

Mr. DAVIS of Virginia. Well, let me just reply to that. We can do that, but CBO cannot really address anything but the fiscal costs. The benefits are really not within their purview. It is not within their expertise. This has not been something we have traditionally assigned them to do.

That is what makes the gentleman from California's amendment more difficult to put in this body, although I think that the goal of it is one which I can sympathize with.

Mr. BOEHLERT. I thank the gentleman for his comments and appreciate them.

Mr. DAVIS of Virginia. In conclusion, Mr. Chairman, let me say this amendment is a little contrary to the underlying purpose of this legislation.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. DAVIS of Virginia. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I appreciate the gentleman raising the questions, and I would ask the author of the amendment, again, what he would do in a situation where we had a manager's amendment on the floor, where we had a substitute amendment?

This is a loophole big enough to drive a very large semi trailer through, because we could essentially put all the mandates in the manager's amendment or the substitute amendment and it would have gotten around the informational requirements in the legislation.

I wonder if the gentleman has thought through that scenario or that possibility and what his response would be.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. DAVIS of Virginia. I yield to the gentleman from New York.

Mr. BOEHLERT. Indeed, I have. I have spent a lot of time anticipating that.

Mr. PORTMAN. If the gentleman from Virginia will continue to yield, I know the gentleman is very engaged in this legislation and spent a lot of time on it, and I would like to hear what he thinks.

Mr. BOEHLERT. One of the things I have done, in terms of talking about tractor trailers, I have offered an amendment to another bill that would limit the size of tractor-trailers on our Nation's highways for safety.

Mr. PORTMAN. That is along the lines we tried to do earlier in changing the subject, but keeping on the subject of mandates, seriously, I wonder if the gentleman has a response to that concern.

Mr. CONDIT. I move to strike the requisite number of words.

Mr. PORTMAN. Mr. Chairman, will the gentleman yield?

Mr. CONDIT. I yield to the gentleman from Ohio.

Mr. PORTMAN. Mr. Chairman, I thank my colleague and the lead sponsor of the legislation, the gentleman from California (Mr. CONDIT) for yielding.

I would like to give the gentleman from New York (Mr. BOEHLERT) the opportunity to discuss the possibility that if we were not to permit the informational requirement to apply to any amendments, would we not, in effect, circumvent the intent of the legislation by having an amendment which is in essence the legislation, such as a manager's amendment, which sometimes we do consider on the floor, or a substitute amendment for the legislation, and if he had any ideas as to how perhaps his amendment could be altered to take into account that possibility.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. CONDIT. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, to respond to the gentleman from Ohio, the manager's amendment would be okay, because that comes from outside the committee. But I am talking about in the Committee of the Whole, when we offer amendments, I think we should have the opportunity when amendments are offered to have a full and open airing, pros and cons. That helps me in making up my mind as we are dealing with some of these very important topics.

But I think the gentleman will concede that one Member, based upon a gut reaction or an instinct, and often gut reactions and instincts are correct but often they are not, could raise a point of order against the amendment, and then the Chair would automatically have to limit debate to 10 minutes and there would be a vote. And I would be called upon, as would the gentleman would be called upon and our colleagues would be called upon to make a decision on a very important amendment with very limited input, and I do not want that. I want to expand the knowledge that we have as a base to make decisions.

Mr. PORTMAN. Again, Mr. Chairman, if the gentleman will continue to yield, I understand what the gentleman is trying to get at, and certainly agree that that is a concern.

I would also remind the gentleman that the gentleman from Virginia (Mr. DAVIS) has already mentioned that our experience in the Unfunded Mandate Relief Act of 1995, which has been in place for almost 3 years, is in fact what happens is at the committee level we come up with better legislation. And that indeed when we talk about the mandate, and this is public sector mandates, albeit it is 10 minutes on each side, the debate tends to be about whether to move forward with the legislation because of the benefits. In other words, we do not just focus on the cost.

So I would say it has not been a problem in our experience with the Unfunded Mandates Relief Act that passed 3 years ago that dealt with the public sector. With the private sector, there may be the possibility for some additional concerns.

I also would remind the gentleman that with regard to private sector mandates, two things are different. One is that the threshold is raised to $100 million from $50 million, so it will apply to fewer mandates. Second is that one must consolidate the point of order.

In other words, we cannot have a point of order on every private mandate that is in a piece of legislation or, for that matter, in an amendment. Instead, we have to consolidate all of those various point of order mandates into one point of order and then have the debate. That is to avoid the dilatory tactics that some were concerned about with regard to this legislation.

So it is a little different from that, in a sense provides even more safeguards, but if the gentleman would be willing to talk about the possibility of taking out of consideration these broad-based amendments that would, in effect, be the legislation, maybe there is a way we can resolve this.

Mr. BOEHLERT. Mr. Chairman, I would be glad to accept a perfecting amendment dealing with a manager's amendment so that the gentleman's concern would be addressed.

Mr. PORTMAN. Mr. Chairman, I would like to yield back to my colleague from California, who is again the lead sponsor of this legislation, to get his thoughts.

Mr. CONDIT. Mr. Chairman, reclaiming my time, I agree with the gentleman from Ohio. I do have a problem with the manager's amendment. If we come in with a very broad amendment, we could undercut the very intention of the unfunded mandate legislation in that if it did not qualify for a point of order, it could put all kinds of mandates and costs on. And that would become a little unworkable, I think.

If we could perfect this so that we were talking about other amendments, I certainly would be open.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. CONDIT. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, the gentleman is referring to other than the manager's amendment?

Mr. CONDIT. Other than the manager's amendment.

Mr. BOEHLERT. If the gentleman will continue to yield, if he wants to work that language out right now, I would be glad to accept that.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

I appreciate and say to my friend, the gentleman from New York, that I rise in opposition to his amendment although I can see where he would like to go with this amendment. And I would think that we could work something out if we had time to work something out.

But I have to say that the gentleman's amendment guts this bill. It completely guts the intent of this bill. The whole intent is to provide some process by which we can bring to the light of day a visible opportunity to discuss the fact that what we do in this Chamber has a direct impact on the private sector of this country. That is what this is about.

If we have a situation here where the gentleman's amendment became part of the bill, then there is no use of having debate, because we could play all kinds of shenanigans with a bill to try to put the House in the position of not implementing the intent of this bill, because all we have to do is pull the substantive stuff out of a bill, offer it as a committee substitute or as a manager's amendment, and we negate the whole reason for the bill.

So I just hope that we can work with the gentleman. I think there is a way that we can work this out. I understand and sympathize with the gentleman from New York that he does not want to stifle debate. Nor do I. But I would say to the gentleman from New York that we could probably fashion an amendment that looks at, say, for instance, amendments that are not printed in the RECORD or amendments that are just brought to the floor ad hominem. But to exclude all amendments from a bill slows down and violates the spirit of debate.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, as I have said, we have agreed, we have agreed based upon the colloquy I had with the gentleman from Ohio, to include the manager's amendment in the exemption.

Mr. DELAY. Reclaiming my time, I understand, and appreciate the gentleman trying to work with us. I appreciate that offer. But there is also committee substitutes, where a committee would bring to the floor and the opportunity for a committee.

I see the chairman of the Committee on Rules is coming to the floor. He understands what this does to the Committee on Rules and the ability to manage debate on a bill on the floor. The gentleman's amendment not only creates huge loopholes in this bill, we might as well not even have the bill. But if we could narrow it down to a specific type of amendment, then maybe we could work with the gentleman and even accept his amendment.

Mr. BOEHLERT. If my colleague will continue to yield, I would like to point out this is not, as it has been characterized, a gutting amendment. What we are trying to do is ensure that an amendment proposed on the floor has a full and open airing so that our colleagues will have the benefit of the thinking of the proponent and the opponents of the amendment. The bill's resolutions, as provided for in the base bill, would still be subject to a point of order.

The fact of the matter is, characterizing something as a gutting amendment does not, in fact, mean it is a gutting amendment. That is not my intent, to gut the bill. My intent is to improve the bill.

Mr. DELAY. Mr. Chairman, I appreciate the gentleman's support for the bill, but the way we read it, and certainly the way the Committee on Rules reads it and the Committee on Rules staff reads it, is that the gentleman's amendment is so broad and includes so much that it, in effect, does kill the entire intent of the bill and the whole reason for the bill.

So unless we can work something out, I would urge our Members to vote against the gentleman's amendment.

Mr. SOLOMON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the sponsor of this amendment happens to be a very good friend of mine. His district borders mine. But I just have to severely admonish him for bringing this kind of amendment to the floor.

The gentleman represents a district just like mine. I have more small businesses in my district up and down the Hudson Valley and the Catskill Mountains, the Adirondack Mountains, probably than any of my colleagues. But all of my colleagues have literally thousands of small businesses. If my colleagues have been a town mayor, as I have, or a town supervisor or a county legislator or even a State legislator, they know what Federal mandates do to small businesses.

First of all, if we do it to the public sector, to the towns and the villages and the cities and the counties, we raise property taxes. We have got people living on fixed incomes that cannot afford to pay the taxes today on their property. We fixed that several years ago, because we said if we were going to levy a Federal mandate on local governments that forces up real estate taxes, then we would have to come on this floor and we would have a separate vote, just so that the American people can see what we are doing and, more than that, Members themselves can see what they are doing. Because if we have not served in local government or county government, sometimes we may not know what that is. So now that is taken care of.

Now let us take a look at the small businesses. I will never forget when I was a small businessman just starting out, and I had a wife and five children, and we could hardly make it as it was because my wife and I chose to have her stay home with those children all the time they were growing up, and it was rough. And every time I turned around it seemed like we had either the State government or the Federal Government coming in with some kind of a mandate that took money out of my business which we did not even have, and we had to give it to the government to pay for those Federal mandates. Well, if we had had this kind of a rule on the floor back 30 years ago, I probably would have been a lot more successful than I am.

And all we are saying today is that in the private sector, if we want to vote to levy a mandate on the private sector, on private businesses, then we ought to have a separate debate on it on the floor here, just sort of like we are doing right now. Now, what is wrong with that? What is wrong with it is nothing.

My good friend comes in here and, unlike the public sector, now he wants to do something to the small businessman.

□ 1815

He wants to say that if anybody brings an amendment on this floor and offers it to a bill, that that does not count because it was not in the bill in the first place. Well, my colleagues, that is a gutting amendment.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, two things. One, I have served in local government as a former county executive, so I know whereof he speaks. Secondly, I am not suggesting that proposed mandates are good or bad. Some are good. Some are bad.

The only thing I am trying to protect is the opportunity for full and open debate on the floor of the people's House. What could be wrong with that?

Mr. SOLOMON. Mr. Chairman, reclaiming my time, because the gentleman knows that if his amendment goes through, there will never be that debate on the mandate itself. And that is where we missed the boat all these years. We need to have that 20-minute debate so it sets the parameters so we know what we are going to vote on.

Like, right now, how many Members are on this floor right now? Maybe 25, if that. Where are the other 400 Members? They have no idea what is going on here. And nine times out of ten, when we come to a bill with an unfunded mandate in it, they are not going to know what they are voting on over here.

All we are saying is, let us have a rollcall and get the Members over here, and let us point out the mandate that

is coming to them. And then all the time they are considering the merit of the bill, then they will keep in mind that there is a mandate out there. The gentleman knows that is exactly how it works.

I am Chairman of the Committee on Rules. I have been a member of that Committee for 10 years. I know the rules of this House. And I would tell the membership, on behalf of local businesses across this Nation, if they vote for the Boehlert amendment, they are voting to gut this legislation. And I would be tempted to pull the legislation and take it off the floor if that were the case.

Please come over here and vote no on the Boehlert amendment. Vote for small businesses that create 75 percent of all the new jobs in America every single year.

All the kids graduating from high school this coming month in June, all of them graduating from college, 75 percent of those jobs being offered to those kids are going to be from small businesses; and this will help to keep those small businesses profitable so they can hire them. Vote no on the Boehlert amendment, and then let us pass this measure.

The CHAIRMAN pro tempore (Mr. GILLMOR). The question is on the amendment offered by the gentleman from New York (Mr. BOEHLERT).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. BOEHLERT. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House resolution 426, further proceedings on the amendment offered by the gentleman from New York (Mr. BOEHLERT) will be postponed.

AMENDMENT OFFERED BY MR. BECERRA

Mr. BECERRA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BECERRA:

Page 6, line 5, after "exceeded" insert "or that would remove, prevent the imposition of, prohibit the use of appropriated funds to implement, or make less stringent any such mandate established to protect civil rights".

Page 6, after line 5, insert the following new paragraph and renumber the succeeding paragraphs accordingly:

(4) MODIFICATION OR REMOVAL OF CERTAIN MANDATES.—(A) Section 424(b)(1) of such Act is amended by inserting "or if the Director finds the bill or joint resolution removes, prevents the imposition of, prohibits the use of appropriated funds to implement, or makes less stringent any Federal private sector mandate established to protect civil rights" after "such fiscal year" and by inserting "or identify any provision which removes, prevents the imposition of, prohibits the use of appropriated fund to implement, or makes less stringent any Federal private sector mandate established to protect civil rights" after "the estimate".

Page 6, lines 14, 16, 18, and 20, after "intergovernmental" insert "mandated" and after the closing quotation marks insert "and by inserting mandate or removing, preventing the imposition of, prohibiting the use of appropriate funds to implement, or making less stringent any such mandate established to protect civil rights'".

Page 7, line 12, strike "one point" and insert "two points" and on line 14, insert after "(a)(2)" the following: "with only one point of order permitted for provisions which impose new Federal private sector mandates and only one point of order permitted for provisions which remove, prevent imposition of, prohibit the use of appropriated funds to implement,or make less stringent Federal private section mandates.".

Mr. BECERRA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BECERRA. Mr. Chairman, I yield myself such time as I may consume. Let me explain my amendment briefly.

We have entered into a debate through the amendment by my colleague and friend from California (Mr. WAXMAN) on the issue of what happens when a particular bill or a piece of legislation has the effect of weakening protections for the environment or public health and safety, and we had some discussion on that amendment.

If my colleagues look at the legislation that we are discussing now and we now relate that same type of debate or discussion on the issue of civil rights, what we find is that this legislation actually would permit, permit, this Congress to establish laws that will weaken our current civil rights protections that we provide to the American public.

Let me give my colleagues a quick example of what I mean.

In both fair employment and housing law, there are exemptions made for small businesses. A small business is defined as having fewer than 15 employees. If we have legislation which attempted to broaden the definition of a small business to, say, 50 employees, in other words, something more than 15 employees, what we would do is we would now be excluding from civil rights laws and protections a whole array, many, many more businesses that now have up to 50 employees. Where, right now, under current law, those businesses that have between 16 and 50 employees would have the civil rights laws in the books applied to them; with this legislation, that would no longer be the case.

I do not believe it is the intent of the authors of this legislation or of anyone in this Congress to weaken civil rights protections for the elderly, for the infirm, the disabled, for minorities that have been discriminated over the past, other people based on religion. I do not believe that is the intent of this Congress. Yet the legislation, as it is written, would allow that to happen.

Why do I say that? Well, if my colleagues recall when we had the debate on the Unfunded Mandates Reform Act, when it was passed last session, a number of us raised this concern that we would make it nearly impossible to enforce and protect civil rights laws, constitutional protections and other matters with the legislation had it been drafted back then a couple years ago.

We got included in the legislation the Unfunded Mandates Reform Act legislation that, in essence, said, we cannot apply this unfunded mandates law on bills that try to enforce constitutional rights of individuals or attempt to establish or enforce any statutory rights that prohibit discrimination. So no points of order would lie against legislation that tried to do exactly that, enforce constitutional rights or establish or enforce statutory rights that prohibit discrimination.

But we have a situation here where now we are not necessarily trying to enforce the law. In this case, if legislation comes forward which tries to diminish the impact of that law, weakening that law, as the example I gave before where we went from considering a small business to mean only 15 or fewer employees in a business to now 50 or fewer employees in a business, by weakening that law, what we have done is weakened civil rights protections.

I do not believe that that is the intent of this legislation and its sponsors. I would hope that Congress would not intend to go in that direction. And I offer this amendment to try to address that concern and hope that it can be unanimously accepted by this body.

Mr. Chairman, if I could give one last example to, hopefully, make this as clear as possible.

Right now, under the Americans With Disabilities Act, the ADA, a disabled individual who may have to use a wheelchair is entitled to be able to access a public place. And if there is a business that wants to open itself up to the public, it must also make itself available to disabled who are in wheelchairs.

Well, if we had legislation that attempted to remove the ramp-access requirements for disabled, that currently would not be protected under the Unfunded Mandates Reform Act. This legislation would now make it possible to remove those standards and weaken the laws.

So, for those reasons, I would ask Members to consider this amendment and adopt it unanimously.

Mr. PORTMAN. Mr. Chairman, I rise to reluctantly oppose the amendment. We are just looking at the language over here.

But, in essence, what this does, as I see it, is it builds on the Waxman amendment we debated previously regarding the environment and says that, with regard to any civil right or constitutionally protected right where there is a lessening of some requirement, that there be a point of order.

Again, it is not what this legislation is about. We specifically in the legislation, the underlying bill, which is the Unfunded Mandates Relief Act of 1995, exclude all civil rights, all constitutionally protected rights. And that is very clear. And I think that carve-out was appropriate, although it was debated, as some will remember, 3 years ago; and I think that is appropriate.

What this legislation would purport to do or this amendment would purport to do is to go well beyond that and say that, any time there is a determination by somebody that there has been a diminution of some kinds of rights, then there be a point of order.

Again, it may be a good idea to do if the gentleman would like to sit down and work on some legislation. It took Mr. CONDIT and I about a year to come up with this legislation on private-sector mandates. There might be some way to do it. But it does not fit into this legislation.

CBO is not able to do this. It is not their job. They do cost analysis and budget. That is who we are relying on here.

And if we learned anything in the experience of the Unfunded Mandates Relief Act over the last 3 years, and it has worked well, it is that we need to clearly define the terms. We need to have the minimum of ambiguity and the maximum of clear, concise definitions to be able to make this work right so that at the committee level we come up with better legislation that does not mandate on State and local government and now with this legislation mandate on the private sector without fully understanding the cost and coming up with the least costly way to achieve the same results.

I would just say to the gentleman it is an interesting idea. Maybe there is some legislation that could be crafted to achieve his objective. But this is not the place to do it.

Mr. CONDIT. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from California.

Mr. CONDIT. Mr. Chairman, I thank the gentleman for yielding.

I want to join with the gentleman from Ohio (Mr. PORTMAN) in opposition to this amendment. We were very sensitive to this issue. We did exempt it out of the bill. The civil rights issue was exempted out of the bill.

After our last experience about 3 years ago, we had a healthy debate about it and we tried to be conscientious about it and be sensitive. My colleague is right. It was not our intent to change the civil rights law, to do anything to weaken them; and I do not believe that is the intent of anybody in this room.

So I would oppose the amendment. Although I would tell my colleague from California, I would be delighted if he has got a proposal like the gentleman from California (Mr. WAXMAN) that we can perfect and work on. I am open to do that. But I think today to bring this up, it does not fit with what we are doing. And our efforts I think are honorable in saying that we exempt this, and our commitment to the gentleman to try to work out a solution is there.

Mr. BECERRA. Mr. Chairman, will the gentleman yield?

Mr. PORTMAN. I yield to the gentleman from California.

Mr. BECERRA. Mr. Chairman, I thank my friend, the gentleman from Ohio (Mr. PORTMAN), for yielding; and I also thank my friend from California (Mr. CONDIT) for his words.

I appreciate what the gentleman from California has just said. And I agree. I do not think it is the intent of anyone, whether it is the sponsors or anyone who would vote on this legislation, to diminish, to weaken civil rights protections.

But I think, and we can always sit down and discuss this further. I believe if we read closely what is clearly covered under the law under the Unfunded Mandates Reform Act and what the legislation we have before us do in tandem is it would permit legislation that would weaken civil rights protections.

Because the Unfunded Mandates Reform Act only spoke about laws that establish or enforce; it did not talk about laws that weaken. So laws that weaken are permitted to go through this process without coverage to the Unfunded Mandates Reform Act.

Mr. PORTMAN. Reclaiming my time for a moment, let us back up and talk about the fundamental philosophy on this legislation. This is with regards to new mandates on business. The previous legislation was new mandates on the public sector.

We chose to carve out the situation of constitutionally protected rights or civil rights. In other words, even if there is a new mandate on the public sector, it is not subject to this informational requirement if it relates to civil rights. In other words, it is a carve-out; it protects it.

The gentleman just made the assertion that somehow this legislation could affect civil rights law negatively by diminishing civil rights. It would have no impact on that. This legislation would not apply. In fact, this legislation goes out of its way to make sure that we are not going to put any barriers in place of any kinds of civil rights.

There is a legitimate debate we would have as to whether we should have excluded included all civil rights from the requirements on this bill. After all, it is just informational. But we thought civil rights is so important and it is defined as constitutionally protected rights that we did not subject it to the information requirements in this legislation.

The situation that the gentleman is describing of diminishing civil rights simply would not be affected by this legislation one way or the other.

The CHAIRMAN pro tempore. The time of the gentleman from Ohio (Mr. PORTMAN) has expired.

(By unanimous consent, Mr. PORTMAN was allowed to proceed for 1 additional minute.)

Mr. PORTMAN. Mr. Chairman, I yield to the gentleman from California (Mr. BECERRA).

□ 1830

Mr. BECERRA. Mr. Chairman, I thank the gentleman. I do not think we will need the time.

Mr. PORTMAN. Mr. Chairman, reclaiming my time, I think it is irrelevant to what we are debating today because it does not affect a diminution of civil rights one way or the other; and, specifically, civil rights were excluded from the requirement of information that is in the legislation.

Mr. BECERRA. But if we gauge in a discussion and find that the legislation does affect and the law as it exists does affect those civil rights protections, would the gentleman be willing, or I ask the two sponsors, will they be willing to then incorporate language to make sure that we do not weaken civil rights protections.

Mr. PORTMAN. The gentleman from California (Mr. CONDIT) has expressed my views on this; we are happy to sit down and have a dialogue about it.

The CHAIRMAN pro tempore (Mr. GILLMOR). The question is on the amendment offered by the gentleman from California (Mr. BECERRA).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. BECERRA. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 426, further proceedings on the amendment offered by the gentleman from California (Mr. BECERRA) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to House Resolution 426, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: The amendment, as modified, offered by the gentleman from Massachusetts (Mr. MOAKLEY); the amendment offered by the gentleman from California (Mr. WAXMAN); the amendment offered by the gentleman from New York (Mr. BOEHLERT); and the amendment offered by the gentleman from California (Mr. BECERRA).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT, AS MODIFIED, OFFERED BY MR. MOAKLEY

The CHAIRMAN pro tempore. The pending business is the demand for a

recorded vote on the amendment, as modified, offered by the gentleman from Massachusetts (Mr. MOAKLEY), on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 176, noes 233, not voting 23, as follows:

[Roll No. 156]

AYES—176

Abercrombie
Ackerman
Allen
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boucher
Boyd
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Engel
Eshoo
Etheridge
Evans
Farr
Fazio
Filner
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McDermott
McGovern
McHale
McKinney
Meehan
Meek (FL)
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sawyer
Scott
Serrano
Skelton
Slaughter
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Traficant
Velázquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOES—233

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Cook
Cooksey
Cox
Cramer
Crapo
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Fawell
Foley
Forbes
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Gekas
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Gutknecht
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Maloney (CT)
Manzullo
McCarthy (NY)
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Moran (KS)
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Salmon
Sandlin
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—23

Baesler
Bateman
Clay
Crane
Ewing
Fattah
Ganske
Gibbons
Gonzalez
Goodling
Greenwood
Harman
Inglis
Johnson (WI)
Livingston
McNulty
Meeks (NY)
Paxon
Rogan
Ryun
Schumer
Shuster
Skaggs

□ 1853

Messrs. McINTOSH, WELDON of Florida, and FORBES changed their vote from "aye" to "no."

Messrs. GORDON, SPRATT and STUPAK and Mrs. CAPPS changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. GIBBONS. Mr. Chairman, on rollcall no. 156, I was unavoidably detained. Had I been present, I would have voted "no."

PERSONAL EXPLANATION

Mr. INGLIS of South Carolina. Mr. Chairman, on rollcall no. 156, I was inadvertently detained. Had I been present, I would have voted "no."

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. GILLMOR). Pursuant to House Resolution 426, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT OFFERED BY MR. WAXMAN

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. WAXMAN) on which further proceedings were postponed, and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 190, noes 221, not voting 21, as follows:

[Roll No. 157]

AYES—190

Abercrombie
Ackerman
Allen
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Berman
Bilbray
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boswell
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (IL)
Davis (VA)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Engel
Eshoo
Etheridge
Evans
Farr
Fazio
Filner
Forbes
Ford
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gilman
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Horn
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Lazio
Leach
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McKinney
Meehan

Meek (FL)
Menendez
Millender-McDonald
Miller (CA)
Mink
Moakley
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Poshard
Price (NC)
Rahall
Ramstad
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sawyer
Saxton
Scott
Serrano
Shays
Sherman
Slaughter
Smith (NJ)
Smith, Adam
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Tauscher
Thompson
Thurman
Tierney
Torres
Towns
Velázquez
Vento
Visclosky
Walsh
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOES—221

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Berry
Bilirakis
Bishop
Bliley
Blunt
Boehner
Bonilla
Bono
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crapo
Cubin
Cunningham
Danner
Davis (FL)
Deal
DeLay
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Fawell
Foley
Fossella
Fowler
Gallegly
Gekas
Gibbons
Gillmor
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Gutknecht
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
John
Johnson, Sam
Jones
Kasich
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lucas
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Minge
Moran (KS)
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Redmond
Regula
Riggs
Riley
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Royce
Salmon
Sandlin
Sanford
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shimkus
Sisisky
Skeen
Skelton
Smith (MI)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Upton
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—21

Baesler
Bateman
Clay
Crane
Dickey
Ewing
Fattah
Ganske
Gonzalez
Goodling
Greenwood
Harman
Livingston
McNulty
Meeks (NY)
Paxon
Rogan
Ryun
Schumer
Shuster
Skaggs

□ 1902

Mr. DAVIS of Virginia, Mr. LAZIO of New York, Ms. WATERS and Mrs. ROUKEMA changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. BOEHLERT

The CHAIRMAN pro tempore (Mr. GILLMOR). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from New York (Mr. BOEHLERT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 189, noes 223, not voting 20, as follows:

[Roll No. 158]

AYES—189

Abercrombie
Ackerman
Allen
Andrews
Baldacci
Barrett (WI)
Becerra
Bentsen
Berman
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boswell
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Castle
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Ehlers
Engel
Eshoo
Etheridge
Evans
Farr
Fawell
Fazio
Filner
Forbes
Ford
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gilman
Green
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Horn
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
LaTourette
Leach
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDade
McDermott
McGovern
McHale
McKinney
Meehan
Meek (FL)
Menendez
Millender-McDonald
Miller (CA)
Mink
Moakley
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Petri
Pomeroy
Porter
Poshard
Quinn
Rahall
Ramstad
Rangel
Rivers
Rodriguez
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sawyer
Saxton
Scott
Serrano
Shays
Slaughter
Smith (NJ)
Smith, Adam
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Tauscher
Thompson
Thurman
Tierney
Torres
Towns
Upton
Velázquez
Vento
Visclosky
Walsh
Waters
Watt (NC)
Waxman
Weldon (PA)
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOES—223

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Berry
Bilbray
Bilirakis
Bishop
Bliley
Blunt
Boehner
Bonilla
Bono
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crapo
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
English
Ensign
Everett
Foley
Fossella
Fowler
Fox
Gallegly
Gekas
Gibbons
Gillmor
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Lazio
Lewis (CA)
Lewis (KY)
Linder
Lucas
Maloney (CT)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Minge
Moran (KS)
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Ortiz
Oxley
Packard
Pappas
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Pickering
Pickett
Pitts
Pombo
Portman
Price (NC)
Pryce (OH)
Radanovich
Redmond
Regula
Reyes
Riggs
Riley
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Royce
Salmon
Sandlin
Sanford
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Sherman
Shimkus
Sisisky
Skeen
Skelton
Smith (MI)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas

Thornberry
Thune
Tiahrt
Traficant
Turner
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—20

Baesler
Bateman
Clay
Crane
Ewing
Fattah
Ganske
Gonzalez
Goodling
Greenwood
Harman
Livingston
McNulty
Meeks (NY)
Paxon
Rogan
Ryun
Schumer
Shuster
Skaggs

□ 1912

Mr. DINGELL, Mr. MORAN of Virginia and Mrs. ROUKEMA changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. BECERRA

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. BECERRA) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 180, noes 231, not voting 21, as follows:

[Roll No. 159]

AYES—180

Abercrombie
Ackerman
Allen
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Berman
Bilbray
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Chenoweth
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fazio
Filner
Forbes
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gordon
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McDermott
McGovern
McHale
McKinney
Meehan
Meek (FL)
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Scott
Serrano
Shays
Sisisky
Skelton
Slaughter
Smith, Adam
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Velázquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOES—231

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Berry
Biliraki s
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Christensen
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crapo
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Fawell
Foley
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Gutknecht
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas
Manzullo
McCarthy (NY)
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Moran (KS)
Moran (VA)
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Sherman
Shimkus
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—21

Baesler
Bateman
Clay
Crane
Ewing
Fattah
Ganske
Gonzalez
Goodling
Greenwood
Harman
Livingston
McNulty
Meeks (NY)
Miller (FL)
Paxon
Rogan
Ryun
Schumer
Shuster
Skaggs

□ 1920

Mr. GORDON changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. ROGAN. Mr. Chairman, on rollcall Nos. 156, 157, 158, 159 I was unavoidably detained. Had I been present, I would have voted "no."

PERSONAL EXPLANATION

Mrs. CHENOWETH. Mr. Speaker, it was my intention to vote "no" on roll call vote No. 159, but was recorded as voting "yes."

I would like to have it reflected in the RECORD that I should have been recorded as voting "no" on this roll call vote.

Mr. GEPHARDT. Mr. Chairman, I rise in opposition to H.R. 3534.

I agree with the objective of this legislation—which is to ensure that Congress fully considers the costs of legislation to the private sector prior to voting on that legislation.

But once again, House Republican leaders have hijacked a common sense objective—and turned it into a stealth attack on our laws to protect public health and the environment.

This bill establishes a procedural obstacle—a point of order—against Congressional action on a whole host of issues critical to the American people—from future increases in the minimum wage to broader patient protections for patients in managed care plans to the Senate-passed IRS reform legislation.

And it doesn't deliver relief from all private-sector mandates. The bill's protection from mandates is in fact arbitrary and inconsistent.

For example, assume that Congress extends the Superfund tax on big companies. If the bill used these revenues to clean up toxic waste sites—the very purpose of this tax—the bill would face a point of order under H.R. 3534. But if the bill used all the revenues to provide tax breaks to wealthy special interests, there would be no point of order. In both cases a private sector mandate is imposed—but in only one case is that mandate subject to review.

Make no mistake about it. If this legislation, as the Republicans have amended it, were to become law, it would enact a procedural obstacle to programs that command bipartisan support—the highway bill, our toxic waste cleanup program, our airport and airline safety programs, and legislation to reduce underage teen smoking, to name just a few.

In short, this bill gives House Republican leaders a procedural device to kill important health and environmental proposals without directly voting against them. It's all part of the Republican Congress' stealth agenda: to look for ways to weaken our health and environmental laws without the glare of publicity.

Instead of attacking our environmental laws, we should be protecting them. And instead of sneak attacks mounted by Republican Leaders under cover of darkness, we should be debating all riders freely and openly.

That is why I have cosponsored Congressman WAXMAN's Defense of the Environment Amendment. This amendment simply requires a separate vote on all legislative riders that weaken our environmental laws. If we are going to insist upon a careful analysis of the costs of legislation to the private sector, we should do no less for the environment.

Over the past four years, the House Republican leadership has repeatedly weakened our environmental laws by attaching legislative riders—often in the dark of night and with little debate—on high-priority spending bills.

Americans want healthy forests. But Republicans have used special-interest riders to clear-cut our forests and to undermine the protection of endangered species.

Americans want our toxic waste sites cleaned up. But Republicans have used riders to stall our toxic waste cleanup program.

And Americans want to reduce oil import dependence and the risk of global climate change. But Republicans have used riders to block new energy efficiency standards.

In the recent supplemental spending bill, Republican riders gave out special subsidies for the oil and gas industry and launched additional assaults on our public lands.

The Defense of the Environment amendment will give us a better chance to reign in these extremist attacks on the environment. It deserves approval. I urge your support.

Mr. STENHOLM. Mr. Chairman, I rise in strong support of H.R. 3534, the Mandates Information Act. This bill extends to the private sector comparable procedural limitations currently placed on legislation imposing unfunded federal mandates on state or local governments.

Small businesses are the backbone of the economy in my District and, in fact, across the country. It always has been my practice to take the impact on small businesses into account when legislation is being considered, and it is for this reason that I support this bill.

The bill before us requires Congressional committees to include in their legislative reports detailed information on potential private sector mandates in excess of $100 million that would result from the legislation. H.R. 3534 also requires that the Committee reports provide information on a proposed bill's effect on consumer prices and the supply of goods and services in consumer markets, as well as on matters relating to workers.

Those of us supporting this bill dare not oversell its merits. H.R. 3534 will not end private sector mandates. What it will do is force Congress to honestly examine and make public the consequences of its actions, considering the effects of mandates on consumers, workers and small businesses. Congress would fully retain its right to pass whatever legislation it chooses. There easily could be instances in which Congress determines that the benefit of the regulation is worth its cost. This measure would simply force Congress to reveal and consider more complete information about the policies we approve.

I do want to mention one reservation I have about the bill before us. The current legislation states that points of order would not be permitted against bills that have net decreases in tax revenues over five years, even if the measure includes a tax increase. This provision assumes that the mix of tax provisions resulting in a decrease in revenues automatically will be a net positive for businesses, workers and consumers. There is absolutely no reason for such an assumption. This provision places tax cutting of any sort above all other priorities, including reducing business' regulatory burdens, maintaining a balanced budget, or a wide array of other priorities which could be expressed through certain tax cuts. While I trust the good intentions of the author of this language, I believe that those supporting this language are looking at this issue from a narrow perspective which ignores unintended consequences these supporters would not appreciate.

Reducing the burdens imposed on small business by the federal government is one of my highest priorities in Congress. I will continue to do whatever I can to encourage and promote a business climate which is conducive to maintaining and expanding small business opportunities. Enactment of this legislation will assist me and other Representatives in this effort.

Mr. HALL of Texas. Mr. Chairman, I am pleased to rise today in support of H.R. 3534, the Mandates Information Act. This bill directs Members of Congress, for the first time, to carefully consider the burden that unfunded mandates impose on the groups they intend to help—small businesses, consumers and employees.

Mr. Chairman, H.R. 3534 is very simply a common sense bipartisan effort to ensure that policy-makers focus their attention on the costs of legislation on the private sector before it is passed.

In 1995, with the passage of the Unfunded Mandates Act, Congress addressed the significant problem that federal government mandates have on the operation of state and local governments. These mandates create equally burdensome problems on those in the private sector, especially the small business owner. H.R. 3534 will remedy the problem of federal mandates on our nation's small businesses and their employees by taking the reforms of the Unfunded Mandates Act of 1995 and applying them to the private sector. It is the next logical step in an effort to ensure our government accomplishes its public policy initiatives in the most cost effective manner.

Mr. Chairman, I believe that this bill makes good sense for the federal government, for industry and for every American citizen trying to create a better way of life for themselves and their families—I urge my colleagues to support this legislation.

The CHAIRMAN. Are there other amendments to the bill?

If not, under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. RIGGS) having assumed the chair, Mr. GILLMOR, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3534) to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes, pursuant to House Resolution 426, he reported the bill, as amended, back to the House with further sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MOAKLEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 279, noes 132, not voting 21, as follows:

[Roll No. 160]

AYES—279

Aderholt	Cox	Hansen
Archer	Cramer	Hastert
Armey	Crapo	Hastings (WA)
Bachus	Cubin	Hayworth
Baker	Cunningham	Hefley
Ballenger	Danner	Herger
Barcia	Davis (FL)	Hill
Barr	Davis (VA)	Hilleary
Barrett (NE)	Deal	Hinojosa
Bartlett	DeLay	Hobson
Barton	Dickey	Hoekstra
Bass	Dooley	Holden
Bentsen	Doolittle	Hooley
Bereuter	Doyle	Horn
Berry	Dreier	Hostettler
Bilirakis	Duncan	Houghton
Bishop	Dunn	Hulshof
Bliley	Edwards	Hunter
Blunt	Ehlers	Hutchinson
Boehner	Ehrlich	Hyde
Bonilla	Emerson	Inglis
Bono	English	Istook
Boswell	Ensign	Jenkins
Boyd	Etheridge	John
Brady	Everett	Johnson (CT)
Bryant	Fawell	Johnson (WI)
Bunning	Fazio	Johnson, Sam
Burr	Foley	Jones
Burton	Ford	Kasich
Callahan	Fossella	Kelly
Calvert	Fowler	Kildee
Camp	Fox	Kim
Campbell	Franks (NJ)	Kind (WI)
Canady	Frelinghuysen	King (NY)
Cannon	Frost	Kingston
Capps	Gallegly	Kleczka
Castle	Gekas	Klug
Chabot	Gibbons	Knollenberg
Chambliss	Gillmor	Kolbe
Chenoweth	Gilman	LaFalce
Christensen	Goode	LaHood
Clayton	Goodlatte	Largent
Clement	Gordon	Latham
Coble	Goss	LaTourette
Coburn	Graham	Lazio
Collins	Granger	Leach
Combest	Green	Lewis (CA)
Condit	Gutknecht	Lewis (KY)
Cook	Hall (OH)	Linder
Cooksey	Hall (TX)	Lipinski
Costello	Hamilton	LoBiondo

Lofgren
Lucas
Luther
Maloney (CT)
Manzullo
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McHugh
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Minge
Moran (KS)
Moran (VA)
Murtha
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Ortiz
Oxley
Packard
Pappas
Parker
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Roukema
Royce
Salmon
Sánchez
Sandlin
Sanford
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Sherman
Shimkus
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Thurman
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOES—132

Abercrombie
Ackerman
Allen
Andrews
Baldacci
Barrett (WI)
Becerra
Berman
Bilbray
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Cardin
Carson
Clyburn
Conyers
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Engel
Eshoo
Evans
Farr
Filner
Forbes
Frank (MA)
Furse
Gejdenson
Gephardt
Gilchrest
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kilpatrick
Klink
Kucinich
Lampson
Lantos
Lee
Levin
Lewis (GA)
Lowey
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McDermott
McGovern
McHale
McKinney
Meehan
Meek (FL)
Menendez
Millender-McDonald
Miller (CA)
Mink
Moakley
Mollohan
Morella
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Rahall
Rangel
Ros-Lehtinen
Rothman
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Saxton
Scott
Serrano
Shays
Slaughter
Stark
Stokes
Stupak
Thompson
Tierney
Torres
Towns
Velázquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Wise
Woolsey
Wynn
Yates

NOT VOTING—21

Baesler
Bateman
Buyer
Clay
Crane
Ewing
Fattah
Ganske
Gonzalez
Goodling
Greenwood
Harman
Livingston
McInnis
McNulty
Meeks (NY)
Paxon
Ryun
Schumer
Shuster
Skaggs

□ 1940

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DREIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3534, the bill just passed.

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

There was no objection.

SENSE OF CONGRESS THAT COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT SHOULD CONFER IMMUNITY CONCERNING ILLEGAL FOREIGN FUNDRAISING ACTIVITIES

Mr. COX of California. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 440) expressing the sense of the Congress that the Committee on Government Reform and Oversight should confer immunity from prosecution for information and testimony concerning illegal foreign fundraising activities.

The Clerk read as follows:

H. RES. 440

Whereas the Committee on Government Reform and Oversight is currently investigating the unprecedented flow of illegal foreign contributions to the Clinton-Gore campaign during the 1996 Presidential campaign;

Whereas more than 90 witnesses in the investigation have either asserted the fifth amendment or fled the United States to avoid testifying, including 53 persons involved in raising money for the Democratic National Committee or the Clinton-Gore campaign;

Whereas among the 53 persons who have either asserted the fifth amendment or fled the United States to avoid testifying are former Associate Attorney General Webster Hubbell; former White House aide Mark Middleton; longtime Clinton friends John Huang, Charlie Trie, and James and Mochtar Riady; and Chinese businessman Ted Sieong and 11 members of his family;

Whereas democratic fundraiser Johnny Chung has told Department of Justice investigators that he funneled more than $100,000 in illegal campaign contributions from a Chinese military officer to Democrats during the 1996 campaign cycle, according to a New York Times report on May 15, 1998;

Whereas Chung told Federal investigators much of the $100,000 he gave to the Democratic National Committee in the 1996 campaign came from Communist China's Peoples Liberation Army through Liu Chaoying, a Chineese Lieutenant Colonel and aerospace industry executive;

Whereas Chung's account and supporting evidence, such as financial records, is the first direct evidence of Communist Chinese campaign contributions being funneled to the Democratic National Committee and Clinton-Gore '96;

Whereas subsequent to the receipt of the illegal campaign contributions from Communist Chinese officials the Clinton Administration relaxed export controls and overruled a Pentagon ban on the sale and export of sophisticated satellite technology to China;

Whereas on April 23 and May 13, 1998, the Committee on Government Reform and Oversight unsuccessfully sought to grant immunity from prosecution to 4 important witnesses, including 2 former employees of Johnny Chung who have direct knowledge concerning Communist Chinese attempts to influence United States policy and make illegal campaign contributions;

Whereas these 4 witnesses, Irene Su, Nancy Lee, Larry Wong, and Kent La, each have direct information concerning the efforts employed by Johnny Chung, Ted Sieong, and other foreigners to violate Federal campaign laws and exercise foreign influence over the 1996 elections;

Whereas the Department of Justice does not object to the Committee on Government Reform and Oversight's desire to confer immunity on Irene Wu, Nancy Lee, Larry Wong, and Kent La;

Whereas Irene Wu, Johnny Chung's office manager and primary assistant, would provide the Committee on Government Reform and Oversight firsthand information and knowledge about Chung's payments to Clinton-Gore '96 and his relationships with foreign nationals;

Whereas Nancy Lee, an engineer at Mr. Chung's company, solicited contributions from her colleagues for the benefit of Clinton-Gore '96, and those contributions serve as the foundation of criminal charges brought against Mr. Chung;

Whereas Larry Wong, a long-time friend and associate of convicted felon Gene Lum, has direct knowledge concerning Lum's method of making illegal foreign money contributions to Clinton-Gore '96;

Whereas Kent La, the United States distributor of Communist Chinese cigarettes, has direct and relevant information about illegal foreign money contributions made to the Democratic National Committee by Ted Sioeng; and

Whereas the inability of the Committee on Government Reform and Oversight to confer immunity on these 4 important witnesses serves as an impediment to the important work of the committee in determining the extent to which officials and associates of the Chinese and other foreign government sought to influence the 1996 elections and United States policy in violation of Federal campaign contribution laws and regulations: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that the Committee on Government Reform and Oversight should vote to direct the General Counsel of the House of Representatives to apply to a United States district court for an order immunizing from use in prosecutions the testimony of, and other information provided by, Irene Wu, Nancy Lee, Larry Wong, and Kent La at proceedings before or ancillary to the Committee.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. COX) and the gentleman

from California (Mr. WAXMAN) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. COX).

Mr. COX of California. Mr. Speaker, I ask unanimous consent to yield my time to the gentleman from Ohio (Mr. BOEHNER) and that he may be able to yield time as he sees fit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

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

Mr. Speaker, yesterday I introduced House Resolution 440. This resolution expresses the sense of Congress that the Committee on Government Reform and Oversight should confer immunity to four witnesses who have direct knowledge about how the Chinese government made illegal campaign contributions in an apparent attempt to influence our foreign policy. This resolution is not about titillating gossip, nor is it about partisan politics. Simply put, this resolution is about determining whether American lives have been put at risk and whether Communist-controlled companies and Chinese officials were given access to sophisticated technology that jeopardizes our national security.

To give my colleagues a sense as to why this resolution is so important, I would like to ask them to consider some disturbing revelations that have come to light about the connection between the Clinton administration and Communist China.

Last week various news sources, including the New York Times, reported that the Clinton administration's decision to approve exports of satellite technology to China in 1996 may have been connected with campaign contributions to the Democrat Party. In short, it is alleged that the Clinton administration granted waivers to two companies in 1996, Loral Space and Communications and Hughes Electronic Corporation, that allowed them to export sophisticated satellite technology to Communist China.

Loral's chairman, Bernard Schwartz, donated more than $600,000 to the Democrat Party. Last week the New York Times also reported that in March of 1996, the President overruled both the State Department and the Pentagon, which wanted to keep sharp limits on China's ability to launch American-made satellites using Chinese rockets, and turned oversight of granting such permission for these launches over to the Commerce Department, which was in favor of permitting them.

At the time the Commerce Department was headed by the late Ron Brown, who was previously chairman of the Democratic National Committee.

One of the beneficiaries of that decision, according to the Times, was China Aerospace, a military-run Chinese company that employed Liu Chaoying as an executive. The Times also reported that one-time Democratic fund-raiser Johnny Chung has told the Justice Department investigators that he funneled $100,000 in cash from Liu to the Democratic National Committee during the 1996 presidential campaign.

□ 1945

Liu is a lieutenant colonel in the Chinese army and the daughter of a top Chinese military official.

The Times' report is significant in that it represents the most solid evidence yet of a Chinese connection in the campaign finance scandal. More importantly, it opens the door to allegations that the Chinese government was able to jeopardize U.S. national security because of illegal campaign contributions.

Mr. Speaker, one might logically ask, "How does this affect America's national security?" Well, I think the answer is quite obvious. Any technology transfer that benefits China's space program also benefits China's missile program.

In fact, a little over 2 weeks ago it was reported in The Washington Times that Communist China had aimed 13 long-range strategic missiles at the United States. These missiles have a range of 8,000 miles and are capable of delivering nuclear warheads that can obliterate an entire city in a single blast.

We have also learned that China is aggressively pursuing development and modernization of their entire missile program. Not only are they improving the accuracy of their short-range missiles which threaten their neighbors, they are also developing an entirely new class of missiles capable of bringing their nuclear weapons to American families.

So, Mr. Speaker, we need to know why and if the President of the United States changed the policy in a way that gave sensitive and sophisticated missile technology to a Nation that now aims nuclear weapons at our sons and daughters. Mr. Speaker, I can only ask all of my colleagues to join with me as we try to ensure whether or not our children grow up in a safe world or in a world in the throes of another arms race, or even another Cold War.

President Clinton is expected to travel to China next month where he is also expected to announce new space technology cooperation agreements. Before he leaves, the American people must know exactly if past cooperation with China has undermined our national security.

Congress and the American people must have the answers to some very specific questions:

Why did the President overrule the State Department and turn such important decisions over to the Commerce Department?

How did this transfer of technology jeopardize our national security and American lives?

No Member of this body should rest until we know the answers to these questions. Giving immunity to these four important witnesses is a first step in opening the door to the truth in these very important matters.

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

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

Mr. Speaker, I rise in support of the Boehner resolution. I completely agree that the four witnesses should be given immunity. I believe every Democrat on the House Committee on Government Reform and Oversight also supports immunity for the witnesses.

In fact, our only reservation on the merits has been that the witnesses still have not provided proffers of their testimony, which is a standard and essential procedure in an immunity case. That is what we said when the committee first voted on immunity on April 3, it is what I said in a letter to the Speaker on May 10, and it is what we said again when the committee voted on immunity on May 13.

On May 10, I sent a letter to the Speaker, and I want to quote from that letter. I wrote to the Speaker and I said:

> I am writing in the spirit of bipartisanship to work with you to find a constructive solution to the difficult problems facing the Committee on Government Reform and Oversight. During the past several weeks, you have personally attacked me and questioned my integrity without justification. I believe, however, that the American people expect more from us than name calling and partisan battles. Instead of escalating this fight, I want to make a genuine attempt to work with you to meet these expectations.

I said to the Speaker, and I further quote,

> I am prepared to recommend to my Democratic colleagues that they support the pending immunity requests, but before I do, I believe the rules and procedures guiding the committee's campaign finance investigation must be changed so that the committee can conduct a fair and thorough investigation.

Well, 2 weeks have passed, and the Speaker still has not responded to my letter and my request that we work together. We have tried to make it as clear as possible that our problem is not with immunity, our problem is with the gentleman from Indiana (Mr. DAN BURTON) and his handling of this investigation. That is a problem the Speaker, the gentleman from Ohio (Mr. BOEHNER), and the other Members of the Republican leadership insist on ignoring.

Since we last voted in committee, new information has come to light, originally in The New York Times, about the possibility that Johnny Chung may have been a conduit for political contributions from China. The

new allegations are serious and deserve thorough congressional investigation.

Although there is no indication that the four witnesses seeking immunity have information relevant to these new allegations, the new evidence reinforces my belief that the witnesses should be given immunity. The new evidence also reinforces my belief that the gentleman from Indiana is the wrong person to be leading this investigation.

We are dealing with extremely serious allegations. We owe the American people a serious, credible investigation. So here we are today, and the Republican leadership has made no attempt to work with us in a bipartisan way. The Republican leadership is not sending this issue to another committee, it is not bringing the issue up on the House floor, it is not proposing to fix the Burton problem. The leadership is here telling us immunity is essential and then insisting on the one immunity option they know we will oppose. It is rare that partisanship and cynicism are this transparent.

Two weeks ago The New York Times, which has been leading the call for a thorough and aggressive investigation into the President's 1996 campaign, printed an editorial called "The Dan Burton Problem," and I want to take a moment and read in part from that editorial.

By now, even Representative DAN BURTON ought to recognize that he has become an impediment to a serious investigation of the 1996 campaign finance scandals. If the House inquiry is to be responsible, someone else on Mr. BURTON's committee should run it.

Coming on the heels of an impolitic remark by Mr. BURTON about the President 2 weeks ago, the tapes fiasco is forcing the House Republicans to confront two blunders: The first was to entrust the investigation of campaign finance abuses to Mr. BURTON, the chairman of the House Government Reform and Oversight Committee. The second was to give him unilateral power to release confidential information.

Mr. BURTON, a fierce partisan, not known for balanced judgment, was plainly the wrong man for a sensitive job. If Mr. BURTON will not step aside, Speaker NEWT GINGRICH should convene the Republican Caucus and ask it to name a replacement. Mr. GINGRICH should also agree to rules both to provide a check on the new Chairman's power and to enhance bipartisanship.

By agreeing to improvements in the rules, Republicans would remove a major criticism of the committee's process as well as the Democrats' excuse for denying immunity. For now, Mr. GINGRICH seems determined to back Mr. BURTON. That will only delay getting a truthful account of fund-raising in the 1996 election.

My colleagues, this is a serious matter, and that is why we have asked that the Speaker give us leadership on this issue to work with us in a bipartisan manner. It sometimes seems that the Speaker acts as if he thinks he is still in the minority; that he is an insurgent. But the Speaker is the Speaker of the House. He is the Speaker of the whole House, and he should be working to bring all of us together for a fair and credible investigation, not trying to drive partisan wedges between us and trying to impede a serious investigation.

Now, the Republicans have a majority in this House. When the chairman of the investigation calls the President of the United States a scum bag, when he admits he is after the President, when he doctors transcripts that purport to represent evidence the committee obtained, when he issues over 600 unilateral subpoenas and targets 99 percent of his 1,000 subpoena and other information requests to Democrats, we Republicans and Democrats have a very real problem.

When the committee's Republican chief counsel quits because he is not allowed to conduct a professional investigation, when the Republican chief investigator is fired, we have a very real problem. We have a committee out of control. But because Republicans have the majority in this House, it is a problem that they alone can solve. All the Democrats ask is what The New York Times proposed: Act responsibly, solve the problem. We are prepared to vote for immunity if the majority is willing to work with us in even the most minimal way.

I am going to vote for this resolution because it really is tantamount to a meaningless gimmick. It is an empty exercise in political posturing. I should also point out for the record that the resolution contains a number of basic factual errors, and I will submit information correcting these mistakes.

A meaningful act would be to reform the procedures we have in the Committee on Government Reform and Oversight, or send this matter to another committee, so that we can get on with the investigation.

If this matter is as important to the Speaker as he says it is, and it should be, we only ask that he work with us for a constructive investigation. Please do not posture on such an important issue. Democrats are ready and have been ready to vote for immunity. All we ask is that the investigation be fair, bipartisan and competent.

And that means, by the way, that we get the facts, and then see what conclusions those facts lead us to, not reach the conclusions first and then try to see what facts will fit into those conclusions.

I have heard incredible statements by some of my Republican colleagues when they talk about money from the Chinese government going to the President of the United States and he knowingly then gives weapons technology to the Chinese that may jeopardize our national security. If that is the allegation, we better have facts to back it up because, quite frankly, that is not just accusing the President of the United States of a crime, that is accusing the President of the United States of the crime of treason.

We ask the Speaker, bring us together to act rationally. We ask the Speaker to work with us. Give us bipartisanship. Make some tough decisions. If the Speaker is going to send this to the committee for another vote, take some time first to meet with the minority Members and try to find common ground. If that does not occur, it will be absolutely clear that this is all about cynical politics not genuine concern, and the American people will have yet another reason to tune us all out.

Mr. Speaker, I provide for the RECORD the letter to the Speaker and information correcting the factual errors contained in the resolution to which I referred to earlier:

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT,
Washington, DC, May 10, 1998.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I am writing in the spirit of bipartisanship to work with you to find a constructive solution to the difficult problems facing the Committee on Government Reform and Oversight. During the past several weeks, you have personally attacked me and questioned my integrity without justification. I believe, however, that the American people expect more from us than name-calling and partisan battles. Instead of escalating this fight, I want to make a genuine attempt to work with you to meet their expectations.

I am prepared to recommend to my Democratic colleagues that they support the pending immunity requests. But before I do, I believe that the rules and procedures guiding the Committee's campaign finance investigation must be changed so that the Committee can conduct a fair and thorough investigation.

Of course, such changes also require that the chair of the investigation be fair and credible. Mr. BURTON, the current chairman, has disqualified himself by his actions. He has called the President a vulgar name and said that he is out to get the President. And he has "doctored" evidence by releasing altered and selectively edited transcripts of the Webster Hubbell tapes. There are several senior Republican members of the Committee who could immediately take his place and continue the investigation. For the investigation to have any legitimacy, this must happen.

A fair investigation must have fair procedures. Some have asserted that the Democratic members want a veto over the conduct of the investigation. This is not true. We are not seeking the right to block the issuance of subpoenas or the release of documents. All we want is the opportunity to present our arguments to the Committee if we raise objections that the chair is unwilling to acknowledge. We recognize that we are in the minority and that we can be outvoted. Fairness dictates, however, that we should at least have the right to appeal our case to the Committee members if we are summarily rejected by the chair.

I am not asking for unusual procedures. The exact opposite is the case. In the last year, Mr. BURTON issued over 600 subpoenas unilaterally, without minority concurrence

or a Committee vote. That is more than three unilateral subpoenas for every day the House was in session. To the best of my knowledge, however, no Democratic committee chairman since the McCarthy era forty years ago ever issued a subpoena unilaterally. The congressional subpoena power is an awesome power. It compels an individual to turn over documents to Congress or to testify before Congress against the individual's will. Prior to Mr. BURTON, committee chairmen simply did not exercise this power unilaterally.

As LEE HAMILTON, the chair of the House Iran-Contra investigation, wrote me:

As a matter of practice in the Iran-Contra investigation, the four Congressional leaders of the Select Committee—Senators INOUYE and Rudman, Representative Cheney and I—made decisions jointly on all matter or procedural issues, including the issuance of subpoenas. I do not recall a single instance in which the majority acted unilaterally.

Likewise, Mr. BURTON's unilateral release of subpoenaed documents is the exception, not the rule. I cannot think of a precedent for a committee chairman releasing such personal information—such as Mr. Hubbell's private conversations with his wife and daughters—unilaterally.

There are many precedents in congressional history for fair investigative procedures. You have referred repeatedly to the Watergate investigation as a model of bipartisanship. The House Watergate investigation had fair procedures that provided the minority the right to seek a committee vote if they objected to a proposed subpoena or document release. These Watergate procedures would provide an excellent model for this investigation.

Fair procedures do not lead to gridlock. To the contrary, they lead to bipartisan cooperation and a more successful investigation. They also are a safeguard against the kind of abuses that have characterized Mr. BURTON's investigation. Under the rules followed in other congressional investigations, the entire committee is accountable for the investigation. Under Mr. BURTON's rules, the Committee has transferred virtually all its power to him alone and he is accountable to no one. The events of the past weeks make it clear why this model should never be used again.

Senator THOMPSON followed fair procedures in his campaign finance investigation, and he was able to accomplish far more than Mr. BURTON. In fact, he held 33 days of hearings and filed a 1,100-page report before Mr. BURTON held his twelfth day of hearings. The Thompson procedures would be another excellent model for this investigation.

You have accused me and other Democrats of "stonewalling" the investigation. That is not accurate. Mr. BURTON has had virtually limitless powers. Democrats have blocked none of the 602 unilateral subpoenas he has issued, nor have we blocked any of the 148 depositions that his staff has conducted. In fact, we even supported the only other three immunity requests made by Mr. BURTON. I want to be part of a thorough investigation of campaign finance abuses. I don't want to be in a position I am in now, where I must oppose immunity requests as a matter of principle.

Mr. Speaker, I am willing to put partisanship aside in addressing the problems on the Committee on Government Reform and Oversight. I hope you will join with me in this effort.

Sincerely,

HENRY A. WAXMAN,
Ranking Minority Member.

FACTUAL INACCURACIES IN H. RES. 440

Claim: "[M]ore than 90 witnesses in the investigation have either asserted the fifth amendment or fled the United States to avoid testifying."

Fact: This number is misleading because it includes:

12 individuals who have been given immunity and already testified;

8 Buddhist nuns who were never immunized because their testimony would have duplicated other testimony;

21 individuals who are listed as having fled the country who in fact live in foreign countries;

11 individuals who, while not cooperating with Congress, have been convicted by or are cooperating with the Department of Justice.

Claim: "[S]ubsequent to the receipt of the illegal campaign contributions from Communist Chinese officials the Clinton Administration relaxed export controls . . . on the sale and export of sophisticated satellite technology to China."

Fact: This statement is inaccurate. The Clinton administration relaxed export controls before not after, June 1996, when Johnny Chung reportedly first met Liu Chaoying. The Clinton administration announced its decision to move commercial communications satellites from the Munitions List to the Commerce Control List of dual-use items, moving export licensing jurisdiction from the Department of State to the Department of Commerce. In March 1996—three months before Mr. Chung allegedly met Ms. Liu. Moreover, the practice of issuing waivers was not begun by the Clinton Administration. According to the *New York Times* (May 17, 1998), it was first used by the Bush Administration.

Claim: "[T]he Department of Justice does not object to the Committee on Government Reform and Oversight's desire to confer immunity on . . . Kent La."

Fact: The Department of Justice does have serious reservations about immunizing Kent La. In a letter dated April 22, 1998, the Department of Justice expressed its view that "if Mr. La were to testify publicly at this time, the Department's criminal investigation could in fact be compromised. Even if Mr. La were to testify in a closed session, any disclosure or leak of that testimony, whether intentional or inadvertent, could seriously compromise the investigation and any subsequent prosecutions." The numerous leaks of information during the course of Committee's investigation suggests that the confidentiality that the Department of Justice has requested could not be maintained.

Claim: The four witnesses have "direct knowledge" concerning "Communist Chinese attempts to influence United States policy and make illegal campaign contributions," "illegal foreign money contributions made to the Democratic National Committee by Ted Sioeng," or "convicted felon Gene Lum['s] . . . method of making illegal foreign money contributions to Clinton-Gore '96."

Fact: The four witnesses have had employment or business relationships with Johnny Chung, Ted Sioeng, and Gene Lum. It is not yet clear, however, that any of the four witnesses have significant information about the alleged illegal activities involving foreign contributions. Based on what is currently known about the witnesses, they would appear to be relatively minor witnesses with little new information to provide investigators.

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

Mr. BOEHNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. DELAY), the majority whip.

Mr. DELAY. Mr. Speaker, I appreciate the gentleman yielding me this time. This is really a sad day for the House, that we have to bring a resolution like this to the House, and I rise in strong support of the resolution. I wish we did not have to bring it.

To some, bipartisan means as long as they buy into their partisanship, they will go along. To some, they think it is the chairman of the committee that is the problem. This has nothing to do with the chairman of the committee. What it has to do, and the American people have seen it, that if people really wanted to get to the truth, the revelations that came over the weekend, we would have known years ago, at least months ago.

□ 2000

But the American people have seen this administration stonewalling and dragging their feet, hiding documents, hiding behind their lawyers. We have seen Members of the other party and the other body attacking Chairman THOMPSON, attacking Chairman D'AMATO. And over here they attack the gentleman from Iowa (Mr. LEACH), they attack the gentleman from Pennsylvania (Mr. KLINK), and now they are attacking the gentleman from Indiana (Mr. BURTON), all for one purpose; and that is they are scared to death to get to the truth.

Well, if all the scandals surrounding the Clinton administration had not meant much to the American people in the last 3 months, the latest revelations coming about the White House prove that they matter now.

According to press accounts, the White House accepted campaign contributions from officials of the Communist Chinese army and then later approved the shipment of sensitive defense technology to that country. Now, we do not know if there is a connection there or not. But the American people have the right to know the truth. And this was done over the objections of several foreign policy advisors in this administration. This technology has threatened the balance of power in Asia, giving India an excuse to test nuclear weapons, thereby threatening the security of every human being on earth.

So, Mr. Speaker, where were the Democrats when we asked them for their cooperation earlier this year in finding out the facts about this serious situation? Where were the Democrats when the House Committee on Government Reform and Oversight tried to interview witnesses who had important information about this national security crisis?

Some of our friends on the other side of the aisle appear to be turning their backs on the truth because they want

to play these partisan games. Well, Mr. Speaker, this is no time for partisan games. Our national security is threatened by this new Asian arms race, which has been unwittingly jump-started by the political hacks at the White House.

Now, I hope that these latest revelations would give even the fiercest partisan a reason to seek the truth. My friends, these events have put into motion the greatest crisis the world has seen since the end of the Cold War. Now is the time for Congress to work together to find out the facts, and I urge my Democrat colleagues to join us now in investigating these allegations. The American people have a right to know the truth.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the Majority Leader, the gentleman from Texas (Mr. ARMEY).

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I will get to the point. The point is we have long since now passed the point at which we can be casual about this. We are not talking about campaign finance violations. We are not talking about small things. We have very big questions here and very grave questions before the American people.

Did the President of the United States permit the sale of technology to China that would allow them to target missiles against United States citizens?

Did the President of the United States allow that sale to be made by an American firm already under investigation for trespasses against American law regarding the sale of such merchandise?

Did the President of the United States allow that sale against the protest of his own State Department and his own Department of Defense and over the objections of his own Justice Department?

Did the President of the United States know that the money received for his campaign, the campaign for people of his party, came from an officer in the Chinese Government who is also a major officer in Chinese corporations that were under sanction by the United States Government?

Did the transfer of the missile technology to China spark India's nuclear testing?

And did India's nuclear testing, in response to China's new capacity, spark the desire to do so in Pakistan?

Does the Defense Department find our national security is threatened?

Is the President, as Bill Safire suggests, the "proliferation president"?

Does the President of the United States have the standing in the international community to be the leader that America must have in its president?

Just last week, the President failed to convince our major allies to join us in sanctioning India over testing nuclear weapons. Yesterday, he agreed to waive Helms/Burton sanctions on European countries helping Iran develop its oil industry, and I am still wondering where did that come from.

Last year, the President could get very little support for efforts to force weapons inspections in Iraq. And, last year, the President could not even get his own party in the House of Representatives to give him fast track authority.

The President of the United States should command international respect as the leader of the free world. Until President Clinton comes forward with the truth, the cloud hanging over this presidency in not only international affairs but domestic affairs will grow.

Mr. Speaker, I suppose there are times when it is amusing and even entertaining to pretend a wide-eyed innocence as one joins the stonewalling effort of the administration. If it were only a matter of domestic campaign finance law, violations, perhaps America could afford to give a wink and a nod to feigning moral outrage because one does not like the chairman of the committee, or that committee, or the other committee, or this committee.

But this is bigger than that. It is more important than that. It is about the genuine security needs of the American people in a world that may, in fact, be increasingly more dangerous than we ever thought we would face again and about the President of the United States being respected in the international community so that he can give the leadership in world affairs that this Nation feels it must give.

This is a serious matter. It is time to get serious. It is time to put away all the lawyer tricks. It is time to put away all the cute politics. It is time to get serious and say to the President, to all with whom he has had association in these matters, "Come forward. Tell the truth. Get it off your chest. You will feel better for it. It is possible that you may make it possible for us to make America safer for it."

Mr. WAXMAN. Mr. Speaker, may I inquire how much time is remaining on each side?

The SPEAKER pro tempore (Mr. RIGGS). Both the gentleman from Ohio (Mr. BOEHNER) and the gentleman from California (Mr. WAXMAN) control 9½ minutes.

Mr. WAXMAN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Mr. Speaker, I am not usually engaged in these type of discussions, but I made it a point to come down tonight because I like the gentleman from Ohio (Mr. BOEHNER). I have had the occasion to spend some time with him and find him to be a man of admirable quality. I came to the House at the same time that the Majority Leader came to the House, and I find him to be a man of quality.

Indeed, it is a sad day for the House of Representatives and for this government. We seem to be ever increasingly accepting leaks, contentions, illogical reasoning; and bright and intelligent men that exercise unusual influence in this House and in this country are willing to leap ahead and make conclusions, as the gentleman from California said, making a charge that the President of the United States is guilty of treason.

I have served in this House probably longer than most Members here because I started my service as a page and I followed the House through. So I went through the McCarthy hearings. And I am not going to make any reference that this reminds me of that because that is something for historians to determine.

But I have taken the time to read the RECORD of the House in 1972 and 1973 and 1974, and I would challenge my friends on the other side to examine the statements of then Speaker Carl Albert, the Majority Leader, or at that time the Majority Leader, and the Majority Whip and the Caucus Chairman and show us one instance where that leadership came to the floor of the House of Representatives to assert an indictment and a conviction for the crime of treason against the President of the United States on the basis of leaked information in a New York newspaper by unnamed investigators that have arrived at some facts that they do not draw conclusions from.

I would like to tell my friends on the other side, I have been a very serious member of the Committee on Government Reform and Oversight for 18 months now in this investigation. I have sat through hundreds of hours of hearings and depositions and things that have been thrown around this town and around this world.

The Majority Leader yesterday said that he was going to see that the deposition of Johnny Chung was released. Well, by golly, if he can release it, I wish he would tell me where it is. Because I sat in a meeting when Johnny Chung and his lawyer refused to take a deposition before this Committee but was entertained by the Chairman of our Committee for about 2 or 2½ hours in, quote, a friendly discussion; and at that time and through those 2 hours of testimony never did he remotely indicate where any funds came from from foreign government, foreign agents, or that he, in fact, had any activity that would castigate not only the national Democratic party but certainly not the President of the United States.

Suddenly, the deposition is to be released on Wednesday. Apparently, my friend from Ohio has more information than I have. I have been 2 weeks at hearings asking for proffers.

In his opening statement, my colleague indicated what these four witnesses are going to testify to. Why did

not the gentleman from Indiana (Mr. BURTON) allow to us have those proffers if he is sharing it with the majority side and conference chairman?

Mr. Speaker, we are not going to solve this. But I want to say one thing. I think the leaks that were made over the weekend are serious leaks. They are not proper. They are not right. They do not stand for anything. But they are things that we should be investigating. I think it is time to put politics and partisanship aside. We may have serious problems. And we may have none.

If my colleagues want my belief, I am going to tell them this. If I conclude that for an $80,000 contribution to the Democratic National Committee that the President of the United States committed treason, I will tender my resignation the day that fact is established to me.

I cannot believe that any responsible Representative, Republican, Democrat, Independent, in the Congress of the United States could be so foolhardy to think that the President of the United States would risk that country's security, violate his oath of office, commit treason, and subject not only every man, woman, and child in America, but the 6 billion people of this world, to nuclear war. What a charge. What an incredible charge.

All I suggest, my colleagues, is before we make these wild allegations, statements and charges, please take the time to realize that a bipartisan investigation is necessary; and that is the only thing the gentleman from California (Mr. WAXMAN) requests.

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Mr. BOEHNER. Mr. Speaker, no one is alleging any specific act. There are questions, lots of questions that we are trying to get answers to.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Mrs. FOWLER).

Mrs. FOWLER. Mr. Speaker, I rise in support of this resolution. It is unfortunate that this has become a partisan debate. I rise today, not as a Republican, but as a member of the House Committee on National Security.

Make no mistake about it. This is a national security issue. This is about finding out how and why the Clinton administration overruled Pentagon experts to allow sensitive military technology to be transferred to the Chinese.

My colleagues on the other side of the aisle are not happy with the course of the campaign finance investigation. They are opposing immunity for four key witnesses to register their protest with the Chairman. But, Mr. Speaker, who is really being punished? Who is hurt if there is a successful effort to block Congress' attempt to determine the truth? A nation, Mr. Speaker.

Our Nation is at risk. Our men and women in uniform are at risk. The American people deserve to know why their Commander in Chief approved the sale of sensitive military technology to China, not once, but twice, over the objections of his Defense Department, State Department, Justice Department, and intelligence agencies.

This is a national security issue that should not be subject to the same partisanship that has characterized so much of the campaign finance investigation.

I urge my colleagues to consider this Nation's legitimate national security interest and vote yes on the Boehner resolution.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Speaker, my colleague from Pennsylvania asks how could we possibly think that a donation of $80,000 could cause the President to do something so terrible as has been suggested here. We are not talking about $80,000. We are not talking about $80,000 at all. We are talking about hundreds of thousands, if not millions, of dollars that were funneled into the President's reelection effort by people involved with these transfers of technology.

I have never called to treason and I will not call to treason. I think what we have here is a betrayal of the interest of the people of the United States of America, especially if that had anything to do with those millions of dollars that were funneled into the President's reelection effort from the Red Chinese and the American companies that were involved with transferring the technology.

Why do we have to come to the floor to insist that these four individuals who know about these campaign contributions be permitted to testify? It is absolutely ridiculous that we have had to come this far.

No one will ever be able to know for sure what is going on if you are saying what is happening here unless we hear their testimony. We need to get to the bottom of this. This is a national security issue as well as a political corruption issue. But no one will ever be perfect enough when a Democrat President is being investigated.

Ken Starr had impeccable credentials and now he has been vilified. The gentleman from Indiana (Mr. BURTON) makes one or two verbal mistakes and all of a sudden that is being used as a diversion to pull the public's attention away from these very serious national security charges.

We need to get to the bottom of this. We need to make sure, and we are not going to be diverted by some nonsense about the gentleman from Indiana (Mr. BURTON) made a couple of verbal abuses. That does not cut it with us when we have weapons technology going to improve the Communist Chinese capabilities of launching nuclear weapons against the United States of America. That is that serious.

Mr. WAXMAN. Mr. Speaker, may I inquire how much time is remaining on each side.

The SPEAKER pro tempore (Mr. RIGGS). The gentleman from California (Mr. WAXMAN) has 4½ minutes remaining, and the gentleman from Ohio (Mr. BOEHNER) has 6 minutes remaining.

Mr. BOEHNER. Mr. Speaker, I yield 2¼ minutes to the gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Speaker, I thank the gentleman from Ohio for yielding time to me.

Mr. Speaker, as usual, when our colleague from California (Mr. WAXMAN) speaks I think of many things. One thing that I thought of was Alice in Wonderland. When Alice is admonished to say what she means, she says "I do. At least I mean what I say. That is the same thing, you know." "Not quite so," she was then lectured. "Saying that you mean what you say is the same as I mean what I say. I say what I mean would be like saying I say what I eat is the same as I eat what I see."

Unlike Alice in Wonderland, Mr. Speaker, we are in the real world. Mr. WAXMAN gets up here and pontificates about how he will vote for this resolution knowing full well that then when he goes back to the committee, he and all of his colleagues or at least those who still travel in lockstep with him will vote against it. He means what he says, and he says what he means, but neither is actually the case.

I did not object when the gentleman from California said he was going to insert corrective language in his statement. The reason that I did not object to it was the fact that I certainly hoped that he will correct the one misstatement that I find in the resolution on page 2, paragraph 4, which says that Mr. Chung's account and supporting evidence is the first direct evidence of Communist Chinese campaign contributions.

I presume that the gentleman from California (Mr. WAXMAN) will insert in the RECORD the voluminous amounts of material and evidence directly related thereto that is already in the RECORD of direct evidence of Communist Chinese campaign contributions.

He may want to go back and I presume he will correct the RECORD to indicate and set forth the eight trips that Ng Lap Seng made to this country in 1994, 1995 and 1996, bringing large amounts, hundreds of thousands of dollars of cash in here and within 2 days of each one of those entries into this country made a visit to the White House, and on most occasions visited directly with Mark Middleton at the White House.

The gentleman from California might also go back and review some of the tapes in which Mr. Clinton, the President of the United States, was meeting

Chinese officials and others thanking them for attending a fund-raising event. He might also review the voluminous evidence we have of other money coming from Macao and the Bank of China into the Clinton/Gore campaign in 1995 and 1996.

Mr. WAXMAN. Mr. Speaker, I yield 4 minutes to the gentleman from West Virginia (Mr. WISE).

Mr. WISE. Mr. Speaker, the gentleman from Ohio (Mr. BOEHNER) has made very serious allegations and demanded an investigation. I think he is correct in terms of requesting the investigation based on the allegations he has made.

The gentleman from Texas (Mr. DELAY), the majority whip, the Republican whip, has made serious allegations, and they too should be investigated. The gentleman from Texas (Mr. ARMEY), the majority leader. Has made serious allegations.

As a 16-year member of the Committee on Government Reform and Oversight and one who is a subcommittee chair in my time, I, too, agree that because those allegations have been made they should be investigated.

The gentleman from Texas (Mr. ARMEY), the majority leader, said something that stuck with me, and I remember he said this is too big, in effect, for partisanship. He is absolutely correct. That is why we ask that it not be a partisan investigation, because these allegations are so serious that are being made that if the American people are to accept the results of any investigation it must be a credible investigation.

So what we have asked those of us Democrats, and I hate to think on the Committee on Government Reform and Oversight we have now gotten to the point of having to identify ourselves as partisan labels, we never had to do that before, but those of us who voted against immunity do not vote against immunity because we want to stop an investigation. We voted because it is not a credible investigation.

The gentleman from Ohio (Mr. BOEHNER) referred to allegations in the New York Times, and that, on the basis of those, the committee ought to look at it. But it also should be mentioned the New York Times editorial of May 8, which says, and I quote:

> By now, even Representative DAN BURTON to recognize that he has become an impediment to a serious investigation of the 1996 campaign finance scandals.

If the 1996 campaign finance scandals are such that he is an impediment to them, what about something as serious as the allegations that have been made by the gentleman from the other side?

We have seen an investigation on our committee which was to be bipartisan; and, yet, 1,037 out of 1,049 subpoenas, depositions, interrogatories, and other information requests, in this so-called bipartisan investigation have been targeted at whom? At Democrats, despite the fact that in Republican, in soft, despite the fact that in the soft money raising contest it was the Republican Party that raised the most soft money and indeed it is the soft money that is the basis of 95 percent of all allegations, whether directed at Republicans or at Democrats.

Mr. Speaker, we want immunity. We want a thorough investigation. We want to walk with or talk and work with the leadership of the other side. We want a credible investigation.

What is a credible investigation? It is one like they did in Watergate. It is one like they did in Iran Contra. It is one like our committee did up until a couple years ago in which, when there is a subpoena to be issued, it cannot be unilaterally issued by one person. That is abuse of power. But that one person must consult with the minority.

If there is no agreement reached, we take it to the committee. That is all. Then the best sides wins. The side that demonstrates the merits of the argument decides whether or not that subpoena is issued. That is all. That is the way this committee has operated and that is the way this Congress has operated until recently.

So, yes, the American people deserve that credible investigation. They must know that these allegations are out there and they are serious, know that those allegations are out there and the American people want this investigation. But it has got to be credible if it is to have any credibility.

So we want to work with you, Mr. Speaker, want to work with the other side. We want that investigation. If it is, and I believe it is, these allegations are that important, simply by being raised, then it demands going the extra level to make sure that that investigation has the credibility and the bipartisanship that is so important.

That is why I will vote for this, because I happen to believe that these individuals ought to be given immunity. I also want to make sure that the committee has to operate in such a way that the investigation and the product is credible and not simply something that at the end of the day was not worthy of the entire Congress.

Mr. BOEHNER. Mr. Speaker, I yield 1 minute to my colleague from Ohio (Mr. TRAFICANT).

Mr. TRAFICANT. Mr. Speaker, this debate is not about the gentleman from Indiana (Mr. BURTON) or Bill Clinton. It is not about the Lincoln bedroom or Monica Lewinsky. This debate is about our national security.

This is no fly on our face. This is an elephant eating our assets, and that elephant is China, Communist China, with a foothold on our soil that has missiles, as we speak, pointing and capable of hitting every American city, a nation that threatened Taiwan. What are we, nuts? Now we find out that Johnny Chung got $300,000 from a member of the Chinese Army to gain access to the White House, and he boasts about it.

Look, the White House is not a one-stop shopping mall for campaign headquarters, folks. Congress must investigate this matter, and a Congress that plays partisan politics with this is a Congress that endangers the national security of every citizen.

I support the resolution, and I am glad to see that the Democrats will be supporting it as well. We must support this resolution, and we must investigate this matter.

Mr. BOEHNER. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. HAYWORTH).

Mr. HAYWORTH. Mr. Speaker, I thank my colleague from Ohio on the other side of the aisle for offering the proper picture here.

Mr. Speaker, I rise without venom or vitriol tonight. My colleague from West Virginia is correct. These are serious allegations that go to the heart of our constitutional republic. This must transcend partisanship. This Congress must do its constitutional duty.

Our founders wisely granted this branch oversight over the executive branch. Accordingly, these witnesses should be granted immunity for all the right reasons, because, as Republicans and Democrats, we recognize that we are Americans first, and we owe it to the citizens of this Nation to get to the bottom of these disturbing allegations.

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Mr. WAXMAN. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I want a serious investigation. I want us to be able to conduct this investigation responsibly, competently and fairly. We have a resolution on the floor like this. After all the months we have asked for bipartisanship, it still seems to me like we are in the process of kids' play.

Let us work together. This matter must be investigated in a way that speaks well of the House. I ask the Speaker to work with us. This is not the time to fire up your base; this is the time for you to be a leader of the House for the people of this country.

Mr. BOEHNER. Mr. Speaker, I yield the balance of my time to the gentleman from California (Mr. COX), the chairman of the Republican Policy Committee.

The SPEAKER pro tempore (Mr. RIGGS). The gentleman from California (Mr. COX) is recognized for one and three-quarter minutes.

Mr. COX of California. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, what I hear from the minority side is that they are in support of granting immunity to these witnesses; just not now, just not at this

time and this place, just not in this way, because they are busy protesting the committee and its existence.

It is perhaps politically acceptable to engage in acts of political protest in an election year, but obstruction of justice is not an acceptable form of protest. Today, the minority stands alone in obstructing the grants of immunity to these 4 witnesses, because the Clinton administration——

POINT OF ORDER

Mr. WAXMAN. Mr. Speaker, I rise to a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. WAXMAN. Mr. Speaker, I would inquire of the Chair whether an accusation of obstruction of justice is permitted on the House floor.

The SPEAKER pro tempore. The reference to obstruction of justice should not be made with respect to specific or certain Members of the House of Representatives.

Mr. COX of California. Mr. Speaker, with the permission of the gentleman, I will withdraw the remark, to the extent that it conveys violation of statute. I do not mean to suggest that. What I mean to suggest very explicitly is that the minority is obstructing what the Justice Department itself wishes to do.

In its defense of the Clinton administration, the minority is more tendentious than is the administration itself. The administration has no objection to the grant of immunity to these witnesses.

The most important of the four witnesses whose testimony we seek to immunize is Kent La. Kent La is the United States distributor for Red Pagoda Mountain Cigarettes, the largest Communist Chinese brand. The man who is a distributor for these cigarettes in the United States is the person whose testimony we seek to hear.

The contributions that Mr. La is going to testify about, from Communist Chinese tobacco billionaire Ted Sioeng, his family and their associates in the worldwide tobacco business, totalled over $400,000 to the Democratic National Committee in 1996 alone. All these contributions were solicited by John Huang, $50,000 of them came from Kent La himself.

We can differ about the facts, but we should not differ about whether to get the facts. Let us get the truth. Let us grant immunity to these witnesses, as the Clinton administration agrees we can and must.

Mr. WAXMAN. Mr. Speaker, I rise in support of the Boehner resolution.

I completely agree that the four witnesses should be given immunity. I believe every Democrat on the House Government Reform and Oversight Committee also supports immunity for the witnesses. In fact, our only reservation on the merits has been that the witnesses still haven't provided proffers of their testimony, which is a standard and essential procedure in immunity cases.

That is what we said when the Committee first voted on immunity on April 23. It's what I said in a letter to the Speaker on May 10. And it's what we said again when the Committee voted on immunity on May 13.

In my May 10 letter to the Speaker, I wrote:

I am writing in the spirit of bipartisanship to work with you to find a constructive solution to the difficult problems facing the Committee on Government Reform and Oversight. During the past several weeks, you have personally attacked me and questioned my integrity without justification. I believe, however, that the American people expect more from us than name-calling and partisan battles. Instead of escalating this fight, I want to make a genuine attempt to work with you to meet their expectations.

I am prepared to recommend to my Democratic colleagues that they support the pending immunity requests. But before I do, I believe the rules and procedures guiding the Committee's campaign finance investigation must be changed so that the Committee can conduct a fair and thorough investigation.

I ask unanimous consent that the full text of this letter be inserted in the RECORD.

Two weeks have passed, and the Speaker still has not responded to my letter and my request that we work together. We have tried to make it as clear as possible that our problem isn't with immunity; our problem is with DAN BURTON and his handling of the investigation.

That's a problem the Speaker, Mr. BOEHNER, and the other members of the Republican leadership insist on ignoring.

Since we last voted in committee, new information has come to light in the New York Times about the possibility that Johnny Chung may have been a conduit for political contributions from China. The new allegations are serious and deserve thorough congressional investigation. Although there is no indication that the four witnesses seeking immunity have information relevant to these new allegations, the new evidence reinforces my belief that the witnesses should be given immunity.

The new evidence also reinforces my belief that DAN BURTON is the wrong person to be leading the investigation. We are dealing with extremely serious allegations. We owe the American people a serious, credible investigation.

The Committee's Democrats have said we would vote for immunity if the Dan Burton problem were fixed. We have said we would encourage the Democrats on either the House Oversight Committee or the House International Relations Committee to vote for immunity if this issue were sent to those committees. We have said we would support immunity on the floor. But we have been as clear as we can that we will not support immunity without first addressing the Dan Burton problem.

So here we are today and the Republican leadership has made no attempt to work with us in a bipartisan way. The Republican leadership is not sending this issue to another committee, it's not bringing the issue up for a floor vote, it's not proposing to fix the Burton problem. The leadership is here telling us immunity is essential and then insisting on the one immunity option they know we will oppose. It's rare that partisanship and cynicism are this transparent.

Two weeks ago, the New York Times, which has been leading the call for a thorough and aggressive investigation into the President's 1996 campaign, printed an editorial entitled "The Dan Burton Problem." I want to take a moment and read it.

[From the New York Times, May 8, 1998]

THE DAN BURTON PROBLEM

By now even Representative Dan Burton ought to recognize that he has become an impediment to a serious investigation of the 1996 campaign finance scandals. He has dismissed David Bossie, the mischievous aide who helped issue inaccurate transcripts of Webster Hubbell's jailhouse conversation's, and has apologized to his fellow Republicans. But: that cannot compensate for inept behavior that has hobbled the inquiry and complicated Independent Counsel Kenneth Starr's criminal investigation of intriguing comments on the tapes. If the House inquiry is to be responsible, someone else on Mr. Burton's committee should run it.

Coming on the heels of an impolitic remark by Mr. Burton about the President two weeks ago, the tapes fiasco is forcing House Republicans to confront two blunders. The first was to entrust the investigation of campaign finance abuses to Mr. Burton, the chairman of the House Government Reform and Oversight Committee. The second was to give him unilateral power to release confidential information. Mr. Burton, a fierce partisan not known for balanced judgment, was plainly the wrong man for a sensitive job.

When the committee convenes next Wednesday, Democrats plan to offer motions to transfer leadership of the inquiry to another Republican on the committee. They will also ask the committee to adopt the same bipartisan rules for issuing subpoenas and releasing documents that have been followed by all previous Congressional investigations.

But it should not come to that. If Mr. Burton will not step aside, Speaker Newt Gingrich should convene the Republican caucus and ask it to name a replacement. Mr. Gingrich should also agree to rules both to provide a check on the new chairman's power and to enhance bipartisanship.

At the same meeting, the committee will wrestle with whether to grant immunity from prosecution to four witnesses who are expected to testify about questionable donations to Democrats in the 1996 campaign. House Democrats have threatened to block immunity as leverage to win a rules change granting them more say. By agreeing to improvements in the rules, Republicans would remove a major criticism of the committee's process as well as the Democrats' excuse for denying immunity.

For now, Mr. Gingrich seems determined to back Mr. Burton. That will only delay getting a truthful account of fund-raising in the 1996 election.

There is a Dan Burton problem. It's very real. When the Chairman leading the investigation calls the President a scumbag, when

he admits he's "after" the President, when he doctors transcripts that purport to represent evidence the committee obtained, when he issues over 600 unilateral subpoenas and targets 99% of his 1000 subpoena and other information request to Democrats, we—Republicans and Democrats—have a very real problem. When the committee's Republican Chief Counsel quits because he's not allowed to conduct a professional investigation, when the Republican Chief Investigator is fired, we have a very real problem and a committee out of control. But because Republicans have a majority in the House, it's a problem only they can solve.

All the Democrats ask is what the New York Times proposed. Act responsibly. Solve the problem. We are prepared to vote for immunity if you are willing to work with us in even the most minimal way.

I'm voting for this resolution today because it's a meaningless gimmick. It's an empty exercise in political posturing. I also should point out for the record that the Resolution contains a number of basic factual errors, and I ask unanimous consent that information correcting these mistakes be inserted after my statement.

A meaningful act would be to reform the procedures we have in the Government Reform Committee, or to send this matter to another committee so that we can get on with the investigation. Mr. Speaker, if this matter is as important to you as you say it is—and as it should be—work with us for a constructive investigation. Don't posture on such an important issue. Democrats are ready—have been ready—to vote for immunity. All we ask is that the investigation be fair, bipartisan, and competent.

Instead of bringing us together and acting rationally, the Republican leadership is bringing a gimmick to the floor and continuing to allow what should have been a serious investigation to degenerate into a circus. Instead of dealing with the Dan Burton problem, which is unpleasant for them to confront, they pretend it doesn't exist.

I urge all my colleagues to vote for this gimmick. But I ask the Republican leadership to show some genuine leadership. Make some tough decisions. Give true bipartisanship a try. And work with us so that we can have a meaningful investigation.

If you are going to send this to the committee for another vote, take some time first to meet with the minority members and try to find common ground. If you don't, it will be absolutely clear that this is all about cynical politics, not genuine concern. And the American people will have yet another reason to tune us all out.

FACTUAL INACCURACIES IN H. RES. 440

Claim: "[M]ore than 90 witnesses in the investigation have either asserted the fifth amendment or fled the United States to avoid testifying."

Fact: This number is misleading because it includes: 12 individuals who have been given immunity and already testified; 8 Buddhist nuns who were never immunized because their testimony would have duplicated other testimony; 21 individuals who are listed as having fled the country who in fact live in foreign countries; 11 individuals who, while not cooperating with Congress, have been convicted by or are cooperating with the Department of Justice.

Claim: "[S]ubsequent to the receipt of the illegal campaign contributions from Communist Chinese officials the Clinton Administration relaxed export controls . . . on the sale and export of sophisticated satellite technology to China."

Fact: This statement is inaccurate. The Clinton administration relaxed export controls before, not after, June 1996, when Johnny Chung reportedly first met Liu Chaoying. The Clinton administration announced its decision to move commercial communications satellites from the Munitions List to the Commerce Control List of dual-use items, moving export licensing jurisdiction from the Department of State to the Department of Commerce, in March 1996—three months before Mr. Chung allegedly met Ms. Liu. Moreover, the practice of issuing waivers was not begun by the Clinton Administration. According to the New York Times (May 17, 1998), it was first used by the Bush Administration.

Claim: "[T]he Department of Justice does not object to the Committee on Government Reform and Oversight's desire to confer immunity on . . . Kent La."

Fact: The Department of Justice does have serious reservations about immunizing Kent La. In a letter dated April 22, 1998, the Department of Justice expressed its view that "if Mr. La were to testify publicly at this time, the Department's criminal investigation could in fact be compromised. Even if Mr. La were to testify in a closed session, any disclosure or leak of that testimony, whether intentional or inadvertent, could seriously compromise the investigation and any subsequent prosecutions." The numerous leaks of information during the course of Committee's investigation suggests that the confidentiality that the Department of Justice has requested could not be maintained.

Claim: The four witnesses have "direct knowledge" concerning "Communist Chinese attempts to influence United States policy and make illegal campaign contributions," "illegal foreign money contributions made to the Democratic National Committee by Ted Sioeng," or "convicted felon Gene Lum['s] . . . method of making illegal foreign money contributions to Clinton-Gore '96."

Fact: The four witnesses have had employment or business relationships with Johnny Chung, Ted Sioeng, and Gene Lum. It is not yet clear, however, that any of the four witnesses have significant information about the alleged illegal activities involving foreign contributions. Based on what is currently known about the witnesses, they would appear to be relatively minor witnesses with little new information to provide investigators.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. COX) that the House suspend the rules and agree to the resolution, House Resolution 440.

The question was taken.

Mr. WAXMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Without objection, the three suspension votes postponed earlier today will be 5 minute votes immediately following this vote, so there will be a 15 minute vote, followed by three 5 minute votes.

There was no objection.

The vote was taken by electronic device, and there were—yeas 402, nays 0, not voting 30, as follows:

[Roll No. 161]

YEAS—402

Abercrombie	Davis (VA)	Hooley
Ackerman	Deal	Horn
Aderholt	DeFazio	Hostettler
Allen	DeGette	Houghton
Andrews	Delahunt	Hoyer
Armey	DeLauro	Hulshof
Bachus	DeLay	Hunter
Baker	Deutsch	Hutchinson
Baldacci	Diaz-Balart	Hyde
Ballenger	Dickey	Inglis
Barcia	Dingell	Istook
Barrett (NE)	Dixon	Jackson (IL)
Barrett (WI)	Doggett	Jackson-Lee (TX)
Bartlett	Dooley	Jefferson
Barton	Doolittle	Jenkins
Bass	Doyle	John
Becerra	Dreier	Johnson (CT)
Bentsen	Duncan	Johnson (WI)
Bereuter	Dunn	Johnson, E. B.
Berman	Edwards	Johnson, Sam
Berry	Ehlers	Jones
Bilirakis	Ehrlich	Kanjorski
Bishop	Emerson	Kaptur
Blagojevich	Engel	Kasich
Bliley	English	Kelly
Blumenauer	Ensign	Kennedy (MA)
Blunt	Eshoo	Kennedy (RI)
Boehlert	Etheridge	Kennelly
Boehner	Evans	Kildee
Bonilla	Everett	Kilpatrick
Bonior	Farr	Kim
Bono	Fazio	Kind (WI)
Borski	Filner	King (NY)
Boswell	Foley	Kingston
Boucher	Forbes	Kleczka
Boyd	Ford	Klink
Brady	Fossella	Klug
Brown (CA)	Fowler	Knollenberg
Brown (FL)	Fox	Kolbe
Brown (OH)	Frank (MA)	Kucinich
Bryant	Franks (NJ)	LaFalce
Bunning	Frelinghuysen	LaHood
Burr	Frost	Lampson
Burton	Furse	Lantos
Buyer	Gallegly	Largent
Callahan	Gejdenson	Latham
Calvert	Gekas	LaTourette
Camp	Gephardt	Lazio
Campbell	Gibbons	Leach
Canady	Gilchrest	Lee
Cannon	Gillmor	Levin
Capps	Gilman	Lewis (CA)
Cardin	Goode	Lewis (GA)
Carson	Goodlatte	Lewis (KY)
Castle	Gordon	Linder
Chabot	Goss	Lipinski
Chambliss	Graham	LoBiondo
Chenoweth	Granger	Lofgren
Christensen	Green	Lowey
Clayton	Gutierrez	Lucas
Clement	Gutknecht	Luther
Clyburn	Hall (OH)	Maloney (CT)
Coble	Hall (TX)	Maloney (NY)
Coburn	Hamilton	Manton
Collins	Hansen	Manzullo
Combest	Hastert	Markey
Condit	Hastings (FL)	Martinez
Conyers	Hastings (WA)	Mascara
Cook	Hayworth	Matsui
Costello	Hefley	McCarthy (MO)
Cox	Hefner	McCarthy (NY)
Coyne	Herger	McCollum
Cramer	Hill	McCrery
Crapo	Hilleary	McDermott
Cubin	Hilliard	McGovern
Cunningham	Hinojosa	McHale
Danner	Hobson	McHugh
Davis (FL)	Hoekstra	McInnis
Davis (IL)	Holden	

McIntyre
McKeon
McKinney
Meehan
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun
Sabo
Salmon
Sánchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Stokes
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt
Tierney
Torres
Towns
Traficant
Turner
Upton
Velázquez
Vento
Visclosky
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wicker
Wise
Wolf
Woolsey
Wynn
Yates
Young (AK)
Young (FL)

NOT VOTING—30

Archer
Baesler
Barr
Bateman
Bilbray
Clay
Cooksey
Crane
Cummings
Dicks
Ewing
Fattah
Fawell
Ganske
Gonzalez
Goodling
Greenwood
Harman
Hinchey
Livingston
McDade
McIntosh
McNulty
Meek (FL)
Meeks (NY)
Paxon
Schumer
Shuster
Skaggs
Waters

□ 2054

Mr. ABERCROMBIE changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BILBRAY. Mr. Speaker, on Rollcall No. 161, I was unavoidably detained. Had I been present, I would have voted "Yes".

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. RIGGS). Pursuant to clause 5, rule I, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed earlier today in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R. 3039, by the yeas and nays;

H.R. 3718, de novo; and

H.R. 3809, by the yeas and nays.

The Chair will reduce to 5 minutes the time for all electronic votes in this series.

VETERANS TRANSITIONAL HOUSING OPPORTUNITIES ACT OF 1998

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 3039, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. STUMP) that the House suspend the rules and pass the bill, H.R. 3039, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 405, nays 1, not voting 26, as follows:

[Roll No. 162]

YEAS—405

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Armey
Bachus
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berman
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Carson
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clayton
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Conyers
Cook
Costello
Cox
Coyne
Cramer
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Etheridge
Evans
Everett
Farr
Fazio
Filner
Foley
Forbes
Ford
Fossella
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gallegly
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Green
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hilleary
Hilliard
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHale
McHugh
McInnis
McIntyre
McKeon
McKinney
Meehan
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun
Sabo
Salmon
Sánchez
Sanders
Sandlin
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Stokes
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt
Tierney
Torres
Towns
Traficant
Turner
Upton
Velázquez
Vento
Visclosky
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wicker
Wise
Wolf
Woolsey
Wynn
Yates
Young (AK)
Young (FL)

NAYS—1

Sanford

NOT VOTING—26

Archer
Baesler
Bateman
Clay
Cooksey
Crane
Dicks
Ewing
Fattah
Fawell
Ganske
Gonzalez
Goodling
Greenwood
Harman

Hinchey
Kennedy (MA)
McDade
McIntosh
McNulty
Meek (FL)
Meeks (NY)
Paxon
Schumer
Shuster
Skaggs

□ 2103

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

LIMITING JURISDICTION OF FEDERAL COURTS WITH RESPECT TO PRISON RELEASE ORDERS

The SPEAKER pro tempore (Mr. PEASE). The pending business is the question de novo of suspending the rules and passing the bill, H.R. 3718.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the bill, H.R. 3718.

The question was taken.

RECORDED VOTE

Mr. SCOTT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 352, noes 53, not voting 27, as follows:

[Roll No. 163]

AYES—352

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Armey
Bachus
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berman
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Borski
Boswell
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cannon
Capps
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clayton
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Costello
Cox
Coyne
Cramer
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeFazio
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Etheridge
Everett
Farr
Fazio
Foley
Forbes
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Green
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennelly
Kildee
Kim
Kind (WI)
King (NY)
Kingston
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McGovern
McHale
McHugh
McInnis
McIntyre
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Minge
Mink
Moakley
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Ortiz
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Ryun
Salmon
Sánchez
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Thurman
Tiahrt
Torres
Traficant
Turner
Upton
Vento
Visclosky
Walsh
Wamp
Watkins
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wicker
Wise
Wolf
Wynn
Yates
Young (AK)
Young (FL)

NOES—53

Barrett (WI)
Blumenauer
Bonior
Campbell
Carson
Clyburn
Conyers
Davis (IL)
DeGette
Delahunt
Dingell
Dixon
Evans
Filner
Ford
Frank (MA)
Furse
Gutierrez
Hastings (FL)
Hilliard
Jackson (IL)
Johnson, E. B.
Kennedy (RI)
Kilpatrick
Kleczka
Leach
Lee
Lewis (GA)
McDermott
McKinney
Meehan
Millender-McDonald
Miller (CA)
Oberstar
Obey
Olver
Owens
Payne
Pelosi
Rangel
Rush
Sabo
Sanders
Scott
Serrano
Stark
Stokes
Stupak
Thompson
Tierney
Towns
Velázquez
Watt (NC)

NOT VOTING—27

Archer
Baesler
Bateman
Clay
Cooksey
Crane
Dicks
Ewing
Fattah
Fawell
Ganske
Gonzalez
Goodling
Greenwood
Harman
Hinchey
McDade
McIntosh
McNulty
Meek (FL)
Meeks (NY)
Paxon
Schumer
Shuster
Skaggs
Waters
Woolsey

□ 2111

Ms. PELOSI and Mr. RUSH changed their vote from "aye" to "no."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. CUMMINGS. Mr. Speaker, on rollcall number 163, my vote on H. Res. 440, I was unavoidably detained and missed the vote. Had I been present, I would have voted in favor of the resolution.

DRUG FREE BORDERS ACT OF 1998

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 3809, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. ARCHER) that the House suspend the rules and pass the bill, H.R. 3809, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 320, nays 86, not voting 26, as follows:

[Roll No. 164]

YEAS—320

Abercrombie
Ackerman
Aderholt
Andrews
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bentsen
Bereuter
Berry
Bilirakis
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Bono
Borski
Boswell
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clayton
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cox
Coyne
Cramer
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Etheridge
Everett
Farr
Foley
Forbes
Ford
Fossella
Fowler
Fox
Franks (NJ)

Frelinghuysen
Frost
Gallegly
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennelly
Kildee
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manzullo
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McHale
McHugh
McInnis
McIntyre
McKeon
Meehan
Menendez
Metcalf
Mica
Millender-McDonald
Miller (FL)
Minge
Mink
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pease
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Redmond
Regula
Riggs
Riley
Rivers
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sánchez
Sandlin
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Thurman
Tiahrt
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wise
Wolf
Woolsey
Wynn
Yates
Young (AK)
Young (FL)

NAYS—86

Allen
Baldacci
Barrett (WI)
Becerra
Berman
Bilbray
Blumenauer
Bonilla
Bonior
Brown (OH)
Carson
Clyburn
Conyers
Costello
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Engel
Evans
Fazio
Filner
Frank (MA)
Furse
Gejdenson
Green
Gutierrez
Hastings (FL)
Hilliard
Hoyer
Jackson (IL)
Johnson, E. B.
Kennedy (MA)
Kennedy (RI)
Kilpatrick
Kucinich
Lee
Lewis (GA)
Manton
Markey
Martinez
McDermott
McGovern
McKinney
Miller (CA)
Moakley
Mollohan
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Poshard
Reyes
Rodriguez
Roybal-Allard
Rush
Sabo
Sanders
Sanford
Sawyer
Scott
Serrano
Smith, Adam
Stark
Stokes
Thompson
Tierney
Torres
Towns
Velázquez
Vento
Visclosky
Waters
Watt (NC)
Wexler

NOT VOTING—26

Archer
Armey
Baesler
Bateman
Clay
Cooksey
Crane
Dicks
Ewing
Fattah
Fawell
Ganske
Gonzalez
Goodling
Greenwood
Harman
Hinchey
McDade
McIntosh
McNulty
Meek (FL)
Meeks (NY)
Paxon
Schumer
Shuster
Skaggs

□ 2119

Mr. DOGGETT changed his vote from "nay" to "yea."

Mr. MOLLOHAN changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: "A bill to authorize appropriations for the United States Customs Service for drug interdiction, and for other purposes.".

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. ARMEY. Mr. Speaker, on rollcall No. 164, I was unavoidably detained. Had I been present, I would have voted "aye."

LEGISLATIVE PROGRAM

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, the last order of business this evening will be a rule which will make in order two hours of general debate only, no amendments, and then tomorrow the first order of business will be taking up another rule on the defense authorization bill which will then make in order amendments. But for this evening, there will be no further votes if there is no vote on this rule.

I would ask the gentleman from Texas if it is his understanding that he does not intend to ask for a vote on this rule.

Mr. FROST. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Texas.

Mr. FROST. Mr. Speaker, I do not intend to ask for a vote on this rule. I know of no one on my side of the aisle who is going to ask for a vote on this rule.

Mr. SOLOMON. Mr. Speaker, if we can then proceed with the debate on the rule, we do not intend to use much time on it and then we can go right to the general debate.

NOTICE OF INTENT TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 2400, BUILDING EFFICIENT SURFACE TRANSPORTATION AND EQUITY ACT OF 1998

Mr. OBEY. Mr. Speaker, pursuant to clause 1(c) of House Rule XXVIII, I hereby notify the House of my intention tomorrow to offer the following motion to instruct House conferees on H.R. 2400, Building Efficient Surface Transportation and Equity Act of 1998:

I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2400, be instructed to insist that no provisions to prohibit or reduce service-connected disability compensation to veterans for smoking-related illnesses be included in the conference report on H.R. 2400 to offset spending for highway or transit programs.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

Mr. SOLOMON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 435 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 435

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 3616) to authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1999, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on National Security. After general debate the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to subsequent order of the House.

The SPEAKER pro tempore. The gentleman from New York (Mr. SOLOMON) is recognized for 1 hour.

Mr. SOLOMON. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), a very strong supporter of the defense budget, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 435 is a rule providing for general debate consideration of H.R. 3616, the Fiscal 1999 Defense Authorization Bill. The rule waives points of order against consideration of the bill and provides two hours

of general debate only, which we will take up in just a few minutes. Further consideration of the bill will be governed by a rule that the Committee on Rules will report out later today.

This rule is necessary simply to get the ball rolling on this massive, complex bill which always requires a great deal of floor time.

Mr. Speaker, the annual defense authorization bill is without question one of the most important bills we consider in this body each year. In doing our business that sometimes seems routine, we should never lose sight of the fact that the number one duty of the Federal Government is the protection of national security and that is exactly what this bill is all about here tonight. As usual, the gentleman from South Carolina (Mr. SPENCE) and the gentleman from Missouri (Mr. SKELTON) and their staffs have done outstanding work, and I commend them and urge support for the rule so that they can get on with their business tonight.

Mr. Speaker, it is absolutely imperative that this bill contain adequate funding for our military personnel who are right now out in the field standing vigilant on behalf of all Americans all over this world.

Mr. Speaker, it is imperative that this bill set out the policies which are consistent with and seek to maintain the unique warrior culture of our military, and that is exactly what it is, it is a warrior culture and that is what it has to be, for without that we cannot win wars, and that is what militaries are for. Some people seem to have forgotten that over the course of years.

Mr. Speaker, to the best extent possible this bill does all of that within the budget restrictions we have to live by. I congratulate and I commend both the gentleman from South Carolina (Mr. SPENCE) and the gentleman from Missouri (Mr. SKELTON) and again their staffs for their outstanding work on behalf of military preparedness.

At $270.8 billion, this bill once again adds money to the President's annually inadequate defense budget request. Very importantly, the bill provides for the first time in 13 years an inflation adjusted increase in procurement spending. That means in being able to purchase the hardware that is going to give the best state of the art equipment to young men and women that serve in the military today. This is exceedingly important.

This account provides for the weapons and equipment that we send our young men into battle with and it has been cut by nearly 70 percent since 1985. I will bet Members did not know that, did they? It is well past time that we reversed this trend.

These accounts contain adequate funding for the President's request of $36 billion for research and development. Again, if we do not have the research and development, we will not have that state of the art equipment that will give our men and women the best. These accounts contain adequate funding for the weapons systems of tomorrow, such as the F-22 Stealth Fighter, the Marine Corps V-22 troop carrier, and the next generation of aircraft carriers and submarines. These accounts also contain funding to bring us one step closer to developing and deploying defenses against ballistic missiles, something we may need even sooner if certain U.S. businesses continue to assist China missile programs with a wink and a nod from the Clinton administration, and we will be debating this at length during this upcoming debate.

This bill also contains, very importantly, a 3.6 percent pay raise for our military personnel and adds significant funding increases for the barracks, for the family housing and for child care centers. We have to keep in mind, Mr. Speaker, that when I served with some of my colleagues in the Marine Corps more than 45 years ago, almost all of us, noncommissioned officers, as I was, were single. Almost all of the commissioned officers were single under the grade of colonel. Today that is absolutely reversed. Therefore, it is imperative that we do provide housing and child care centers for our military in order to keep the kind of personnel that we want in the military.

Despite all of these excellent provisions in this bill, Mr. Speaker, let me go on the record once again as I have for several years now. We continue to provide inadequate, yes, I will repeat, inadequate funds for this Nation's defenses. Despite our additions to the President's request, this bill will represent the 14th straight year of inflation adjusted cuts to this budget. Our military is vastly smaller and it is older than during Desert Storm and, God forbid, if we had to go back and have the same kind of rearm go that we had in Desert Storm, we could not do it today and that means the men and women that we put in danger's way are going to be very, in very serious condition. Most experts agree, not just with me, that such a mission would simply be impossible today.

□ 2130

Worse, this smaller force is being asked to do more and more and more and more by the administration. We are bogged down in a fanciful nation-building mission in Bosnia. We also have a seemingly never-ending mission in Iraq.

And I support the Iraq mission, but my point is that our military is stretched almost to its breaking point, my colleagues. Our men and women are being asked to do too much, with less training, less support and with older and older equipment.

The predictable results are that the recruiters are unable to meet the quotas. If my colleagues do not believe it, they should go back into their districts and go and sit down with the Marine Corps and the Navy and the Army and the Air Force recruiters, and they will tell my colleagues that they are having trouble recruiting a real cross-section of America today.

Air Force and Navy pilots are resigning in droves today because they do not think that the career is there. Are they going to be able to advance up the promotion ladder? And under today's military level of funding, the answer is no. They know they will be cashiered out at an early age and, therefore, how can they afford to stay in the military and still support their families? They cannot. And that is why we have to pass this bill today.

All this, as the world just gets more and more dangerous. We have a nuclear arms race going on right now in South Asia, aided and abetted by the increasingly aggressive Communist China, and we will debate that at length for about 4 hours tomorrow morning. The Middle East peace process is in deep trouble. Saddam Hussein, according to the U.N. weapons inspectors, continues to conceal his weapons of mass destruction capabilities, and North Korea remains as dangerous as ever.

Unfortunately, Mr. Speaker, history has not ended and conflict among nations has not ceased, nor will it in my colleagues' lifetime and mine. But in order to deter conflict and to prepare for all contingencies, we need the strongest, best trained, best equipped and most ready military force that we can possibly have. We have had that, but have taken ourselves to the verge of squandering it over the past several years with these budget cuts.

For several years running, the Committee on National Security and the Committee on Appropriations have made valiant and worthy attempts to correct this increasingly dangerous situation by adding to the President's budget request. But it has not been enough. Mr. Speaker, somehow we are all going to have to figure out a way to get more money allocated to defense before we come to regret what we have done here on this floor over the years.

Despite all this, I nonetheless urge support of the rule and this bill as we debate through this week. It is vital legislation and it is simply the best we can do at this juncture. And once again I would commend the gentleman from South Carolina (Mr. FLOYD SPENCE), the gentleman from Missouri (Mr. IKE SKELTON), and the Committee on National Security and their staff for the excellent work on bringing this bill to the floor.

Let us pass this rule quickly, get on to the general debate, and then get into the amendment process tomorrow.

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

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

Mr. Speaker, this is a noncontroversial rule which merely facilitates the work of the House. The Committee on Rules has also reported a rule which provides for the consideration of the amendments to the Department of Defense authorization for fiscal year 1999.

However, as in the years past, the Committee on Rules has recommended this separate rule providing for general debate on the DOD authorization in anticipation of another rule which will set the terms of debate on the many substantive issues relating to the operations of the Department of Defense.

Mr. Speaker, there is a matter related to the consideration of this rule by the Committee on Rules I would like to call to the attention of the House. Last Thursday afternoon, just minutes before the Committee on Rules convened to consider this noncontroversial rule, the chairman announced from the floor that the committee would be considering two resolutions which had not been previously noticed to the committee. This chairman said these matters were being brought to the Committee on Rules solely because the Democratic leadership had earlier that day offered a privileged resolution relating to the conduct of the investigation on campaign finance by the chairman of the Committee on Government Reform and Oversight.

Mr. Speaker, I only raise this issue because these matters were brought to the Committee on Rules with no notice to the Democratic members. The chairman of the committee, my friend the gentleman from New York (Mr. SOLOMON), did call the ranking member to inform him of his decision to bring these matters before the committee as emergency matters, but he did so only moments before going to the floor to make this general announcement, during which he said the committee was due to meet in 3 minutes.

Mr. Speaker, I do not dispute the authority of the chairman to bring those matters that he chooses before the committee for its consideration. What I would merely like to point out is that the manner in which these resolutions were brought to the committee only perpetuate a problem he is seeking to remedy.

That being said, Mr. Speaker, let me add that I have no objection to this rule providing for general debate on the authorization for the programs of the Department of Defense for fiscal year 1999, and I urge its adoption.

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

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that the gentleman from Colorado (Mr. MCINNIS) be allowed to manage the rest of the time on this rule.

The SPEAKER pro tempore (Mr. PEASE). Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. MCINNIS. Mr. Speaker, I yield 3½ minutes to the gentleman from Utah (Mr. HANSEN).

Mr. HANSEN. Mr. Speaker, I rise in support of this bill and of this rule as the minimum support necessary to meet our basic security requirements around the world. I sincerely hope that over the year we can begin to debate our responsibility in solving the many challenges facing our military.

With the passage of this bill, the Congress has joined the President in responsibility for underfunding the critical functions of national security. The duty now rests squarely with the Congress to provide sufficient resources for a strong and ready military force capable of meeting our global responsibilities while keeping faith with the men and women in uniform who sacrifice so much for this country.

I had hoped the President would lead on this issue, laying out the case for the American people that it is still a dangerous world and the United States must be prepared to lead and to act whenever our interests are at stake. I am not hopeful that he will.

The revelations of China's influence in White House policy and the very troubling transfer of missile technology to the Chinese military have gravely damaged our national security and may have ignited a new wave of proliferation and arms race throughout Asia. Meanwhile, at home, the President continues to put campaign promises and jobs in California ahead of complying with the base closure law and hundreds of millions of dollars in savings represented by the consolidation of excess capacity.

I do not expect too much leadership from a White House that promised a 1-year mission to Bosnia for a cost of $1 billion, and now our military is stuck in an endless stalemate that will cost well over $10 billion and even more in eroded military readiness.

That leaves it to us. It is the principal job of the Congress to provide for the national defense. We do not need a bigger Department of Defense, but we do need a more modern one with adequately supported professionals and clearly defined goals.

After 14 straight years of real decline in defense spending, it is long past time for a change. If we are to remain great and free and respected around the world, we need the courage and foresight to provide for a strong and ready force. George Washington warned that the only way to ensure peace was to be prepared for war. I am afraid today that we are prepared for neither.

The Joint Chiefs of Staff and the CBO tell us the national military strategy is underfunded by nearly $15 billion per year for the next 6 years. At less than 1 percent of the Federal budget and one-tenth percent of our GDP, I ask each of my colleagues, if we cannot afford this investment now, when times are good and we have the first balanced budget in a generation, when will we afford it? Let us commit what modest investment in national defense will be included with debt reduction and family tax cuts as we reprioritize Federal expenditures under a budget surplus.

Our military readiness is already broken. Retention and recruiting are at nearly all-time lows. Morale is falling. The only thing holding our military together is the tireless effort, dedication, patriotism and self-sacrifice of the men and women who volunteer to serve in our armed forces. They can only bear this burden so long before health, safety and family fall victim to relentless operational tempo.

I salute these people and thank them for all they do. We owe it to them to show our full support before we ask the last full measure of their devotion. I hope we in the Congress can show that kind of leadership.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. DEFAZIO).

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

I think it is unfortunate that we are having and will have the debate tonight on the largest single expenditure of the government of the United States, late at night with virtually no Members in attendance.

Further, it is unfortunate that as the bill moved forward, that there were two copies of the report on this bill available in the anteroom of the committee for the 435 Members of the Congress. If any Member wanted to attempt to develop an amendment, they could have gone down and sat in the anteroom and tried to pore through the hundreds of pages of the bill, because the amendments were due on Thursday and the reports were issued to the Members' offices today. I think that is equally unfortunate.

And what we can expect from that is that many vital issues will not get the scrutiny that they should have on the floor of the House of Representatives or in the Congress.

Procurement reform. No one can argue that the procurement system of the Pentagon works well. The scandals are still there. If it is not toilet seats, it is screwdrivers. If it is not screwdrivers, it is fasteners. If it is not fasteners, it is whole weapon systems that do not work.

These things should be adequately reviewed. But profits come before efficiency, or even come before national security, and certainly come before the troops.

We are not going to address effectively in this bill the fact that 15,000 enlisted families are eligible for food stamps in the military. The small across-the-board raise given in this bill is not going to boost those families up above that level.

We are not going to effectively address the much more cost-effective alternative of the National Guard as an alternative to full-time standing military for the defense needs of our country. We are still going to short the National Guard in this bill.

People say, well, there is not enough money to go around. Well, the Pentagon is spending a lot of time pushing some other big programs that are of dubious value, another generation of attack submarines. When the last one, *Seawolf*, was launched, a senior chief said, "Now, if we could just find somebody to fight with." Well, now we are going to develop another generation of submarines, even more sophisticated, even though there are none as sophisticated as the last ones we are still launching.

We are still going to invest $3.8 billion in ballistic missile defense, some of it oriented toward theater defense to defend our troops, but some of it still following the fantasy launched by Star Wars $50 billion ago with not yet one successful test. There will be no amendments on that issue here on the floor of the House. There will be very little discussion of that issue here on the floor of the House.

These are things that deserve scrutiny. These are things that should have amendments oriented toward them. But the process that was adopted here, two reports available, amendments due by Thursday, reports issued today to Members, did not lead to that and the debate late at night does not either.

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

The gentleman from Oregon, I know he is getting ready to leave the Chamber, but I think he needs to be aware, because he is probably going to be embarrassed by the fact that he was not, that hundreds of copies of the committee print were available a week ago Monday. Last Monday a week.

Mr. DEFAZIO. Mr. Speaker, will the gentleman yield?

Mr. MCINNIS. I will not yield.

Mr. DEFAZIO. If the gentleman will yield.

Mr. MCINNIS. I have not yielded.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. MCINNIS) has the time.

Mr. DEFAZIO. That is an inaccurate statement.

Mr. MCINNIS. Mr. Speaker, I ask for order on the floor. I have time on the floor.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. MCINNIS) has the time.

Mr. MCINNIS. Furthermore, I would advise the gentleman that over 100 amendments have been filed. So what I would surmise from this is that a number of our colleagues have determined that this is a very open process. They have taken the time to file over 100 amendments.

The fact that the gentleman from Oregon neglected to do this or neglected to watch the schedule, he should not then come down here on the floor and say that this rule is not fair.

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

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Speaker, my staff contacted the committee. They were told two copies were available in the anteroom. Beyond that, we know that the process is preloaded.

I have just reviewed the list of amendments that are being allowed. There is not one single amendment that would cut $1 from any program. There is not one single amendment being allowed that would review the efficiency or the effectiveness of the procurement program.

This has been going on for years here on the floor of the House. Members can take the amendments up there and they will not be allowed to talk to them on the floor. The only amendments here on the floor are going to be amendments that enhance the spending under this bill.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume once again to correct. I mean the gentleman from Oregon makes it sound like there were lots of amendments up there to decrease spending and none of them were allowed on the floor.

Only one amendment was filed, Mr. Speaker. Only one amendment. I think we need to show the whole story, show the whole picture here before we reflect upon our colleagues some kind of Committee on Rules that is theoretically disorderly and not fair. It is eminently fair.

This rule has had over 100 amendments. We are going to have lots of debate in the next few days. And, quite frankly, the gentleman needs to be a little more accurate, in my opinion, in regards to the action the Committee on Rules has taken.

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

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Mrs. THURMAN).

Mrs. THURMAN. Mr. Speaker, I thank the gentleman for yielding me this time, and I also want to take this opportunity to thank the chairman, the gentleman from South Carolina (Mr. SPENCE), and the ranking member, the gentleman from Missouri (Mr. SKELTON), for what I see as a very important issue that has been included in this authorization bill, which is to extend the national mail order pharmacy program to Medicare eligibles.

□ 2145

While Congress has authorized a mail-order pharmacy program and allowed retirees who live near those areas that the bases have been designated to be closed, they are allowed to participate, but this has left out hundreds of thousands of other brave, retired servicemen and women who have continued to be locked out of this process.

Currently, this program does not include the vast majority of our Nation's Medicare-eligible military retirees. That is why last year I introduced some legislation, H.R. 1773, to expand the mail-order program to all Medicare-eligible military retirees. This measure has been supported by both the Air Force Sergeants Association and the Army Retirement Council, both of which have worked tirelessly on this issue.

I would also like to point out that the hard work of one of my constituents who serves on one of these committees, Mr. Ebitz, first brought this issue to my attention.

The legislation before us today will require that the DOD submit a plan to Congress by March 1, 1999. This plan must provide for a system-wide redesign of the military mail-order pharmacy system, which includes a system-wide drug benefit for all beneficiaries, including Medicare-eligible beneficiaries.

I think the DOD and this Congress have an implied moral commitment to provide this care to all military beneficiaries. By supporting the expansion of the mail-order program, we can send a clear message that the passage of time does not either erase the service of our military retirees and what they have given to us nor our Government's obligation to their well-being.

Mr. MCINNIS. Mr. Speaker, may I ask how much time is remaining?

The SPEAKER pro tempore (Mr. PEASE). The gentleman from Colorado (Mr. MCINNIS) has 17 minutes remaining. The gentleman from Texas (Mr. FROST) has 22 minutes remaining.

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

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from Mississippi (Mr. TAYLOR).

Mr. TAYLOR of Mississippi. Mr. Speaker, I would like to take this opportunity to speak against this rule and the rule that will come up tomorrow.

Mr. Speaker, about $18 billion of our Nation's money, most of it coming from the Department of Defense, is spent on the war on drugs. In February, to my knowledge, we had a special forces aid team in Colombia training the Lance Arrows. I visited that group a week before the Lance Arrows were ambushed. Out of 125, I think 18 straggled back. The rest were killed or captured.

We also have Seals down there. We have E-3s flying. We have P-3s flying. We have surveillance C-130s, one of which was shot up by the Peruvians.

An American airman fell to his death I think 11,000 feet out of the plane.

The point that I am trying to make, Mr. Speaker, is that I offered an amendment to the Committee on Rules to require all Department of Defense employees to be tested for drugs. Because we have some Department of Defense employees, particularly our uniformed personnel, who are literally putting their lives on the line as we speak. So should we not know that all of the people within the Department of Defense are pulling for the same team?

The uniformed military personnel and some civilians are required to be drug tested. We know from conversations that have been intercepted from the drug lords that they know when the planes are flying, they know when the ships are patrolling; and I suspect there are some people within the Department of Defense that are giving this information away.

Is it for money? Is it for drugs? I think we deserve to know. And I think the American people deserve a Department of Defense, as a matter of fact, the American people deserve a Federal workforce that is drug free. And the best way to see to it that that happens is to allow drug testing as a condition of employment.

That is why I must express my deep anger that every single Republican member of the Committee on Rules voted against bringing this amendment to the floor. I do want to congratulate my Democratic colleagues who voted for that. But that is one of the 100 amendments that should have been voted on. That is why I will be voting against the rule both tonight and tomorrow.

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

The amendment of the gentleman sounds good. I think the amendment has a lot of merit to it. However, this amendment was offered last year. It is going to be addressed at the Committee on Government Oversight and Reform. Other committees are going to take a look at it. That is a more appropriate location.

I would urge my colleague to go ahead and support the rule. That is what is going to allow us some good debate.

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

This is the rule for general debate only. We will have the opportunity tomorrow to consider a rule which will provide for the consideration of various amendments. I urge the adoption of this rule, and I yield back the balance of my time.

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

I also urge that we pass this bill. We are going to have appropriate time for general debate this evening. The next few days are going to be consumed on the issue of defense. It is absolutely critical.

I think the good congressman, the gentleman from the State of Utah (Mr. HANSEN), stated it very well in his remarks. He quoted George Washington, "The best way to be prepared for peace is to be prepared for war."

I think these are key issues. I think both sides of the aisle have a lot of keen interest in seeing that our defense is strong and appropriate. And, therefore, I urge the first step in this process, and that is passage of the bill. I urge a yes vote.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. HEFLEY). Pursuant to House Resolution 435 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3616.

The Chair appoints the gentleman from Michigan (Mr. CAMP) as chairman of the Committee of the Whole, and requests the gentleman from Indiana (Mr. PEASE) to assume the chair temporarily.

□ 2153

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3616) to authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1999, and for other purposes, with Mr. PEASE (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from South Carolina (Mr. SPENCE) and the gentleman from Missouri (Mr. SKELTON) each will control 1 hour.

The Chair recognizes the gentleman from South Carolina (Mr. SPENCE).

Mr. SPENCE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, on May 6, the Committee on National Security reported H.R. 3616 on a bipartisan vote of 50–1. Although this kind of support may leave everyone with the impression that all is well with our military and that crafting this bill was easy, the truth was far different.

Caught between an international geopolitical environment that requires an expansive United States national security strategy and a domestic political environment bounded by declining defense budgets locked in place by the Balanced Budget Act, the Committee is left to figure out how best to manage risk; and there should be no illusions about the level of risk associated with the problems that our military confronts in carrying out its mission.

The Joint Chiefs of Staff recently assessed it as moderate to high. Thus, our actions in this bill are intended to protect as best we can those programs that will help lower the risks to our national security interests by improving readiness, enhancing quality of life, and increasing the pace of which the rapidly aging equipment is modernized.

When the fiscal year 1999 defense budget is measured by any of last year's Quadrennial Defense Reviews three central requirements for the U.S. military, shaping the international environment, preparing for uncertain future or responding to the crisis of war, it is inadequate.

Despite the Nation's extensive national security requirements and the administration's heavy use of the military all over the world, the fiscal year 1999 defense budget continues for the 14th consecutive year a pattern of real decline in defense spending.

The President's budget request represents a 1.1 percent decline from current defense spending levels and is $54 billion short of even keeping pace with record low inflation over the next 5 years. The spending levels authorized in this bill are almost 40 percent lower than those of little more than a decade ago and, in fact, represent the lowest level of inflation-adjusted defense spending since before the Korean War.

Earlier this year, the Joint Chiefs of Staff, the Nation's military leaders, testified that their fiscal year 1999 budgets contained shortfalls of more than $10 billion. Over the 5-year defense plan, the Chiefs of Staff testified that their shortfalls amounted to more than $58 billion.

Mr. Chairman, I will submit a summary of the shortfalls identified by the Service Chiefs along with my statement.

Unfortunately, it is not hard to appreciate why the unofficial motto of today's military is "doing more with less." Force structure and resources continue to decline, while missions continue to increase.

Since 1987, active duty personnel have been cut by more than 800,000.

Since 1990, the Army has been reduced from 18 to 10 divisions.

Since 1988, the Navy has reduced its ships from 565 down to 346.

Since 1990, the Air Force has reduced its fighter wings from 24 down to 12.

And since 1988, the United States military has closed more than 900 bases and facilities around the world and 97 bases and facilities here at home.

At the same time, our military is shrinking, operations around the world are increasing:

Between 1960 and 1991, the Army conducted 10 operational events. In just the last 7 years, they have conducted 26 such operational events.

In the 7-year period from 1982 to 1989, the Marine Corps participated in 15 contingency operations. However, since 1989 and the fall of the Berlin Wall, they have participated in 62 such contingency operations.

Similarly high operation national tempos are also impacting the Navy and the Air Force.

The threats and challenges America confronts around the world today and the resulting pressures they have placed on a still shrinking United States military have been underestimated by the administration and by many in Congress. At this critical point in history, the mismatch between the Nation's military strategy and the resources required to implement it grows larger every day. Consequently, a wide range of quality of life, readiness and modernization shortfalls have developed. If left unresolved, these shortfalls threaten the viability of today's all-volunteer force, risk a return to the hollow military of the late 1970s and jeopardize America's ability to effectively protect and promote its national interests around the world.

And these are not just my own personal conclusions. They reflect a consensus view held by the Committee on National Security's senior leadership on both sides of the aisle.

Back on April 22, I joined the gentleman from Missouri (Mr. Skelton) and the committee's senior Republican and Democrat members in publicly calling upon the President and the congressional leadership to provide for increased defense spending in the face of these worsening military shortfalls.

The letter we signed stated, in part, and I will read from that:

Despite several years of aggressive Pentagon reform, it is apparent that even if the most optimistic estimates of reform-generated savings materialize, they will fall far short of adequately addressing underfunded quality of life, readiness and modernization requirements as well as the inevitable deployments in the years ahead. Having just concluded our initial oversight hearings on the fiscal year 1999 defense budget request, it is our collective judgment that, short of an unwise retrenchment and overhaul of United States national military strategy, fixing the Nation's long-term defense program will require increased defense spending. Without additional defense resources to reverse the 14-year pattern of spending decline, the military services will be unable to stabilize their shrinking force structures, protect quality of life and readiness and modernize rapidly aging equipment.

□ 2200

Mr. Chairman, I will submit a copy of the complete April 22 bipartisan letter along with my statement.

Despite the Committee on National Security's attempt to manage the growing risk, we can only make improvements at the margin in the absence of additional defense resources. The magnitude of the shortfalls is so great that they cannot be eliminated simply through a wiser allocation of resources contained in the President's request.

By reprioritizing the President's request, the committee has provided the military services some of the tools they need to better recruit and train quality personnel, better train personnel to the highest possible standards, and better equip them with advanced military technology.

At the same time, the committee has tried to provide those who wear their uniform and their families with a quality of life more commensurate with that of the American citizens they are sworn to protect. As a result of these improvements, H.R. 3616 received strong bipartisan support in committee and should receive the same in the full House.

Nonetheless, every Member of the House should be deeply troubled that 14 years of a shrinking military and declining budgets have left the world's only superpower running a moderate-to-high risk when it comes to protecting and promoting its national security interests around the world.

Mr. Chairman, I will leave discussion of the many specific initiatives in the bill to my colleagues on the Committee on National Security who have worked very hard since February to get us to the point here tonight. However, I would like to recognize the hard work of the subcommittee and panel chairman and ranking members. Their leadership and bipartisan approach to issues have permitted the committee, even without additional resources, to significantly improve upon the administration's request in this bill.

I would specifically like to single out and thank the gentleman from Missouri (Mr. SKELTON), the committee's new ranking member, for all of his help, support, and hard work. The gentleman from Missouri (Mr. SKELTON) is not only a relentless advocate for a strong military defense, he works very hard to ensure an open committee process. His handiwork is evident in the overwhelming bipartisan support H.R. 3616 received in the committee.

Finally, Mr. Chairman, I would like to thank the staff for their enormous dedication and effort. While the staff is usually the first to get the blame, they rarely receive any of the credit. All you have to do is take a look at the size and complexity of this bill to understand the importance of the committee staff to the defense authorization process.

Mr. Chairman, I urge support of this bipartisan bill.

Mr. Chairman, the material I referred to is as follows:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATIONAL SECURITY,
Washington, DC, April 21, 1998.

MEMORANDUM FOR HNSC MEMBERS

From: Chairman Floyd D. Spence

Re unfunded requirements of the military services

During the committee's March 12, 1998 hearing, I asked each of the four service chiefs to identify all underfunded or unmet quality of life, readiness and modernization requirements in the five year budget plan and to estimate how much it would cost to fully fund these requirements over the next five years.

The lists that the services forwarded reveal substantial underfunded requirements. In fiscal year 1999 alone, these shortfalls total over $10 billion; for the five-year period ending in fiscal year 2003, the shortfalls amount to over $58 billion. Moreover, if you study the chiefs' responses, I believe a compelling case can be made that the shortfalls may be understated. It is particularly troubling that these shortfalls have been identified at a time when the Balanced Budget Act of 1997 (BBA) has set defense spending at levels that continue the fourteen year trend of real decline for the next five years.

It is also interesting to note that the five-year defense budget plan called for in the BBA falls more than $54 billion short of keeping pace even with today's record low inflation (see attached chart). And, were inflation to increase even modestly to historical averages, the five-year plan could fall short of inflation by as much as $100 billion.

The attached table presents the underfunded or unmet requirements by service in each of the next five years. Should you require additional information or have any further questions, please contact Andrew Ellis (5–9648) or Dino Aviles (6–0533) on the committee staff.

Attachments (2)

MILITARY SERVICES UNFUNDED PRIORITIES

[millions of current year dollars]

	Fiscal year—					Total
	1999	2000	2001	2002	2003	
Army:						
FY 99 Contingency Ops (Bosnia)	1,390.0					1,390.0
MIL-Tech Restoration	36.5					36.5
Real Property Maintenance	463.5	500.0	500.0	500.0	500.0	2,463.5
Base Operations	500.0	500.0	500.0	500.0	500.0	2,500.0
ARNG & USAR OPTEMPO	199.8	250.0	250.0	250.0	250.0	1,999.8
Military Pay	120.0					120.0
MILCON	214.4					214.4
Soldier Life Support	72.1					72.1
Embedded Diagnostics (TMDE)	39.5					39.5

MILITARY SERVICES UNFUNDED PRIORITIES—Continued

[millions of current year dollars]

	Fiscal year—					Total
	1999	2000	2001	2002	2003	
Comanche (2nd prototype acceleration)	24.0					24.0
Crusader	11.5					11.5
AFATDS	20.7					20.7
HMMWV	65.7					65.7
Apache 2nd FLIR	50.3					50.3
Command and Control	22.5					22.5
Engineer Equipment	46.9					46.9
Demonstration of New Technology	39.8					39.8
Tactical Vehicles and Trailers	92.7					92.7
Family of Medium Tactical Vehicles	88.0					88.0
Blackhawk Helicopters (8 for ARNG)	78.5					78.5
C^3 Equipment	92.9					92.9
Apache Longbow (training devices)	40.2					40.2
Small Arms	41.8					41.8
Javelin	37.9					37.9
Test Equipment and Facilities	10.0					10.0
Ammunition Production Base	39.3					39.3
Test Equipment and Range Improvements	34.6					34.6
Depot Maintenance		400.0	400.0	400.0	400.0	1,600.0
Training and Support		350.0	350.0	350.0	350.0	1,400.0
Ammunition, Force XXI, night vision, soldier modernization, combat support/combat service support, and C^3I		2,000.0	2,000.0	2,000.0	2,000.0	8,000.0
Critical Modernization (Abrams tank, Bradley FV, Apache Longbow 2nd gen FLIR, digitization)		1,000	1,000	1,000	1,000.0	4,000.0
Army total	3,873.0	5,000.0	5,000.0	5,000.0	5,000.0	23,873.0
Navy:						
Aviation Spares	45.0					45.0
OPTEMPO (Steaming days for mine warfare)	20.0					20.0
Ship Depot Maintenance	90.0					90.0
Real Property Maintenance	391.0					391.0
Reserve Pay (ADT & ADSW)	20.0					20.0
TOMAHAWK Missile Recertification	27.0					27.0
Shipbuilding (CVN–77 and ADCX)	550.0					550.0
Aircraft Procurement (E–2C and AIP)	143.0					143.0
MILCON–QOL and Other	273.0					273.0
RDT&E (Aviation Programs)	45.0					45.0
LANTIRN Pods	8.0					8.0
Submarine equipment and RDT&E	94.0					94.0
Ship Self Defense systems	30.0					30.0
CVN RDT&E (technology insertion)	33.0					33.0
Cooperative Engagement Capability (CEC)	20.0					20.0
IT–21 Procurement and O&M	143.0					143.0
O&M–QOL (BEQ furnishings)	10.0					10.0
O&M–Other (NSIPS, ATMs, Recruiting)	93.0					93.0
STANDARD Missile Procurement	48.0					48.0
Family Housing	53.0					53.0
Shipbuilding Rates		600.0	600.0	600.0	600.0	2,400.0
Aircraft Procurement Rates		750.0	750.0	750.0	750.0	3,000.0
RDT&E (next generation combatants)		400.0	400.0	400.0	400.0	1,600.0
Recruiting, Training and Retention		400.0	400.0	400.0	400.0	1,600.0
MILCON		700.0	700.0	700.0	700.0	2,800.0
Navy total	2,136.0	2,850.0	2,850.0	2,850.0	2,850.0	13,536.0
Marine Corps:						
Personnel Support Equip/Initial Issue	64.0					64.0
Other Personnel Education and Training	2.6					2.6
Family Housing	82.1					82.1
MILCON—QOL	100.7					100.7
USMCR OPTEMPO & ADSW	6.7					6.7
Recruiting & Advertising	22.4	30.0	30.0	30.0	30.0	142.4
Depot Maintenance	20.7					20.7
Base Operations Support	10.4					10.4
Operating Forces Support	16.1					16.1
Miscellaneous Readiness Activities	23.0					23.0
Aviation Modernization (MV–22, AV–8B, etc)	290.5	750.0	750.0	750.0	750.0	3,290.5
Ground Equipment Modernization	265.4	650.0	650.0	650.0	650.0	2,865.4
Amphibious Equipment Modernization (LCAC)	32.8					32.8
Real Property Maintenance	72.0	120.0	132.9	102.8	95.5	523.2
MILCON—Other	74.0	176.0	181.0	143.0	141.0	715.0
Personnel Mgmt & Other	2.6					2.6
Increase Equipment Maintenance		100.0	100.0	100.0	100.0	400.0
Total Marine Corps	1,086.0	1,826.0	1,843.9	1,775.8	1,766.5	8,298.2
Air Force:						
Spares	219.6	295.8	311.5	240.9	208.8	1,276.6
Depot Maintenance	182.4	121.9	168.7	198.2	208.2	879.4
Engines	274.4	321.7	254.6	221.9	231.8	1,304.4
Training	73.3	59.5	60.8	62.1	63.4	319.1
Technical Orders	24.0	57.5	38.4	29.5	26.2	175.6
Real Property Maint	363.0	424.0	499.0	608.0	508.0	2,402.0
Base Operating Support	294.4	205.9	170.6	172.5	189.9	988.3
Aircraft Systems	157.3	157.3	166.5	182.3	255.5	918.9
Space Launch Ranges	28.3	24.3	32.3	33.4	22.2	140.5
MILCON—Readiness	310.6	272.3	231.3	216.2	209.8	1,240.2
War Reserve Material	64.0	13.0				77.0
MILCON—QOL	464.4	439.9	416.2	410.8	411.1	2,142.4
Communications	96.4	99.7	99.1	85.5	87.4	468.1
Special Purpose Vehicles	50.0	52.8	46.9	41.7	42.6	234.0
Air Force Total	2,557.1	2,545.6	2,495.9	2,503.0	2,464.9	12,566.5
Total, All Services	9,652.1	12,221.6	12,189.8	12,128.8	12,081.4	58,273.7

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATIONAL SECURITY,
Washington, DC, April 22, 1998.

Hon. WILLIAM J. CLINTON, President of the United States of America.
Hon. NEWT GINGRICH, Speaker of the House.
Hon. RICHARD A. GEPHARDT, House Minority Leader.
Hon. TRENT LOTT, Senate Majority Leader.
Hon. TOM DASCHLE, Senate Minority Leader.

DEAR SIRS: The fiscal year 1999 defense budget request represents the fourteenth consecutive year of real decline in defense spending that has occurred under Administrations and Congressional majorities of both parties.

The fall of the Berlin Wall brought with it an opportunity to reduce the nation's Cold War defense structure. We believe, however, that the threats and challenges America confronts today and the resulting pressures they have placed on a still shrinking U.S. military have been underestimated. At what we believe to be a critical point in history, the mismatch between the nation's military strategy and the resources required to implement it is growing. Consequently, a wide range of quality of life, readiness and modernization shortfalls have developed that, if left unchecked, threaten the long-term viability of today's all-volunteer force. Compelling our men and women in uniform to "do more with less" risks a return to a hollow military and jeopardizes America's ability to effectively protect and promote its national interests around the world.

Make no mistake, the men and women who serve in uniform today comprise the finest military force in the world. They are truly America's best and brightest. It took almost a generation following the Vietnam War to build the force that quickly and decisively won the Persian Gulf War just seven years ago. Yet as the pace of military operations increases against a backdrop of declining resources, we must recognize that our all-volunteer force is under stress. We need to take better care of our men and women in uniform.

Despite several years of aggressive Pentagon reform, it is apparent that even if the most optimistic estimates of reform-generated savings materialize, they will fall far short of adequately addressing underfunded quality of life, readiness and modernization requirements as well as the inevitable deployments in the years ahead. Having just concluded our initial oversight hearings on the fiscal year 1999 defense budget request, it is our collective judgment that, short of an unwise retrenchment and overhaul of U.S. national military strategy, fixing the nation's long-term defense program will require increased defense spending. Without additional defense resources to reverse the fourteen year pattern of spending decline, the military services will be unable to stabilize their shrinking force structures, protect quality of life and readiness and modernize rapidly aging equipment.

In the context of the first federal budget surplus in three decades and today's strong economy, we call on you, the nation's bipartisan political leadership, to reopen negotiations on the Balanced Budget Act of 1997 in order to provide for a sustained period of real growth in defense spending. We understand that other issues would be part of any such agenda. However, the inevitable result of adhering to an agreement that ensures declining defense budgets indefinitely will be the hollowing of the U.S. military. Because we believe that to "provide for the common defense" is the federal government's first, and most important, responsibility, we stand ready to work with you to ensure that America maintains a military befitting our nation's superpower status—a military that remains second to none.

Sincerely,

FLOYD D. SPENCE,
Chairman, Committee on National Security.
DUNCAN HUNTER,
Chairman, Subcommittee on Military Procurement.
CURT WELDON,
Chairman, Subcommittee on Military Research and Development.
HERBERT H. BATEMAN,
Chairman, Subcommittee on Military Readiness.
JOEL HEFLEY,
Chairman, Subcommittee on Military Installations and Facilities.
IKE SKELTON,
Ranking Member, Committee on National Security.
NORMAN SISISKY,
Ranking Member, Subcommittee on Military Procurement.
OWEN B. PICKETT,
Ranking Member, Subcommittee on Military Research, and Development.
SOLOMON P. ORTIZ,
Ranking Member, Subcommittee on Military Readiness.
NEIL ABERCROMBIE,
Ranking Member, Subcommittee on Military Installations and Facilities.
GENE TAYLOR,
Ranking Member, Subcommittee on Military Personnel.

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

Mr. SKELTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, Members of the House, I rise to offer my support and make the following observations on H.R. 3616, the National Defense Authorization Act For Fiscal Year 1999.

Allow me, first, to congratulate the distinguished gentleman from South Carolina (Mr. SPENCE) for his commitment to having the work on the committee carried on in a bipartisan fashion, as was reflected as such in this bill. Not only did he and I work together on a number of issues, but the staff that worked for the minority had numerous occasions to work with the staff on the majority to influence and improve the overall product of this bill. Overall, this truly was a bipartisan effort and can be best summarized by the overwhelming support that the bill received in the committee, 50 votes for with only one against.

This will also be the last time, Mr. Chairman, that the gentlewoman from California (Ms. HARMAN) and the gentleman from Pennsylvania (Mr. MCHALE) will participate in these deliberations. I want to thank them for their fine work over the years and their contributions to the work in this committee. Their presence will certainly be missed.

As we begin consideration of this bill, let me underline the point that this year we are operating under the restrictions of the Balanced Budget Act of 1997. The totals on defense were agreed to by both executive and legislative branches last summer. As a result, the overall total for the defense budget today, $270 billion in budget authority, which we handle on our committee, is as much a reflection of congressional priorities as it is of executive priorities.

As a result of that agreement, the task of trying to address the many issues affecting the Armed Forces has become much more difficult to manage this year than in past years. Over the past 3 years, the committee and this Congress added funds to defense. We did not have that option this year and worked within the confines of the Balanced Budget Act of 1997.

Let me try to set the scene a bit as we consider this defense bill. The fallen Berlin wall in 1989 and the subsequent collapse of the Soviet Union 2 years later brought with it the end of the Cold War. It also brought with it the opportunity to substantially reduce both the size of our Armed Forces and reduce the burden of defense expenditures on our Nation.

In 1989, we had over 2.1 million active duty service members in an Army of 18 divisions, a Navy of over 540 ships, and an Air Force of 24 fighter wing equivalents. Today, the military is about 1.4 million active duty service members in an Army of 10 divisions, a Navy with 315 ships, and an Air Force with 20 fighter wing equivalents.

The percentage of Gross Domestic Product, the GDP, devoted to defense in 1989 was 5.7 percent. For the current fiscal year, we are spending 3.2 percent of the Gross Domestic Product on defense. Next year will be 3.1 percent, the smallest share we will have spent on defense since 1941 when the Japanese attacked Pearl Harbor.

I cite these figures simply to highlight the point that, with the end of the Cold War, we made substantial reductions in both the size of our Armed Forces and the burden of defense spending. It was proper to do both.

Since the end of the Cold War, we have had five different reviews of our defense structure.

Our current defense strategy is a subset of our national security strategy. As described in the Quadrennial Defense Review, our defense strategy calls for shaping the international environment in ways favorable to United States interests, responding to the full

spectrum of crises when it is in our interest to do so, and preparing now for an uncertain future.

In short, Mr. Chairman, we are trying to deal with the problems of today in anticipating the needs of tomorrow. It is the right strategy to have at a time of change and uncertainty.

However, as we have reduced the size of our forces since 1989, we have also increased the pace of our military deployments. This is serious. An Army cut almost 40 percent since 1988 has experienced a 300 percent increase in its operational pace. An Air Force that has undergone similar personnel reductions has experienced a fourfold increase in its operational pace.

Each of the services is struggling with a task of adjusting the size, composition, mission of its forces to deal with the implications of operating in this more demanding post-Cold War environment.

Our Armed Forces today are ready. However, if we keep up the current pace of operations and deployments, we may not be ready 5 years from now. Let me just say again, I believe we were right to reduce our forces and defense spending when the Cold War came to an end. I also believe we are right to have a defense strategy that promotes our involvement in the world.

But I believe that we may have reduced the size of our forces and the size of the defense budget a little too much. I believe we have a mismatch between the demanding goals we have set for ourselves and the resources we are willing to spend to obtain those goals.

That is why, about a month ago, senior committee leaders of both parties wrote the President and senior leaders in this Congress that the current strategy required increased defense spending.

Because of the changed economic conditions in which we find ourselves, I believe we should place an increase in defense spending on the national agenda. I believe that we can increase defense spending without having to reduce domestic spending; that we can increase defense spending and also reduce the national debt; that we can increase defense spending by also saving Social Security. But we will also have to arrive at a new national consensus to do so.

The world is still a complex, ever-changing, and dangerous place. In many ways, yesterday's solutions have spawned today's problems. The challenges we face are numerous: the proliferation of weapons of mass destruction, the intentions and actions of rogue states, the threat of terrorism, the possible emergence of China as a hostile power in the 21st century, the uncertain future of Russia, drug trafficking, the security of our information systems, regional hot spots, and last, but not least, humanitarian crises.

We have an opportunity to promote a more peaceful, prosperous, and stable world than those of us who lived through the troubling middle years of this century would ever have thought possible. However, we must be vigilant and remain engaged abroad. An important part of that engagement effort is a properly sized, trained, equipped, and ready military to protect our national interests.

As we consider this bill, I hope my colleagues will keep these concerns in mind. Despite the constraints of the Balanced Budget Act, I believe we have fashioned a pretty good bill.

We have provided a pay raise of 3.6 percent, half a percent more than the Department of Defense requested, supported the Department's requested real increase in the procurement budget for modernization, and maintained strong support for the cooperative threat reduction program, which is very important, to accelerate the dismantlement of former Soviet strategic offensive arms that threaten our country.

One important matter that I want to highlight concerns a report the committee has requested by the Department on Counterterrorism and Defense against the use by terrorists of weapons of mass destruction on United States territory.

Since 1994, Congress has expressed increasing concern about this threat. It is a very difficult, complex issue requiring Federal, State, local efforts, and coordination. Our effort is simply one more step to try to deal with the issue in a comprehensive fashion. Much work has been done in this area, and much more needs to be done. My concern is that we do so in a well-planned, well-coordinated effort at the State, Federal, and local levels.

In addition to the report, I will cosponsor, Mr. Chairman, an amendment with the gentleman from Pennsylvania (Mr. WELDON) addressing this important anti- and counterterrorism issue.

In a defense bill recommending $270.8 billion in budget authority, there were, of course, issues of contention. The decision to include two recommendations of the Kassebaum-Baker panel on gender-integrated training stirred one of the most substantive debates at both the subcommittee and full committee mark-up sessions. I did not support including those recommended in our bill.

As one who believes that we need to provide for a sustained period of real growth in defense spending, I believe that we undermine our case by funding unnecessary programs and weapons. In our bill, we have added seven C–130s that were neither requested by the Pentagon in its budget request nor even placed on the services' unfunded requirements list. At the same time, we did not fully fund the administration's request for the F–18 E/Fs, which the Navy has told us is their number one requirement.

Despite these flaws, overall, this is a good bill.

I will defer to other members of the committee on both sides to discuss the many important initiatives found in this bill. They have worked hard, and I compliment all of the members of the committee. Those on our side of the aisle have been very, very cooperative, and they have worked very hard. This is especially true of the subcommittee and panel chairman and ranking members.

Allow me to thank the staff who so ably assist us. Their dedication and expertise and capacity for hard work, Mr. Chairman, cannot be underestimated.

Mr. SPENCE. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. HUNTER), the Chairman of our Subcommittee on Military Procurement.

Mr. HUNTER. Mr. Chairman, I want to thank the gentleman from South Carolina (Mr. SPENCE), chairman of the full committee, who wrapped this package together along with his counterpart, the gentleman from Missouri (Mr. SKELTON), and commend them for doing more with less this year.

I want to thank also the wise gentleman from Virginia (Mr. SISISKY), who is my good partner on the Subcommittee on Military Procurement, for all the work that he did.

Having thanked those gentlemen, Mr. Chairman, let me say that this has been a thankless year for this committee, because we have been forced to preside over the decline of America's defenses, a very dramatic decline.

Anyone who looks at this chart and looks at the various functions, mandatory outlays which have increased from 1991 to fiscal year 2001 by over 38 percent, domestic discretionary outlays, that includes all the social programs that have increased some 15 percent in that same period of time.

Finally, look at defense going down 33 percent over that period of time. We understand that we have reversed our priorities and that we no longer consider the security of this Nation to be the number one priority. That mistake we have made in the past, my friends; and, in the past, it has cost American lives.

□ 2215

If we get specific, we can talk about the reductions in force structure that we have made. We have gone down since Desert Storm from the 18 Army divisions we had to only 10 today, the same number of divisions we had when South Korea was invaded in 1950; we have gone down from 24 to 13 fighter air wings, cut our air power almost in half; and we have cut our ships from 546 ships to about 333 ships.

At the same time, we have put enormous strain on our people, and we are losing our people. The other day, when I had a chance to go up with the C–5 refueling with some of our great Air Force personnel and had a chance to

talk with some of those personnel about whether or not they wanted to stay in the Air Force, the answer that all of us got back was disturbing, because we are projected to be 835 pilots short this year. And it is not just a money problem. It is a fact that we have such a small force now and such major obligations around the world that our pilots are not able to spend that graduation with their daughter, or go to their son's wedding, or do the other things that the men and women in uniform like to do, that is, to have a family life. So we are dropping down radically on personnel.

The Commandant of the Marine Corps told us a couple of months ago that at times he has had the highest OPTEMPO, that means the most Marines staying the longest time away from home since World War II. You can go right through the personnel problems and see that we are in fact approaching that time in 1979 when, as a guy in San Diego, I could look at our naval personnel and see that we had 1,000 chief petty officers a month leaving the Navy. That was a dramatic problem. We are approaching that same problem today across the array of military services.

Now, with respect to our modernization accounts, this account is about $60 billion less in real dollars than it was in the 1980s. That means we are using tanks, planes and ships much longer than we used them in the past. We are running out their lifetime. As a result of that, we have grounded some 907 Huey helicopters because they are not safe to fly anymore. We are building five ships this year. We are building to a 200 ship Navy. Just a few years ago we had almost a 600 ship Navy, and none of our projections for projecting the American power and foreign policy have lessened. So we have dramatically cut the national security budget.

We had just a few cents to spend on what I call platform items this year. We bought a few Blackhawk helicopters, two F-16 fighters, probably fewer F-16's than Sweden is going to buy this year, and just a few other platforms. That is all we could afford to add to the budget this year. We are buying some 66 total tactical aircraft, and that is in fact about 1½ times the buy that Switzerland made a couple of years ago on aircraft.

So we are rapidly disserving our military people in a most critical way. That is, we are not giving them the equipment they need to do the job. That is just as important as giving them pay, giving them quality of life, giving them good living quarters. So, Mr. Chairman, we can a lot with the few dollars that we had this year.

I want to thank all of the folks that worked so hard on the other side of the aisle, all of our staff members. I hope the House will pass this defense budget, and then come back to raise the top line, spend more on defense, and give us more security.

Mr. SKELTON. Mr. Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. SISISKY).

Mr. SISISKY. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, let me say to our distinguished chairman, the gentleman from South Carolina (Mr. SPENCE), I appreciate everything he has done. Of course, to our ranking member, the gentleman from Missouri (Mr. SKELTON), and, of course, my chairman of the Subcommittee on Procurement, the gentleman from San Diego, California (Mr. HUNTER), my sincere thanks.

It is strange, this is my 16th bill, and it is very strange what we are doing. We are not talking about a lot of things that happened in the bill. What we are talking about is why we are short in the bill. I am not opposed to that, because I am going to say the same thing, after I talk a little bit about the procurement bill.

Before I do that, let me ask all of my colleagues to support this defense authorization bill. It is not a perfect bill, but it is about as perfect as we can make it within current budget limitations. As ranking member of the Subcommittee on Military Procurement, I am all too aware of how budget limits impact procurement.

Let me just pick two items. I am delighted that we were able to fund the advance funding for CVN-77, which is a transition carrier between the CVX, the last of the Nimitz carriers. My biggest concern, however, on the other side, is we had to cut 36 F-18 E/Fs from the Navy.

We have reduced this program so much that these reductions threaten to postpone the initial operational capability and first deployment, yet this aircraft is on time, under budget and meeting all performance specifications. Even these marginal reductions will force the unit costs up by $2.4 million for each of the remaining 27 aircraft. I completely understand why this reduction is made, but I cannot help but think there might have been a better solution, and I appreciate the commitment of the gentleman from California (Chairman HUNTER) to look for a better solution in the conference.

Other than that, all Members should realize their requests for additional funding totalled about $6 billion. Even with the shifting of funds from other accounts to the procurement account, we were only able to come up with less than $1 billion.

Nevertheless, this bill authorizes $49 billion for procurement, an increase of $2.8 billion over last year, and $300 million more than the President's request. Despite these small gains, there remains very serious shortfalls, as shown by the unfunded priority list submitted by the military services. These shortfalls occur in all DOD accounts, and most of our chairmen and ranking members have written the leadership, as you heard, in both houses, maybe even asking to open the 1997 budget agreement.

The reason is we really are in danger of having a hollow force. Our military and civilian leaders persist in saying that our forces are "adequate" or "barely adequate." I am concerned, however, that words like "adequate" or "barely adequate" are not good enough to send our young warriors into harm's way. My concern is that over the last 14 years, so this is bipartisan now, of declining defense budgets, we have cut so deep that we simply may not be good enough to meet current threats with an acceptable level of risk.

Our problem is that procurement, readiness, training and other things that contribute to effective military operations are on very thin ice, and I worry that the risks we take because we do not have enough money in the defense budget will come back to haunt us. I worry we may not wake up until we suffer some disaster, like when the hostage rescue fell apart in 1980, or when our positions were overrun during the early stages of Korea.

I worry that their can-do attitude will lead our young men and women to stand up and salute, even when we assign a task for which they are not adequately equipped or trained, and they have done that before.

The bottom line is that it took a bipartisan effort to get us in this hole, and I think it will take a bipartisan effort to get us out.

So I ask all of my colleagues to support this bill, which is the best we can do under the circumstances. But I also ask you to ponder the risk of cutting national security this close to the bone. In my opinion, this budget is no longer "adequate" or "barely adequate." We already passed that point a year or two ago.

Mr. SPENCE. Mr. Chairman, I yield four minutes to the gentleman from Colorado (Mr. HEFLEY), the chairman of the Subcommittee on Military Installations and Facilities.

Mr. HEFLEY. Mr. Chairman, I have always felt that the Subcommittee on Military Installations and Facilities has been the most bipartisan committee that I have seen since being in the Congress, and I think this year the full committee has indicated that they, too, are a very bipartisan committee, and has produced a product, which, while we are not totally satisfied with it, at least it is a product that I think every Member should support in a bipartisan way.

I rise to support H.R. 3616, the National Defense Authorization Act for 1999. It is a bipartisan bill, it deserves strong bipartisan support, and I want to spend just the few brief moments

that I have available to highlight the military construction aspects of this legislation.

The Subcommittee on Military Installations and Facilities continues to be deeply concerned about the serious shortfalls in basic infrastructure. We are all talking about shortfalls, and they are there, and every single subcommittee chairman and ranking member will probably mention this, in military housing and other facilities that affect the readiness and training of the Armed Forces and the quality of life for military personnel and their families.

The budget requested by the administration for 1999 continued a pattern of significant deterioration in funding programs by the Department of Defense for military construction. Overall, the administration proposed 7 percent less in military construction's accounts than one year ago, and 15 percent less than the program authorized by Congress. Yet the military services continue to provide testimony and other evidence that their needs are not being met adequately by the administration's program.

Based on the record, it is clear that the construction programs of the services would need to be at least twice as large as they currently are to begin to address the backlog of serious shortfalls in facilities. The evidence that antiquated, obsolete, overused inadequate facilities and military housing are an impediment to effective training and readiness and to the assurance of decent quality of life for military personnel is clear to anyone who would care to examine the record built by the subcommittee.

Earlier this year, in response to a question from the gentleman from South Carolina (Chairman SPENCE) about their unfunded requirements, the service chiefs provided a list of shortfalls across the broad spectrum of need. The unfunded MILCON requirement identified by the chiefs is $7.6 billion. The recommendations the committee brings to the House today will help alleviate a portion of the backlog and critical shortfalls.

H.R. 3616 does not go as far as I would like. The fiscal constraints faced by the committee prevented us from providing as much in the way of additional resources as we have over the past three years. This bill, however, contains an additional $450 million in added funding for military construction and military family housing, which would permit us to buy back about one-third of the administration's $1.4 billion cut in the MILCON top line. Given the condition of facilities and the needs identified by the services, it is not enough, but I believe we will make good use of these limited funds.

The bipartisan bill would provide an additional $183 million for quality of life enhancements. These funds would provide additional military family housing, troop housing, child development centers, fitness centers and other community support facilities that are integral to the support of military personnel and their families. In addition, it would provide additional funding for military construction to support the training, readiness and maintenance requirements of the active and reserve components.

In closing, I want to express again my appreciation to the members of the subcommittee, especially the ranking Democrat member, the gentleman from Hawaii (Mr. ABERCROMBIE), for their contributions to this legislation. This is truly a bipartisan effort, as I stated at the outset, and I urge all Members to support H.R. 3616.

Mr. SKELTON. Mr. Chairman, I yield five minutes to the gentleman from Virginia (Mr. PICKETT).

Mr. PICKETT. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I commend the committee chairman and the members and staff for the balanced and responsive bill we have before us. This bill has been thoughtfully and carefully put together within the constraints of a defense budget that continues to decline in purchasing power.

In any undertaking of this kind, the defining of and the adherence to a system of priorities is absolutely essential for a realistic and responsive program. My comments will relate primarily to the research and development part of this bill.

The investment for basic research and for science and technology programs has been maintained at current levels. It is widely acknowledged that these basic research and technology programs have been the crucial component in developing and fielding technologically superior weapons systems that have given our military forces a decided advantage over their adversaries.

In spite of the success in developing and fielding improved weapons systems and weapon systems upgrades, there a constant struggle to appropriately and adequately prepare our forces for the unpredictable and speculative battlefield of the 21st Century. The Army is continuing development of its top priority new weapons systems, the Crusader Self-Propelled Howitzer and the Comanche helicopter. The Navy is moving ahead with the DD-21 destroyer, the follow-on to the Nimitz aircraft carrier, and a new class of attack submarine.

□ 2230

The Air Force is reaching the end of its development of the F-22 and is moving forward along with the Navy and Marine Corps in the development of the Joint Strike Fighter. These visible priority programs point the way to the military of the future. Nevertheless, the pursuit of lighter and more lethal weapons, the development of speedier and more stealthy equipment, and the quest for successful leap-ahead technologies continues.

The Department of Defense has said many times that if our forces are called into combat, we do not want a fair fight. We want our forces to have a clearly superior capability, both in weapons systems and technology. That is the direction in which this bill continues to move our defense program, although I must say that the move is at a slower pace than I believe is desirable.

The committee and committee staff have been alert and diligent in reallocating resources to higher priority and more timely projects. Additional support has been provided to missile defense programs in an effort to make certain that these programs are not resource constrained. With alarming reports of continuing advances by other nations in missile technology, every effort must be made to develop and deploy workable and defendable missile defense systems on behalf of our Nation at the earliest possible time.

The level of readiness of our military forces continues to be the subject of intense debate and discussion. After thoughtful and careful consideration of a wide variety of materials and testimony, I am persuaded that the readiness of our military has indeed declined. This is an ominous sign at a time when the shortfall for funding the procurement necessary to modernize our forces is approaching a deficiency of 25 percent of the amount needed. It is time for the Congress to provide more resources to our military.

Mr. Chairman, within the limits of the 1999 level of resources available to our committee, I believe the defense program incorporated in this bill is as robust and effective as can be devised. For this, I compliment the committee and our staff and encourage all Members to fully support H.R. 3616.

Mr. SKELTON. Mr. Chairman, I yield 4 minutes to the gentleman from Texas (Mr. ORTIZ).

Mr. ORTIZ. Mr. Chairman, I want to thank the gentleman for yielding me this time.

I rise in strong support of H.R. 3616, the National Defense Authorization Act for fiscal year 1999. I want to specifically address the provisions in the Act relating to military readiness.

First, I would like to express my personal appreciation to the Subcommittee on Readiness leadership and to my colleagues on both the subcommittee and the full committee for the manner in which they conducted the business of the subcommittee this session. I want to specifically thank the gentleman from South Carolina (Mr. SPENCE), my chairman, and the ranking member, the gentleman from Missouri (Mr. SKELTON). Although the

gentleman from Virginia (Mr. BATEMAN) is not with us today, I want to express my appreciation for his personal involvement and the extraordinary steps that he took in getting us to where we are.

We had the opportunity to see the readiness through a different set of eyes, the eyes of the brave soldiers, sailors and airmen who are entrusted with the awesome responsibility of carrying out our national military strategy. We heard them talk about the shortage of repair parts while we were conducting hearings throughout the continental United States, and the extra hours spent trying to maintain old equipment, and the shortage of critical personnel. While we in this body might differ on some policy and program objectives, we on the subcommittee were able to get a better appreciation of the challenges that these brave souls faced in trying to do more with less. For their effort we can all be proud. I personally remain concerned about how long they will be able to keep up the pace.

The readiness provisions in the bill reflect some of the steps I believe are necessary with the dollars available to make their task easier. It does not provide all that is needed. I would be more pleased if the migration of O&M funds to other accounts did not take place. Much more could be used. I remain perplexed when I reflect on the impact that the resource shortages are having on every facet of our military. That includes the stability of our dedicated civilian employees who are also being asked to remain productive while at the same time the department appears to be trying to take away their jobs.

Mr. Chairman, I share the comments that have often been repeated by our subcommittee members and other Members that readiness across the board is in bad shape, and we need to do something about it. At the same time, I believe that the readiness provisions represent a step in the right direction. I would hope that as we continue through the passage of this bill and go into conference with the Senate, that we will continue to search for opportunities to increase the resources available for the readiness accounts. I ask my colleagues to support this great bill.

Mr. SPENCE. Mr. Chairman, I yield 6½ minutes to the gentlewoman from Jacksonville, Florida (Mrs. FOWLER), the vice-chair of the Subcommittee on Readiness.

Mrs. FOWLER. Mr. Chairman, I rise today in strong support of H.R. 3616, the National Defense Authorization Act for fiscal year 1999, and I want to especially thank our Chairman, the gentleman from South Carolina (Mr. SPENCE) and ranking member, the gentleman from Missouri (Mr. SKELTON) for their strong commitment to national defense and for the bipartisan manner in which they fashioned this excellent piece of legislation.

In its continuing effort to assess force readiness, this year our committee once again conducted a series of field hearings at various military installations throughout the country to hear from our operational field commanders and senior noncommissioned officers from all the military services. The overwhelming impression left with the committee was of a force working harder, longer, and with fewer personnel than ever before. Funding and forces continue to shrink while demands of the job increase.

For example, the Army has conducted 26 operational events, now these are actions other than routine training and alliance operations, since 1991, compared to only 10 during the preceding 31 years. The Marine Corps has conducted 62 contingency operations since 1997, compared to only 15 such operations since 1982 to 1989. These increases in operational tempo are occurring at the same time that the Army has been reduced from 18 to 10 divisions, the Navy is on a track to eliminate nearly 250 ships, or almost 45 percent of the fleet, and the Air Force has been reduced from 24 to 12 fighter wings.

Among the disturbing problems identified in the committee's hearings and investigations were indications of a growing shortage of spare parts which has led to the increased cannibalization of frontline equipment, combat systems being operated at a pace that requires far more extensive maintenance and repair, and the deterioration of facilities where personnel live and work to levels below acceptable standards.

Mr. Chairman, these are indicators of broader trends throughout the force that are raising doubts about present and future readiness. To address many of these issues, H.R. 3616 includes provisions to increase funding for critical readiness areas, including depot maintenance, replacement spare parts and real property maintenance. Because there are no additional funds to pay for these increases, the committee had to reprioritize several of the nonreadiness related administrative and support accounts.

Now, according to senior Pentagon leaders, readiness is at acceptable levels, or readiness is as good as it has ever been, yet when we go out in the field and talk to individual military members, we hear a very different story. To get at these discrepancies concerning the condition of our armed forces, H.R. 3616 contains provisions that require DOD to expand and improve its readiness reporting system. I believe these and other provisions found in this bill will provide necessary up-to-date readiness information to the senior leadership of the Pentagon and to Congress, and will offer visibility into readiness deficiencies before they can become full-scale breakdowns.

Now, there is one other point I would like to make. The committee has recently heard from the Secretary of Defense and the entire Joint Chiefs of Staff emphasizing the importance of fully funding the Operations and Maintenance budget to ensure readiness. Now, although I emphatically agree that readiness must be kept at the highest possible level, it is important to stress that not all of the operations and maintenance budget is directly tied to military readiness.

Of all the major elements of the defense budget, perhaps the least understood is the O&M account. At $94.8 billion, O&M funding accounts for the largest share of the President's defense budget request for fiscal year 1999, and it is traditionally considered the readiness account. But the O&M account, or more precisely, accounts, includes much more than critical readiness spending. In addition to paying for day-to-day military operations, training, supply and equipment maintenance, O&M funds administrative functions, environmental restoration, cooperative threat reduction efforts, humanitarian assistance, and many other programs. Now, whatever the merits of these other programs, they are related only marginally to the readiness of U.S. forces to fight the Nation's wars. In fact, only about one-half of the total O&M account is directly related to readiness.

After a thorough subcommittee review of the administration's O&M budget request for fiscal year 1999, I am convinced that it is riddled with accountant-inspired gamesmanship designed to inflate the O&M top line and create the appearance of an administration fully committed to funding readiness. H.R. 3616 addresses the under-funding of critical readiness accounts by realigning funds from nonreadiness accounts.

Mr. Chairman, frankly, I would prefer to be taking up legislation that would provide more funding for defense than is authorized by this bill. Fiscal year 1999 will represent the fourteenth year in a row in which real defense spending declined, but given the budget constraints under which we have to operate, I believe H.R. 3616 goes as far as it can to ensure that the Defense Department receives the resources necessary to provide for the most important readiness requirements for our military forces.

Mr. Chairman, let me close by thanking the Chairman of the Subcommittee on Readiness, my good friend, the gentleman from Virginia (Mr. BATEMAN) who was recuperating from surgery during markup, but whose good counsel was invaluable to me as I stood in as acting chairman, as well as the ranking member the gentleman from Texas (Mr. ORTIZ), for his outstanding leadership and for his contributions and his

good friendship. The Subcommittee on Readiness had to deal with several difficult issues transcending political lines, and our task would have been far more difficult if not for the expertise and assistance of these 2 distinguished Members and the cooperation of all of the subcommittee's Members.

I urge my colleagues to vote "yes" for the bill.

Mr. SKELTON. Mr. Chairman, I yield 6 minutes to the distinguished gentleman from Mississippi (Mr. TAYLOR).

Mr. TAYLOR of Mississippi. Mr. Chairman, a while back I was visiting the honors class at Hattiesburg High School. One of my students asked me that in my capacity as a member of the Committee on National Security, "What are you? Are you the cheerleaders or the critics for America's military?" And my answer to her was, we are both.

The cheerleader in me wants to report that I think we did the very best we could with what we had. The critic in me wants to point out that I do not think this Congress as a whole is appropriating enough to our Nation's defense.

I hear on a daily basis some of my colleagues come to the House floor and say, well, we are pretty close to balancing the budget, so let us give our wealthiest contributors a big tax break. Some of my other colleagues come to the House floor and say, well, we are almost balancing the budget, so let us pass a whole bunch of new social programs. They are both wrong.

The highest priority of this Nation has to be to defend this Nation, the States can do almost everything else, and I am troubled that we are not doing it well enough. I am also troubled that of the 5 people who put together the defense budget, I am sorry, the overall budget for this Nation, the President of the United States, the President of the Senate, the Speaker of the House, the Chairman of the Committee on the Budget in the House, the Chairman of the Committee on the Budget in the Senate, not one of them has spent one second in the uniform of our country. It does not surprise me that they do not think this is important. They never did.

We have to ask ourselves, what is going to be our legacy? President Jefferson has the legacy of sending Lewis and Clark out to chart the American West and the Louisiana Purchase as a result of it. Earlier in this century an America that thought they could do anything anywhere built the Panama Canal.

What is this committee's legacy? I am sorry to say it is treading water. Treading water because we know we have an op tempo problem and yet we could not find the money, the rest of the Congress would not give us the money to properly budget the use of the Guard and Reserve so that we could give some of the standing force a break.

We know we have health care problems, not only for active duty, but for our retirees. We know we could fix that with Medicare subvention for about $2 billion a year, yet the rest of the Congress will not let us do that.

□ 2245

Every single American over the age of 65 now gets health care, but those people who were promised it in return for serving their country for 20 years, they are being turned away at the base hospital for lack of funds. That is not right.

A brilliant plan was put together by our Armed Forces for a mail order pharmacy plan for our retirees, and for lack of funds it will not be put into effect.

There are still 12,000 fine young Americans in uniform who have to get food stamps in order to feed their kids. That is wrong. It costs about $100 million to fix it, yet the rest of the Congress will not give this committee the money to fix it.

Let me make this perfectly clear. I think this committee is bipartisan. The people who care about the military are on this committee. Whether they are Democrats or Republicans, they care. The problem is, what is happening with the other 435? Where are they for the thing that should count the most? Where will they be when someone launches a biological attack on our Nation and we are not ready to respond?

If Members do not think it could happen, they should pick up a book called The Cobra Event. Our Supreme Allied Commander in Europe, General Wesley Clark, made his staff read it because it is so believable.

What is good about the bill? Something that I think is important is we are going to return to separate gender training at the basic level. A kid going to boot camp goes from being a high school senior, where he is on top of the world, to suddenly he cannot do or she cannot do anything right. They are, in my opinion, at their most vulnerable. When they are at their most vulnerable, we do not need them being led by a sexual predator. By separating the sexes, by separating the gender of the people running them through boot camp, we can minimize the opportunity for that to go wrong. We can get our drill instructors back to doing their job and our troops going back to basic training.

We restore the funding for the Youth Challenge Program, a beautiful program by the National Guard that takes at-risk youth between the ages of 16 and 19 years old and gives them a General Equivalency Diploma. They go through a boot-camp-type environment and get themselves drug-free. To date, on a nationwide basis, 96 percent of those kids have gone on to get a job, join the American military, or further their education.

As the Chairman, the gentleman from California (Mr. HUNTER), pointed out, we have done as good as we could on procurement: stepped forward funding for LST8, 3 DDGs and some Navy vessels.

But, again, as he mentioned, there are 900 Huey aircraft that we will not allow to fly because we are afraid that they and the crews in them will fall out of the sky, because the rest of this Congress is not putting forward enough funds to defend our Nation.

Mr. Chairman, we have to ask ourselves, what will be our legacy as Members of Congress? We are only here for so long. We need to do the best we can with what we have.

My challenge to all of us, Democrats and Republicans, is not to fight with each other but spread the message to the rest of the Congress that this has to be our Nation's greatest priority, because nothing else matters if we cannot defend ourselves.

Mr. SPENCE. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. WELDON), chairman of our Subcommittee on Military Research and Development.

Mr. WELDON of Pennsylvania. Mr. Chairman, first of all, let me thank our distinguished committee chairman, who is one of our outstanding leaders in this body on issues involving national security and support for our troops and our veterans, and the ranking member.

The two of them are a dynamic team. They work together. They both come from the same common perspective on the defense for this Nation, and they really set the right tone for the committee. It is because of their leadership that we had a 50 to 1 vote to get our bill out of committee, and most of our subcommittees likewise had very solid votes in reporting out their portions of this bill, so I want to applaud both of them and all the members of our committee who work so well together on the issue of our country's national security.

Mr. Chairman, I rise for this brief period of time to say that, unfortunately, I think we are facing a train wreck unlike any that we have seen, certainly in the 12 years I have been in Congress and I think really in the history of this country, involving national security. The train wreck is being caused by, unfortunately, a number of things coming together all at one time. I think it is going to peak at around the turn of the century.

I want to go through that briefly. The American people have been led to believe that we are spending so much more money on defense today than we have in the past. I use a simple comparison. When John Kennedy was President, it was a time of relative

peace. It was after Korea and before Vietnam. We were spending 52 cents of every tax dollar on the military, 9 percent of our GNP. In this year's budget we are spending 16 cents of the Federal tax dollar on the military, about 2.9 percent of our GNP on defense. So, in fact, the relative percentage of total Federal dollars on the military has dwindled dramatically. This is the 14th consecutive year of real cuts in defense spending.

Unfortunately, as that defense number comes down, some other things have happened. First of all, in John Kennedy's era, we had the draft. Young people were taken out of high school, they served the country for 2 years, and they were paid far below the minimum wage. They were not married. They did not have the expenses a married person would have.

That is not the case today. We have an all-volunteer force, well-educated, maybe with college degrees, many married and with children, education costs, housing costs, transportation costs to move these families around the world, so a much larger percentage of that smaller amount of money goes for the quality of life of our troops.

Mr. Chairman, we know we are always going to fund quality of life for our troops. But some other things have occurred since the John Kennedy era. In the last 6 years alone, Mr. Chairman, we have seen our troops deployed 25 times at home and abroad. That is a lot of deployments.

Let us compare the last 6 years to the previous 40 years, where our troops were only deployed 10 times. In these 25 deployments in the last 6 years, while defense spending has gone down dramatically, none of those deployments have been budgeted for. So to pay for all those deployments, Haiti, Somalia, Bosnia, and the domestic deployments here at home, we have had to take money out of the modernization of the next generation of equipment to support our troops. We have had to rob the R&D accounts. In fact, Bosnia alone will have cost us, by the end of this fiscal year, $9.4 billion.

We are facing a crisis, Mr. Chairman. We do not have the money to put into modernization. We do not have the money for R&D. The President says, close more bases. We are not going to get around to base closing because the process was politicized 3 years ago.

All of this happens at a time when, in the year 2000, we are being asked to fund a new aircraft carrier, a new attack submarine, DD-21s. We are being asked to fund three new tactical aviation programs, the F-22, the joint strike fighter, and the F/A-18 E&F, the Commanche for the Army, the V-22 for the Marine Corps. We are being asked to fund national missile defense, theater missile defense systems, none of which are properly budgeted. For the Army after next, digitize the battlefield, and give the Navy the spy war system they need to get on the cutting edge of technology. In addition, we are being asked by the Defense Science Board to put $4 million more into information warfare, and we are being asked to put more money into antiterrorism.

Mr. Chairman, all of those factors add up to disaster. By the turn of the century, if this Congress does not begin to address defense in a realistic way, this country is going to be in for a rude awakening. In fact, some of our generals are already telling us, as we had General Tilelli come in and General Prueher of the U.S. Pacific Command. U.S. Pacific Command reported deficiencies in six of the eight measured areas that they have responsibility for. The Navy's U.S. Pacific fleet has only 73 percent of the young sailors it needs.

There is an almost 10 percent shortage in Navy noncommissioned officers. The Hawaii-based fleet lacks 1,900 sailors who have key technical skills. The Air Force units in the Pacific area, a serious manning shortage, which we can correct in the short term.

We do not have enough spare parts. We have some air wings where one-third of the planes are not flying because we have cannibalized them to keep the other two-thirds flying. This same pattern exists for both the Army and the Marine Corps.

Mr. Chairman, we are doing the best we can this year in an impossible budget situation, but this Congress had better understand that if we do not change direction and begin to put some additional dollars into the defense of this country to modernize and take care of our R&D needs, or if we do not begin to reduce the deployment level, or get our allies to put more money on the table to pay for these deployments, we are going to face I think one of the most politically damaging situations that this country will have ever faced involving national security.

I urge my colleagues to pay attention to this debate tomorrow on this bill.

Mr. SKELTON. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Texas (Mr. REYES).

Mr. REYES. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise tonight in support of this bill. I want to thank both the gentleman from South Carolina (Chairman SPENCE) and the ranking member, the gentleman from Missouri (Mr. SKELTON), for their hard work to produce the best budget possible in this time of ever-increasing defense budgets.

Although I believe the committee produced a good bill under the circumstances, I also believe this Nation is not providing enough for national defense. If we continue on the course set out in the balanced budget agreement, the national security of this Nation will be jeopardized. This is the 14th straight year of real declines in the defense budget. The fiscal year 1999 defense budget request represents the lowest real level of U.S. spending since before the Korean War.

Although I do not endorse a $400 billion budget like those of the 1980s, I do believe that this budget and the ones planned for the next 5 years are critically insufficient to maintain a strong military with a decent quality of life for the personnel and high-tech weapons needed to protect our country and defeat any enemy.

Not only is the funding level too low, but the size of our force is insufficient for all of the missions they are being required to accomplish. As an example, Army deployments have increased 300 percent since 1989. The Army is currently funded at 488,000 soldiers. The budget request only provided for 480,000. How can we expect the Army to handle an increase of 300 percent with these continued decreases in the end strength?

At a time when the Army deployments are the highest in history, I believe it is ill-advised to endorse decreasing the end strength of our Army. Our Army is losing outstanding young men and women, both enlisted and officers, because they are away from home far too often. When they are home, they are required to work long hours and not spend quality time with their families. Because of the strain and the pressure, many choose to end marriages or, as an alternative, to save marriages by leaving the service.

Our soldiers should not be forced to make such unacceptable choices. It appears that the United States military operations throughout the world are not decreasing. As such, reducing the end strength of the Army can only exacerbate this problem.

I am one of those many current and former soldiers who believes that the Army should be maintained at a minimum level of 500,000. Of course, this strength level also requires an increase in the Department of Defense budget.

I also want to remind this Congress of our duty to protect our military personnel. Although the Cold War has ended, new and different threats have emerged. It is our duty to ensure that the weapons systems to protect our soldiers in the field are sufficiently funded.

One of the greatest current and future threats is from weapons of mass destruction delivered on short- and medium-range ballistic and cruise missiles. Countries throughout the world are working feverishly to develop or procure the technology to deliver these types of weapons.

We talk about our concerns with North Korea, Iran, Iraq, and Libya, but what about other countries? India's actions last week should serve as a wake-up call that there are other nations to

watch and that countries may be closer to obtaining the technology than we are aware of. We must continue to support theater missile defense programs to ensure that we deploy systems to defend against these threats as soon as possible.

I believe that my colleagues should support this bill before us, but I also urge this Congress and the administration to work together and increase the budget for the Department of Defense.

Mr. SKELTON. Mr. Chairman, I yield 4 minutes to the gentleman from Texas (Mr. RODRIGUEZ).

Mr. RODRIGUEZ. Mr. Chairman, let me, first of all, thank the gentleman from South Carolina (Chairman SPENCE) for giving the opportunity to me to serve on that committee, and also to the gentleman from Missouri (Mr. IKE SKELTON) for allowing me also to work with him.

Let me just share two concerns that I have with the existing bill, and I think they are very important. One of the first ones is the fact, and I was real disappointed that the Committee on Rules did not allow an opportunity for the language that would have struck out the segregation language that exists in the bill. I think we have a real serious problem in that particular bill if we are going to segregate women. We are going in the wrong direction in that area.

□ 2300

When we talk about separate but equal, it was not equal for blacks, and I can assure my colleagues that it is not going to be equal for women. There is a need for us and I would ask the leadership to ask the Committee on Rules to reconsider that opportunity. If not, then I would ask the leadership and the conference committee that as they go into the conference with the Senate, that they strike out that language because I think it is very detrimental.

When we hear the arguments as it deals with the separate but equal doctrine and what we want to do with women in the military, I think that I hear what I used to recall back in the 1960s, when we talked about co-ed education in our universities and some of the same language, and it is unfortunate that that is the case.

I want to also share with my colleagues an additional concern that I have as it deals with cost. I know we have had a great number of individuals come up here and talk about the need for more resources. We also need to look in terms of the language and what it is in there.

Number one, I want you to look very specifically as it deals with the C–17 language. That particular language, number one, sets a very negative precedent. Number two, it is extremely costly, and number three, when it comes to readiness, puts us in danger. I want to be able to share a little bit with you when it comes to the President.

At this particular time, the language that we have there begins to tell the Department of Defense what should be core and what should not. As you well know, the last time we did the piece of legislation, we indicated that that is the responsibility of the Department of Defense, not the Congress. I think we are setting a very negative precedent.

Secondly, as it deals with cost, one of the estimates is $500 million in terms of the cost just by that particular amendment alone in terms of what it is doing, not to mention that if you begin to move the C–17 work from the private sector where it is right now into the depots, we are going to have a situation that it might be up to $1.5- to $2 billion in cost. So I would ask you seriously to look at that language and be able to take that into consideration when you make those decisions.

Thirdly, I think we are all concerned about readiness so that if, as we move, and if you look at that language on the C–17, when it comes to the readiness issue, it really sets a situation in which the depots are not ready to deal with that. They have not been working with that. As Members well know, one of the engines is a commercial engine on the commercial flights, and moving them towards that would be extremely costly and, in terms of readiness, is going to cause a situation where it might take a year and a half to 2 to 3 years before we would even be capable, not to mention the cost of $ 1.5- to $2 billion, so that as we talk about cost and our concerns regarding readiness and regarding other options, we also need to look at the existing language that is extremely detrimental.

I would ask that you consider those options as we move forward as it deals with the language on the C–17 and again on the previous item that I had talked to you on the segregation of the armed forces and not allowing the women to have equal opportunity. If we expect them to be able to participate, they should be able to practice.

Mr. Chairman, I rise today to express concern with a provision in the Defense Authorization bill regarding the maintenance of the C–17 cargo aircraft. The provision added in committee will significantly increase the costs of maintaining the C–17 by potentially billions of dollars. This increased cost will likely reduce the procurement of future C–17 aircraft, decrease Air Force readiness and airlift capability, and force the Air Force to hire more acquisition personnel. The C–17 is essential for our nation's sustained global power projection and the future backbone of our expeditionary force.

Specifically, the bill preempts the Secretary of Defense's authority to determine what systems of the C–17 must be maintained in-house, abrogating the depot provisions adopted in last years defense bill. The C–17 provision structures weapons systems support without regard to Air Force readiness requirements, hobbles partnerships and competition essential for maximizing limited budgets, and delays defense acquisition reforms.

For years Congress called on the Department of Defense to implement acquisition reform. The C–17 program is a prime example of the Department's acquisition reform advances in significantly reducing the life cycle costs of new aircraft. However, this bill's restrictive C–17 provision will reverse those advances. In addition, last years authorization bill attempted to reduce the Department of Defense's acquisition workforce, or "professional shoppers," by 25,000. However, this bill would require the Air Force to hire hundreds more of professional shoppers rather than streamlining the bureaucracy.

Other fiscally irresponsible aspects of the C–17 provision discourage public-private partnerships that would save taxpayers millions of dollars while maintaining a high mission-capable rate for the C–17. The bill forces the Air Force to waste more than $500 million to create in-house maintenance capabilities before an intelligent decision can be made on this new weapon system. In addition, the engine on the C–17 is a commercial engine developed for the Boeing 757. To create an in-house capability for the engine, which the authorization would, would cost the Air Force between $1 billion and $2 billion for the purchase of propriety data alone.

In today's constrained defense budget, we cannot expect the Department of Defense to come up with billions of additional dollars to maintain the C–17 in an antiquated manner that doesn't capitalize on the strengths of both the public and private sector and advances in manufacturing. The C–17 was efficiently designed to be maintained on the flight line to reduce maintenance costs. The billions of dollars the C–17 provision would likely decrease procurement of future C–17 aircraft. This is totally unacceptable.

In closing, Congress should not preempt the warfighter on the decision of maintenance of the C–17, the C–17 provision will force the Air Force to spend billions on the tail instead of the essential tooth, and the measure will have a detrimental impact on readiness.

Mr. SPENCE. Mr. Chairman, I yield back the balance of my time.

Mr. SKELTON. Mr. Chairman, I yield myself such time as I may consume.

I would like to add a word or two. Out of this early general debate this evening, it does appear that there is a bipartisan consensus in favor of doing better for our national security. It is a matter of resources. It is a matter of spending. In this good bill, we have, as has been said, we have done well with what we had, but I think there is that growing understanding that we need to place national security at the top of the list, and I hope that this debate has brought the attention to the other Members of this body as well as to those others who are interested.

I have a couple of other messages, Mr. Chairman. One is to the, if they were here in front of me, parents of the young men and young women in uniform. I would tell them that they should be so very, very proud of what

their family members are doing. They are professionals. They are dedicated. Their operational tempo at times is horrendous, and yet they are doing what their Nation is calling upon them to do without complaining as committed young Americans. So I would tell them, Mr. Chairman, that I and all of us on this committee thank them for their efforts.

Mr. Chairman, if the young people in uniform were sitting here watching us this evening, I would have a message for them as well. My message to them would be to stay the course. If they are in the Navy, steady as you go, because they are so very, very important to the future of our country, to the national security of our country, to where we are as the world leader bringing stability to the various corners of this globe. I would tell them not to get discouraged. I would tell them that sooner or later they will write some brilliant pages in the history books of this country. Those would be my two messages, Mr. Chairman. I am proud of the young folks in uniform. I hope they stay the course, not to get discouraged but to know how so very, very important they are.

I again thank the members of this committee, the gentleman from South Carolina (Mr. SPENCE), the Chairman. This has been an absolute thrill for me to be the ranking member on this committee, and I appreciate the courtesies that he has extended to me personally and that the entire committee has extended to those of us on this side of the aisle.

Mr. Chairman, I yield back the balance of my time.

Ms. HARMAN. Mr. Chairman, I rise in support of this bill. The Committee has worked hard to develop a good, bipartisan bill, and I commend our chairman and ranking member for their leadership.

The Cold War is long gone, Mr. Chairman, but the world is still a dangerous place. Look at the nuclear tests last week in India. Look at the advanced ballistic missiles under development in Iran. Dangers can emerge anywhere, and with little warning. I think this bill reflects a determination to maintain our position of strength within that uncertain world.

No bill is perfect, and this bill is no exception. Consider the fact that our military is finding it increasingly difficult to get permission to use forward bases. This calls for an increased emphasis on power projection.

To me, that means the B–2 Bomber, which can strike any target in the world from Whitman Air Force Base, Missouri, within 24 hours. It also means the Super Hornet, which offers a leap ahead in naval aviation attack capabilities over the aging planes on carrier decks today. But the B–2 production line has been allowed to close, and three Super Hornet aircraft were cut from the request this year.

I think we could have done more to increase the efficiency of the Defense Department—to squeeze savings out of the bureaucracy that we could use for more modern weapons systems. I know that this body takes defense reform seriously, though, and will continue to pursue it, if not in this bill.

I am particularly troubled by a couple of signals this bill sends to women.

First, it perpetuates the policy of barring women serving overseas from using their own funds to obtain legal abortion services in military hospitals. Women who volunteer to serve in our Armed Forces already give up many freedoms and risk their lives to defend our country. They should not have to sacrifice their privacy, their health, and their basic constitutional rights to a policy with no valid military purposes.

Second, the bill prejudges its own congressionally-created commission studying basic training and instead forces the services to segregate men and women.

Such a requirement is premature, may affect unit cohesion and readiness, and will not address the serious problems of sexual misconduct and harassment confronting the services.

The segregated training provision is opposed by the Army, Navy and Air Force. All believe that the best way to train soldiers, sailors and airmen is to "train the way we fight." That means in integrated units.

As Navy Vice Chief of Staff Admiral Pilling testified before the Personnel Subcommittee, if men and women do not learn how to live and work together during basic training, are the confined quarters aboard ship the next-best place? I think not.

The provision is also opposed by the top enlisted men of all four services, including the sergeant major of the Marine Corps, Lewis G. Lee.

And implementing the segregated living requirements required with the bill is expensive—$159 million for the Army alone. It is deeply troubling that, at a time of increasingly scarce resources, the Committee has opted for this expensive and unnecessary course of action.

Lastly, Mr. Chairman, in my view, the long term consequences of this provision will be to roll back opportunities for women in the military. It will reduce training resources for female recruits. And it will not reduce the incidents of sexual harassment and misconduct.

Nearly 50 years ago, the Supreme Court told us that "separate but equal" is inherently unequal. Mr. Chairman, I regret the Committee has failed to recognize this admonition.

Ms. GRANGER. Mr Chairman, I rise today in strong support of the 1999 National Defense Authorization Act. I particularly want to thank Chairman SPENCE, Procurement Subcommittee Chairman HUNTER, and Research and Development Subcommittee Chairman WELDON for their very hard work to produce a bill that meets the needs of our armed services at a time when overall defense spending is in its fourteenth year of real decline.

H.R. 3616 conforms to the defense spending limits established in the Balanced Budget Act of 1997. However, I share Chairman SPENCE's and the defense community's concerns that these funding levels are inadequate to meet the increasing number of threats to our national security.

If you question the need to strengthen America's defenses, just take a look around the world:

Unstable and unfriendly nations around the world are developing medium and long range missile capabilities that directly threaten U.S. forces deployed abroad, and may pose a threat to the continental U.S. in the near future.

India and Pakistan are engaged in a nuclear arms race that could destabilize all of South Asia.

U.S. forces are still in Bosnia, with no end to that operation in sight.

And, Saddam Hussein is continuing to ignore the terms and conditions that Iraq agreed to at the end of the Persian Gulf War.

Moreover, serious personnel problems are emerging throughout the services. Readiness has been sacrificed as the size of our military has been reduced. Morale and retention are low as quality of life issues are ignored or postponed in order to pay for ongoing operations.

Our military is nothing without our brave service men and women, and they need to know they have this Congress' strong support.

Strong support also means the best weapons available. This is why it is so important that the committee included funding for two F–16s, eight V–22s, two F–22s, and continued R&D for the multi-service, multi-role joint strike fighter.

Many members may not realize that procurement of new weapons systems has declined by 70 percent over the last decade. These are the very weapons that were crucial to winning the Persian Gulf War. This is why it is essential to maintain the F–16, which is the workhorse of the Air Force's fighter fleet, and to proceed with procurement of innovative new planes like the V–22 and the F–22.

In closing, Mr. Chairman, I strongly support passage of H.R. 3616, and I want to thank Chairman SPENCE, and the other subcommittee chairman, once again, for all of their hard work on this legislation.

But, I also want to warn my colleagues that our national security cannot be taken for granted. Current defense levels cannot be sustained at the funding levels contained in the budget, and we cannot wait for a crisis situation to revisit this issue.

I am looking forward to working with Chairman SPENCE, and other concerned members, to improve the condition of our armed forces and to ensure that our military remains the best fighting force in the world.

The CHAIRMAN pro tempore (Mr. PEASE). All time for general debate has expired.

Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MORAN of Kansas) having assumed the chair, Mr. PEASE, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3616) to authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1999, and for other purposes, had come to no resolution thereon.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 3616, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (H. Rept. No. 105–544) on the resolution (H. Res. 441) providing for further consideration of the bill (H.R. 3616) to authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1999, and for other purposes, which was referred to the House Calendar and ordered to be printed.

THE ALL-AMERICAN RESOLUTION

(Mr. YOUNG of Alaska asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, today I rise to introduce the All-American Resolution expressing the sense of Congress that any missile defense system deployed to protect the U.S. from missile attacks would include protection for Alaska, Hawaii and territories.

As we can see on this diagram right now, Alaska comes into direct threat by India, China, et cetera, and now the administration sought to avoid protecting Alaska, avoid protecting Hawaii, and I think it is reprehensible to have that occur.

It is time for us to recognize that Alaska and Hawaii are part of the United States and ought to be protected. In fact, we ought to set up our own missile system in Alaska so that we can counterattack in this uncertain time. I urge the passage of this legislation.

Today I rise to introduce "The All-American Resolution" expressing the sense of the Congress that any missile defense system deployed to protect the U.S. from missile attack should include protection for Alaska, Hawaii, territories and commonwealths of the United States.

The U.S. Constitution provides that it is an essential responsibility of the federal government to protect all United States citizens against foreign attack. However, the Administration's development plan is based on a policy of observing the restrictions of the 1972 Anti-Ballistic Missile (ABM) Treaty, which prohibits the deployment of a missile defense system capable of defending all U.S. territory. As such, the plan excludes Alaska, Hawaii, and territories. While this legislation does not attempt to abrogate or amend the ABM Treaty, it does express the sense of Congress that space, sea, or land-based systems are required to include them and the commonwealths, when a system is deployed in the future.

A year ago the Alaska State Legislature passed a resolution expressing the view of the people of Alaska that they, along with other Americans, should be defended against a missile attack. Why are Alaskans concerned about their vulnerability to missile attack? In 1995, the Administration adopted a national intelligence estimate (NIE) asserting that the U.S. did not face a threat of missile attack for at least 15 years. To arrive at this conclusion, the Administration excluded from the National Intelligence Estimate (NIE) an assessment of the threat of missile attack to Alaska and Hawaii. Excluding Alaska and Hawaii from the NIE served to bypass an earlier assessment by then-Deputy Secretary of Defense John Deutch that territories in these two states could be subject to attack by a North Korean missile, the Taepo Dong 2, by the end of this decade. In fact, the Secretary of Defense issued a report titled Proliferation: Threat and Response (November 1997) which exemplifies the possible threat to Alaska from both North Korea and China.

I believe it is reprehensible to prepare the NIE while leaving some Americans undefended in its pursuit of the most minimal missile defense capability possible. My resolution also provides that Alaska and Hawaii, territories and commonwealths must be included in any NIE prepared by the Administration.

While Alaska and Hawaii were the only two states excluded from consideration under the NIE, most states and territories will be vulnerable as well. The Administration's missile defense plan calls for the development of a system in which a deployment decision may be made in 2000 and deployment completed by 2003. This could leave the vast majority of U.S. territory vulnerable to missile strikes. The Administration's policy views the ABM Treaty as "the cornerstone of strategic stability."

I will give a quick history of the ABM Treaty. Article I of the ABM Treaty barred the deployment of a national missile defense system capable of defending all the nations' territory. In fact, Article III of the Treaty, as amended by a 1974 Protocol, permitted the deployment of a single missile defense site that is capable of protecting only the region in which it is deployed. The U.S. designated Grand Forks, North Dakota as this site, although the system located there is mothballed. Taking the Grand Forks system out of mothballs and upgrading its capabilities may allow it to provide protection to all of America. Whether you agree with the ABM Treaty, or not, I believe we would all agree on the necessity to defend all of America, including Alaska, Hawaii, the territories and commonwealths from the threat of ballistic missile attacks.

I call on all my colleagues who wish to see their constituents protected, to look seriously at the resolution introduced today. My friends, this act will improve the interests of all Americans, now and into the future.

□ 2310

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. PEASE). Under the Speaker's announced policy of January 7, 1997, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

OPEN MARKETS, REMOVE SANCTIONS AND AGGRESSIVELY PROMOTE AGRICULTURAL EXPORTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

Mr. MORAN of Kansas. Mr. Speaker, I rise today to address a serious problem facing the First District of Kansas and, indeed, all of rural America.

Over the past 2 years, prices for wheat and other major agricultural commodities have been in a free-fall. Cash wheat today in Dodge City, Kansas, closed at $2.86 per bushel. That is almost $2 less per bushel than just 1 year ago and other commodities have experienced similar price declines.

Soon the combines will start their annual trek north from the Great Plains of Texas to Canada. If current harvest projections hold true, a large U.S. wheat crop will put further downward pressure on already depressed prices.

While there is no silver bullet, there are several important steps the President and Congress can take to improve the economic outlook for this Nation's farmers and ranchers. According to USDA, exports are predicted to be down at least $4 billion this year. This is a clear signal that Congress and the President must be aggressive in opening markets and promoting agricultural exports.

We should start by using the tools we already have at our disposal. Since coming to Congress about a year and a half ago, I have communicated regularly with Agriculture Secretary Dan Glickman on the importance of using the Export Enhancement Program for wheat and flour. While wheat flour and wheat exports have been seriously injured by European trade barriers and sizable foreign subsidies, under USDA's current plan wheat and flour will receive no assistance from EEP.

I know Secretary Glickman cares deeply about the problems faced by Kansas wheat farmers, but I am concerned that he receives insufficient support from the Clinton administration in implementing policy changes that could assist agricultural producers. Recently Secretary Glickman announced the use of EEP to combat specific injurious trade barriers. While I support this action, I remain concerned that when the Europeans spent $7.7 billion on export subsidies, the United States only spent $56 million.

This is an example of what we face. The European Community is spending almost $47 billion annually in 1997 in assistance and subsidies to agriculture. Of that, about $7.7 billion is in assistance and subsidies toward exports, while in the United States we spend only $5.3 billion annually, almost an 8-time difference we face as a disadvantage. And this line we cannot even see, this blue line, is what we spend in assisting agricultural exports in this

United States for American agricultural producers.

We may not be waving the white flag in defeat, but we are certainly far from putting up the necessary fight on behalf of the American farmer. This is not to say that all efforts have been in vain. This past year Secretary Glickman has been successful in increasing the GSM 102, export credit guarantee program, from $3 billion last year to almost $6 billion this year. This support has been beneficial but much more needs to be done.

Market access for agricultural products must also be improved. Our farmers continue to suffer the consequences of foreign policy decisions that shut them out of markets around the world. It is time for these markets to be opened.

Wheat imports to North Korea, Cuba, Iran and Iraq have all doubled since 1995 and now account for over 10 million tons of wheat. These growing markets are off-limits to U.S. producers but not to Canadians and not to Australian farmers. Our sanctions now wall off 11 percent of the world wheat market, a segment larger than the lost sales of the Soviet grain embargo several years ago. In today's global economy, unilateral sanctions by the U.S. unfairly penalize our producers, reward our competitors, and have little impact on changing behavior in the target country. The American farmer is tired of paying the price for failed U.S. foreign policy.

Mr. Speaker, the last farm bill asked American farmers to take agriculture in a more market-oriented direction. But in order to have true market orientation, we need markets. The only way to improve prices on a long-term basis is to pursue aggressive, even-handed trade initiatives. The decisions made here in Washington, D.C. have real world implications for agricultural producers. Now is the time to open markets, remove sanctions and aggressively promote agricultural exports to give our farmers a fighting chance. Mr. Speaker, it is time to trade.

THE INDONESIA CRISIS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. PAUL) is recognized for 5 minutes.

BACKGROUND

Mr. PAUL. Mr. Speaker, the Soviet system, along with the Berlin Wall, came crashing down in 1989, the same year the new, never-to-end, era came to a screeching halt in Japan. The Japanese economic miracle of the 1970's and the 1980's, with its "guaranteed" safeguards, turned out to be a lot more vulnerable than any investor wanted to believe. Today the Nikkei stock average is still down 60% from 1989, and the Japanese banking system remains vulnerable to its debt burden, a weakening domestic economy and a growing Southeast Asian crisis spreading like a wild fire. That which started in 1989 in Japan—and possibly was hinted at even in the 1987 stock market "crash"—is now sweeping the Asian markets. The possibility of what is happening in Asia spreading next to Europe and then to America should not be summarily dismissed.

ECONOMIC FALLACY

Belief that an artificial boom, brought about by Central Bank credit creation, can last forever is equivalent to finding the philosopher's stone. Wealth cannot be created out of thin air, and new money and credit, although it can on the short-term give an illusion of wealth creation, is destructive of wealth on the long run. This is what we are witnessing in Indonesia—the long run—and it's a much more destructive scenario than the currently collapsing financial system in Japan. All monetary inflation, something all countries of the world are now participating in, must by their very nature lead to an economic slump.

The crisis in Indonesia is the predictable consequence of decades of monetary inflation. Timing, severity, and duration of the correction, is unpredictable. These depend on political perceptions, realities, subsequent economic policies, and the citizen's subjective reaction to the ongoing events. The issue of trust in the future and concerns for personal liberties greatly influences the outcome. Even a false trust, or an ill-founded sense of security from an authoritarian leader, can alter the immediate consequences of the economic corrections, but it cannot prevent the inevitable contraction of wealth as is occurring slowly in the more peaceful Japan and rapidly and violently in Indonesia.

The illusion of prosperity created by inflation, and artificially high currency values, encourage over-expansion, excessive borrowing and delusions that prosperity will last forever. This attitude was certainly present in Indonesia prior to the onset of the economic crisis in mid 1997. Even military spending by the Indonesian government was enjoying hefty increases during the 1990's. All that has quickly ended as the country now struggles for survival.

But what we cannot lose sight of is that the Indonesia economic bubble was caused by a flawed monetary policy which led to all the other problems. Monetary inflation is the mother of all crony "capitalism."

CHARACTERISTICS OF THE CORRECTION

One important characteristic of an economic correction, after a period of inflation (credit expansion) is its unpredictable nature because subjective reactions of all individuals concerned influence both political and economic events. Therefore, it's virtually impossible to predict when and how the bubble will burst. It's duration likewise is not scientifically ascertainable.

A correction can be either deflationary or inflationary or have characteristics of both. Today, in Indonesia, the financial instruments and real estate are deflating in price, while consumer prices are escalating at the most rapid rate in 30 years due to the depreciation of the rupiah. Indonesia is in the early stages of an inflationary depression—a not unheard of result of sustained Central Bank inflationary policy. Many believe price inflation only occurs with rapid growth. This is not so.

Blame is misplaced. Rarely is the Central Bank and paper money blamed—unless a currency value goes to zero. In Indonesia the most vulnerable scapegoat has been the Chinese businessmen, now in threat of their lives and fleeing the country.

A much more justifiable "scapegoat" is the IMF and the American influence on the stringent reforms demanded in order to receive the $43 billion IMF bailout. IMF policy only aggravates and prolongs the agony while helping the special interest rich at the expense of the poor. The IMF involvement should not be a distraction from the fundamental cause of the financial problem, monetary inflation, even if it did allow three decades of sustained growth.

"Crony capitalism" was not the cause of Indonesia's trouble. Inflationism and political corruption allows crony capitalism to exist. It would be better to call it economic interventionism for the benefit of special interests—a mild form of fascism—than to abuse the free market term of capitalism.

Any serious economic crisis eventually generates political turmoil, especially if political dissent has been held in check by force for any significant period of time. There should be no surprise to see the blood in the streets of Jakarta—soon to spread and build. Political events serve to aggravate and magnify the logical but subjectively sensitive declining currency values and the faltering economy. The snowballing effect makes the political crisis much more serious than the economic crisis since it distracts from the sound reforms that could restore economic growth. These circumstances, instead of leading to more freedom, invite marshal law for the purpose of restoring stability and the dangers that go with it.

Errors in economic thinking prompt demands from the masses for more government programs to "take care" of the rapidly growing number of poor. Demands for more socialism and price controls results whether it's in education, medical care, unemployment benefits or whatever—all programs that Indonesia cannot afford even if they tried to appease the rioting populous.

SOLUTIONS ATTEMPTED

The IMF's $43 billion bailout promise has done nothing to quell the panic in the streets of Jakarta. If anything, conditions have worsened; the Indonesians deeply resent the austere conditions demanded by the IMF. Since the U.S. is the biggest contributor to the IMF and the world financial and military cop, resentment toward the United States is equal to that of the IMF. The Indonesian people know they won't be helped by the bailout. They already see their jobs disappearing and prices soaring. The political and economic future, just a few months ago looking rosy, is now bleak beyond all description. Indonesians know what the American taxpayers know; the IMF bailout helps the rich lenders who for decades made millions but now want their losses covered by weak victims. Is there any wonder resentment and rage prevails in Indonesia?

The U.S. has just sent a military delegation to study and obviously advise the Indonesian government regarding the law and order crisis now in process. Our officials say that we're there to watch that the Indonesian military do not abuse the rights of Indonesian citizens.

Even if true, and well motivated, where did this authority come from for us to run to the scene of the crime—on the other side of the world and pretend we have all the answers. Proper authority or not put aside, the Indonesian people perceive even a few U.S. military advisors as a further threat to them. The U.S. is seen as an extension of the IMF and is expected to more likely side with the Indonesian military than with the demonstrators. No government likes to see any dissolution of government power, even the questionable ones. It might encourage others unhappy with their own government. And it is not like the U.S. government is innocent and benign, considering our recent history at Kent State, Waco, and Ruby Ridge and the hundreds of no-knock entries made in error, causing loss of life, multiple injuries and destruction of property. Let us make sure our own government acts responsibly in all matters of law and order here at home before we pretend we can save the world—a responsibility not achievable even if motivated with the best of intentions.

Effort to prop up an ailing economy after the financial bubble has been popped, prolongs the agony and increases the severity of the correction. Japan's bubble burst in 1989 and there is not yet any sign of the cleansing of the system of bad debt and mal-investment which is necessary before sound growth will resume. And Indonesia is embarking on the same predictable course. Restoration of free markets, and establishing sound monetary policy has not yet been considered. The people of Indonesia and the rest of the world should prepare for the worst as this crisis spreads. For Congress, the most important thing is to forget the notion that further taxing American workers to finance a bail-out, that won't work, is the worst policy of all for us to pursue.

The Indonesian government had one idea worth considering under these very difficult circumstances. They wanted to replace their central bank with a currency board. It's not the gold standard, but it would have been a wise choice under current conditions. But the United States and the IMF insisted that in order to qualify for IMF funding this idea had to be rejected outright and the new central bank for Indonesia had to be patterned after the Federal Reserve with, I'm sure, ties to it for directions from Greenspan and company. A currency board would allow a close linkage of the rupiah to the dollar, its value controlled by market forces, and would have prevented domestic Indonesia monetary inflation—the principal cause of the economic bubble now collapsed. The shortcoming of a currency board is that the Indonesian currency and economy would be dependent on dollar stability which is far from guaranteed.

REFUSAL

In the approximately 8 months since the crisis hit Indonesia there has been no serious look at the underlying cause—monetary inflation brought about by a central bank. Nor has any serious thought gone into the internationalization of credit as United States exports of billions of dollars, and thus our own inflation, to most nations of the world who hold these dollars in reserve and use them to further inflate their own currencies. Our huge negative trade balance and foreign debt is not considered by conventional wisdom to be relevant to the Asian currency problems, yet undoubtedly it is. True reform to deal with the growing worldwide crisis can only be accomplished by us first recognizing the underlying economic errors that caused the current crisis.

The philosophy of the free market holds a lot of answers, yet the difference between free market capitalism and interventionist political cronyism has not been considered by any of the world banking and political leaders currently addressing the exploding Southeast Asian crisis.

Concern for personal liberty is not a subject associated with the crisis and is an ongoing casualty of past and current policy. A greater concern for individual liberty will be required if a positive outcome is to be expected from the fall-out of the Indonesian crisis. Let's hope we can get our priorities straight. Congress has an obligation not to worsen the crisis by capitulating to more bail-outs and to remain vigilant enough to keep the administration from accomplishing the same bail-out through Executive Orders outside the law.

MESSAGE

What should the message be to the Congress and the American people regarding this sudden and major change in the economic climate in Indonesia? First and foremost is that since we operate with a fiat currency, as do all the countries of the world, we are not immune from a sudden and serious economic adjustment—at any time. Dollar strength and our ability to spend dollars overseas, without penalty, will not last forever. Confidence in the U.S. economy, and the dollar will one day be challenged. The severity of the repercussion is not predictable but it could be enormous. Our obligation, as Members of Congress, is to protect the value of the dollar, not to deliberately destroy it, in an attempt to prop up investors, foreign governments or foreign currencies. That policy will only lead to a greater crisis for all Americans.

As the Asian crisis spreads, I would expect Europe to feel the crunch next. Unemployment is already at a 12% level in Germany and France. The events can be made worse and accelerated by outside events like a Middle Eastern crisis or a war between India and Pakistan both now rattling their nuclear weapons. Eventually though, our system of "crony capitalism" and fiat money system will come under attack. Our system of favoring industries is different than the family oriented favoritism of Suharto, but none-the-less is built on a system of corporate welfare that prompts constant lobbying of Congress and the Administration for each corporation's special interests. We have little to talk about as we preach austerity, balanced budgets and sound money to the current victims. Our day will come when we will humble ourselves before world opinion as our house of cards comes crashing down.

We will all know we are on the right track when the people and our leaders are talking of restoring liberty to all equally, and establishing a sound money system that prevents the Fed from manufacturing money and credit out of thin air for the benefit of politicians, corporations and bankers who directly benefit.

PREVENTING TEEN PREGNANCY

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas (Ms. JACKSON-LEE) is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas. Mr. Speaker, first of all, I am pleased to have the time to speak here today about the importance of preventing teen pregnancy, and I think it is crucially important that we recognize this month as Teen Pregnancy Prevention Month.

As a member of the Women's Congressional Caucus and the Chair of the Children's Congressional Caucus, I have been a strong advocate of teen pregnancy prevention.

I recently offered an amendment to H.R. 2264, a labor and appropriations bill which was to increase funding by $2 million for teen pregnancy programs sponsored by the CDC.

The consequences of teenage pregnancy and child-bearing are serious and contribute to many of the nation's enduring social problems.

Becoming pregnant and having a baby early in life makes it difficult to create an emotionally and financially sound environment for children.

Yet every year, approximately one million teenagers in this country become pregnant and 90 percent of those pregnancies are unintended.

Teenage girls have a higher risk of pregnancy complications, including maternal mortality and morbidity, miscarriages, still births, premature births and nutritional deficiencies than adult women.

Fewer than 60% of these teen mothers graduate from high school by age 25, and in addition to a lower educational status, early childbearing has an impact on the economic status of teens by affecting employment opportunities, marital options, and family structure.

Teen mothers are four times as likely as women who have their first child after adolescence to be poor in their 20's and early thirties, and are likely to have lower family incomes later in life.

In my home state of Texas, the birth rate for teenagers 15–18 years of age is 78.9%.

Although this is a decrease by 3.9% since 1991, far too many of our communities' children across the United States are having children of their own.

Teenage pregnancy and childbearing come hand in hand with a level of risk for all involved.

We all carry the potential burden when children themselves have children, personally, societally and economically.

Our country spends more than $20 billion each year assisting teen parents and their children.

Only through education and programs such as campaigns such as The National Campaign to Prevent Pregnancy, and a similar program through the Texas Southern University in Houston, Texas that focuses on the prevention of pregnancy in pre-adolescents and adolescents.

Our children and our adolescents carry the future of tomorrow. We must do everything we can to help our children prolong childbearing and parenting until they can truly be responsible adults and parents.

JASON HU—A MODERN DIPLOMAT WITH VISION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. SOLOMON) is recognized for 5 minutes.

Mr. SOLOMON. Mr. Speaker, in the April 10 edition of the Central Daily News, published in Taipei, there was an excellent article about Taiwan's Foreign Minister Jason Hu. Jason was the former Taiwan representative in Washington, D.C. and a friend to many of us on the Hill.

I would like to ask the permission to print the article, in an English translation by Professor N. Mao, for the reference of my colleagues and friends.

JASON HU—A MODERN DIPLOMAT WITH VISION

Will Jason Hu be the ruling Kuomintang candidate to run for Mayor of the city of Taipei?

This topic stirred up considerable speculation in the offices of the Taipei Economic Cultural Representative Office in Washington, D.C. Most of Jason Hu's former assistants professed high confidence in Jason Hu's waging a successful campaign for the job, but they would prefer to see Jason stay on as the Republic of China's Foreign Minister.

One close aide of Jason's commented that the Republic of China's diplomatic work needs someone like Jason, a non-career but highly innovative diplomat with fresh ideas and vision. Nearly all of Jason's former aides expressed the view that they would not want to see Jason leave his current post as Foreign Minister.

BREAKTHROUGH IN TAIPEI-U.S. RELATIONS

Will Jason Hu run for the office of the Mayor of Taipei? Someone who knows Jason well commented that Jason would not have any intention of running for the office, but if Jason were asked by the Kuomintang, Jason will run. Why? Jason is very loyal to the party.

If the Kuomintang can't find any other candidate to run for the office and if the Kuomintang leaders keep asking Jason to run, Jason will run.

Jason is not a career diplomat. During his tenure as Taipei's highest ranking diplomat in Washington, D.C., Jason shed outdated conventions and emerged a winner in gaining new friends for his country during a period of diplomatic low tide between Washington and Taipei.

In June 1996, Jason assumed the post as Taipei's representative in Washington, D.C. Immediately after arrival in Washington, he was an enthusiastic participant in activities sponsored by other diplomats, the U.S. Congress, think-tanks, international organizations, U.S. Government officials and any other persons or groups, whether or not their countries recognize Taipei.

He would meet with anyone if he thought that person would enhance Taipei's diplomatic interests. Jason is a man full of self-confidence, wit, humor, sincerity and considerable personal charm. During his short tenure in Washington, he was a highly visible diplomat and even earned the admiration of diplomats in the U.S. State Department for his professionalism. In fact, during Jason's fifteen months in Washington, he won the confidence of the United States Government, acceptance of the diplomatic corps, respect of the overseas Chinese in the United States and loyalty of his colleagues. He was also popular with the press.

It has been less than 8 years since Jason Hu entered government office.

When he first served as the government's spokesman, he impressed everyone with his leadership abilities. But what distinguished him the most was his service as Taipei's top diplomat in Washington. Before he came to Washington, Taipei maintained low-level contacts with the U.S. Government. But with Jason's efforts, within half a year after Jason's arrival in Washington, the level of contacts between Taipei and Washington was significantly upgraded. Moreover, being a non-career diplomat, Jason was an innovative diplomat with new ideas.

His activities in Washington extended far beyond traditional diplomatic circles; he had direct contacts with many international organizations stationed in Washington.

PERSISTENT JASON HU

A man full of self-confidence Jason is gifted with the ability to foster a favorable environment for talks with friends and strangers. For protocol reasons, he could not be formally addressed as "Ambassador Hu" in Washington but could be properly addressed as "Doctor Hu" of Oxford University.

No one could ignore his impressive Oxonian credentials. In 1995 Jason held a face-to-face dialogue with Dr. Kissinger and he equaled Kissinger in terms of knowledge and sharp analytical ability. Jason is a confident man but definitely not an arrogant man.

In fact, Jason can make any adversary happy to be in his company.

After a few witty introductory remarks, Jason will make his listener eager for more conversation. When the "chemistry" is right, Jason tries his best to persuade his adversary of his viewpoints. Even though differences of opinion may persist Jason never allows his adversary to feel confrontational.

Even though Jason Hu has left Washington for more than six months, friends still talk about his innovative personal style in approaching friends and foe.

Another characteristic of Jason's is his persistence. In April 1997, during Speaker Gingrich's Asian tour the Speaker and his delegation made a whirlwind 4-hour stop in Taipei.

At first, everyone, including Gingrich himself, believed that it was not possible to add Taipei to the Speaker's Asian itinerary, but Jason Hu persisted in asking the Speaker to reconsider his itinerary. Finally, he convinced the Speaker of the uttermost importance for the delegation to stop in Taipei. Gingrich relented and squeezed in four precious hours in Taipei.

At about the same time, in a number of articles the New York Times mentioned the "Taiwan factor," implying Taiwan was a troublemaker in U.S. relations with China. Jason Hu repeatedly communicated with the editors of the New York Times, trying to convince them of Taipei's perspectives. As a result of Jason's efforts, the New York Times has not again mentioned the "Taiwan factor."

JASON HU—A MAN OF POTENTIAL

After the 1996 U.S. elections, Jason Hu visited former Senator Robert Dole, former National Security Advisor Tony Lake and former Secretary of Defense William Perry, briefing them of the developments in Taiwan.

It appears that Messrs Dole, Lake and Perry all have now developed a good understanding of the issues affecting Taiwan. Jason Hu deserves credit for making these opinion-makers aware of Taiwan's developments.

Will Jason Hu run for the Taipei mayoral seat? The answer will come in May of this year. Considering Jason Hu's electability and potential, he will be a winning card for the Kuomintang.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CRANE (at the request of Mr. ARMEY) for today on account of illness.

Mr. BATEMAN (at the request of Mr. ARMEY) for today and the balance of the week on account of medical reasons.

Mr. MEEKS of New York (at the request of Mr. GEPHARDT) for today and the balance of the week on account of family matters.

Mr. UNDERWOOD (at the request of Mr. GEPHARDT) for today and the balance of the week on account of official business.

Mr. MCNULTY (at the request of Mr. GEPHARDT) for today on account of family business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. REYES) to revise and extend their remarks and include extraneous material:)

Mr. EDWARDS, for 5 minutes, today.

Mrs. CLAYTON, for 5 minutes, today.

Ms. MILLENDER-MCDONALD, for 5 minutes, today.

Mr. FALEOMAVAEGA, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Mrs. CAPPS, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Ms. BROWN of Florida, for 5 minutes, today.

Ms. CHRISTIAN-GREEN, for 5 minutes, today.

(The following Members (at the request of Mr. MORAN of Kansas) to revise and extend their remarks and include extraneous material:)

Mr. KINGSTON, for 5 minutes, today.

Mr. MORAN of Kansas, for 5 minutes, today.

Mr. HUTCHINSON, for 5 minutes each day, today and on May 20, 21 and 22.

Mr. PAUL, for 5 minutes, today.

Mr. MCINNIS, for 5 minutes each day, today and on May 20.

Mr. METCALF, for 5 minutes, today.

Mr. FRANKS of New Jersey, for 5 minutes each day, today and on May 20, 21 and 22.

Mr. EHRLICH, for 5 minutes, on June 2.

Mr. RIGGS, for 5 minutes, today.

Mr. SMITH of Michigan, for 5 minutes each day, today and on May 20.

Mr. SOLOMON, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. REYES) and to include extraneous matter:)

Ms. ESHOO.
Mr. KIND.
Mr. KENNEDY of Rhode Island.
Mr. HALL of Ohio.
Mr. BONIOR.
Mr. SHERMAN.
Mr. VISCLOSKY.
Mr. KILDEE.
Mr. EDWARDS.
Mr. SKELTON.
Mr. THOMPSON.
Mrs. MALONEY of New York.
Ms. PELOSI.
Mr. SCHUMER.
Mrs. CAPPS.
Ms. SÁNCHEZ.
Mr. STARK.
Ms. HARMAN.
Mr. RUSH.

(The following Members (at the request of Mr. MORAN of Kansas) and to include extraneous matter:)

Mr. RADANOVICH.
Mr. SMITH of New Jersey.
Mr. NEY.
Mr. YOUNG of Alaska.
Mr. ARCHER.
Mr. GILMAN.
Mr. MCCOLLUM.
Mr. WALSH.
Mr. HORN.
Mr. SHAW.
Mr. DELAY.
Mr. PORTMAN.
Mr. SMITH of Michigan, in two instances.
Mr. REYES.
Mr. HALL of Texas.
Mr. GOODLATTE.
Mr. GILLMOR.
Mr. LAZIO of New York.
Mr. BLUMENAUER.
Mr. CLYBURN.
Mr. MORAN of Kansas.
Mr. PAPPAS.
Mr. KILDEE.
Mr. CONDIT.
Mr. PAYNE.
Mr. PACKARD.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1723. An act to amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of 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, and in addition, to the Committee(s) on Education and the Workforce, and the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

ENROLLED BILL SIGNED

Mr. THOMAS, from the Committee on House Oversight, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 3565. An act to amend Part L of the Omnibus Crime Control and Safe Streets Act of 1968.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1605. An act to establish a matching grant program to help State and local jurisdictions purchase armor vests for use by law enforcement departments.

ADJOURNMENT

Mr. MORAN of Kansas. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 19 minutes p.m.), the House adjourned until Wednesday, May 20, 1998, at 10 a.m.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports and amended reports concerning the foreign currencies and U.S. dollars utilized for official foreign travel during the fourth quarter of 1997 and first quarter of 1998 by Committees of the House of Representatives, as well as a consolidated report of foreign currencies and U.S. dollars utilized for speaker-authorized official travel during April of 1998, pursuant to Public Law 95–384 are as follows:

AMENDED REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON AGRICULTURE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1997

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Bob Smith	12/7	12/14	Australia				152.46				152.46
Hon Bill Barrett	12/7	12/14	Australia				152.46				152.46
Hon Richard Pombo	12/7	12/14	Australia				152.46				152.46
Hon. Tom Ewing	12/7	12/14	Australia				152.46				152.46
Hon Frank Lucas	12/7	12/14	Australia				152.46				152.46
Hon. Sam Farr	12/7	12/14	Australia				152.46				152.46
Hon. Eva Clayton	12/7	12/14	Australia				152.46				152.46
Hon. Gary Condit	12/7	12/14	Australia				152.46				152.46
Hon. John Boehner	12/7	12/14	Australia				152.46				152.46
Hon. Collin Peterson	12/7	12/14	Australia				152.46				152.46
Paul Unger	12/7	12/14	Australia				152.46				152.46
Andrew Baker	12/7	12/14	Australia				152.46				152.46
Lynn Gallagher	12/7	12/14	Australia				152.46				152.46
Bryce Quick	12/7	12/14	Australia				152.46				152.46
Jason Vaillancourt	12/7	12/14	Australia				152.46				152.46
William O'Conner	12/7	12/14	Australia				152.46				152.46
Committee total							2,439.36				2,439.36

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

BOB SMITH, Chairman, Apr. 29, 1998

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Frank R. Wolf	1/11	1/14	Russia		670.00						670.00
Commercial airfare							4,961.00				4,961.00
Hon. John P. Murtha	1/7	1/9	Japan		354.00						354.00
	1/9	1/11	South Korea		456.00						456.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998—Continued

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Commercial airfare							5,747.00				5,747.00
Gregory R. Dahlberg	1/7	1/9	Japan		354.00						354.00
	1/9	1/11	South Korea		456.00						456.00
Commercial airfare							5,747.00				5,747.00
Hon Esteban Torres	1/15	1/18	Belgium		852.00		(3)				852.00
	1/18	1/20	Poland		556.00						556.00
Charles Flickner	2/20	2/26	Mongolia		1,399.00						1,399.00
Commercial airfare							5,456.00				5,456.00
William B. Inglee	2/15	2/17	Hungary		494.00						494.00
	2/17	2/19	Czech Republic		564.00						564.00
	2/19	2/21	Poland		556.00						556.00
Commercial airfare							3,999.38				3,999.38
John G. Shank	2/12	2/16	Bosnia/Herzegovina		1,204.00						1,204.00
	2/16	2/19	Czech Republic		696.00						696.00
	2/19	2/21	Poland		456.00						456.00
Commercial airfare							4,103.91				4,103.91
James W. Dyer	2/13	2/16	Bosnia		903.00						903.00
	2/16	2/18	Czech Republic		464.00						464.00
Commercial airfare							5,533.81				5,533.81
Scott Lilly	2/16	2/19	Thailand		720.00						720.00
	2/19	2/22	Indonesia		802.75						802.75
	2/22	2/25	Japan		849.00						849.00
Commercial airfare							4,965.00				4,965.00
Mark W. Murray	2/16	2/19	Thailand		720.00						720.00
	2/19	2/22	Indonesia		802.75						802.75
	2/22	2/25	Japan		849.00						849.00
Commercial airfare							4,965.00				4,965.00
Hon. Charles Taylor	2/14	2/19	Russia		1,350.00						1,350.00
Commercial airfare							5,838.00				5,838.00
Committee total					17,125.50		51,316.10				68,441.60
Committee on Appropriations, Surveys and Investigations Staff:											
Bertram F. Dunn	2/15	2/19	Turkey		723.00		5,110.22		89.90		5,923.12
	2/19	2/21	Germany		390.25						390.25
Carroll L. Hauver	2/15	2/19	Turkey		723.00		5,110.22		82.85		5,916.07
	2/19	2/21	Germany		390.25						390.25
William P. Haynes, Jr	3/29	4/1	Panama		470.25		1,898.00		51.00		2,419.25
Patricia M. Murphy	3/29	4/1	Panama		470.25		2,173.00		61.00		2,704.25
Michael Welsh	3/29	4/1	Panama		470.25		2,173.00		100.75		2,744.00
Committee total					3,637.25		16,464.44		385.50		20,487.19

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military air transportation.

BOB LIVINGSTON, Chairman.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON BANKING AND FINANCIAL SERVICES, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. James Leach	1/17	1/19	Hong Kong		786.00		(3)		4,121.43		4,907.43
	1/19	1/21	China		514.00		(3)				514.00
	1/21	1/22	Korea		228.00		(3)				228.00
	1/22	1/25	Japan		843.00		(3)				843.00
Hon. Bruce Vento	1/17	1/19	Hong Kong		786.00		(3)				786.00
	1/19	1/21	China		514.00		(3)				514.00
	1/21	1/22	Korea		228.00		(3)				228.00
	1/22	1/25	Japan		843.00		(3)				843.00
Hon. Ken Bentsen	1/17	1/19	Hong Kong		786.00		(3)				786.00
	1/19	1/21	China		514.00		(3)				514.00
	1/21	1/22	Korea		228.00		(3)				228.00
	1/22	1/23	Japan		281.00		2,249.00				2,530.00
Hon. Maurice Hinchey	1/17	1/19	Hong Kong		786.00		(3)				786.00
	1/19	1/21	China		514.00		(3)				514.00
	1/21	1/22	Korea		228.00		(3)				228.00
	1/22	1/25	Japan		843.00		(3)				843.00
Hon. Jesse Jackson, Jr.	1/17	1/19	Hong Kong		786.00		(3)				786.00
	1/19	1/21	China		514.00		(3)				514.00
	1/21	1/22	Korea		228.00		(3)				228.00
	1/22	1/25	Japan		843.00		(3)				843.00
James McCormick	1/17	1/19	Hong Kong		786.00		(3)				786.00
	1/19	1/21	China		514.00		(3)				514.00
	1/21	1/22	Korea		228.00		(3)				228.00
	1/22	1/25	Japan		843.00		(3)				843.00
David Runkel	1/17	1/19	Hong Kong		786.00		(3)				786.00
	1/19	1/21	China		514.00		(3)				514.00
	1/21	1/22	Korea		228.00		(3)				228.00
	1/22	1/25	Japan		843.00		(3)				843.00
Committee total					16,035.00		2,249.00		4,121.43		22,405.43

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military air transportation.

JIM LEACH, Chairman, Apr. 30, 1998.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. John Dingell	1/15	1/18	Belgium		852.00						852.00
	1/18	1/20	France		598.00						598.00
	1/20	1/22	Poland		556.00						556.00
Hon. Tom Sawyer	1/15	1/18	Belgium		852.00		1,732.72				2,584.72
Committee total					2,858.00		1,732.72				4,590.72

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

TOM BLILEY, Chairman, Apr. 29, 1998.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON NATIONAL SECURITY, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Visit to Bosnia, Croatia and Germany, December 30, 1997–January 1, 1998:											
Hon. John M. Spratt, Jr.	12/30	12/31	Bosnia		175.00						175.00
	12/31	12/31	Croatia								
	12/31	1/1	Germany		200.00						200.00
Commercial airfare							4,968.80				4,968.80
Visit to Malaysia, Indonesia and Australia, January 7–19, 1998:											
Hon. Floyd D. Spence	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/19	Australia		1,891.00						1,891.00
Hon. Herbert H. Bateman	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/19	Australia		1,891.00						1,891.00
Hon. Owen B. Pickett	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/19	Australia		1,891.00						1,891.00
Hon. Tillie K. Fowler	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/19	Australia		1,891.00						1,891.00
Hon. John M. McHugh	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/13	Australia		472.00						472.00
Commercial airfare							2,755.08				2,755.08
Hon. Paul McHale	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/19	Australia		1,891.00						1,891.00
Hon. Lindsey Graham	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/19	Australia		1,891.00						1,891.00
Hon. Van Hilleary	1/7	1/9	Malaysia								
	1/9	1/11	Indonesia								
	1/11	1/19	Australia								
Peter M. Steffes	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/19	Australia		1,891.00						1,891.00
Steven A. Thompson	1/7	1/9	Malaysia		324.00						324.00
	1/9	1/11	Indonesia		494.00						494.00
	1/11	1/19	Australia		1,891.00						1,891.00
Delegation expenses	1/7	1/9	Malaysia				354.12		581.13		935.25
	1/11	1/19	Australia				3,522.00		2,730.00		6,252.00
Visit to Italy, Bosnia, Macedonia, Azerbaijan and Belgium, January 4–12, 1998:											
Hon. Ike Skelton	1/4	1/6	Italy		796.00						796.00
	1/6	1/6	Bosnia								
	1/6	1/8	Macedonia		372.00						372.00
	1/8	1/9	Azerbaijan		346.00						346.00
	1/9	1/12	Belgium		540.00						540.00
Hon. Gene Taylor	1/4	1/6	Italy		796.00						796.00
	1/6	1/6	Bosnia								
	1/6	1/8	Macedonia		372.00						372.00
	1/8	1/9	Azerbaijan		346.00						346.00
	1/9	1/12	Belgium		540.00						540.00
Hon. Silvestre Reyes	1/4	1/6	Italy		796.00						796.00
	1/6	1/6	Bosnia								
	1/6	1/8	Macedonia		372.00						372.00
	1/8	1/9	Azerbaijan		346.00						346.00
	1/9	1/12	Belgium		540.00						540.00
Michael R. Higgins	1/4	1/6	Italy		796.00						796.00
	1/6	1/6	Bosnia								
	1/6	1/8	Macedonia		372.00						372.00
	1/8	1/9	Azerbaijan		346.00						346.00
	1/9	1/12	Belgium		540.00						540.00
Delegation expenses	1/4	1/6	Italy						359.41		359.41
Visit to Peru and Colombia, January 8–17, 1998:											
Andrea K. Aquino	1/08	1/13	Peru		1,194.00						1,194.00
	1/13	1/17	Colombia		772.00						772.00
Commercial airfare						2,340.00					2,340.00
George O. Withers	1/08	1/13	Peru		1,194.00						1,194.00
	1/13	1/17	Colombia		772.00						772.00
Commercial airfare						2,340.00					2,340.00
Visit to Germany, Hungary, Bosnia and Belgium, January 20–25, 1998:											
John D. Chapla	1/20	1/21	Germany		206.00						206.00
	1/21	1/23	Hungary		494.00						494.00
	1/22	1/22	Bosnia								
	1/23	1/23	Bosnia								
	1/23	1/25	Belgium		552.00						552.00
Commercial airfare						4,154.20					4,154.20
Donna L. Hoffmeier	1/20	1/21	Germany		206.00						206.00
	1/21	1/23	Hungary		494.00						494.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON NATIONAL SECURITY, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998—Continued

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
	1/22	1/22	Bosnia								
	1/23	1/23	Bosnia								
	1/23	1/25	Belgium		552.00						552.00
Commercial airfare						4,154.20					4,154.20
David J. Trachtenberg	1/20	1/21	Germany		206.00						206.00
	1/21	1/22	Hungary		247.00						247.00
	1/22	1/23	Bosnia		351.00						351.00
	1/23	1/25	Belgium		552.00						552.00
Commercial airfare						4,154.20					4,154.20
Thomas J. Donnelly	1/20	1/21	Germany		206.00						206.00
	1/21	1/22	Hungary		247.00						247.00
	1/22	1/23	Bosnia		351.00						351.00
	1/23	1/25	Belgium		552.00						552.00
Commercial airfare						4,154.20					4,154.20
Lara L. Roholt	1/20	1/21	Germany		206.00						206.00
	1/21	1/22	Hungary		494.00						494.00
	1/22	1/23	Bosnia								
	1/23	1/25	Belgium		552.00						552.00
Commercial airfare						4,154.20					4,154.20
Joseph F. Boessen	1/20	1/21	Germany		206.00						206.00
	1/21	1/22	Hungary		247.00						247.00
	1/23	1/24	Germany		281.00						281.00
Commercial airfare						2,978.20					2,978.20
Thomas P. Glakas	1/20	1/21	Germany		206.00						206.00
	1/21	1/22	Hungary		247.00						247.00
	1/22	1/23	Bosnia		351.00						351.00
	1/23	1/25	Belgium		552.00						552.00
Commercial airfare						4,154.20					4,154.20
Visit to Sweden, January 30–February 2, 1998:											
Hon. Curt Weldon	1/30	2/2	Sweden		800.00						800.0
Commercial airfare							3,936.58				3,936.58
Visit to Germany and Bosnia, February 6–8, 1998:											
Hon. Norman Sisisky	2/6	2/8	Germany		472.00						472.00
	2/6	2/6	Bosnia								
Visit to Panama, Peru and Colombia, February 12–20, 1998:											
Hon. Gene Taylor	2/12	2/14	Panama		366.00						366.00
	2/14	2/17	Peru		602.00						602.00
	2/17	2/20	Colombia		660.00						660.00
Commercial airfare							1,929.00				1,929.00
Visit to Russia, February 16–19, 1998:											
Hon. Curt Weldon	2/16	2/19	Russia		1,000.00						1,000.00
Commercial airfare							5,474.00				5,474.00
Committee total					47,943.00		55,522.98		3,670.54		107,136.52

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

FLOYD SPENCE, Chairman, Apr. 30, 1998.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Jim Oberstar	2/16	1/16	Canada								
Commercial airfare							902.19				902.19
Art Chan	2/16	2/16	Canada								
Commercial airfare							866.00				
Committee total							1,768.19				1,768.19

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

BUD SHUSTER, Chairman, May 1, 1998.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON VETERANS' AFFAIRS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]

FOR HOUSE COMMITTEES

Please Note: If there were no expeditures during the calendar quarter noted above, please check the box at right to so indicate and return. ☒

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

BOB STUMP, Chairman, Apr. 27, 1998.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, PERMANENT SELECT COMMITTEE ON INTELLIGENCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Porter Goss	1/3	1/9	Middle East		1,037.00		(3)				1,037.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, PERMANENT SELECT COMMITTEE ON INTELLIGENCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 1998—Continued

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Thomas Newcomb	1/3	1/9	Middle East		1,563.00		(3)				1,563.00
Michael Sheehy	1/4	1/2	Europe & Asia		2,054.00		(3)				2,054.00
Hon. Sanford Bishop	1/19	1/26	Asia		1,636.00				105.00		1,741.00
Commercial airfare							7,041.93				7,041.93
Calvin Humphrey	1/19	1/26	Asia		1,636.00				105.00		1,741.00
Commercial airfare							7,206.62				7,062.62
Hon. Porter Goss	1/29	2/2	North & Central America		936.00		(3)				936.00
Hon. Bill McCollum	1/29	2/2	North & Central America		1,043.00		(3)				1,043.00
John Millis	1/29	2/2	North & Central America		1,043.00		(3)				1,043.00
Patrick Murray	1/29	2/2	North & Central America		1,043.00		(3)				1,043.00
Christopher Barton	1/29	2/2	North & Central America		1,043.00		(3)				1,043.00
Wendy Selig	1/29	2/2	North & Central America		1,043.00		(3)				1,043.00
Patrick Murray	2/12	2/14	South America		542.00						542.00
Commercial airfare							1,438.77				1,438.77
Hon. Porter Goss	2/14	2/22	Europe		2,428.00		(3)				2,428.00
Thomas Newcomb	2/14	2/22	Europe		2,463.00		(3)				2,463.00
John Millis	2/19	2/21	Middle East		480.00						480.00
Commercial airfare							5,451.49				5,451.49
Mary Engebreth	3/3	3/8	Oceania		1,273.00						1,273.00
Commercial airfare							7,714.97				7,714.97
Patrick Murray	3/6	3/10	Europe		1,021.00						1,021.00
Commercial airfare							1,269.00				1,269.00
Committee total					19,684.00		30,122.78				50,016.78

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Military air transportation.

PORTER J. GOSS, Chairman, Apr. 29, 1998.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO BOSNIA, MACEDONIA, CROATIA, GERMANY, HUNGARY AND IRELAND, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 2 AND APR. 7, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Bob Riley	4/2	4/3	Germany		156.00						156.00
Hon. Ernest Istook	4/2	4/3	Germany		156.00						156.00
Hon. Bob Etheridge	4/2	4/3	Germany		156.00						156.00
Dan Gans	4/2	4/3	Germany		156.00						156.00
Carolyn Bartholomew	4/2	4/3	Germany		156.00						156.00
Hon. Bob Riley	4/3	4/5	Hungary		494.00						494.00
Hon. Ernest Istook	4/3	4/5	Hungary		494.00						494.00
Hon. Bob Etheridge	4/3	4/5	Hungary		494.00						494.00
Dan Gans	4/3	4/5	Hungary		494.00						494.00
Carolyn Bartholomew	4/3	4/5	Hungary		494.00						494.00
Hon. Bob Riley	4/5	4/6	Croatia		278.00						278.00
Hon. Ernest Istook	4/5	4/6	Croatia		478.00						278.00
Hon. Bob Etheridge	4/5	4/6	Croatia		278.00						278.00
Dan Gans	4/5	4/6	Croatia		278.00						278.00
Carolyn Bartholomew	4/5	4/6	Croatia		278.00						278.00
Hon. Bob Riley	4/6	4/7	Ireland		168.00						168.00
Hon. Ernest Istook	4/6	4/7	Ireland		168.00						168.00
Hon. Bob Etheridge	4/6	4/7	Ireland		168.00						168.00
Dan Gans	4/6	4/7	Ireland		168.00						168.00
Carolyn Bartholomew	4/6	4/7	Ireland		168.00						168.00
Dan Gans									[3] 360.00		360.00
Hon. Bob Riley	4/2	4/7			[4] 32.00						32.00
Hon. Ernest Istook	4/2	4/7			[4] 32.00						32.00
Hon. Bob Etheridge	4/2	4/7			[4] 32.00						32.00
Dan Gans	4/2	4/7			[4] 32.00						32.00
Carolyn Bartholomew	4/2	4/7			[4] 32.00						32.00
Committee total					5,640.00				360.00		6,000.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Film and film processing.
[4] In-flight meals.

BOB RILEY, May 7, 1998.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, TRAVEL TO SPAIN, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 21 AND APR. 24, 1998

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Fred L. Turner	4/21	4/24	Spain	98,879	645.00					98,879	645.00
Committee total				98,879	645.00					98,879	645.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

FRED L. TURNER, May 5, 1998.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

9183. A letter from the Chairman, Postal Rate Commission, transmitting a copy of the Postal Rate Commission's recommended decision in the Omnibus Rate Case R97-1; to the Committee on Government Reform and Oversight.

9184. A letter from the the Chief Administrative Officer, the U.S. House of Representatives, transmitting the quarterly report of receipts and expenditures of appropriations and other funds for the period January 1, 1998 through March 31, 1998 as compiled by the Chief Administrative Officer, pursuant to 2 U.S.C. 104a; (H. Doc. No. 105—254); to the Committee on House Oversight and ordered to be printed.

9185. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—SPECIAL LOCAL REGULATIONS; River Race Augusta, Augusta, GA [CGD07-98-013] (RIN: 2115-AE46) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9186. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes [Docket No. 98-NM-111-AD; Amendment 39-10522; AD 98-10-10] (RIN: 2120-AA64) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9187. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Bell Helicopter Textron (Bell)-manufactured Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P Helicopters; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A-1 Helicopters [Docket No. 97-SW-35; Amendment 39-10521; AD 97-20-09] (RIN: 2120-AA64) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9188. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK 21 Sailplanes [Docket No. 97-CE-103-AD; Amendment 39-10518; AD 98-10-07] (RIN: 2120-AA64) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9189. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model C-212 Series Airplanes [Docket No. 97-NM-297-AD; Amendment 39-10519; AD 98-10-08] (RIN: 2120-AA64) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9190. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Bell Helicopter Textron (Bell) Model 204B, 205A, and 205A-1 Helicopters [Docket No. 97-SW-32-AD; Amendment 39-10520; AD 97-18-11] (RIN: 2120-AA64) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9191. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Burkhart Grob Luft-und Raumfahrt Models G115C, G115C2, G115D, and G115D2 Airplanes [Docket No. 98-CE-24-AD; Amendment 39-10517; AD 98-10-06] (RIN: 2120-AA64) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9192. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan [Docket No. 27744; SFAR67] (RIN: 2120-AG56) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9193. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes, and C-9 (Military) Airplanes [Docket No. 97-NM-40-AD; Amendment 39-10473; AD 98-08-24] (RIN: 2120-AA64) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9194. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Eurocopter France Model SA-365N1, AS-365N2, and SA-366G1 Helicopters [Docket No. 97-SW-49-AD; Amendment 39-10515; AD 98-10-04] (RIN: 2120-AA64) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9195. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Standard Instrument Approach Procedures; Miscellaneous Amendments [Docket No. 29214; Amdt. No. 1866] (RIN: 2120-AA65) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9196. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Aviation Charter Rules [Docket OST-97-2356] (RIN: 2105-AB91) received May 14, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Alaska: Committee on Resources. H.R. 2863. A bill to amend the Migratory Bird Treaty Act to clarify restrictions under that Act on baiting, to facilitate acquisition of migratory bird habitat, and for other purposes; with an amendment (Rept. 105-542). Referred to the Committee of the Whole House on the State of the Union.

Mr. CANADY: Committee on the Judiciary. House Joint Resolution 78. Resolution proposing an amendment to the Constitution of the United States restoring religious freedom; with an amendment (Rept. 105-543). Referred to the House Calendar.

Mr. SOLOMON: Committee on Rules. House Resolution 441. Resolution providing for further consideration of the bill (H.R. 3616) to authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1999, and for other purposes (Rept. 105-544). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of Rule X and clause 4 of Rule XXII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. GILMAN (for himself and Mr. PAYNE):

H.R. 3890. A bill to promote democracy and good governance in Nigeria, and for other purposes; to the Committee on International Relations, and in addition to the Committees on Banking and Financial Services, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GOODLATTE:

H.R. 3891. A bill to amend the Trademark Act of 1946 to prohibit the unauthorized destruction, modification, or alteration of product identification codes, and for other purposes; to the Committee on the Judiciary.

By Mr. RIGGS:

H.R. 3892. A bill to amend the Elementary and Secondary Education Act of 1965 to establish a program to help children and youth learn English, and for other purposes; to the Committee on Education and the Workforce.

By Mr. ENSIGN (for himself and Mr. GIBBONS):

H.R. 3893. A bill to amend the Crime Control Act of 1990 with respect to the work requirement for Federal prisoners and to amend title 18, United States Code, with respect to the use of Federal prison labor by nonprofit entities, and for other purposes; to the Committee on the Judiciary.

By Mr. HALL of Ohio (for himself, Mr. BOEHLERT, and Mr. HOBSON):

H.R. 3894. A bill to reinvigorate science and technology functions of the Department of the Air Force; to the Committee on National Security.

By Mrs. KENNELLY of Connecticut:

H.R. 3895. A bill to provide grants to improve firearms safety, and to provide for the study of the effects of developing firearms technology on firearms safety; to the Committee on the Judiciary.

By Mr. OWENS (for himself, Mr. ENGEL, Mr. FORD, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. HILLIARD, Mr. HINOJOSA, Ms. KILPATRICK, Mr. KUCINICH, Mr. LEWIS of Georgia, Ms. NORTON, Mr. MCGOVERN, Mr. SANDERS, and Mr. PAYNE):

H.R. 3896. A bill to authorize the Secretary of Education to make grants to institutions of higher education for postsecondary information technology education and employment assistance projects; to the Committee on Education and the Workforce.

By Mr. RUSH (for himself, Mr. SERRANO, Mr. CUMMINGS, Ms. KILPATRICK, Mr. HILLIARD, Mr. JACKSON, Mr. CLAY, Ms. DELAURO, Ms. FURSE, Mr. FROST, Mr. TOWNS, Mr. GUTIERREZ, Mr. LIPINSKI, Mr. STOKES, and Mr. DAVIS of Illinois):

H.R. 3897. A bill to provide for programs to develop and implement integrated cockroach management programs in urban communities that are effective in reducing health risks to inner city residents, especially children, suffering from asthma and asthma-related illnesses; to the Committee on Commerce.

By Mr. SESSIONS (for himself, Mr. GILMAN, Mr. DOOLITTLE, Mr. KINGSTON, Mr. FOSSELLA, Mr. REDMOND, Mr. PAPPAS, Mr. TRAFICANT, Mr. GIBBONS, Mr. COOK, Mr. CALVERT, Mr. DELAY, Mr. COOKSEY, Mrs. EMERSON, Mr. NETHERCUTT, Mr. RYUN, Mr. LATOURETTE, Mrs. CHENOWETH, Mr. SAXTON, Mr. GOSS, Mr. PETERSON of Pennsylvania, Mr. SMITH of Oregon, Ms. GRANGER, Mr. SOUDER, Mr. SMITH of Texas, Mr. NUSSLE, Mr. FOX of Pennsylvania, Mr. BOB SCHAFFER, Mr. BONILLA, Mr. BRADY, Mr. SAM JOHNSON, Mr. MICA, Mr. BARR of Georgia, Mr. MANZULLO, Mr. WATTS of Oklahoma, Mr. SCARBOROUGH, Mr. PORTMAN, Mr. MCCOLLUM, and Mr. BAKER):

H.R. 3898. A bill to amend the Controlled Substances Act and the Controlled Substances Import and Export Act to conform penalties for violations involving certain amounts of methamphetamine to penalties for violations involving similar amounts of cocaine base; to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LAZIO of New York (for himself, Mr. LEACH, Mr. BAKER, Mr. CAMPBELL, Mrs. KELLY, Mr. NEY, Mr. FOX of Pennsylvania, Mr. REDMOND, Mr. RYUN, Mr. SHAYS, Mr. NUSSLE, and Mr. METCALF):

H.R. 3899. A bill to expand homeownership in the United States; to the Committee on Banking and Financial Services.

By Mr. SHAYS (for himself and Mr. BARRETT of Wisconsin):

H.R. 3900. A bill to establish Federal penalties for prohibited uses and disclosures of individually identifiable health information, to establish a right in an individual to inspect and copy their own health information, and for other purposes; to the Committee on Commerce, and in addition to the Committees on Ways and Means, and Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. STABENOW (for herself and Mrs. MORELLA):

H.R. 3901. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to reauthorize funding for the grant program to encourage arrest policies in dealing with domestic violence; to the Committee on the Judiciary.

By Ms. STABENOW (for herself and Mrs. MORELLA):

H.R. 3902. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to reauthorize funding for court-appointed special advocates for victims of child abuse, training programs on child abuse for judicial personnel and attorneys, and closed-circuit television and video taping of child victim testimony; to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. YOUNG of Alaska:

H.R. 3903. A bill to provide for an exchange of lands located near Gustavus, Alaska, and for other purposes; to the Committee on Resources, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. YOUNG of Alaska (for himself, Mr. ABERCROMBIE, Mr. ADERHOLT, Mr. BARTLETT of Maryland, Mr. BRADY, Mr. DOOLITTLE, Mr. ENGLISH of Pennsylvania, Mr. EVERETT, Mr. SAM JOHNSON, Mrs. MINK of Hawaii, Mr. NETHERCUTT, Mr. PORTMAN, Mr. ROMERO-BARCELÓ, Mr. DAN SCHAEFER of Colorado, Mr. SMITH of New Jersey, Mr. SPENCE, Mr. UNDERWOOD, Mr. WELDON of Pennsylvania, Mr. HOSTETTLER, Mr. TALENT, Mr. GILMAN, Mr. GIBBONS, Mr. RYUN, Mr. GOSS, Mr. GILLMOR, Mr. SKEEN, Mr. LIVINGSTON, Mr. HERGER, Mr. ARMEY, Mr. RIGGS, and Mr. DAVIS of Illinois):

H. Con. Res. 278. Concurrent resolution stating the sense of Congress that any national missile defense program to provide protection for the United States against the threat of ballistic missile attack should provide for the protection of Alaska, Hawaii, and the territories and commonwealths of the United States on the same basis as the contiguous States; to the Committee on National Security.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

[Omitted from the Record of May 18, 1998]

H.R. 3809: Mr. WAMP and Mr. THOMAS.

[Submitted May 19, 1998]

H.R. 7: Mr. SHAW.

H.R. 135: Ms. LEE and Mr. KANJORSKI.

H.R. 676: Mr. BOEHLERT.

H.R. 678: Mr. GEKAS, Mr. QUINN, and Mr. ALLEN.

H.R. 754: Mr. BOSWELL and Ms. ROYBAL-ALLARD.

H.R. 815: Mr. TAUZIN.

H.R. 902: Ms. PRYCE of Ohio.

H.R. 953: Mrs. THURMAN and Mr. BERMAN.

H.R. 1054: Mr. EHLERS, Mr. SOLOMON, and Mr. FOSSELLA.

H.R. 1126: Mr. CRAMER, Mr. WALSH, Mr. DEUTSCH, Ms. PRYCE of Ohio, Mr. GILCHREST, Mr. JEFFERSON, and Mr. BATEMAN.

H.R. 1378: Mr. SUNUNU.

H.R. 1382: Mr. PAUL, Mr. WAXMAN, and Ms. STABENOW.

H.R. 1401: Mr. LEVIN.

H.R. 1425: Ms. DEGETTE.

H.R. 1548: Mr. PAUL.

H.R. 1560: Mr. SHIMKUS and Mr. BURR of North Carolina.

H.R. 1766: Mr. BENTSEN and Mr. PACKARD.

H.R. 1842: Mr. INGLIS of South Carolina.

H.R. 1884: Mr. PAUL.

H.R. 1951: Mr. GREENWOOD and Ms. LEE.

H.R. 2004: Mr. STRICKLAND.

H.R. 2023: Mr. SCHUMER, Mr. ABERCROMBIE, and Ms. EDDIE BERNICE JOHNSON of Texas.

H.R. 2124: Mr. NEUMANN.

H.R. 2290: Mr. SANDLIN.

H.R. 2352: Mr. BRYANT.

H.R. 2478: Mr. FRANK of Massachusetts.

H.R. 2504: Mr. ENGLISH of Pennsylvania and Mrs. MEEK of Florida.

H.R. 2519: Mr. LAMPSON.

H.R. 2538: Mr. DOOLITTLE, Mr. DUNCAN, Mr. ENSIGN, Mr. GALLEGLY, Mr. HEFLEY, Mr. PETERSON of Pennsylvania, Mr. RADANOVICH, and Mr. GILCHREST.

H.R. 2613: Mr. PASTOR, Mr. RAHALL, Mr. DOOLEY of California, Mr. OLVER, Mr. FALEOMAVAEGA, Mr. ORTIZ, Mr. COSTELLO, Mr. WISE, Mr. MCHUGH, Mr. PAUL, Ms. DANNER, Mr. HALL of Texas, and Mr. POSHARD.

H.R. 2721: Mr. LEWIS of Kentucky.

H.R. 2863: Mr. ISTOOK, Mr. HOEKSTRA, Mr. RAMSTAD, Mr. MANZULLO, and Mr. MCINNIS.

H.R. 2879: Mr. MCKEON and Mr. INGLIS of South Carolina.

H.R. 2888: Mr. WATTS of Oklahoma.

H.R. 2923: Mr. MANTON.

H.R. 2946: Ms. PELOSI.

H.R. 3032: Mr. ANDREWS and Mr. SMITH of Texas.

H.R. 3048: Mrs. THURMAN.

H.R. 3050: Mr. SKELTON and Mr. BROWN of California.

H.R. 3131: Mr. LANTOS and Mr. UNDERWOOD.

H.R. 3181: Mr. ROMERO-BARCELÓ.

H.R. 3217: Mr. CRANE, Mrs. THURMAN, and Mr. WATTS of Oklahoma.

H.R. 3234: Mr. NORWOOD.

H.R. 3242: Mr. PAUL.

H.R. 3304: Mrs. EMERSON.

H.R. 3341: Mr. FILNER and Mr. UNDERWOOD.

H.R. 3342: Mr. ALLEN and Mr. MCGOVERN.

H.R. 3398: Mr. FROST.

H.R. 3400: Mr. BALDACCI.

H.R. 3464: Mr. FROST.

H.R. 3470: Ms. KAPTUR.

H.R. 3514: Mr. THOMPSON.

H.R. 3526: Mr. STENHOLM, Mr. MILLER of California, and Mr. LEWIS of Georgia.

H.R. 3550: Mr. ETHERIDGE and Ms. KILPATRICK.

H.R. 3566: Mr. SMITH of New Jersey.

H.R. 3567: Mr. MCINTYRE, Mr. SANDLIN, Mr. DOOLEY of California, Mr. KLUG, Mr. EHLERS, and Mr. KNOLLENBERG.

H.R. 3570: Mr. ACKERMAN.

H.R. 3605: Mr. DAVIS of Florida, Mr. KLECZKA, Mr. BLUMENAUER, Mr. LEVIN, Mr. KANJORSKI, Mr. MEEHAN, Mr. MCHALE, and Ms. SLAUGHTER.

H.R. 3615: Mr. THOMPSON and Ms. MCCARTHY of Missouri.

H.R. 3629: Mr. LARGENT.

H.R. 3636: Ms. JACKSON-LEE and Mr. BONIOR.

H.R. 3644: Mr. CAMP.

H.R. 3648: Mr. HYDE, Mr. CRANE, Mr. SNYDER, and Mr. BEREUTER.

H.R. 3651: Mr. FORBES and Mr. FROST.

H.R. 3674: Mr. VISCLOSKY.

H.R. 3688: Mr. LARGENT, Mr. SKEEN, and Mr. MORAN of Kansas.

H.R. 3735: Mr. ADERHOLT.

H.R. 3764: Mr. LOBIONDO, Mr. ROHRABACHER, Mr. CUNNINGHAM, Mr. NETHERCUTT, Mr. PORTER, and Mr. HYDE.

H.R. 3802: Mr. BROWN of Ohio.

H.R. 3833: Ms. DELAURO.

H.R. 3849: Mr. EHLERS, Mr. SOLOMON, and Mr. FOSSELLA.

H.R. 3877: Mr. BISHOP.

H.R. 3879: Mr. JOHN, Mr. HALL of Texas, Mr. CRAMER, Mr. SESSIONS, Mr. REDMOND, Mr. DICKEY, Mr. NETHERCUTT, Mr. MCCOLLUM, Mr. WATTS of Oklahoma, Mr. GOODE, Mr. PAPPAS, Mr. MCKEON, and Mr. BONILLA.

H. Con. Res. 126: Ms. NORTON and Mr. ROTHMAN.

H. Con. Res. 203: Mr. MCDERMOTT, Mr. OLVER, Mr. FRANKS of New Jersey, Mr. COOK, Mr. BILBRAY, Mr. BERMAN, Mr. BEREUTER, Mr. PASTOR, and Mrs. CLAYTON.

H. Con. Res. 208: Mr. LAMPSON, Ms. SLAUGHTER, Mr. COSTELLO, Mr. CLYBURN, Mr. DOOLEY of California, Mrs. FOWLER, Mr. MCINTOSH, Mr. BATEMAN, Mr. SISISKY, Mr. EVANS, Mr. EDWARDS, Mr. WEYGAND, Mr. BRADY, Mr. BALDACCI, Mr. GREENWOOD, Mr. PAXON, Mr. HOBSON, Mr. GORDON, Mr. HUTCHINSON, Mr. LEWIS of Kentucky, Mr. GRAHAM, Mr. DOYLE, Mr. HINCHEY, and Mr. MCINTYRE.

H. Con. Res. 233: Mr. WATTS of Oklahoma.

H. Con. Res. 258: Mr. PITTS, Mr. SANDERS, Mr. BROWN of Ohio, Mrs. MORELLA, Mr. MANTON, Ms. FURSE, and Mr. BLUMENAUER.

H. Con. Res. 267: Mr. ROGAN.

H. Res. 363: Mr. SANDLIN.

H. Res. 404: Mrs. MINK of Hawaii.

EXTENSIONS OF REMARKS

RELIGIOUS GROUPS CHALLENGE GROWING INTOLERANCE IN BELGIUM

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SMITH of New Jersey. Mr. Speaker, as Chairman of the Subcommittee on International Operations and Human Rights, and as Co-Chairman of the Helsinki Commission, I am alarmed at the growing religious intolerance toward religious minorities that we are observing in Western Europe. I am pleased that a coalition of religious groups is building in Europe to combat the rising intolerance, and in fact a legal challenge to these onerous actions is to be announced in Belgium on May 20.

In the last few years, we have witnessed disturbing government interference in the affairs of religious communities in Western Europe through new religion laws, parliamentary investigations into minority beliefs and religious groups, and new government bureaucracies created to disseminate government propaganda on religious organizations. These new laws, parliamentary investigations and government information centers stigmatize as "dangerous" groups such as the Jehovah Witnesses, Baha'i, Hindus, and charismatic Catholic and Protestant groups. These government actions violate the religious liberty principles found in numerous international documents, including the Helsinki Final Act, particularly the commitment to "foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers" found in the Vienna Concluding Document of 1989 (Paragraph 16.2).

In January, I traveled to Moscow with my good friends and colleagues Representatives FRANK WOLF and TONY HALL to raise our concerns with the 1997 Russian religion law. There, we met with minority religious groups concerned that the new law would limit their ability to freely practice their faith. While it remains to be seen how this law will be implemented, on its face, the law clearly violates numerous Helsinki human rights principles.

Also in January, another Helsinki Commission delegation led by fellow Commission Representative JOHN PORTER, raised concerns with the Austrian Government regarding their new law restricting religious freedom. The Austrian law, passed by the Austrian Parliament on December 10, 1997, requires that a religious group prove a 20-year existence in Austria, have a creed distinct from previously registered groups, and have a membership of at least 0.02% of the population or 16,000 members before they are granted full rights under law. The premise extended by the Austrian Government for such intense regulation of religious groups is that the government is responsible for the content of belief available for public consumption, just as the government regulates the quality of food for public consumption. The Austrian Government's opinion that the government must "approve" religious belief before it is available for the public reveals a shocking retreat from democratic principles which encourage the free exchange of ideas and the freedom of the individual to choose his or her own religious belief.

Several Western European parliaments have or are currently investigating the reporting on the activities of minority religious groups. These parliamentary investigations have also had a chilling effect on religious liberty and appear to cause a public backlash against groups being investigated or labeled "dangerous." For instance, the German Bundestag is currently conducting its investigation into "dangerous sects" and "psycho-groups" and issued an interim report in January 1998. At the Helsinki Commission's September 1997, hearing, independent evangelical church representatives reported a direct correlation between the harassment, vandalism and threats of violence they experience and the investigation by the German Bundestag's commission.

The French Parliament's 1996 report contained a list of "dangerous" groups in order to warn the public against them and the Belgian Parliament's 1997 report had an informal appendix, which was widely circulated, listing 189 groups and included various allegations against many Protestant and Catholic groups, Quakers, Hasidic Jews, Buddhists, and the YWCA.

Equally alarming has been the establishment of government information centers by Western European parliaments to alert the public to "dangerous" groups. The Austrian and Belgian Governments have set up hotlines for the public and, through government sponsored advisory centers, distributes information on groups deemed "dangerous." In Austrian Government literature, Jehovah's Witnesses are labeled "dangerous" and members of this group report that the stigma associated with this government label is difficult to overcome in Austrian society. These information centers directly violate the commitments that Austria and Belgium have made as participating States of the OSCE to "foster a climate of mutual tolerance and respect" and excessively entangle the government in the public discussion on religious beliefs.

On Wednesday (May 20), at the European Parliament, a coalition of religious groups, including Hasidic Jews, Baha'i, Seventh Day Adventist and other leaders from the evangelical Protestant community representing 90 percent of Belgium's Protestant community, are holding a press conference. They are publishing a petition to the Belgian authorities, announcing the launch of a court challenge to the Belgian Parliamentary Report, and highlighting their concerns over the Belgian Government's Advice and Information Center. The premise of the legal challenge is that these actions by the Belgian Government violate Belgium's international commitments to religious liberty. I commend the work that these and other groups such as Human Rights Without Frontiers are doing to highlight and challenge the governmental actions that violate the Helsinki Accords and other international commitments to religious liberty.

TRIBUTE TO LOU AND JUNE LORCH

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SHERMAN. Mr. Speaker, I rise today to pay tribute to Lou and June Lorch for their efforts to improve the quality of life in our community.

Lou and June have exhibited exemplary leadership with their active participation in the Jewish communities of Congregation Beth Kodesh and Shomrei Torah Synagogue. Each has spent countless hours working for the benefit of others, and together they have contributed to the successful development of a growing Jewish community.

Lou's positions and accomplishments illustrate a zest for life and a vigorous dedication to the causes which he supports. At Temple Beth Kodesh, Lou served at various times as Religious Vice President, Ways and Means Vice President, Executive Vice President and as the Men's Club President. After Shomrei Torah Synagogue was formed by the merging of Temple Beth Kodesh and Temple Beth Ami, Lou served as the co-chairman of the High Holy Days seating committee. Currently, he holds a seat on the Jewish National Fund's Board of Directors and the Chatsworth Chamber of Commerce.

June's contributions to the Jewish community embody the spirit of enthusiasm and leadership as well. Having served most notably as Ways and Means Vice President on the Congregation Beth Kodesh Sisterhood Executive Board, she has also held positions including Party Shop Chairperson and Chanukah craft and needlepoint workshops instructor. As a result of her tireless efforts for the community, June was awarded the Chayem Olam award, the Sisterhood's highest honor. In addition, June was named an honorary member of the Men's Club and served as the National Governor of the CAIR Evolution Versus Society.

Besides Lou and June's individual achievements, they have joined forces to chair the Congregational Blood Bank Drive and together played an integral role in planning the synagogue's auction and annual dinner dance.

The Lorch's achievements in the Jewish community highlight a successful career in the

insurance industry with the Lorch Insurance Agency. Lou has served as the President of the Independent Insurance Agents and Brokers Association and as the State Director of the California Insurance Agents and Brokers Association. A highlight of his career came in 1988, when he was awarded the prestigious Van Dawson Award. In the past, June has served as the Lorch Insurance Agency's Chief Financial Officer.

Mr. Speaker, distinguished colleagues, please join me in paying tribute to two distinguished members of our community. Lou and June Lorch epitomize community leadership and awareness, and should be recognized for their contributions.

THE GLACIER BAY NATIONAL PARK BOUNDARY ADJUSTMENT ACT OF 1998

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. YOUNG of Alaska. Mr. Speaker, today I am introducing the Glacier Bay National Park Boundary Adjustment Act of 1998. The legislation is a manifestation of efforts to make the construction and operation of a small hydroelectric facility near the city of Gustavus, Alaska, possible through a land exchange. The hydro project would be constructed and operated by Gustavus Electric Company, and is intended to benefit the city's residents by providing a cheap source of electricity as an alternative to using diesel-powered generators. The project could also supply low-cost power to the National Park Service facilities in Glacier Bay National Park.

An Act of Congress is necessary to allow the development of this hydro project. The project location is within designated wilderness of Glacier Bay National Park. Current law governing wilderness areas does not permit such construction and operation of hydro power facilities. The legislation I am introducing will provide for a land exchange in which the appropriate lands where the project is located are transferred to the State of Alaska, and the Park Service acquires State lands of equal value to compensate. Once the state acquires its lands under the exchange, construction of the facility will be possible.

To reflect an understanding among the parties to this exchange, this legislation requires that the proper environmental and economic analyses and licensing procedures of the Federal Energy Regulatory Commission be followed prior to any transfer of lands. This stipulation assures the integrity of the lands and wildlife will be maintained before construction of the project may begin. In addition, the bill requires an exchange that is of equal value to the State and the federal government, and a "no net loss" of wilderness acreage.

The major provisions of this bill were negotiated by people most directly affected by the land exchange. It is therefore a local solution to a local problem.

TRIBUTE TO JOSUE HOYOS

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Ms. ESHOO. Mr. Speaker, I rise to honor Josue Hoyos, Vice-President of Skyline College in San Mateo County, upon his retirement after 33 years of dedicated service to education.

Josue Hoyos has always taken pride in commitment to his country and to others, as demonstrated by his service in the U.S. Army from 1958 to 1960 and his activity with the Civil Rights movement in the 60's and 70's, marching with Cesar Chavez and the Farm Workers Union.

Josue Hoyos began his teaching career in 1965 at Ridgeview Junior High School in Napa where he was appointed to a faculty group to develop a team teaching approach to World History, a major innovation in the teaching of history at that time. He was appointed Director of Adult Basic Education at Napa College in 1969 and devoted himself to teaching ESL in the fields to farm workers, serving as a liaison to the Mexican American Community and strengthening the ABE program. Josue Hoyos developed the first EOPS program for Napa College in 1970, began the development of a Chicano Studies Curriculum and taught U.S. and Chicano History.

In 1972 Josue Hoyos was appointed to head the Open Education Program (EOPS) at Skyline College. He was instrumental in forming a Traveling Seminar to visit community colleges in California to learn about Learning Centers for Developmental Education. The result of the Traveling Seminar and the proposals which were written followed the plan for the Learning Center developed at Skyline College. Josue Hoyos was also the first Special Program and Services Dean at Skyline.

Josue Hoyos was appointed Dean of Students at Cañada College in 1977, where he developed a School Relations Program and continued to work closely with the community and legislative bodies in the interest of the College.

While Dean of Special Programs and Services at College of San Mateo in 1980, Josue Hoyos was the operations administrator of the first child care center in the San Mateo Community College District and established the successful Parent's Night Program and Services.

Josue Hoyos served in the first U.C. Berkeley Community College Council in the early 1980's which developed processes to ease the tension between the University of California system and Community Colleges, and to increase the number of transfers to U.C. As a result of the Council, several community colleges implemented the U.C. Guaranteed Enrollment Program or U.C. Scholars program for graduating high school seniors who were eligible to be admitted to U.C., but because of space limitation were not accepted. The University guaranteed their admission as juniors if they went to selected community colleges that had agreements with U.C.

In 1989 Josue Hoyos was appointed Vice President for Student Services at Skyline College. He developed and implemented the College's first Security Department, chaired the committee that developed the Student Equity Plan, one out of eleven Community College Plans that were approved out of 107 colleges, developed the Incident Command System for disaster preparedness, initiated the planning process for the Student Services Center and led the development of Skyline College's first Children's Center.

Josue Hoyos has served on numerous Community College Committees developing school policies. In addition, he has been an active participant in community organizations including the Napa City Planning Commission where he was instrumental in pushing through the first low income housing plans in 1970, Co-founder of the Chicano Educators Association in Marin, Napa, and Sonoma Counties and a member of the Mexican American Educators Association, Planned Parenthood, Hispanic Concilio of San Mateo County, the Child Care Coordinating Council, the Daly City/Colma Chamber of Commerce, the Hispanic Chamber of Commerce and the Latino Leadership Council of San Mateo County.

Throughout his distinguished career, Josue Hoyos has earned the respect and admiration of his colleagues and peers and has done the utmost to improve the educational system. He has touched the lives of countless students and has served as an inspiration to many. I ask my colleagues to join me in congratulating Josue Hoyos on his retirement, commending him for his tireless efforts and dedication, and wishing him all the best in the years ahead.

IN CELEBRATION OF THE DENNISON RAILROAD DEPOT MUSEUM AND EAST OHIO GAS

HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. NEY. Mr. Speaker, I commend the following article to my colleagues:

The Dennison Railroad Depot Museum and East Ohio Gas will celebrate on May 21, 1998, the Ribbon Cutting Ceremony and Preview Opening in celebration of the East Ohio Gas Centennial Exhibit titled "A century of Service Built on Trust."

This exhibit is a traveling exhibit prepared by the Ohio Historical Society and will be making its debut in the museum's new Keystone Exhibition Hall. This is an honor for both the Dennison Railroad Depot Museum and East Ohio Gas. I am extremely proud to represent both companies and wish them the best of luck in their future endeavors. I know this will prove to be very successful.

Mr. Speaker, I ask that my colleagues join me in congratulating the Dennison Railroad Depot Museum and East Ohio Gas. The growth and economic opportunity they have brought to the Ohio Valley is to be commended. I wish both companies continued success and prosperity.

CONGRATULATIONS TO THE SPRECKELS SUGAR CO.

HON. GEORGE P. RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. RADANOVICH. Mr. Speaker, I rise today to congratulate Spreckels Sugar Company as they celebrate their centennial anniversary. The Spreckels family has created an important sugar company with the kind of hard work and determination it takes to succeed in the business world. This family-owned business has made a tremendous impact on both the business and agricultural community. Their efforts in the sugar industry, combined with years of exceptional service, make the Spreckels Sugar Company deserving of this recognition.

Sugar and sugar beet history run deep in the annals of California. The first successful sugar beet processing plant in California was built in 1870 in Alvarado. The second plant was built in Watsonville in 1888. The Watsonville plant was eventually dismantled and became part of the world's largest beet processing plant of its time. This plant, built by Claus Spreckels, was the beginning of Spreckels Sugar Company. The plant was built in the town bearing the Spreckels' family name in the fertile Salinas Valley.

Claus Spreckels died nine years after the opening of the Spreckels factory. At this point his sons, John D. and A.B. Spreckels, took the reins of the company. They followed in the footsteps of their father and planned the expansion of the Spreckels Sugar Company to meet the sugar requirements of California's rapidly growing population. In time, they expanded to sell sugar to both the East and West Coasts.

The Mendota plant, where Spreckels' 100-year celebration is being held, was the past plant built in California, in 1963.

Historically, the Mendota factory has operated from the time fields dried in the spring (March or April) until the "spring crop" is harvested. Following a short shutdown in June, the factory is restarted in July and March through October without a shutdown, producing over 2,000,000 cwt. sugar per year, processing approximately 735,000 tons of sugar beets.

The San Joaquin Valley has been the primary source of the Mendota factory's beet supply, with the exception of several occasions when beets were shipped by rail from the Imperial Valley. Additionally, the San Joaquin Valley has been the source of beets for the other California Spreckels factories during the summer months. Millions of tons of beets have been shipped over the years by rail and truck to Spreckels, California (near Salinas), Manteca, and Woodland and to this day are still being shipped to Tracy and Woodland.

In January 1996, Spreckels Sugar Company was purchased by Imperial Holly Corporation. The Woodland, Tracy, Mendota, and Brawley plants in California are now part of the Imperial Holly family and are known as Spreckels Sugar Company, a division of Holly Sugar Corporation. Imperial's purchase of Savannah Sugar in October of last year makes Spreckels a part of the largest sugar refiner, processor, and marketer in the United States.

Mr. Speaker, it is with great honor that I congratulate Spreckels Sugar Company as they celebrate their centennial anniversary. I applaud their years of exceptional service and commitment to the Sugar Beet industry. Spreckels shows just how successful a small family owned business can become with hard work and determination. I ask my colleagues to join me in wishing the Spreckels Sugar Company many more years of success.

PORTSMOUTH MIDDLE SCHOOL ANNUAL FIELD TRIP TO WASHINGTON, D.C.

HON. PATRICK J. KENNEDY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. KENNEDY of Rhode Island. Mr. Speaker, I want to take this opportunity to praise the hard work of those who organized the Portsmouth Middle School Annual Field Trip to Washington, DC. Every year a group of students from the school are taken to the capital to have a tour. A number of people put a great deal of time and effort into organizing this trip. In fact these same dedicated individuals have been making this trip for over twenty years. I would like to acknowledge these people for the work they have done. Richard Munch, Beverly Tavares, Paul Fuller, Andrew Schlachter, Harold Weymouth, Beverly Mankofsky, Jackie Shearman, Heather Baker. Without their constant help and support the trip would not take place.

The trip enables young students to see the Capital up close and they learn a great deal of how the government works. It is important that our young people get to see for themselves the legislative process. They get a tour of the Capital which goes through all aspects of the legislature. They are able to learn the procedures of Congress and they get a taste of how the process functions. This is a very educational tour as these students are able to hear the history of the nation and the capital. They go to Congressional offices, are shown through the Capitol and see the House in action.

I believe that it is an important aspect of our democracy that people can come and see the political process themselves. Many members of the populace never get a chance to do this. Often the legislative process seems far removed from the average person's everyday life. It is often seen as a process that they cannot have any part in. We need to educate people in what we do. To show them that we are here to serve them and that we are answerable to them. This is how our democracy works and young people should be aware of these principles.

The Capital tour gives a taste of history of the United States. I believe that these young people need to learn about their history and the work that our great leaders have put in to creating the nation we have today. It is the people that I mentioned above from Portsmouth Middle School who make this trip possible. They have over the years acted beyond the call of duty to make these trips work. I would like to acknowledge their efforts and note that I appreciate the work they do to show a new generation of young people our democratic process.

APPOINTMENT OF CONFEREES ON H.R. 629, TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT CONSENT ACT

SPEECH OF

HON. SILVESTRE REYES

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 12, 1998

Mr. REYES. Mr. Speaker, the following resolution was submitted in Spanish for the RECORD following Mr. Reyes' remarks on H.R. 629 on Thursday, May 14. This is the English translation to be inserted in the RECORD.

FIRST.—The Joint Committees on Ecology and the Environment, Border Issues and Foreign Relations of the Chamber of Deputies reiterate their complete rejection of the planning, construction and operation of the Radioactive Waste Dump that the Governor of Texas is trying to establish in the town of Sierra Blanca, Texas, and express their disagreement, concern and disapproval of the decisions, adopted and followed until now by the Government of the United States of America, which favor installation of dumps on the southern border with Mexico, without taking into account the potential negative impact that such decisions can have on human health and the environment in communities located on both sides of the border.

SECOND.—The Joint Committees of the Chamber of Deputies have conducted an evaluation of available information on this dump project, the result of which shows that its operation would entail potential adverse impacts.

THIRD.—The Joint Committees of the Chamber of Deputies kindly request that the Office of the Secretary of Foreign Relations transmit to the Government of the United States of America the Chamber of Deputies complete rejection of the construction and operation of a radioactive waste dump in Sierra Blanca, Texas.

FOURTH.—The Chamber of Deputies presents to the Office of the Secretary of Foreign Relations the possibility of considering the formulation of the following proposals to the Government of the United States of America.

(a) Insist on the relocation of the Sierra Blanca project to a site located outside the 100 kilometers of the border zone.

(b) State the disapproval of the Chamber of Deputies with respect to decisions of the United States of America which favor the installation of hazardous and radioactive waste dumps within the border strip.

(c) Begin negotiation of an amendment to the La Paz Agreement in which the installation and operation of hazardous and radioactive waste dumps are explicitly prohibited in the 100-kilometer strip of the common border.

(d) Demonstrate to the members of the U.S. House of Representatives the desire of the Chamber of Deputies that they vote against the Compact Law which authorizes the dumping of wastes among the states of Texas, Maine and Vermont, by virtue of [the fact that] their approval signifies notable

support for the construction and operation of a radioactive waste dump in Sierra Blanca, Texas, and represents a violation of the spirit of the La Paz Agreement.

(e) Include the topic of radioactive and hazardous waste dumps on the agenda of the next meeting of the Mexico-United States Binational Commission to negotiate the suspension of dump projects in the 100-kilometer strip of the border.

FIFTH.—The Joint Committees of the Chamber of Deputies and the Committee of International Affairs are instructed:

(a) To include this matter on the agenda of the next Mexico-United States Interparliamentary Meeting.

(b) That the Ecology and Environment, Border Issues and Foreign Relations Committees of the Chamber of Deputies propose that the Governors of the border states of the Mexican Republic and their respective Congresses be informed about projects attempting to be established in the border zone, exhorting them to define a joint strategy so that dumps not be implemented in the 100-kilometer border strip, and requesting their support of the present Report.

(c) To form a plural commission, made up of deputies [who are] members of the Joint Committees to meet with federal, local and legislative authorities of the United States of America to deal with the Sierra Blanca case and demonstrate their rejection of same.

SIXTH.—The Joint Committees express that the present case constitutes a valuable opportunity for both countries to show their will, responsibility and ability to cooperate in dealing with similar matters of common interest.

SEVENTH.—To the effect that public opinion has greater awareness of the subject, it is suggested that a document be drawn up, to be disseminated by the national and international communication media, in which the problems and current situation of the project in question are expressed.

EIGHTH.—The Joint Committees of the Chamber of Deputies request that this report be sent to the Honorable Chamber of Senators so that, within the framework of the faculties conferred on it by the Political Constitution of the United Mexican States, it proposes the actions necessary for the report's implementation.

Given in the Committee Room of the San Lazaro Legislative Palace, April 27, 1998.

TRIBUTE TO HERB AND SHEILA FRANKEL

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SHERMAN. Mr. Speaker, I rise today to pay tribute to Herb and Sheila Frankel for their efforts to improve the quality of life in our community.

Although Herb and Sheila both spent their childhoods in Chicago and the families knew each other, the two met and married a year later in Los Angeles. With Herb having already served in the US Army and working in the family retail business and Sheila working as a dental assistant, the family moved to the San Fernando Valley in 1974 and began to focus their energy on Jewish community involvement.

The Talmud states, "He who gives charity serves the Holy One daily, and sanctifies his name." The Jewish community of the Shomrei Torah Synagogue and the San Fernando Valley have appreciated and enjoyed the charity of the Frankels for many years, as the devotion of their energies have given the community the strength to expand, and set into motion programs that will not only benefit today's members, but also the next generation.

The Frankel family has devoted a large amount of time to the Jewish communities of Temple Beth Ami and Shomrei Torah Synagogue. Their efforts illuminate a zealous determination to contribute to and support a growing Jewish community.

Herb has held many leadership offices such as Financial Secretary, Vice President and a three year term as President of Temple Beth Ami. He also co-chaired the merger committee of Temple Bet Ami and Congregation Beth Kodesh when the two Jewish communities joined to form Shomrei Torah Synagogue. Currently, Herb is the co-chairperson of the High Holy Days seating committee.

Sheila has served as an active member of the Sisterhood of Shomrei Torah Synagogue on the Donor Committee and as the chairperson of numerous Donor luncheons.

Herb and Sheila have had three beautiful children, Paul, Laurie and Adam. Unfortunately, Laurie was lost to cancer in 1995. Sheila's sister Roberta and Brother-in-law Ron Katz are also members of Shomrei Torah Synagogue.

Mr. Speaker, distinguished colleagues, please join me in honoring two outstanding individuals of our community. Herb and Sheila Frankel are dedicated members of Shomrei Torah Synagogue and role model for the West San Fernando Valley Jewish community.

IN RECOGNITION OF JOHN J. MURRAY

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. HALL of Texas. Mr. Speaker, it is with a great deal of personal gratification that I pay tribute to the major accomplishments over the past six decades of an individual who not only dedicated his military career to serving and honoring our country, but also continued that service in his leadership positions at Raytheon—formerly E—Systems. On 29 May 1998, Mr. John J. Murray will retire from Raytheon Systems Company in Greenville, TX, with 31 years of dedicated service on programs that contributed to the strength of our national defense and commercial welfare.

Mr. Murray was born on January 6, 1922, in Brooklyn, New York. He attended school there and graduated in 1939. In 1957, he received a Bachelor of Science in Political Science from St. Joseph's College in Pennsylvania while teaching ROTC. That same year he graduated from the United States Air Force Command and Staff College at Maxwell Air Force Base, Alabama. Mr. Murray retired from the United Staes Air Force in 1967. He continued his education in 1977 by earning his Master's of Business Administration at the University of Dallas in Texas.

Mr. Murray served 24 years as an officer in the Air Force, retiring as a Lieutenant Colonel and Combat Rated Pilot with more than 5,000 flying hours. His military career earned him the Air Medal with two oak leaf clusters and numerous other military service medals. During his Air Force Career, he served in a variety of operational and staff positions. In some of his early military assignments, between 1944 and 1960, he served in several operational and administrative positions and became qualified in 20 different aircraft.

Mr. Murray started his career flying "The Hump" in the China-Burma theater of WW II in C–47 aircraft for the U.S. Army Air Corps. He then signed on as a Base Legal Officer at Mitchell Field, New York and tried about 400 cases. Mr. Murray served as Commander of a Tactical Reconnaissance Squadron from 1960 until 1964. From 1964 through 1967, he was assigned as Operational Plans Officer, Headquarters North American Air Defense Command. In this capacity, he was specifically responsible for planning the systems requirements, operational employment concepts, and force levels, as well as performing operational analyses of the Improved Manned Interceptor and Airborne Warning and Control System Programs. Mr. Murray continues to be a member of the Air Force Association and has been a member of the Greenville Flying Club for many years.

Mr. Murray began his remarkable career with Raytheon System Company—Greenville, then known as LTV Electro Systems, in 1967. His extensive 31 years of experience at Raytheon Systems Company—Greenville has included a wide variety of program management positions. From 1968 to 1973, he was Program Manager for the Airborne Surveillance and Control System on the EC–121T aircraft. He was assigned special duties during 1973 that involved detailed preparation of the operations and logistics plan for the Sinai Field Mission Program. From 1973 to 1978, he was the Integrated Logistics Support Program Manager for the E–4A modification effort. From 1978 to 1980, he served as the Program Manager for the 4950th Test Wing Class II Modification Services Program.

Mr. Murray's management positions ranged from very high technologies with the Advanced Research Project Agency, where he successfully managed the Multitude Chip Module Program and the Applied Specific Electronic Module Program during the 1990 to 1995 time frame, to very large and complex aircraft programs during the 1980s. His management experience has also included service as the Material Program Manager for the E–4B Advanced Airborne Command Post Program. For 19 of those years, Mr. Murray was honored by being appointed consecutively to serve as chairman of the Employees' Political Action Committee (PAC). The Greenville PAC was organized in September 1976, with a mission to encourage Greenville employees to be better informed on federal, state, and local policies and action, and intensify the employees' and company's networking effort with elected representatives. During this 19-year chairman position, he inspired continued communications among members of our U.S. Congress,

the PAC, and the population of Hunt County, Texas by hosting informative political forums at Greenville.

On election years, people running for local, state, and national elected positions were invited to speak giving the employees a first hand knowledge of each candidate's opinions. Those elected were invited back to brief PAC members of events in their respective jurisdictions. Some of the special guests over the past 19 years include: Governors Bill Clements and George W. Bush; U.S. Senators Lloyd Bentsen, Phil Gramm, Kay Bailey Hutchison, John Tower; U.S. Representatives Dick Armey, Joe Barton, Jim Chapman, Sam Hall, Sam Johnson, Max Sandlin, and myself. Mr. Murray has briefed influential people in Washington on Raytheon Systems Company—Greenville programs and shaped funding for many of the national security aircraft. He represented the interest of Greenville employees, the company, and the American free enterprise system.

Mr. Murray's career at Raytheon has been one of "can do" and "team spirit." He has been a leader, encourager, friend to all, and an anchor in times of difficulty. He has always been ready to contribute in whatever capacity was needed and his range of experience has been a benefit to many younger employees. Mr. Murray is a native of New York as is his wife, the former Terry Casey. They moved to Texas in 1967 and are 31-year residents of Greenville, Texas. They have three children: two daughters, Laura Murray and Nancy Feuille; and one son, Bill Murray. They also have six grandchildren.

Mr. Speaker, when we adjourn today's session—let us do so in honor and respect for this great American.

TRIBUTE TO ED WEINSTEIN

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SHAW. Mr. Speaker, in just a few months, the accounting profession will bid farewell to one of its illustrious members. Ed Weinstein epitomizes what CPAs stand for: honesty, integrity, and forthrightness in all matters. Ed majored in accounting at Columbia University and earned his MBA from the Wharton School. He then joined Touche Ross and Co., and is currently a senior partner in the Deloitte & Touche firm. He has spent most of his professional career in New York and Pennsylvania, and during part of that time he managed the firm's Philadelphia office.

But Ed has done more than serve his clients; he serves his community and gives selflessly of his time and talents to many worthy and deserving causes. He is currently involved in the New York City Police Foundation, the Cooper-Hewitt National Museum of Design, and the New York City Public/Private Initiatives Commission. He is a Public Member of the New York City Rent Guidelines Board and is actively involved in Operation Exodus, the United Israel Appeal.

Fittingly, Ed has been acknowledged by his peers for his professional and civic activities. The New York Society of CPAs awarded Ed "The Arthur J. Dixon Public Service Award" and he received the New York City Police Department's Certificate of Commendation of 1994.

As a fellow CPA, I know the accounting profession will surely miss him, but I also know that Ed intends to continue many of the important community activities in which he is currently involved.

On behalf of my colleagues, I extend to Ed and his wonderful wife, Sandra, our very best wishes for a long and well-deserved retirement.

INTRODUCTION OF THE TRADEMARK ANTI-COUNTERFEITING ACT OF 1998

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. GOODLATTE. Mr. Speaker, I rise today to introduce the Trademark Anticounterfeiting Act of 1998. This important legislation will provide law enforcement the tools they need to combat the growing crime of altering or removing product identification codes from goods and packaging. This bill will also provide manufacturers and consumers with civil and criminal remedies to fight those counterfeiters and illicit distributors of goods with altered or removed product codes. Finally, this bill will protect consumers from the possible health risks that so often accompany tampered goods.

Most of us think of UPC codes when we think of product identification codes—that block of black lines and numbers on the backs of cans and other containers. However, product ID codes are much more than simple UPC codes. Product ID codes can include various combinations of letters, symbols, marks or dates that allow manufacturers to "fingerprint" each product with vital production data, including the batch number, the date and place of manufacture, and the expiration date. These codes also enable manufacturers to trace the date and destination of shipments, if needed.

Product codes play a critical role in the regulation of goods and services. For example, when problems arise over drugs or medical devices regulated by the Food and Drug Administration, the product codes play a vital role in conducting successful recalls. Similarly, the Consumer Product Safety Commission and other regulators rely on product codes to conduct recalls of automobiles, dangerous toys and other items that pose safety hazards.

Product codes are frequently used by law enforcement to conduct criminal investigations as well. These codes have been used to pinpoint the location and sometimes the identity of criminals. Recently, product codes aided in the investigation of terrorist acts, including the bombing of Olympic Park in Atlanta and the bombing of Pan Am Flight 103 over Lockerbie, Scotland.

At the same time, manufacturers have limited weapons to prevent unscrupulous distributors from removing the coding to divert products to unauthorized retailers or place fake codes on counterfeit products. For example, one diverter placed genuine, but outdated, labels of brand-name baby formula on substandard baby formula and resold the product to retailers. Infants who were fed the formula suffered from rashes and seizures.

We cannot take the chance of any baby being harmed by infant formula or any other product that might have been defaced, decoded or otherwise tampered with. FDA enforcement of current law has been vigilant and thorough, but this potentially serious problem must be dealt with even more effectively as counterfeiters and illicit distributors utilize the advanced technologies of the digital age in their crimes.

Manufacturers have attempted, at great expense and with little success, to prevent decoding through new technologies designed to create "invisible" codes, incapable of detection or removal. However, decoders have proven to be equally diligent and sophisticated in their efforts to identify and defeat new coding techniques. We therefore must provide manufacturers with the appropriate legal tools to protect their coding systems in order for them to protect the health and safety of American consumers.

Currently, federal law does not adequately address many of the common methods of decoding products and only applies to a limited category of consumer products, including pharmaceuticals, medical devices and specific foods. Moreover, current law only applies if the decoder exhibits criminal intent to harm the consumer. It does not address the vast majority of decoding cases which are motivated by economic considerations, but may ultimately result in harm to the consumer.

My legislation will provide federal measures which will further discourage tampering and protect the ability of manufacturers to implement successful recalls and trace products when needed. It would prohibit the alteration or removal of product identification codes on goods or packaging for sale in interstate or foreign commerce, including those held in areas where decoding frequently occurs.

The legislation will also prohibit goods that have undergone decoding from entering the country, prohibit the manufacture and distribution of devices primarily used to alter or remove product identification codes, and allow the seizure of decoded goods and decoding devices. It will require offenders to pay monetary damages and litigation costs, and treble damages in the event of repeat violations. The bill will also impose criminal sanctions, including fines and imprisonment for violators who are knowingly engaged in decoding violations.

The bill would not require product codes, prevent decoding by authorized manufacturers, or prohibit decoding by consumers. It is a good approach designed to strengthen the tools of law enforcement, provide greater security for the manufacturers or products, and most importantly, provide consumers with improved safety from tampered or counterfeit goods. I urge my colleagues to join me in supporting passage of this bill, which will go a long way toward closing the final gap in federal law enforcement tools to protect consumers and the products they enjoy.

THE AMERICAN HOMEOWNERSHIP ACT OF 1998

HON. RICK LAZIO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. LAZIO of New York. Mr. Speaker, today I am proud to introduce with my colleagues the "American Homeownership Act of 1998." For most Americans, the most important financial investment we make in our lives is the purchase of a home. Homeownership creates a sense of community and common good, binding neighbors together. Homeownership is the cornerstone of strong families, prosperous communities and a dynamic nation, and this important legislation is designed to provide all families great opportunities to attain and preserve the American dream of owning their own home.

This Act will reduce barriers to the production of affordable housing, protect our Nation's senior citizens when they obtain reverse mortgages, and enable those who receive federal housing assistance, such as public housing or Section 8 housing, to use these funds in creative ways to achieve homeownership. This bill contains important provisions to assist self-help housing providers, such as Habitat for Humanity, in achieving their goals of helping our poor citizens move into their own homes. The American Homeownership Act provides increased flexibility to State and local governments to leverage federal housing funds, provided through the HOME Program, to attain higher levels of homeownership in their areas through local homeownership initiatives. This bill contains provisions to enhance and improve the manufactured housing industry. Moreover, this legislation seeks to address concerns raised by Native American groups who fear that federal bureaucratic procedures will hinder their efforts to increase homeownership on Indian lands.

BARRIERS TO AFFORDABLE HOUSING

We must eliminate the bureaucratic red tape and excessive regulation that stifles homeownership. Unnecessary governmental regulation adds 20 to 35 percent, thousands of dollars, to the cost of a new home according to the National Association of Home Builders.

I am pleased to join with my good friends and colleagues, TOM CAMPBELL, JACK METCALF and JON FOX to incorporate legislation Mr. CAMPBELL has previously introduced to reduce barriers to affordable housing.

The Act requires all Federal agencies to include a housing impact analysis with any proposed regulations to certify such regulations have no significant negative impact on the availability of affordable housing. Local nonprofits and community development groups are given the opportunity to offer alternatives if it is found that the rule would have a deleterious effect on affordable housing.

REVERSE MORTGAGES FOR SENIORS

We must preserve and protect opportunities for senior citizens to remain in their own homes near their families and friends. The American Homeownership Act makes the FHA-insured reverse mortgage program permanent. A reverse mortgage offers sometimes the only tool to for "house-rich", "cash-poor" seniors to remain in their own homes by providing extra income for living and medical expenses or crucial home repairs. We also will require HUD to prohibit financial entities from charging seniors extortionate fees when obtaining a reverse mortgage in response to allegations to fraud and abuse within the program last year.

HOMEOWNERSHIP OPTION IN FEDERALLY-ASSISTED HOUSING

The American Homeownership Act of 1998 will allow families receiving rental voucher assistance under the Section 8 program to use those funds in a properly structured homeownership program that would help them buy their own homes. Residents and public housing authorities are authorized to use funds normally used to pay rents for either downpayment assistance or toward mortgage payments.

HOME, HOME LOAN GUARANTEE PROGRAM, HOMEOWNERSHIP ZONES

The most innovative tools for expanding homeownership opportunities are being created at the state and local level. The American Homeownership Act creates a HOME Loan Guarantee program to allow communities to tap into future HOME grants for affordable housing development. HOME is one of the most successful Federal block grant programs, and is designed to create affordable housing for low-income families. The Act also provides grant authority for use in "Homeownership Zones"—designated areas where large scale development projects are designed to reclaim distressed neighborhoods by creating homeownership opportunities for low and moderate income families. Flexibility is also granted in defining metropolitan areas to allow greater homeownership opportunities for suburbs affected by the high home prices of nearby cities.

MANUFACTURED HOUSING

More and more families are living in manufactured homes than ever before. The days of trailer parks filled with metallic shoebox-shaped "homes" are gone. Many of today's manufactured homes are multi-sectioned with vaulted ceilings and state of the art appliances. They are also very affordable for more than 18 million Americans—$40,000 to $70,000 for a new, multi-sectioned manufactured home, compared to $158,000 for the average new home.

I am pleased to join with my colleagues BOB NEY, KEN CALVERT, DAVID MCINTOSH and others in including legislation we previously introduced to reform and modernize the Federal manufactured housing program.

The American Homeownership Act of 1998 promotes the quality, safety and affordability of manufactured homes by ensuring uniform standards and codes for construction across the country. The legislation improves the Federal management of the program by establishing a consensus committee of consumers, industry experts and government officials to advise HUD on regulation enforcement.

HOUSING ON INDIAN LANDS

I am pleased to join with my colleague Mr. REDMOND of New Mexico to include in this bill an Indian Lands Status Commission which will develop recommended approaches to improving how the Bureau of Indian Affairs conducts title reviews in connection with the sale of Indian lands. Receipt of a certificate from the Bureau of Indian Affairs is a prerequisite to any sales transaction on Indian lands, and the current procedure is overly burdensome and presents a regulatory barrier to increasing homeownership on Indian lands. This Commission is charged with providing Congress with methods to address these concerns.

Mr. Speaker, this homeownership legislation recognizes that the strength of our Nation lies in its individual communities, and that federal government policy should be encouraging and fostering, instead of hindering, the efforts of localities and individuals to achieve the American dream of homeownership.

HONORING REVEREND BRAXTON BURGESS

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. KILDEE. Mr. Speaker, it is an honor to rise before you today to recognize the achievements of Reverend Braxton Vincent Burgess of Flint, Michigan. On Saturday, May 30, the congregation of Flint's Quinn Chapel African Methodist Episcopal Church will honor Reverend Burgess for the many contributions he has made to our community.

Reverend Burgess earned his Bachelor of Science degree from Wilberforce University in Ohio and continued his education at Payne Theological Seminary where he received his Master's of Divinity. To continue his mission of peace and social change, he received a diploma in urban ministry from the Urban Training Center of Chicago and served as a member of President Carter's White House Council on Arms Control.

In 1967, Reverend Burgess was ordained as an Itinerant Elder in the African Methodist Episcopal Church. Since that time he has committed his life's work to providing spiritual guidance and counsel to countless individuals. As a member of the Board of Directors of the Urban League of Flint, Past President of the Greater Flint Association of Christian Churches, and a member of the Board of Directors of the United Way of Genesee County, Reverend Burgess has been a highly effective leader. His dedication to ensuring that everyone is afforded a quality education is evidenced by his tenure on the Advisory Committee for the Mott Adult High School Continuing Education Program.

Reverend Burgess's tireless service and deeds have earned him recognition from various groups such as the Flint Optimist International, Western Michigan University's Black Studies Department, the State of Michigan House of Representatives, and the Flint Chapter of the NAACP, to name a few.

Mr. Speaker, it is with great pride that I ask my colleagues in the House of Representatives to join me in saluting an inspirational individual, Reverend Braxton Vincent Burgess. He deserves our thanks for a lifelong commitment to making our community a much better place.

TRIBUTE TO HERB AND SHIRLEY CANE

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SHERMAN. Mr. Speaker, I rise today to pay tribute to Herb and Shirley Cane for their devoted efforts to improve the quality of life in our community.

Herb and Shirley have played an instrumental role in leading the Jewish community of the San Fernando Valley. Their continued community activism demonstrates a commitment to the further enhancement of the organization to which they have already dedicated so much valuable time and effort.

Herb Cane's relentless and unselfish dedication to the Jewish community has set the foundation for many growing Jewish youth programs. After his term as the first president of the Kadima Hebrew Academy for two and a half years, Herb headed the committee that would establish Kadima as an independent community school. In addition to this effort, he was also greatly committed to the fiscal stability of the young institution. Herb has served on the advisory and grant selection committee of the Ann Zatz Memorial Fund and the B'nai Brith Youth Organization. This organization has provided yearly scholarships for youth leadership training in Israel.

Shirley has also shown a great commitment to expanding the Jewish community in the San Fernando Valley. She played an integral role in founding the Honor Chapter of B'nai Brith Women in Canoga Park and presided over the Honor Chapter for a period. Shirley is a past president of Kidney Infection Needs Detection (K.I.N.D.) and served on the Cedars-Sinai Liaison Council. In addition to these roles, she has also held executive positions on the board of Congregation Beth Kodesh, the Congregation's Sisterhood and served as President of Friends of Kadima. Shirley is currently serving on Kadima Hebrew Academy's Board of Directors. As a tribute for her hard work, Congregation Beth Kodesh awarded her with the Sisterhood Chayeh Olam Award.

Married for thirty-five years, Herb and Shirley are the founders and main supporters of the Stacey Cane Youth Theater, named after their daughter whom they lost to breast cancer. Their continued support of the Shomrei Torah Synagogue is greatly appreciated as it continues to successfully expand into the next century.

Mr. Speaker, distinguished colleagues, please join me in paying tribute to Herb and Shirley Cane. They have shown an unwavering commitment to the community and deserve our recognition and praise.

ROBERT W. GENZMAN IN MEMORIAM

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. McCOLLUM. Mr. Speaker, I come before this body tonight to express my deep sadness over the death of Robert W. Genzman, one of the finest individuals I have ever known. Bob Genzman passed away in Orlando on May 12, 1998. He left a legacy of public service and accomplishment that will serve as an example for many in the years to come.

Bob Genzman received a B.A. from the University of Pennsylvania, an M.S. degree from the London School of Economics, and in 1977 a J.D. from Cornell Law School. Following law school Bob spent 2 years as staff counsel to the House Select Committee on Assassinations as one of several attorneys assigned to investigate the assassination of President Kennedy. He participated in public hearings and wrote and edited substantial portions of the Committee's final report. Later he spent several years as a Legislative Assistant to Congressman BOB LIVINGSTON.

From 1980 to 1983 he was Assistant United States Attorney in Orlando. After entering the private practice of law, Bob was tapped in 1987 to take a leave of absence from his law firm and serve as Associate Minority Counsel for the Republican Members of the House Select Committee to Investigate Covert Arms Transactions with Iran. In this capacity he did a great amount of research, deposed numerous witnesses, questioned in open hearings several of these witnesses including Secretary of Defense Caspar Weinberger, and wrote and edited substantial portions of the Committee's final report.

In early 1988 Bob Genzman was selected by President Reagan to serve as United States Attorney for the Middle District of Florida. Appointed by President Bush shortly after he took office, Bob was U.S. Attorney for the Middle District until 1993. He supervised 94 attorneys in a 35 county district with offices in Tampa, Orlando, Jacksonville and Fort Myers. During his tenure he pioneered the use of the federal criminal law for possession and use of a firearm by a convicted felon to prosecute previously convicted felons serving relatively short sentences in state or county jails so as to get them off the streets and locked up in a federal prison for a lengthy period of time. Attorney General Richard Thornburgh embraced this as a national policy under the name "Operation Triggerlock."

I got to know Bob Genzman quite well while I served as a member of the Iran Contra Committee. He was an excellent counsel for the Committee and struck me as bright, capable, even tempered, gracious and compassionate. When the office of U.S. Attorney opened, it was a pleasure for me to recommend him for this position. There had been much turmoil in this office, and everyone who worked with Bob Genzman while he was U.S. Attorney says he settled the office down and ran it with great professionalism.

Above all else, Bob Genzman was a family man. He is survived by his wife, Martha; his 5 year old twin children, Rob and Jackie; and his parents, Catherine and Glenn Genzman.

IN RECOGNITION OF LOIS NELSON

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. HALL of Texas. Mr. Speaker, I rise today to pay tribute to an extraordinary senior citizen from Princeton, Texas—Mrs. Lois Nelson—whose success story is worthy of recognition. What makes Mrs. Nelson so extraordinary is that she entered the workforce for the first time in 1982 at the age of 68 and has been active ever since.

In 1982 Mrs. Nelson began working through the Green Thumb program as the site manager for the Senior Citizen's Center in Princeton. As site manager, Mrs. Nelson spent countless hours recruiting members, organizing activities, counseling fellow seniors and distributing food to those less fortunate. Seven years ago, she began her quest to fulfill a lifetime dream—to become a librarian. Mrs. Nelson became an aide in both the elementary and high school libraries. In this capacity, she applied herself to learn and master the skills necessary to be a successful librarian, but she was still lacking one credential—a high school diploma. At the age of 79, Mrs. Nelson returned to the classroom and in April of 1994, received her GED.

On March 1, 1995, as a result of hard work and determination, a dream came true for Mrs. Nelson when she received her County Librarian, Grade 3 Certification. As a librarian for the Princeton Independent School District, Mrs. Nelson not only performed her professional duties but also recruited Green Thumb applicants and GED students, assisted in a community green house project, and helped with the school tax office. Her boundless energy and enthusiasm were never more prevalent than in 1996, when Mrs. Nelson had open-heart surgery. Within six weeks and at the age of 81, she was back at work, fulfilling her official and voluntary duties.

Mrs. Nelson's enthusiasm for life, quest for knowledge, and willingness to give of herself set an example for all of us. In addition to obtaining her GED and receiving her County Librarian Certification, she has been active in a variety of community service efforts. Mrs. Nelson has participated in the 55-Alive class, attended Gang Awareness Inservice and Citizen's Crime class and served as a Pink Lady for the Ladies Volunteer Auxiliary at Columbia Medical Center—all after the age of 75.

In recognition of her exemplary achievements, Mrs. Nelson was nominated for the 1997 Outstanding Older Worker of Texas award. Today I am pleased to announce Mrs. Nelson's selection for Honorable Mention in this statewide search. Mrs. Nelson is living proof that life can be challenging and filled with opportunity, regardless of age.

Mr. Speaker, I am honored today to pay tribute to this outstanding senior citizen from the Fourth District of Texas. Mrs. Lois Nelson is an inspiration and role model to all Americans.

WESTHILL CHOIR WINS NORTH AMERICAN MUSIC FESTIVAL

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. WALSH. Mr. Speaker, it is my privilege today to recognize publicly the accomplishments of scholastic musicians and singers across the United States, and in particular some of my constituents in Central New York—the winners of the North American Music Festival in New York this spring, Westhill High School Concert Choir.

The choir was awarded First Place with a Superior rating. The Westhill High School Women's Ensemble also was awarded the First Place Trophy with a Superior rating. Members of the Ensemble also belong to the Concert Choir.

I want to congratulate Choral Director William Black for his tireless dedication and talented instruction. I would also ask my colleagues to join me in saluting the participants in such school groups in every district, in every state.

This kind of extracurricular activity nurtures sensitivity for beauty in music and song in young people. I am very proud of the programs which address such an important aspect of education and especially proud of the Westhill participants this year who won the American Music Festival.

They are: Michael Aquayo, Jeffrey Aldrich, Jaime Arnold, Kirstin Axford, Lacey Ballard, Katie Balogh, Jessica Bartle, Betsy Bartle, Nell Beadling, Claire Berkery, Erin Berkery, Katherine Bernstein, Brendan Brieaddy, Megan Brody, Sarah Brody, Kelley Burkett, Melody Calley, John Carpenter, Bryant Carruth, Paul Cella, Margaret Chajka, Michael Cieply, Marie Connell, Heather Cutler, Jessica Diaz, Laura DiSerio, Hilary Donegan, Erin Dowd, Brian Dudiak, Victoria Duffy, Jennifer Ernestine, Catherine Evans, Jennifer Fetter, Kristen Finn, Meghann Finerghty, Jamir Flores, Robert Flynn, Casey Foreman, Megan Foreman, Erin Frost, Rebecca Fullan, Jenelle Gallardo, Nicholas Gambino, Elizabeth Garofano, Manjinder Gill, Stephanie Grosso, Rebekah Guss, Kathleen Guyder, Kelly Hall, Colleen Harrington, Cara Hart, Sheehan Hayes, Benjamin Haynes, Erin Hogan, Julie Howard, Juliana Ingraham, Kristen Ingraham, Jonathan Jackowski, Lyndsay Jesmain, Joelle Kearns, Patrick Keeler, Elizabeth Kelly, Margaret Kelly, Jessica LaFex, Margaret LaFex, Allison Lang, Sara Lange, Meghan Lantier, Colleen Lavin, Marie Lebro, Emily Lemanczyk, Elizabeth Lemmerman, Kimberly Majewicz, Erin McCormick, Meghan McClees, Bryan McMahon, Molly Michaels, Rickard Mulligan, Kelly Murphy, Larissa Murphy, David Mushow, Andrea Nedoshytko, Julie Nichols, Pamela Norton, Colleen O'Brien, William O'Sullivan, Amelia Ott, Emily Ott, Jeffrey Pacelli, Jonathan Patrei, Julie Patriarco, Leah Patriarco, Jason Paussa, Sarah Pelligrini, Ana Pinker, Jessica Pouliot, John Powers, Sarah Quintana, Rebecca Reidy, Molly Rickert, Kathleen Roche, Carolyn Rolince, Jessica Roliance, Lauren Ryan, Marie Sampo, Michael Scheid, Elisa Sciscioli, Kelley Seymour, Daniel Silky, Kimberly Smith, Katherine Snyder, Jennifer Sobecki, John Sondej, Bryan Sparkes, Elizabeth Stebbins, Carissa Stepien, Lindsay Sterbank, Jillian Stevenson, Brian Stiles, Caitlin Sullican, Calleen Sullican, Matthew Tiffault, Matthew Thornton, Jamie Toth, Elizabeth Tucker, Erica Volpe, Kathryn Walsh, Kimberly Walsh, Maureen Walsh, Jessica Waters, Joseph Waters, George Welch, Shannon Wiktorowicz, Cassandra Williams, and Nathaniel Wood.

HANK STRAM/TONY ZALE SPORTS AWARD BANQUET

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. VISCLOSKY. Mr. Speaker, it is my distinct pleasure to announce that Lodge 2365 of the Polish National Alliance of the United States, also known as the Silver Bell Club, held its 25th Annual Hank Stram/Tony Zale Sports Award Banquet yesterday, May 18, 1998, at the Radisson Hotel at Star Plaza in Merrillville, Indiana. Eighteen Northwest Indiana high school students of Polish and Slavic descent received the prestigious Hank Stram/Tony Zale Award plaque at last night's banquet. These outstanding students were chosen to receive the award by their respective schools on the basis of academic and athletic achievement. All proceeds from the banquet will go toward a scholarship fund which will be awarded to deserving students next year.

This year's Hank Stram/Tony Zale Award recipients include: Andrew Bien of Boone Grove High School; Jeff Bozovich of Chesterton High School; Andrew Byrom of Merrillville High School; Luke DeBold of Andrean High School; Tania Fliter of Griffith High School; Stephen Hnatiuk of Hobart High School; Cheryl Jakubczyk of Hammond High School; Richard Jaryszak of Lowell High School; Dan Kaminski of Portage High School; Steve Kaminski of Portage High School; Annie Knish of Munster High School; Ben Lyon of Highland High School; Justin Marcinkewicz of Bishop Noll Institute; Kelly O'Brien of Crown Point High School; Dan Perryman of Lake Station Edison High School; Eileen Stahura of Whiting High School; Becky Turek of Valparaiso High School; and Melissa Wychocki of Lake Central High School.

Hank Stram, one of the most successful coaches in professional football history, was present at yesterday's event. Hank was raised in Gary, Indiana, and he graduated from Lew Wallace High School where he played football, basketball, baseball, and ran track. While attending college at Purdue University in West Lafayette, Hank won four letters in baseball and three letters in football. During his senior year, he received the coveted Big Ten Medal, which is awarded to the conference athlete who best combines athletic and academic success. After college, Hank entered the NFL where he became best noted for coaching the Kansas City Chiefs to a Super Bowl victory in 1970.

The late Tony Zale was a champion boxer from Gary, Indiana. During his boxing career, Tony defeated the National Boxing Association champion in July of 1940, became a world titleholder when he defeated World Middleweight Champion, Georgie Abrams, in 1941, and successfully defended his title against famous boxer, Rocky Graziano, in 1945. When Tony retired from boxing in 1948, he left the profession with the distinction of fighting and beating every contender in the middleweight division during his championship reign from 1941 through 1948 and, in the 1950s, he was inducted into the World Boxing Hall of Fame. Tony Zale passed away in March of last year.

The distinguished speaker at last night's event was former NFL quarterback and head football coach, Sam Wyche. An NFL player and coach for 27 years, Sam was one of the original Cincinnati Bengals in 1968, and he was the quarterback on the Bengals first playoff team in 1970. Sam began his coaching career with Bill Walsh and the San Francisco 49ers. He coached quarterback Joe Montana from his rookie year through the 49ers first Super Bowl victory in 1981. Sam was then head coach of the Bengals in Super Bowl XXIII, which was against the 49ers. Sam has just completed his first year as one of the members of NBC's pre-game show, "NFL on NBC".

Mr. Speaker, I ask you and my other distinguished colleagues to join me in commending the Silver Bell Club for hosting this celebration of success in sports and academics. The hard work of all those involved in planning this worthwhile event is indicative of their devotion to the very gifted young people in Indiana's First Congressional District.

TRIBUTE TO MRS. SANDY CANDIOTTY

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SHERMAN. Mr. Speaker, I rise today to pay tribute to Mrs. Sandy Candiotty for her outstanding commitment to others that has done so much to improve the quality of life in our community. Both as a successful business woman and as an avid supporter of charitable projects, she has used her intelligence and charisma to distinguish herself as a woman of valor.

The Talmud tells us that "He who does charity and justice is as if he had filled the whole world with kindness." Sandy has had a long tradition of service to the community through her family. Her father's family, the Taylors, founded Taylortown, Pennsylvania in the 1700's as well as Belmont County in Ohio. In addition to this, one of the family's most famous sons was Zachary Taylor, the 12th president of the United States.

In the business community, Sandy served in management and supervisory positions at Bank of America, Great Western Savings and Mercury Savings. While serving in these positions she was involved in all aspects of marketing. At Mercury, she also developed an entirely new staff training program for the company. Sandy converted to Judaism and married Max Candiotty on June 2, 1991.

At the Sephardic Temple-Tifereth Israel she has served as Sisterhood Co-President and as

Vice-President of Programming. She is a board member and serves on the executive board of My Discovery Place where she has chaired three major fund raisers. At the Maimonides Academy she has co-chaired two Chinese Auctions and has helped out in numerous school related projects.

Sandy also serves on the Board of Directors of the Sephardic Educational Center, and is active in the UJF Sephardic Women's Division, the Bureau of Jewish Education and the Women's League of the University of Judaism where she received the coveted Torah Fund Award. As a supporter of the humanities and the arts she has assisted the American Friends of Israel Museum, the Smithsonian, the Metropolitan, the Los Angeles County Museum, and has been appointed Chair of the Levy Sephardic Museum.

Mrs. Candiotty has served her own family as well, and has raised both her son Stephen and her daughter Dana to be successful and contributing members of the community. We are told in the Talmud that "When you teach your son you teach your son's sons," and Sandy has taken her commitment to education seriously.

Mr. Speaker, distinguished colleagues, please join me in paying tribute to Sandy Candiotty. Her dedication to charity and service has improved the community and made her a role model for us all.

TRIBUTE TO SISTER GLORIA JEAN ZIESKE

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. BONIOR. Mr. Speaker, today I would like to congratulate, Sister Gloria Jean Zieske for her hard work and dedication to education. Sister Gloria Jean is retiring after twenty years as Principal of St. Veronica's School in Eastpointe, Michigan. Her friends, colleagues, and students will honor her with a reception on Sunday, May 31st.

Education has always been important to Sister Gloria Jean. She has studied at Nazareth College, University of Notre Dame, University of Dayton, Marygrove College, Edgewood College and Siena Heights College. As both a teacher and administrator, Sister Gloria Jean has been sharing the joys of learning with children since 1949. In 1997, Sister Gloria Jean received recognition from the University of Notre Dame for her contributions to Catholic education. She was also nominated by Today's Catholic Teachers as one of the 25 most influential individuals in Catholic education.

She joined the faculty at St. Veronica's in 1978. Sister Gloria Jean has been more than just a Principal, she has taught religion and coordinated the Elementary Religious Education Program. For more than twenty years, the students and parishioners of St. Veronica's have been graced by Sr. Gloria Jean's spirit and love of learning.

St. Veronica's School is a very special place. As a graduate of this school, I know how hard the staff and faculty work to create an educational and spiritual environment. Sister Glorida Jean's compassion and interest in improving the educational system have made her a compelling symbol of everything that education should embrace. I would like to give my heartfelt congratulations to Sister Gloria Jean as she celebrates her retirement.

CONGRATULATING MISSION SAN JOSE HIGH SCHOOL FOR WINNING EDUCATION DEPARTMENT'S BLUE RIBBON AWARD

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. STARK. Mr. Speaker, I would like to congratulate Mission San Jose High School for winning the Blue Ribbon award from the Department of Education. Mission San Jose was one of six California schools to win this prestigious award and one of 166 schools nationwide.

Mission San Jose proves that public schools can be effective advocates for all students to succeed in the 21st Century. Mission San Jose believes that all students can learn and all students will learn. The facts prove them correct.

Mission San Jose High School has an attendance rate of over 95 percent and a dropout rate of .05 percent. The student average SAT scores are in the top 5 percent of the nation. 65 percent of the student body is on the honor roll and most important to me is that 95 percent of students go on to post-secondary institutions.

These numbers speak for themselves and for the faculty and administrators at Mission San Jose High. I congratulate Principal Mathog for her outstanding leadership and positive views.

This success by one of our public schools is the best argument against some of the arguments of my colleagues. Eliminating the Department of Education and advocating public funds to be spent on scholarship vouchers for private schools is not the right step to providing opportunity and hope for all students. Public schools work and I can prove it.

Mission San Jose deserves this award and I congratulate them.

HONORING JOHN BRUEN SR.

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. GILMAN. Mr. Speaker, it is with regret that I inform our colleagues of the passing of one of the most remarkable residents of my 20th Congressional District of New York.

John Bruen Sr. was 92 years young when he died this past weekend, but right until the end he remained the embodiment of the dignity of the individual.

John Bruen was born in 1906 in Goshen, NY, and lived in that community his entire life. His grandfather was a runaway slave, who had shown John the scars on his back from the whippings he had received as a slave, and which remained on him until the day he died.

Because of his heritage, John was working for civil rights for all Americans long before it became fashionable to do so. As a young man, he worked grooming horses at the Goshen Historic Track in Goshen, New York. It was there, as a boy, that he learned his love of reading and especially his love of history. A friend gave him a biography of Abraham Lincoln, and that initiated John's lifelong dedication to equality for Afro Americans.

John married Gertrude Van Dyke in 1925, and they had six children.

John loved his family and taught them to share his love of liberty and of history. He worked for 30 years for the Erie Railroad, but was a true renaissance man: in the 1930's, John began his career as a semi-pro baseball player. In one season, he had an astonishing .517 batting average. Those were the days when professional baseball was closed to Black Americans. However, when Jackie Robinson broke that color barrier, forever, John Bruen was one of the first to cheer him on.

John became an expert on the life stories of those heroes who paved the way for equality: Frederick Douglass, Harriet Tubman, W.E.B. Dubois, Martin Luther King, Jr., as well as Jackie Robinson, and a host of others. John was a good friend of another outstanding resident of our region—Floyd Patterson—and the two of them shared their love for boxing, at which John also tried his hand, and for humanitarianism.

John had a gift for the written word, and from 1959 until near his death, the daily and weekly newspapers in Orange County, New York, published his views on the issues of the day. He was a consistent fighter against segregation, prejudice, and racism. He was superb at quoting those figures from the past who he so admired, and who he believed were living proof that all the races should live in harmony.

John was always of tremendous help to me throughout my career in public service. He used his column effectively to promote the causes he so believed in, and to remind us of our responsibilities to human rights for all. John was quick to praise those of us who supported civil rights, but would not consider compromise on those issues he considered basic to human dignity.

To John's surviving children, to his many loved ones, and to those who greatly admired him, we extend our heartfelt condolences. While John Bruen Sr. may not be quoted in our textbooks or popular histories, it is in great part due to the relentless trails blazed and consciences stirred by individuals such as John throughout our nation that we are closer than ever to achieving the dream of Martin Luther King Jr.

John you left your mark—we will long miss you.

TRIBUTE TO THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SCHUMER. Mr. Speaker, I am speaking today in honor of a leading organization in America's Jewish community, the Union of Orthodox Jewish Congregations of America, in recognition of its 100th anniversary.

The Orthodox Union represents over one million members from one thousand congregations across the country in matters religious and communal. In its efforts to assist Orthodox Jews in America, the Orthodox Union runs the renowned Kashruth Certification Program to guarantee certified kosher food for the observant. The Orthodox Union's National Council for the Jewish Disabled serves as an outreach program for the deaf and the developmentally disabled which has helped thousands of disabled live fuller lives. The Orthodox Union has always been at the forefront of the fight for the concerns of the world's Jewish population, working to strengthen and protect the state of Israel as well as defending Jewish civil rights and playing a vital role in the struggle to save the Soviet Jewry.

The Union of Orthodox Jewish Congregations of America was established in 1898 by Dr. Henry Pereira Mendes, the leader of the Spanish & Portuguese Synagogue in New York to promote Torah Judaism and help organize the fragmented American Orthodox Jewish community. Since then, the Orthodox Union has served the needs of over 1 million members in more than 1,000 congregations nationwide. To address the need for Jewish continuity the Orthodox Union created the NCSY, a dynamic outreach movement for teenagers. Through its efforts, the Orthodox Union has helped the modern orthodox congregant prosper in a world which often seeks to strip them of their religious and cultural identity. In this role, the Orthodox Union has played a vital part in the worldwide advancement of Judaism.

On this anniversary, I call upon all of my colleagues in the House to join me in giving tribute to the Union of Orthodox Jewish Congregations of America in recognition of the defining role that it has played in the formation of modern American Judaism. I congratulate the Orthodox Union on its successful first one hundred years, and wish it many more.

BULLETPROOF VEST PARTNERSHIP GRANT ACT OF 1998

SPEECH OF

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 12, 1998

Mr. WALSH. Mr. Speaker, I rise today to commend the House of Representatives for passing H.R. 2829, the Bulletproof Vest Partnership Grant Act of 1998.

I have met with law enforcement officials from across my district who feel this is an important and useful bill. Currently, 25 percent of our nation's state and local law enforcement officials do not have access to bulletproof vests. Additionally, police officers not wearing a bulletproof vest have a fatality risk 14 times that of officers wearing a vest. There is an obvious need to make sure those who risk their lives on our behalf have access to these lifesaving devices.

H.R. 2829 will ensure that for the days to come, no police officer will be left unnecessarily exposed in the line of duty. Bulletproof vests are one of the most basic forms of law enforcement protection, and America now sends a message to its law enforcement officials—we will protect you who valiantly protect us every day.

HONORING THE CHINATOWN COMMUNITY DEVELOPMENT CENTER OF SAN FRANCISCO

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Ms. PELOSI. Mr. Speaker, I rise today to bring to the attention of my colleagues the Chinatown Community Development Center of San Francisco, which has been selected to receive the Fannie Mae Foundation Sustained Excellence Award.

For the past 21 years, the Chinatown Development Center (CCDC) has served Northeastern San Francisco neighborhoods through providing low-income housing development and management and by fostering a sense of community. CCDC incorporates a unique approach to community development that combines housing advocacy with community involvement through grassroots organizing and neighborhood planning. Supportive services empower residents to become self-sufficient and to participate in formulating public policy issues that directly affect them. Throughout its 21-year history, CCDC's principal projects reflect how it has merged housing with community improvement.

The significant contributions that CCDC has made include managing more than 1,000 units of affordable housing with a multitude of tenant services and the creation of 10 commercial spaces for small businesses to help provide employment for local residents. The CCDC has also contributed to fostering neighborhood pride through the creation of a street cleaning venture called the Chinatown Environmental Organizations and through coordination of neighborhood-based planning resulting in the renovation of five new parks, gardens, and courtyards in neighborhoods with limited safe, recreational areas. Additionally, CCDC provides citizenship and educational classes, as well as counseling and translation services for its residents.

We in San Francisco are proud of our diversity and CCDC has played a key role in supporting immigrant and low-income populations throughout the city. By investing in low-income residents, CCDC has brought new life and hope to San Francisco's low-income neighborhoods. CCDC is a model of sustained high quality housing development and management combined with active grassroots community organizing. CCDC possesses a clear vision for sustaining its communities for years to come. I join with the people of San Francisco in congratulating and thanking Gordon Chin and CCDC for its 21 years of accomplishments and send my very best wishes for continued success.

ARMED FORCES' DAY "WE MUST REMEMBER"

HON. LORETTA SANCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Ms. SANCHEZ. Mr. Speaker, this weekend I joined the veterans in my community to recognize the first day the Prisoner of War and Missing in Action Flag was flown Nationally on Armed Forces' Day.

During the day, I had the opportunity to hear the stories of America's POWs and MIAs.

Their stories weighed on my heart and angered my senses. These men deserve from the United States as much, if not more, than they have given to us.

For these reasons, I cosponsored Public Law 105–85, legislation that requires the flying of the POW/MIA flag at Federal facilities, including U.S. Post Offices.

Having the flag flown at Federal offices and facilities will help us remember the work that remains to honor these courageous individuals and their families.

The POW/MIA flag offers us an opportunity not only to remember and recognize those we have lost, but also to rededicate ourselves to the cause of finding these men or their remains and bringing them home to their families and their grateful Nation.

We need to secure a full accounting of the men and women who fought for our Nation's flag and who were captured by the enemy or listed as missing.

We must work together to ensure the fullest possible accounting of these men for their family and all Americans who have benefited from their fight for freedom and liberty.

Although this is a good first step to recognizing and remembering those missing soldiers, I believe we must do more.

Recently, I joined several of my colleagues in contacting the State Department expressing our concern about the POW/MIA who are still unaccounted for from the Korean War.

We felt that the POW/MIA subject should have been a priority subject during the negotiations in Geneva this past December.

I strongly believe that any agreement for peace must include a serious commitment on the part of the government of North Korea to locate missing soldiers of the thousands of Korean Veterans I represent.

As you know, a lasting peace on the Korean Peninsula, underscored by a unified democratic government is a goal for which our Veterans fought bravely during the conflict of 1950–1953.

Under adverse conditions, and sometimes against a numerically superior enemy, U.S. troops battled to preserve a non-communist enclave on the Asian continent.

At a time during the cold war when the forces of communism seemed on the rise across the world, the performance of our valiant soldiers, sailors and airmen affirmed the resolve of democracy.

Now that the first steps to achieving peace in Korea are being taken, it is paramount that the US negotiators insist on POW/MIA closure subject to any formal accord.

By doing so, we honor the troops who put forth the ultimate sacrifice;

We honor their families, who have lived with uncertainty about their loved ones for over 40 years; most importantly;

We honor those veterans of the Korean War still living, who will never forget their colleagues lost on the nameless hills, ridges and valleys during those 3 long years.

I will continue to urge the State Department to work with the Pentagon in articulating a clear and resolute position for the United States on unresolved POW/MIA personnel cases as the talks continue.

A lasting peace cannot be fully achieved unless those who fought for it are accounted for by a grateful nation.

And I will continue to express my concern to the federal government.

It has been over 20 years since the war in Vietnam ended, yet our Government has still not accounted for so many of those men who went to a far away nation to defend an unknown people against an unseen enemy.

We have almost erased the scourge of Communism from the face of the earth, yet we have not yet fully recognized all of the men who made this victory of democracy possible.

Until we bring home these men, the war is not over. We must continue to fight and remember those we have lost in our battle for freedom.

Until all of the men, from throughout this country, have been accounted for, we must not rest in our efforts.

As a member of the National Security Committee, I commit myself to America's veterans. I commit myself to working in the memory of the thousands of Americans who served in America's wars and were captured by the enemy or listed as missing in action.

I commit myself to the families of those whose fate has been unknown and who have had to suffer tragic and continuing hardships.

In Washington, engraved at the Veterans' Administration Building, is a quote from Abraham Lincoln, "To care for him who shall have borne the battle, and for his orphan."

I do not believe that America has sufficiently cared for all of those men who have been declared missing or captured.

Until we have a full accounting, we cannot fulfill this promise to America's veterans and families.

A SPECIAL TRIBUTE TO BLAIR J. NAHM ON HIS APPOINTMENT TO ATTEND THE UNITED STATES MILITARY ACADEMY AT WEST POINT, NEW YORK

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to an outstanding young man from Ohio's Fifth Congressional District, Blair J. Nahm. Blair recently accepted his offer of appointment to attend the United States Military Academy at West Point, New York.

The Nahm family has a long tradition with West Point, as Blair's older brother, Reid, is currently a Cadet Third Class. As Blair will soon be graduating from Tiffin Columbian High School, he, too, will be embarking on what figures to be one of the most educational and challenging opportunities of his life.

While attending Columbian High School, Blair excelled academically by attaining a 3.735 grade point average, placing him in the top ten percent of his class. Blair's academic excellence was extended through his involvement in the National Honor Society. He also participated in the Ohio Test of Scholastic Achievement, where he placed second in the district in pre-calculus.

Blair is also a fine student-athlete, and has distinguished himself on the fields of competition. He was a key member of the Varsity Football Team and Varsity Wrestling Team. In fact, during his junior year of wrestling, Blair received the Wrestling Iron Man Award for his accomplishments.

Mr. Speaker, I am confident that Blair will be very successful at West Point and in all of his future endeavors. I would urge my colleagues to stand and join me in paying tribute to Blair J. Nahm, and in wishing him well as he prepares to enter the United States Military Academy.

A TRIBUTE TO DR. MARJORIE SLAVENS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SKELTON. Mr. Speaker, let me take this opportunity to say a few words in tribute to an outstanding teacher, Dr. Marjorie Slavens, who after nearly 40 years in the teaching profession, has decided to retire.

Dr. Slavens, who has been blind since a small child, has dedicated her life to teaching others. She is a Phi Beta Kappa from the University of Missouri at Columbia—holding both Bachelor of Arts and Master of Arts degrees. She earned her PH.D. from St. Louis University in St. Louis, MO. After graduating, Dr. Slavens began teaching Spanish in the Department of Modern Languages at Rockford College in Rockford, IL, and continued at this post for 33 years. During this period, student workers proudly assisted Dr. Slavens by taking attendance and proctoring tests, and tape-recording examinations for Slavens to grade.

Dr. Slavens's unique teaching style has earned recognition. In 1987, Dr. Slavens received the Illinois Lieutenant Governor's Award for service to the foreign language teaching profession. The college also appointed her Director of Advising, and she published Rockford College's first Academic Advising Handbook. In 1989, she was awarded the Mary Ashby Cheek Award that recognized her as an Honorary Alumni of the college. In 1991, a committee composed of faculty, staff, and students selected Dr. Slavens to receive the Sears Foundation Award for teaching excellence and campus leadership.

Mr. Speaker, I am certain that the Members of the House will join me in congratulating Dr. Marjorie Slavens on a spectacular teaching career. As she prepares for her retirement and the enjoyment therein, Dr. Slavens will undoubtedly take pride in her legacy as one of the nation's most special educators.

PEACE OFFICERS' MEMORIAL DAY

HON. CHET EDWARDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. EDWARDS. Mr. Speaker, on May 15 our Nation honored the brave men and women in law enforcement with Peace Officers' Memorial Day, designated 36 years ago by President John F. Kennedy. This day of acknowledgment for the selfless contributions made by hardworking individuals falls during National Police Week. I rise today to pay tribute to all law enforcement professionals across our country and to honor those who have made the ultimate sacrifice.

Last year, 159 officers lost their lives in the line of duty. These fine individuals died serving the best interests of our society, working hard to protect our citizens. Patrolling our streets and highways, protecting our homes and families, and seeking out criminals are in the job descriptions of law enforcement professionals. Yet we all too often take for granted these hardworking people.

The National Association of Police Chiefs reported 21 confirmed line-or-duty deaths for January of 1998, ten more than reported in January of 1997. Even as crime rates are dropping, peace officer fatalities are steadily rising. Since 1980, 1,182 officers have been killed in the line of duty by firearms. According to the Federal Bureau of Investigation, 42 percent of those officers could have survived had they been wearing bulletproof vests. That is why I am pleased that the Bulletproof Vest Partnership Act was approved by Congress last week. This bill will provide Federal grants to match State and local government funds in purchasing bulletproof vests for law enforcement officers. This bill will take steps to provide these brave men and women with the tools they need to fight crime, protect society, and insure that they make it home.

We should not forget the hardworking, courageous men an women who every day step into the role of peace officer to make our society a safer place. I thank the Members for supporting the Bulletproof Vest Partnership Act and observing National Police Week and Peace Officers' Memorial Day.

THE NIGERIAN DEMOCRACY AND CIVIL SOCIETY EMPOWERMENT ACT, H.R. 3890

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. GILMAN. Mr. Speaker, today I am introducing, along with Representative DONALD M. PAYNE of New Jersey, the Nigerian Democracy and Civil Society Empowerment Act, H.R. 3890. Mr. PAYNE, a senior member of our International Relations Committee, has been a true leader in Congress on this issue. He identified the corrupt, venal nature of the Nigerian regime long before many of us, and I am pleased to work with him on this bill.

Mr. Speaker, while many other African nations are moving toward democracy and joining the world economy, the military government of Nigeria has become one of the most brutal and corrupt dictatorships on the continent.

Nevertheless, Nigeria remains important to U.S. interests. With a population of more than 100 million people, and the strongest military in the region, Nigeria is the key to security and development in all of West Africa. If Nigeria descends into chaos, millions of people from Senegal to Cameroon will suffer.

Nigerian drug traffickers, who have thrived under this regime, are among the most skilled in the world, reportedly delivering 70% of the heroin that enters Chicago alone, as part of their world-wide distribution networks.

Our bill sends a clear message to the military regime in Nigeria that the status quo is unacceptable. The Nigerian people want and deserve a real transition to democratic, civilian government, and this measure points U.S. foreign policy toward that goal. This legislation does three things.

It establishes a program to assist those in Nigeria who are willing to take risks for democracy and human rights. As was done during the apartheid regime in South Africa, the United States will aid those who stand against the illegitimate government of Nigeria and for a return to democratic, civilian rule.

The bill codifies into law the various sanctions that have been imposed on Nigeria by executive order, from visa restrictions to prohibitions on weapons sales, and establishes conditions under which these sanctions can be lifted.

The bill also mandates further measures if a transition to a democratic government under civilian control does not occur by the end of this year. These include additional visa restrictions and a prohibition against Nigerian athletes and teams participating in events in the United States.

While there are no provisions for economic sanctions in the bill, we are considering additional measures that could be added in committee mark-up on the House floor.

Mr. Speaker, the Nigerian regime is among the most venal, brutal, and corrupt regimes in the world. It is not enough to simply call them names, however. We must continue to put pressure on the military government and isolate it from the civilized world. This bill will help accomplish those goals, and I urge my colleagues to support it.

H.R. 3890

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 "Nigerian Democracy and Civil Society Empowerment Act".

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) The continued rule of the Nigerian military government, in power since a 1993 coup, undermines confidence in the Nigerian economy, damages relations between Nigeria and the United States, threatens the political and economic stability of West Africa, and harms the lives of the people of Nigeria.

(2) The transition plan announced by the Government of Nigeria on October 1, 1995, which includes a commitment to hold free and fair elections, has so far failed to foster an environment in which such elections would be considered free and fair, nor was the transition plan itself developed in a free and open manner or with the participation of the Nigerian people.

(3) The international community would consider a free and fair election in Nigeria one that involves a genuinely independent electoral commission and an open and fair process for the registration of political parties and the fielding of candidates and an environment that allows the full unrestricted participation by all sectors of the Nigerian population.

(4) In particular, the process of registering voters and political parties has been significantly flawed and subject to such extreme pressure by the military so as to guarantee the uncontested election of the incumbent or his designee to the presidency.

(5) The tenure of the ruling military government in Nigeria has been marked by egregious human rights abuses, devastating economic decline, and rampant corruption.

(6) Previous and current military regimes have turned Nigeria into a haven for international drug trafficking rings and other criminal organizations.

(7) On September 18, 1997, a social function in honor of then-United States Ambassador Walter Carrington was disrupted by Nigerian state security forces. This culminated a campaign of political intimidation and personal harassment against Ambassador Carrington by the ruling regime.

(8) Since 1993, the United States and other members of the international community have imposed limited sanctions against Nigeria in response to human rights violations and political repression.

(9) According to international and Nigerian human rights groups, at least several hundred democracy and human rights activists and journalists have been arbitrarily detained or imprisoned, without appropriate due process of law.

(10)(A) The widely recognized winner of the annulled June 6, 1993, presidential election, Chief Moshood K. O. Abiola, remains in detention on charges of treason.

(B) General Olusegun Obassanjo (rt.), who is a former head of state and the only military leader to turn over power to a democratically elected civilian government and who has played a prominent role on the international stage as an advocate of peace and reconciliation, remains in prison serving a life sentence following a secret trial that failed to meet international standards of due process over an alleged coup plot that has never been proven to exist.

(C) Internationally renowned writer, Ken Saro-Wiwa, and 8 other Ogoni activists were arrested in May 1994 and executed on November 10, 1995, despite the pleas to spare their lives from around the world.

(D) Frank O. Kokori, Secretary General of the National Union of Petroleum and Natural Gas Workers (NUPENG), who was arrested in August 1994, and has been held incommunicado since, Chief Milton G. Dabibi, Secretary General of Staff Consultative Association of Nigeria (SESCAN) and former Secretary General of the Petroleum and Natural Gas Senior Staff Association (PENGASSAN), who was arrested in January 1996, remains in detention without charge, for leading demonstrations against the canceled elections and against government efforts to control the labor unions.

(E) Among those individuals who have been detained under similar circumstances and who remain in prison are Christine Anyanwu, Editor-in-Chief and publisher of The Sunday Magazine (TSM), Kunle Ajibade and George Mbah, editor and assistant editor of the News, Ben Charles Obi, a journalist who was tried, convicted, and jailed by the infamous special military tribunal during the reason trials over the alleged 1995 coup plot, the "Ogoni 21" who were arrested on the same charges used to convict and execute the "Ogoni 9" and Dr. Beko Ransome-Kuti, a respected human rights activist and leader of the pro-democracy movement and Shehu Sani, the Vice-Chairman of the Campaign for Democracy.

(11) Numerous decrees issued by the military government in Nigeria suspend the constitutional protection of fundamental human rights, allow indefinite detention without charge, revoke the jurisdiction of civilian courts, and criminalize peaceful criticism of the transition program.

(12) As a signatory to the International Covenant on Civil and Political Rights (ICCPR), the Harare Commonwealth Declaration, and the African Charter on Human and Peoples' Rights, Nigeria is obligated to grant its citizens the right to fairly conduct elections that guarantee the free expression of the will of the electors.

(13) Nigeria has played a major role in restoring elected, civilian governments in Liberia and Sierra Leone as the leading military force within the Economic Community of West African States (ECOWAS) peacekeeping force, yet the military regime has refused to allow the unfettered return of elected, civilian government in Nigeria.

(14) Despite organizing and managing the June 12, 1993, elections, the Nigerian military regime nullified that election, imprisoned the winner a year later, and continues to fail to provide a coherent explanation for their actions.

(15) Nigeria has used its military and economic strength to threaten the land and maritime borders and sovereignty of neighboring countries, which is contrary to numerous international treaties to which it is a signatory.

(b) DECLARATION OF POLICY.—Congress declares that the United States should encourage political, economic, and legal reforms necessary to ensure rule of law and respect for human rights in Nigeria and support a timely and effective transition to democratic, civilian government in Nigeria.

SEC. 3. SENSE OF CONGRESS.

(a) INTERNATIONAL COOPERATION.—It is the sense of Congress that the President should, in any and all international fora, seek the cooperation of other countries as part of the United States policy of isolating the military government of Nigeria.

(b) UNITED NATIONS HUMAN RIGHTS COMMISSION.—It is the sense of Congress that the

President should instruct the United States Representative to the United Nations Human Rights Commission (UNHRC) to use the voice and vote of the United States at the annual meeting of the Commission—

(1) to condemn human rights abuses in Nigeria; and

(2) to press for the appointment of a special rapporteur on Nigeria, as called for in Commission Resolution 1997/53.

(c) SPECIAL ENVOY FOR NIGERIA.—It is the sense of Congress that, because the United States Ambassador to Nigeria, a resident of both Lagos and Abuja, Nigeria, is the President's representative to the Government of Nigeria, serves at the pleasure of the President, and was appointed by and with the advice and consent of the Senate, the President should not send any other envoy to Nigeria without prior notification of Congress and should not designate a special envoy to Nigeria without consulting Congress.

SEC. 4. ASSISTANCE TO PROMOTE DEMOCRACY AND CIVIL SOCIETY IN NIGERIA.

(a) DEVELOPMENT ASSISTANCE.—

(1) IN GENERAL.—Of the amounts made available for fiscal years 1999, 2000, and 2001 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), not less than $10,000,000 for fiscal year 1999, not less than $12,000,000 for fiscal year 2000, and not less than $15,000,000 for fiscal year 2001 should be available for assistance described in paragraph (2) for Nigeria.

(2) ASSISTANCE DESCRIBED.—

(A) IN GENERAL.—The assistance described in this paragraph is assistance provided to nongovernmental organizations for the purpose of promoting democracy, good governance, and the rule of law in Nigeria.

(B) ADDITIONAL REQUIREMENT.—In providing assistance under this subsection, the Administrator of the United States Agency for International Development shall ensure that nongovernmental organizations receiving such assistance represent a broad cross-section of society in Nigeria, including—

(i) organizations with representation from various ethnic groups;

(ii) organizations containing journalists, lawyers, accountants, doctors, teachers, and other professionals;

(iii) business organizations;

(iv) organizations that represent constituencies from northern Nigeria;

(v) religious organizations with a civic focus; and

(vi) other organizations that seek to promote democracy, human rights, and accountable government.

(3) GRANTS FOR PROMOTION OF HUMAN RIGHTS.—Of the amounts made available for fiscal years 1999, 2000, and 2001 under paragraph (1), not less than $500,000 for each such fiscal year should be available to the United States Agency for International Development for the purpose of providing grants of not more than $25,000 each to support individuals or nongovernmental organizations that seek to promote, directly or indirectly, the advancement of human rights in Nigeria.

(b) USIA INFORMATION ASSISTANCE.—Of the amounts made available for fiscal years 1999, 2000, and 2001 under subsection (a)(1), not less than $1,000,000 for fiscal year 1999, $1,500,000 for fiscal year 2000, and $2,000,000 for fiscal year 2001 should be made available to the United States Information Agency for the purpose of supporting its activities in Nigeria, including the promotion of greater awareness among Nigerians of constitutional democracy, the rule of law, and respect for human rights.

(c) STAFF LEVELS AND ASSIGNMENTS OF UNITED STATES PERSONNEL IN NIGERIA.—

(1) FINDING.—Congress finds that staff levels at the office of the United States Agency for International Development in Lagos, Nigeria, are inadequate.

(2) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the United States Agency for International Development should—

(A) increase the number of United States personnel at such Agency's office in Lagos, Nigeria, from within the current, overall staff resources of such Agency in order for such office to be sufficiently staffed to carry out subsection (a); and

(B) consider placement of personnel elsewhere in Nigeria.

SEC. 5. PROHIBITION ON ECONOMIC ASSISTANCE TO THE GOVERNMENT OF NIGERIA; PROHIBITION ON MILITARY ASSISTANCE FOR NIGERIA; REQUIREMENT TO OPPOSE MULTILATERAL ASSISTANCE FOR NIGERIA.

(a) PROHIBITION ON ECONOMIC ASSISTANCE.—

(1) IN GENERAL.—Economic assistance (including funds previously appropriated for economic assistance) may not be provided to the Government of Nigeria.

(2) ECONOMIC ASSISTANCE DEFINED.—As used in this subsection, the term "economic assistance"—

(A) means—

(i) any assistance under part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) and any assistance under chapter 4 of part II of such Act (22 U.S.C. 2346 et seq.) (relating to economic support fund); and

(ii) any financing by the Export-Import Bank of the United States, financing and assistance by the Overseas Private Investment Corporation, and assistance by the Trade and Development Agency; and

(B) does not include disaster relief assistance, refugee assistance, or narcotics control assistance under chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.).

(b) PROHIBITION ON MILITARY ASSISTANCE OR ARMS TRANSFERS.—

(1) IN GENERAL.—Military assistance (including funds previously appropriated for military assistance) or arms transfers may not be provided to Nigeria.

(2) MILITARY ASSISTANCE OR ARMS TRANSFERS.—The term "military assistance or arms transfers" means—

(A) assistance under chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.) (relating to military assistance), including the transfer of excess defense articles under section 516 of that Act (22 U.S.C. 2321j);

(B) assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.) (relating to international military education and training);

(C) assistance under the "Foreign Military Financing Program" under section 23 of the Arms Export Control Act (22 U.S.C. 2763); or

(D) the transfer of defense articles, defense services, or design and construction services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), including defense articles and defense services licensed or approved for export under section 38 of that Act (22 U.S.C. 2778).

(c) REQUIREMENT TO OPPOSE MULTILATERAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary of the Treasury shall instruct the United States executive director to each of the international financial institutions described in paragraph (2) to use the voice and vote of the United States to oppose any assistance to the Government of Nigeria.

(2) INTERNATIONAL FINANCIAL INSTITUTIONS DESCRIBED.—The international financial institutions described in this paragraph are the African Development Bank, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the International Monetary Fund.

SEC. 6. EXCLUSION FROM ADMISSION INTO THE UNITED STATES OF CERTAIN NIGERIAN NATIONALS.

Notwithstanding any other provision of law, the Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who is—

(1) a current member of the Provisional Ruling Council of Nigeria;

(2) a current civilian minister of Nigeria not on the Provisional Ruling Council;

(3) a military officer currently in the armed forces of Nigeria;

(4) a person in the Foreign Ministry of Nigeria who holds Ambassadorial rank, whether in Nigeria or abroad;

(5) a current civilian head of any agency of the Nigerian government with a rank comparable to the Senior Executive Service in the United States;

(6) a current civilian advisor or financial backer of the head of state of Nigeria;

(7) a high-ranking member of the inner circle of the Babangida regime of Nigeria on June 12, 1993;

(8) a high-ranking member of the inner circle of the Shonekan interim national government of Nigeria;

(9) a civilian who there is reason to believe is traveling to the United States for the purpose of promoting the policies of the military government of Nigeria;

(10) a current head of a parastatal organization in Nigeria; or

(11) a spouse or minor child of any person described in any of the paragraphs (1) through (10).

SEC. 7. ADDITIONAL MEASURES.

(a) IN GENERAL.—Unless the President determines and certifies to the appropriate congressional committees by December 31, 1998, that a free and fair presidential election has occurred in Nigeria during 1998 and so certifies to the appropriate committees of Congress, the President, effective January 1, 1999—

(1) shall exercise his authority under section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) to prohibit any financial transaction involving the participation by a Nigerian national as a representative of the Federal Republic of Nigeria in a sporting event in the United States;

(2) shall expand the restrictions in Presidential Proclamation No. 6636 of December 10, 1993, to include a prohibition on entry into the United States of any employee or military officer of the Nigerian government and their immediate families;

(3) shall submit a report to the appropriate congressional committees listing, by name, senior Nigerian government officials and military officers who are suspended from entry into the United States under section 6; and

(4) shall consider additional economic sanctions against Nigeria.

(b) ACTIONS OF INTERNATIONAL SPORTS ORGANIZATIONS.—It is the sense of Congress that any international sports organization in which the United States is represented should refuse to invite the participation of any national of Nigeria in any sporting event in the United States sponsored by that organization.

SEC. 8. WAIVER OF PROHIBITIONS AGAINST NIGERIA IF CERTAIN REQUIREMENTS MET.

(a) IN GENERAL.—The President may waive any of the prohibitions contained in section 5, 6, or 7 for any fiscal year if the President makes a determination under subsection (b) for that fiscal year and transmits a notification to Congress of that determination under subsection (c).

(b) PRESIDENTIAL DETERMINATION REQUIRED.—A determination under this subsection is a determination that—

(1) the Government of Nigeria—

(A) is not harassing human rights and democracy advocates and individuals who criticize the government's transition program;

(B) has established a new transition process developed in consultation with the prodemocracy forces, including the establishment of a genuinely independent electoral commission and the development of an open and fair process for registration of political parties, candidates, and voters;

(C) is providing increased protection for freedom of speech, assembly, and the media, including cessation of harassment of journalists;

(D) has released individuals who have been imprisoned without due process or for political reasons;

(E) is providing access for international human rights monitors;

(F) has repealed all decrees and laws that—

(i) grant undue powers to the military;

(ii) suspend the constitutional protection of fundamental human rights; or

(iii) allow indefinite detention without charge, including the State of Security (Detention of Persons) Decree No. 2 of 1984; and

(G) has unconditionally withdrawn the Nigerian internal security task force from regions in which the Ogoni ethnic group lives and from other oil-producing areas where violence has been excessive; or

(2) it is in the national interests of the United States to waive the prohibition in section 5, 6, or 7, as the case may be.

(c) CONGRESSIONAL NOTIFICATION.—Notification under this subsection is written notification of the determination of the President under subsection (b) provided to the appropriate congressional committees not less than 15 days in advance of any waiver of anye prohibition in section 5, 6, or 7, subject to the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

SEC. 9. PROHIBITION ON UNITED STATES ASSISTANCE OR CONTRIBUTIONS TO SUPPORT OR INFLUENCE ELECTION ACTIVITIES IN NIGERIA.

(a) PROHIBITION.—

(1) IN GENERAL.—No department, agency, or other entity of the United States Government shall provide any assistance or other contribution to any political party, group, organization, or person if the assistance or contribution would have the purpose of effect of supporting or influencing any election or campaign for election in Nigeria.

(2) PERSON DEFINED.—As used in paragraph (1), the term "person" means any natural person, any corporation, partnership, or other juridical entity.

(b) WAIVER.—The President may waive the prohibition contained in subsection (a) if the President—

(1) determines that—

(A) the climate exists in Nigeria for a free and fair democratic election that will lead to civilian rule; or

(B) it is in the national interests of the United States to do so; and

(2) notifies the appropriate congressional committees not less than 15 days in advance of the determination under paragraph (1), subject to the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

SEC. 10. REPORT ON CORRUPTION IN NIGERIA.

Not later than 3 months after the date of the enactment of this Act, and annually for the next 5 years thereafter, the Secretary of State shall prepare and submit to the appropriate congressional committees, and make available to the public, a report on governmental corruption in Nigeria. This report shall include—

(1) evidence of corruption by government officials in Nigeria;

(2) the impact of corruption on the delivery of government services in Nigeria;

(3) the impact of corruption on United States business interests in Nigeria;

(4) the impact of advance fee fraud, and other fraudulent business schemes originating in Nigeria, on United States citizens; and

(5) the impact of corruption on Nigeria's foreign policy.

SEC. 11. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.

Except as provided in section 6, in this Act, the term "appropriate congressional committees" means—

(1) the Committee on International Relations of the House of Representatives; and

(2) the Committee on Foreign Relations of the Senate.

CONGRATULATING GULFSTREAM FOR WINNING THE 1997 COLLIER TROPHY

HON. STEPHEN HORN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. HORN. Mr. Speaker, I rise today to call the attention of the House to the winner of the 1997 Robert J. Collier Trophy, aviation's most prestigious award. The National Aeronautic Association (NAA) recently awarded the Collier Trophy to the Gulfstream Aerospace Corporation and the Gulfstream V Industry Team for the Gulfstream V—the world's first ultra-long range business jet. The trophy honors the year's top aeronautical achievement in the United States.

Gulfstream employs 5,800 people at five locations, including approximately 800 at its Long Beach, California facility in my Congressional District. The Gulfstream V is completed at the Long Beach facility. The Collier Trophy brings a well-deserved honor to all of Gulfstream's employees.

The NAA specifically recognized Gulfstream and the Gulfstream V Industry Team "for successful application of advanced design and efficient manufacturing techniques, together with innovative international business partnerships, to place in customer service the Gulfstream V." This aircraft is capable of flying 6,500 nautical miles at speeds up to Mach .885. It has a superior cabin environment with a 100 percent fresh air ventilation system, customized interiors, and the company's oversized signature oval windows offering panoramic views. The Gulfstream V has set 46 world and national records since receiving final certification on April 11, 1997. These records include: the first-ever nonstop flight from New York to Tokyo by a business jet; a climb to 51,000 feet in just over 15½ minutes; and the first-ever nonstop business aircraft flight between Washington, DC, and Dubai.

Amazingly, the Gulfstream V achieved these records while overcoming such challenges as using a new airframe with a new engine. And the project stayed fundamentally on schedule. By listening to customers throughout the production of the Gulfstream V, Gulfstream showed its commitment to superior service.

The Gulfstream V is not only a remarkable achievement in America's aviation history, but in our nation's business tradition as well. The story of this aircraft's production fits well in America's heritage of bold, entrepreneurial risk-taking. When Gulfstream first decided to pursue this project in the early 1990s, it was a relatively small, privately held company, and the Gulfstream V carried with it significant financial risks. Instead of backing down in the face of economic adversity, Gulfstream launched a series of partnerships under revenue-sharing agreements that allowed the Gulfstream V to become a reality.

The Collier Trophy has been awarded since 1911 "for the greatest achievement in aeronautics or astronautics in America, with respect to improving the performance, efficiency, and safety of air or space vehicles, the value of which has been thoroughly demonstrated by actual use during the preceding year." Until this century, men and women could only look at the sky and wonder what it was like to fly. Air and space travel was the stuff of science fiction and fantasy. But starting with that fateful first flight in Kitty Hawk, America has led the way in man's conquest of the skies.

The list of the Collier Trophy's winners tells nearly the entire history of America's leadership in aviation and space travel. Past winners include Orville Wright, Charles E. "Chuck" Yeager, Neil Armstrong and the Apollo 11 flight crew, Cessna, and Boeing. The Trophy is on permanent display at the Smithsonian Institution's National Air and Space Museum. Gulfstream's employees and partners should take great pride in this historic achievement. They deserve it.

HONORING ATHENA AWARD WINNER

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SMITH of Michigan. Mr. Speaker, I rise to pay special tribute to one of my constituents who has recently been honored with the ATHENA award by the Lenawee County Chamber of Commerce.

Janet McDowell is an assistant to the superintendent of the Lenawee Intermediate School District. She has been presented with the ATHENA award for her outstanding contributions to the Lenawee County community.

It is gratifying that the Lenawee Chamber of Commerce has devoted itself to the task of recognizing those people who make such valuable contributions to our community. And it is

even more inspiring to know of the many good works of area residents such as Janet McDowell.

As the Lenawee Chamber realizes, a healthy economic climate is not the sole characteristic that makes a community worthwhile. While we can do much to create a climate that brings jobs, builds roads, lowers taxes, and eliminates deficits, the most important deficit we as a nation and a community must face is a deficit of values and character.

For this reason, Mr. Speaker, I wanted to tell my colleagues about those people who demonstratee the true meaning of community service in my district in Michigan. So many people talk about the need to get involved and pitch in when they see a problem, but Janet McDowell is one person who takes action.

Janet has distinguished herself as a volunteer for a number of local organizations, including the United Way and the American Red Cross. She is an active member of the Lenawee Chamber and a vigorous participant in her chosen community.

Mr. Speaker, on behalf of my constitutents, I extend my congratulations and appreciation to Janet McDowell. May she continue to be a source of encouragement to men and women whose professional accomplishments and public service endeavors are worthy of recognition.

TRIBUTE TO DEBORAH R. JOHNSON

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to Ms. Deborah R. Johnson of Columbia, South Carolina, a Richland School District One's 1998–1999 Teacher of the Year Finalist. Aside from being a recent finalist for the district's top teaching honor, Ms. Johnson received her school's top honor by being named Virginia Pack Elementary School Teacher of the Year. She is also a Richland School District One Honor Roll Teacher of the Year.

Ms. Johnson received most of her formal education in the Sixth Congressional District, which I represent. She graduated from Burke High School in Charleston, South Carolina, and South Carolina State College, now South Carolina State University, in Orangeburg. She went on to receive her Masters in Education and Computer Technology from the University of Charleston, S.C.

Ms. Johnson began her distinguished teaching career in the Charleston County public schools system. She was once Teacher of the Month and twice the Distinguished Reading Teacher in the district. She was also Charleston County School District's Teacher of the Year for two consecutive years. During the 1994–1995 school year Ms. Johnson received both the President's Award and an Outstanding Achievement Award for post-secondary level teaching.

Aside from having an impact on the lives of many students, Ms. Johnson remains very active in her community. She is often a poll manager for the election commission, a tutor for "Community Helpers," a member of the National Association for the Advancement of Colored People (NAACP), and a member of the Alpha Kappa Alpha Sorority.

As a former teacher in the school district where Ms. Johnson began teaching, I take great pleasure in her many accomplishments. With a new millennium in sight, excellent teachers should be our nation's most prized possessions, for it is through their efforts the quality of our leaders of tomorrow will be determined. Mr. Speaker, I ask you to join me today in honoring Deborah R. Johnson for her outstanding work as a role model and teacher.

RECOGNIZING READING COMMUNITY CITY SCHOOLS

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. PORTMAN. Mr. Speaker, I rise today to recognize Reading Community City Schools on their Celebration of Excellence, which will be held on May 20, 1998.

Reading Community City Schools have demonstrated a strong track record of academic excellence, parental involvement and community support. In fact, several Reading schools have been recognized as Blue Ribbon award winners by the State of Ohio.

In particular, Reading Central Community Elementary School has received national recognition for excellence by being named as a National Blue Ribbon School for 1996–1997. This designation—given to only 268 public and private elementary schools nationwide—is a real tribute to the faculty, staff, students and parents who have shown a great deal of dedication, leadership and hard work.

Too often, newspaper headlines are filled with stories about inadequate performance by our schools and our students. It is my hope that the achievements of Reading Community City Schools will serve as a model and will inspire other schools in our region and throughout the country to work toward new levels of academic excellence.

I commend Superintendent John Varis, Board of Education President Albert Kretschmar, the faculty, staff, parents and—most importantly—the students themselves, for their hard work and dedication that have made this Celebration of Excellence so richly deserved.

RECOGNIZING THE 100TH ANNIVERSARY OF THE BOROUGH OF STOCKTON

HON. MICHAEL PAPPAS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. PAPPAS. Mr. Speaker, it is my privilege to send congratulations and best wishes to the citizens of the Borough of Stockton, New Jersey as they commemorate the 100th anniversary of the incorporation of their community. This is a day of celebration and remembrance—a time to celebrate the growth and achievements of Stockton while remembering the efforts and sacrifice of the good men and women, past and present, who helped to make the Borough what it is today.

On Saturday, May 16, 1998, the Borough will celebrate its centennial with a parade, music and a picnic. Local students will also present a time capsule during the celebration as a way of passing along a piece of Stockton's history for future generations.

The Borough was named for Richard Stockton, a signer of the Declaration of Independence and member of the Continental Congress. In the years to come, I sincerely hope that Stockton will continue to build on the foundations of the past to ensure a happy and prosperous future for all its residents.

I offer my congratulations and best wishes to Mayor Gigi Celli and the Borough Council. It is my honor to have this municipality within the boundaries of my district. And it is my good fortune to be able to participate in its very special day.

H.R. 1522 SPONSOR JOEL HEFLEY AMENDS THE NATIONAL HISTORIC PRESERVATION ACT

HON. EARL BLUMENAUER

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. BLUMENAUER. Mr. Speaker, Congress has a role to play in the design, preservation, and livability of our nation's capital. The land that houses the nation's congressional offices, the Botanical Garden and several of the administrative offices is under the stewardship of the Architect of the Capitol. In the past, Congress has exempted the Architect of the Capitol from meeting the same building, design, and community notification guidelines it requires other builders in the city and nation to meet. These exemptions have not worked to the public's benefit.

In the early 1960's Congress spent over $100 million to build the Rayburn House Office Building. It was designed by the Architect of the Capitol of the time, J. George Stewart. The building sits on 50 acres and is widely considered a waste of precious space. Only 15 percent of the building is used for hearing rooms and offices. Forty-two percent is used for parking. The appearance and design of the building since its inception has been considered architecturally void and barely functional with its hallways that end without warning.

Again, in 1997 the Architect of the Capitol, without consulting the public, demolished an historic row house built in 1890 to construct a $2 million day care center. The location was bitterly opposed by residents and local groups. The Architect demolished the historic house and constructed a new structure with what appeared to be an act of very little coordination with the people who lived in the neighborhood. Sadly enough, today the structure is nonfunctional due to a deadly toxin which developed on site.

Fortunately, Representative JOEL HEFLEY's bill H.R. 1522 takes steps to bring the Architect of the Capitol under the same guidelines

as other builders who are required to abide by the National Preservation Act. I am pleased and hopeful the mistakes of the past will not have the opportunity to be repeated due to the building guidelines in this bill and other efforts currently in process by my office. The Architect of the Capitol needs to update their services by including the public in their decision making process and by following building guidelines established by Congress.

Currently, I am working to expand the efforts put forth in H.R. 1522 with legislation that would address several areas of the operation of the Architect of the Capitol. The major elements of the bill provide for community notification, a community comment period, annual auditing of their expenditures, historical impact statements and environmental impact statements for new buildings and a separate department of recycling with public reports as to the success of the recycling program.

In addition, I would like to add that H.R. 1522 successfully addresses the codification of Executive Order 12072 and 13006. By drawing investment away from our cities, urban sprawl has been sucking the life out of our downtowns. Sprawling development leads directly to traffic congestion, decreased air quality, loss of farm and forest land, decreased water quality and the need for costly new infrastructure. As land development continues to press further and further out, many of our older suburbs have begun to deteriorate as well.

Despite the fact that Executive Order 12072 and 13006 require federal agencies to try to locate in our cities, strong evidence suggests that federal agencies continue to abandon our cities in favor of suburban locations inaccessible to urban workers and urban transportation services. I am extremely pleased to see the codification of these Executive Orders, so that our federal agencies will no longer contribute to the blight of urban sprawl.

CAMPAIGN FINANCE REFORM

HON. RON KIND

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. KIND. Mr. Speaker, this could finally be the week. After a year and a half of work by members of Congress, reform groups and the general public the pressure to schedule a vote on campaign finance reform may have succeeded. This week, if the leadership keeps it's word, we will begin consideration of campaign finance reform.

This debate is long overdue. I have been delivering a daily statement in the House of Representatives calling for a vote. Enough has already been said about the abuses of the system or the way that money has distorted our democratic process. It should be clear by now that the public is frustrated with the system and they want change. Now is the time to bring some control to the out of control money race that dominates our elections.

I will not stop my work until the leadership finally allows a vote on campaign finance reform on the floor of the House. We have seen promises broken in the past, but we will not let the leadership break their promise this time. The people are demanding reform and it is time for us to take action.

CONGRATULATING TYLER SELLERS OF VICKSBURG, MISSISSIPPI

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. THOMPSON. Mr. Speaker, I rise today to congratulate one of my constituents, Tyler Sellers of Vicksburg, Mississippi, for winning a Grand Prize during the recent international poetry contests sponsored by the River of Words Environmental Poetry and Art Project. A third grader at Culkin Elementary School, Tyler has written a truly moving description of one of the pleasures we can all gain from a healthy natural environment. I would like to read the poem into the CONGRESSIONAL RECORD in hopes that it will encourage all its readers to develop a better appreciation of the great outdoors.

FISHING ON THE OUACHITA

I burn my lure beneath the surface,
Cordell redfin, real as rainbow
you like to feast on.
Starving striped bass
cruising for a bleeding shad,
you rise swift as white gulls above me,
deep from your blue hidden kingdom.
I wait for the moment
when I feel you strike
like a flood swallowing a levee.
Your fight breaks the water,
silver courage stronger than this line.
It gives, you take,
becoming my wish for another day.

CONGRATULATIONS TO THE REPUBLIC OF CHINA

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. PAYNE. Mr. Speaker, I rise today to congratulate the Republic of China. If there is one country that deserves praise, it is the Republic of China on Taiwan. It is a country without natural resources, yet it has become an oasis of wealth in Asia. This economic miracle is due to the leadership of Taiwan's President Lee Teng-hui and Vice President Lien Chan.

Sworn in as the ninth president and vice president of the Republic of China on May 20, 1996, President Lee and Vice President Lien have worked very hard to maintain Taiwan's economic growth and initiated all types of political reform. Today, Taiwan stands tall among all nations. It is rich, free and respects human rights. It is a full democracy.

On the occasion of President Lee and Vice President Lien's second anniversary in office, I extend to them my best wishes and congratulations.

HONORING REPRESENTATIVE MIKE NYE

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. SMITH of Michigan. Mr. Speaker, I rise to join the citizens of Hillsdale and Branch Counties to pay special tribute to our representative in the Michigan legislature.

So many people talk about the kind of leader they want to represent them in government and Mike Nye fits that definition by every measure.

This week, my friends in Hillsdale County will honor Mike Nye for his sixteen years of dedicated leadership in Lansing. They know, as I do, that few people have accomplished more in that time for the people of Michigan.

Mike Nye's retirement from the state legislature is a great loss. As a member of the House, he fought for commonsense legal reform and worked to provide better health care to poor children and was the innovator of reforms that have resulted in a better education system for Michigan. Mike Nye's improvements in court reform, school reform, tort reform, and juvenile justice reform will be a continuing legacy of his knowledge, ability and leadership in the Michigan legislature.

In an era of overheated rhetoric and blatant partisanship, Mike Nye stands out as a conciliator—a legislator who brought people together. Mike Nye was often the man people turned to when they needed a leader to finalize and pass legislation.

Mr. Speaker, my colleagues and I here in Washington can learn a lot from the service of Mike Nye. His contributions to public policy are equaled by his and his wife, Marcie's, dedication to their community. Marcie's leadership in working in the prison system with her Kids Need Moms program is a great example of their commitment to help people.

I know Mike's future contributions will be just as worthwhile to all of us, regardless of what path he may take. God bless you, Mike, and good luck.

INTRODUCTION OF THE URBAN ASTHMA REDUCTION ACT OF 1998

HON. BOBBY L. RUSH

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. RUSH. Mr. Speaker, I am pleased today to join with several of my colleagues, to introduce The Urban Asthma Reduction Act of 1998.

This bill takes an important step towards increasing the federal commitment to reducing the high rate of asthma-related illnesses and hospitalizations of inner city children who suffer from asthma and who also are allergic to cockroach allergen. In 1997, the National Institutes of Health (National Institutes of Allergy and Infectious Diseases) reported conclusively that asthmatic children who were both allergic to cockroaches, and exposed to high cockroach allergen levels, were hospitalized 3.3

times more often than children who were either only exposed or allergic.

The link between asthma and allergy to cockroaches is a serious public health concern. In light of the NIH findings, there should be increased federal assistance to communities to address the problem.

Asthma is on the rise, especially in inner cities. Last month, the Centers for Disease Control (CDC) and Prevention reported that more than 15 million Americans suffer from asthma—an increase of 75 percent between 1980 and 1994.

Asthma is a growing concern for poor and minority communities, especially African American and Latinos. In 1993, among children and adults, African Americans were 3 to 4 times more likely than whites to be hospitalized for asthma. They were 4 to 6 times more likely to die from asthma.

The social and economic costs are high. These children are more likely to miss school more often, go to the doctor or emergency room more frequently, and lose sleep. Consequently, the adults who care for these children may have to miss work to care for them. According to The Washington Post (April 24, 1998) the Centers for Disease Control reported that costs related to asthma were estimated to be $6.2 billion in 1990, and expected to more than double by the year 2000.

The Urban Asthma Reduction Act of 1998 asks for action. The bill proposes to amend the Preventive Health and Health Services Block Grant Program, authorized by the Public Health Service Act, by adding integrated cockroach management to rodent control as an eligible activity for funding. Several groups have expressed support in working on behalf of the legislation. These include the Chicago Asthma Coalition, Southside Health Consortium American Lung Association, and the Safer Pest Control Project, a statewide coalition that promotes pesticide use reduction throughout Illinois.

Integrated cockroach management is a multi-faceted approach to controlling the prevalence of cockroaches while minimizing pesticide use. It involves a range of techniques that include building cleaning and maintenance, and using pesticides as a means of last resort. The funds could be used for structural rehabilitation of buildings. This includes patching holes or open pipes that allow cockroaches entry; caulking cracks in walls; moving bushes away from buildings so cockroaches do not have easy access; and ensuring that all windows are properly screened.

Integrated cockroach management can work. One example comes from Chicago. Residents of the Henry Horner Public Housing Development successfully created and carried out an integrated pest control program with assistance from the Safer Pest Control Project. The Henry Horner Pest Control Program is illustrative of the type of pro-active and preventive work that the Urban Asthma Reduction Act of 1998 would support.

The Urban Asthma Reduction Act creates new possibilities for communities that are serious about making integrated pest management a component of a comprehensive public health policy. City-wide cockroach control carried out in Budapest, Hungary between 1978 and 1990 resulted in nearly cockroach-free housing, schools, factories, hospitals, and other public facilities. Budapest's experience is documented in "Efficacy of Large-Scale Rat and Cockroach Control Actions in Budapest Shown by Experiences Over a 23-Year Period," a paper presented at the 1996 International Conference on Urban Pests held in Edinburgh, Scotland.

Both the Henry Horner Pest Control program and the experience of Budapest demonstrate that a significant reduction in urban cockroach prevalence can be achieved and maintained. My hope is that the Urban Asthma Reduction Act of 1998 will prove a viable tool for urban communities to improve the quality of life and health of all residents, but especially children who suffer from asthma. I urge all my Colleagues to join me in cosponsoring this legislation.

HONORING THE 57TH ANNIVERSARY OF THE BATTLE OF CRETE

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mrs. MALONEY of New York. Mr. Speaker, I rise today to mark the 57th anniversary of the Battle of Crete. This is a historic event with direct significance to the allies' victory of World War II.

On May 20, 1941, thousands of German paratroopers and gliders began landing on Crete. Both the allies and Nazis wanted Crete because of its strategic location. At that time the British controlled the island. It was a very strong point on the lifeline to India and protected both Palestine and Egypt.

The Nazi invasion force included the elite German paratroopers and glider troops. Hitler felt this was to be an easy victory, yet he is quoted to have said shortly after the invasion, "France fell in 8 days. Why is Crete free?" The invasion of Crete took 11 days. It resulted in more than 6,000 German troopers listed as killed, wounded or missing in action. The losses to the elite 7th parachute division were felt so hard by the German Military it signified the end of large-scale airborne operations.

This valiant fight by the Cretan people began in the first hour of the Nazi airborne invasion. In contrast of the European underground movements that took a year or more after being invaded to activate. Young boys, old men and women displayed breathtaking bravery in defending their Crete. German soldiers never got used to Cretan women fighting them. They would tear the dress from the shoulder of suspected women to find bruises from the recoil of the rifle. The penalty was death. The Times (London) July 28, 1941 report that "five hundred Cretan women have been deported to Germany for taking part in the defense of their native island."

Another surprise for the German soldiers who invaded Crete was the heroic resistance of the clergy. A priest leading his parishioners into battle was not what the Germans anticipated. At Paleochora, Father Stylianos Frantzeskis, hearing of the German airborne invasion, rushed to his church, sounded the bell, took his rifle and marched his volunteers toward Maleme to write history. This struggle became an example for all Europe to follow in defying German occupation and aggression.

The price paid by the Cretans' for their valiant resistance to Nazi forces was high. Thousands of civilians died from random executions, starvation, and imprisonment. Entire communities were burned and destroyed by the Germans as a reprisal for the Cretan resistance movement. Yet this resistance lasted for four years. The battle of Crete was to change the final outcome of World War II.

The Battle of Crete significantly contributed in delaying Hitler's plan to invade Russia. The invasion was delayed from April to June of 1941. The two month delay in the invasion made Hitler's forces face the Russian winter. The Russian snow storms and the sub zero temperatures eventually stalled the Nazi invasion before they could take Moscow or Leningrad. This was the beginning of the downfall of the Nazi reign of terror.

This significant battle and the heroic drive of the Cretan people must always be remembered and honored. Democracy came from Greece and the Cretan heroes exemplified the courage it takes to preserve it.

Today, the courage and fortitude of the Cretan people is seen in the members of the United Cretan Associations of New York, that is located in Astoria. The association's Chairman Steven Kohilakis and Co-Chairman Charles Marangoudakis, together with the presidents of the member clubs: Emmanuel Taouganakis, Omonia, Emmanuel Velonakis, Minos, Emmanuel Piperakis, Cretan Brotherhood, George Filippakis, Erotokritos and Aretousa, Marina Pefani, Pasifai, Cleo Aliferis, Cretan Sisterhood, Emmanuel Vlastakis, Filoxenia, John Daskos, Diktamos, Andreas Fiotodimitrakis, Labris, Mr. Polihronakis, Idomeneas and Mr. Berikakis, Kazatzakis are excellent representatives of their Cretan heritage.

I request my colleagues to join me in honoring the Cretans in the United States, Greece and the diaspora.

A SPECIAL TRIBUTE TO SCOTT B. RADCLIFFE ON HIS APPOINTMENT TO ATTEND THE UNITED STATES MILITARY ACADEMY AT WEST POINT, NEW YORK

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. GILLMOR. Mr. Speaker, I rise today to pay special tribute to a truly outstanding young man from Ohio's Fifth Congressional District, Scott B. Radcliffe. Scott recently accepted his offer of appointment to attend the United States Military Academy at West Point, New York, and will soon enroll as part of the Cadet Class of 2002.

Scott, who is from Perrysburg, Ohio, will soon be graduating from Perrysburg High School. After graduation, he will begin preparing for what figures to be one of the most exciting, challenging, and educational experiences of his life: his four years at West Point.

While attending high school in Perrysburg, Scott distinguished himself as a talented student. His academic achievements in the classroom are certainly accomplishments of which he can be proud. An honors student, Scott has maintained a cumulative grade point average of 3.3, placing him near the top in his class of 315 students.

In addition to his excellent work in the classroom, Scott has proven himself to be a talented and gifted student-athlete. Scott has excelled on the fields of competition throughout his high school career. During his senior year, he was selected as the Captain of the Varsity Football Team and the Varsity Basketball Team. He has also been active in the Perrysburg Show Choir, symphony, and the school musical.

Mr. Speaker, each year, I have the opportunity to nominate several outstanding young men and women from the Fifth District to the nation's military academies. I am pleased that Scott was among those nominated for the West Point Class of 2002. I would urge my colleagues to stand and join me in paying special tribute to Scott Radcliffe, and in wishing him well at West Point and in the future.

IN HONOR OF PEOPLE'S SELF-HELP HOUSING

HON. LOIS CAPPS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mrs. CAPPS. Mr. Speaker, I rise today to pay tribute to an organization that has provided countless Central Coast families with hope and a home, People's Self-Help Housing.

People's Self-Help Housing is being honored today by the Fannie Mae Foundation for sustained excellence in their work. It is an award of recognition that is justly deserved.

Through the efforts of the good and hard-working individuals at People's Self-Help, more Central Coast families live in places they want to call home. I extend to them my sincerest thanks for their years of dedication, and congratulations for achieving this well deserved commendation for the Fannie Mae Foundation.

People's Self-Help Housing has been providing housing for low income families for more than 25 years. They have produced over 1400 units for low income seniors, families, farmworkers, and other special needs groups. Expanding beyond their original "sweat equity" program, People's Self-Help now handles affordable rental units, property management and complete construction services. They provide well managed properties and ensure that much needed health and education services are available to residents of these communities.

Mr. Speaker, I have known the head of this wonderful organization, Jeannette Duncan, for years and I have seen firsthand the fantastic work that this group does. People's Self-Help helps to fill a glaring need in our bucolic seaside and inland rural communities. Housing is expensive on the Central Coast and finding clean, affordable, quality homes and apartments can be a real struggle for people of limited means or extraordinary needs.

Among their many accomplishments, People's Self-Help has provided farmworkers with national award-winning townhouses in Santa Maria, updated the Victoria Street apartments in downtown Santa Barbara, and provided apartments for seniors in Templeton. Through their creativity and persistence, the Central Coast has filled communities where low and moderate income families find an opportunity to participate in the American dream.

They have done these things by working with developers, banks, local, state and Federal officials. But most of all, they have done this by thinking first and foremost of the communities they serve and the people who so often are forgotten in our society.

This is an example of public-private partnership that works, providing services to communities that need them and opening the doors of opportunity to all.

I commend Jeannette and everyone at People's Self-Help for their years of service and success, and in the recognition that is being bestowed upon them today.

HONORING CALVIN AND MARJORIE BRIGHT

HON. GARY A. CONDIT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. CONDIT. Mr. Speaker, I rise today to honor a pair of very special friends of mine—Calvin and Marjorie Bright—and to recognize them as they become the first recipients of the Bart Bennett Community Award.

This award, given by the City of Modesto in my district in California's great Central Valley, is in honor of Calvin and Marjorie's tireless efforts of putting others before themselves and working for the betterment of our community.

Not only are these people pioneers in local housing, they have given back to the community time and time again. Perhaps Community Housing and Shelter Services Executive Director Diana Olsen summed it up the best when she said, "I can't think of anyone else that deserves this award more."

Calvin and Marjorie were volunteering their time and efforts before voluntarism became popular. I'd like to take a moment to focus on some of their achievements. Not only did they establish the Bright Family Foundation which includes the Marjorie H. Bright Scholarship Program for students at California State University Stanislaus, Modesto Junior College, University of the Pacific and San Jose State University and other universities in Utah and Oklahoma; they also sponsor a medical fellowship at the University of California, San Francisco School of Medicine.

Particularly poignant to me is the fact that despite their success, they have never forgotten their roots in helping provide scholarships for students from their high school alma mater, Beggs High School, in Beggs, Oklahoma. I am honored to call Calvin and Marjorie my friends. The Bright Foundation also actively supports the Children's Crisis Center and the Boy Scouts of America.

Calvin formed Bright Development in 1971 in Modesto. The firm has built approximately 3,000 single-family homes, in addition to townhouses, apartments and commercial office buildings. He founded Bright Foods in Turlock in 1956, one of the first frozen prepared food processing plants on the West Coast. Bright Foods and FM Stamper of St. Louis were merged and renamed Banquet Foods in 1966. Banquet was later sold to RCA Victor in 1969.

Marjorie Bright worked actively in the couple's food processing and building businesses. She was the personnel and labor relations manager of Bright Foods and now serves as the general manager of Woodside Management Group. Woodside has more than 100 employees and manages approximately 3,000 apartments.

Mr. Speaker, it is with great pride that I stand before the House of Representatives and ask my colleagues to join me in honoring Calvin and Marjorie Bright for their outstanding service to our community.

CONGRATULATIONS TO MINDY BACCUS, VFW VOICE OF DEMOCRACY SCHOLARSHIP WINNER

HON. JERRY MORAN

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. MORAN of Kansas. Mr. Speaker, I rise today to congratulate Ms. Mindy Baccus from Ada, Kansas on being named a National winner in the 1998 Voice of Democracy Scholarship Competition sponsored by the Veterans of Foreign Wars and its Ladies Auxiliary.

Ms. Baccus is a senior at Minneapolis High School and hopes to pursue a career in communications or Law. She has been honored for her scholastic and extracurricular activities and exhibits outstanding leadership qualities. She has again distinguished herself by writing and orating the best patriotic script in Kansas entitled "My Voice in Our Democracy" for this nationwide competition. Her insight into the importance of each individual's role in our democracy and the eloquence with which she states her ideas, exemplifies the principles this country was founded upon. I am proud to announce that as a result of her hard work, Ms. Baccus has been awarded $3,500.

The men and women of the Veterans of Foreign Wars and its Ladies Auxiliary deserve recognition for their generous sponsorship of this scholarship program. I especially commend VFW Post 3201 and its Ladies Auxiliary in Minneapolis, Kansas for their local sponsorship. This year fifty-six young leaders from across the nation received scholarships totaling $128,500.

I am proud that the VFW have honored Ms. Mindy Baccus with this year's award. I wish Ms. Baccus all the best in her chosen career path and in her studies at William Jewell College.

"MY VOICE IN OUR DEMOCRACY"

Ballots! Ballots! Get'em while they're hot! Here sir, have a ballot! What!? You don't want one! You're a US citizen 18 or over, aren't you? Well, then take a ballot. Oh, you think one person can't make a difference?

What about you ma'am. You want one, right? After all, women fought for the right to vote for over a century. You'll take advantage of that privilege, won't you? What, you think your opinion doesn't matter. Well, you're wrong. You need to sit down and let me tell you about my voice in our democracy. In fact, all of you need to listen because anyone can have a voice in our democracy as long as they remember what voice truly stands for. My voice is vibrant, overcoming, insightful, confident, and educated.

Never half-hearted, my voice is pulsing with life, energy, and vigor. No one can resist being drawn to my enthusiasm. Whether writing letters to public officials, discussing policy decisions with those around me, or encouraging my peers to become more active in government; I always convey my beliefs with energy and vitality. By doing so, I set an example that others are compelled to follow because everyone can see that I truly believe in what I'm saying. However, regardless of how vibrant my voice is, someone is usually waiting to stifle it.

For that reason, my voice must be overcoming. I know that I must never let others make me compromise what I truly believe. Because so many policies in our society today are controversial, viewpoints often encounter strong opposition, but in order to be as close to a democracy as possible, many diverse opinions must be heard. Obviously, without a voice that's overcoming, having any voice in our democracy would be extremely difficult. Often, fully understanding a situation will help me overcome obstacles.

As a result, I must be insightful. By looking deeply into a situation, I can find details which support my opinion and by pointing out aspects of an argument that others may have missed, I can gain more support for my view. Additionally, thoroughly exploring a policy helps me to make the right decision from the beginning. Soon, others will recognize me as a strong analyst and will gain more respect for my views, even if they don't agree with them. Although my peers may not agree with me, I will never stop believing in myself.

That's why my voice must be confident. If I don't believe in myself, no one else will believe in me either. Regardless of the opposition I face or whether I feel like I'm alone in my views, I can never let myself feel defeated. As long as I know I am right and tenaciously defend my opinions, I will never be conquered. Even if I have to write a letter daily for years, make thousands of signs, or vote year after year for the same proposal, I will eventually make a difference as long as I believe in myself. Still, it's hard to be confident if I don't know about the issue.

In order to have a strong voice in our democracy, I must be educated. First, without being informed, I cannot know enough about issues to find the position I want to fight for, and without fully understanding my views, I cannot adequately defend them. Finally, since affairs in a democracy are constantly changing, education can never stop; it must be ongoing. Overall, knowledge is power especially when it comes to democracy.

Vibrant, overcoming, insightful, confident, and educated. Although the use of the acronym V.O.I.C.E. is clever, this actually is what voice truly stands for. I know my voice in our democracy embodies all of these traits and will as I continue to enter adulthood. Everyone has a voice in our democracy; they must simply learn to use it. One person can truly make a difference, and that one person could be me * * * or you. Ballots! Ballots! Get'em while they're hot. Here, would you like a ballot? Of course you would.

AIR FORCE SCIENCE AND TECHNOLOGY REINVIGORATION ACT

HON. TONY P. HALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. HALL of Ohio. Mr. Speaker, today I join my colleague Mr. Boehlert in introducing the Air Force Science and Technology Reinvigoration Act, a bill to restore the role of scientific research as a driving force in the decision-making of the United States Air Force. The bill establishes the new positions of Assistant Secretary of the Air Force for Science and Technology and Deputy Chief of Staff for Science and Technology. The bill will require minimal expense. The two new positions are similar to positions which once existed in the Air Force. These changes could help reinvigorate Air Force science and technology and help return the Air Force to the spirit of its founding mission—a mission that established and maintained the world's supreme air fighting force.

BACKGROUND

Scientific investigation, accompanied by the new knowledge it generates and the foundation it lays for development of new technologies, is the cornerstone of air and space superiority. The Air Force as no other military service should recognize the singular importance of science to its beginning and survival. Technology has been an engine that drives the Air Force as an institution. More than the other services, the Air Force is where scientists and engineers must do their work years before the battle begins.

As critical as it is to military aviation, support for science and technology has been feast or famine throughout Air Force history. In times of war or national emergency, science and technology are almost always fully funded and encouraged. However, as soon as the crisis is over, science and technology are de-emphasized until the next crisis. As a result, in the past the United States has found itself technologically behind enemies and allies, and has been forced to play catchup when responding to a national emergency.

The feast-or-famine approach has not yet failed us. However, as technology becomes more complex, the lead time from the inception of new research to fully-deployed weapon systems grows longer. For example, the smart weapons that worked so well in Desert Storm were the result of a technology build up that began in the 1960s. Unless the Air Force stabilizes long-range research at sufficiently high levels, our Nation could face a crisis without the technology necessary for victory.

AIR FORCE SCIENCE AND TECHNOLOGY POLICY

A HISTORICAL OVERVIEW

Air Force science and technology (S&T) grew from the technical revolution that began with development of the first airplane by the Wright brothers in Dayton, Ohio. The Army purchased a plane from the Wright brothers, but the service did not appreciate the value of scientific research in the new field of aeronautics. Few pilots received technical training. For the most part, they cared only about the finished product. Between 1909 and the beginning of World War I, the Army Signal Corps purchased 24 airplanes, but conducted no aviation research. During World War I, the Army designed no military aircraft, instead relying on foreign aircraft that were shipped to the United States and copies.

In October 1917, the Army established the Experimental Engineering Division at McCook Field in Dayton, Ohio, to help the fledgling American aeronautical industry design and produce military planes. McCook Field operated as no other Army Air Field. It employed primarily a civilian workforce of scientists, engineers, and support personnel who were exempted from many of the ordinary civil service rules, including those on hiring. The Army recruited the best and brightest scientists and engineers in the country from industry and academia, both seasoned professionals and new graduates.

In the early 1920s, McCook Field was the place to be for anyone interested in aeronautical science and engineering. It was the place to discover how to design and build military aircraft, and more importantly, to develop new concepts and technologies. It had beocme the United States' center of aeronautical research and development.

By the mid 1920s, the engineering staff designed and tested its own aircraft prototypes and equipment, including engines. The experimental engineering activities at McCook field came to an abrupt end when the aeronautical industry complained of unfair competition. World War I was over and industry leaders thought there was no longer any need for the Army Air Corps to experiment with aeronautics or develop new military aircraft. They—and the Nation as a whole—felt there would never be another war like World War I.

The Army Air Corps found new importance in scientific research after President Franklin D. Roosevelt assigned the Corps the emergency role of carrying air mail in 1934. The Army Air Corps' men and equipment were unprepared to accomplish the mission. The Corps discovered that its inability to respond successfully to the national emergency was a direct result of the cancellation of its aeronautical experimental engineering program. This experience lead the Army Air Corps into an ambitious research and development program which reached its height by 1939. Some of the technological advances made during this period were all metal aircraft, pressurized cabins, retractable landing gear, and automatic landing systems. However, this technology was aimed at building better planes, not war fighting machines.

When World War II began, the Army Air Forces had already started to dismantle its aviation research programs and it was conducting little research to develop military aircraft. Aircraft developed during and after the air mail crisis was retrofitted for war service. Once again the country had to ramp up aviation research on a crisis basis.

By hiring outside expert scientific and engineering consultants, the Army Air Forces quickly developed a successful wartime research and development effort. Some of the most important aircraft of World War II and immediately afterward were developed during this period, including pursuit planes and giant, long range bombers, such as the B–29 and

the B–36. Revolutionary new technologies included jet and rocket motor propulsion, advanced aerodynamics, gun and bomb sights, radars and communications equipment, and synthetic materials. However, after the war, it became apparent that the American program lagged behind both the German and British programs. This position was unacceptable to the men who would soon lead the new Air Force. They determined this would never happen again.

ESTABLISHMENT OF THE U.S. AIR FORCE

The experience of World War II clarified the problems that had plagued military aviation from the beginning. The Army was not organized to conduct advanced research for two reasons: First the Army Air Forces was a branch of the Army and did not have control of its own budget, research, or weapons development. Second, and perhaps even more important, the Army's policy stated that military research and development should be confined to improving existing aircraft, tanks, and artillery.

Gen Henry H. "Hap" Arnold, Commander of the Army Air Forces in World War II, recognized the importance of the technological revolution that had taken place during the war, especially its potential to project air power. He knew all too well the historical pattern of feast and famine in aviation research and he set about to preserve and expand the military scientific cooperation that had been built up during the war.

In 1944, Gen. Arnold told a group of scientists, "For twenty years the Air Force was built around pilots and more pilots. The next Air Force will be built around scientists."

It was clear to Gen. Arnold that air power was essential to victory in World War II and research was the key to air power. He felt that research should be continuous, without the fits and starts of the past, and that it should tap the best minds of the Nation. His deepest concern was that in the next war, unlike previous conflicts, advanced enemy technology would not give the United States time to get ready after the outbreak of hostilities.

Gen. Arnold commissioned Dr. Theodore von Karman, the prominent aerodynamicist and mathematician and head of the Guggenheim Aeronautical Laboratory of the California Institute of Technology, to survey wartime technological achievements and chart a future course for an independent Air Force. The result was Toward New Horizons, a 12-volume report delivered to Gen. Arnold on December 15, 1945. This work, written by 25 eminent scientists, became the blueprint of Air Force research and development.

Dr. von Karman believed that only a constant inquisitive attitude toward science and ceaseless and swift adaptation to new developments could maintain national security. He was convinced that the twentieth century had transformed war from a drama of human endurance to a technological contest for control of the air. In the introduction to his report (called, "Science, the Key to Air Supremacy," Dr. von Karman recommended a peacetime research and development budget equal to five percent of the annual Army Air Forces wartime budget. Dr. von Karman forcefully argued for an institutional alignment in which science permeated the entire military structure. To do this, he recommended separating the management and funding of research from weapons systems procurement, working closely with industrial research efforts, and providing technical education of officers.

The efforts of Gen. Arnold and Dr. von Karman came to fruition with the National Security Act of 1947, which changed the Army Air Forces to the independent U.S. Air Force (USAF). The new USAF was no longer bound to the Army and its procurement-drive policies. It was now free to pursue the research that would be necessary to give the United States air and space supremacy.

RESEARCH AND DEVELOPMENT IN THE NEW U.S. AIR FORCE

General Arnold was not able to complete his vision of an Air Force lead by science and he retired due to ill health. Dr. von Karman continued the effort, resulting in the establishment of a permanent Scientific Advisory Board (1947) and the Office of Air Research (OAR) in the Materiel Command's Engineering Division (1948).

In the late 1940s the Air Force issued a master plan for research and development which was shaped by Brig. Gen. Donald L. Putt, Director of Research and Development. Like Gen. Arnold and Dr. von Karman, Gen. Putt thought that scientific research and development decisions were too much influenced by the need for procurement.

In keeping with the Arnold-von Karman vision, the plan gave top billing in the Air Force mission to research and development during peacetime. The plan also recommended that all research and development activities should be unified under the direction of a Deputy Chief of Staff for Research and Development.

Putt's efforts eventually lead to the establishment in 1950 of the Air Research and Development Command (ARDC) to concentrate resources and facilities on turning out new and radically improved materiel and techniques. These include supersonic flight, guided missile technology, "swing wing" aircraft, ramjet propulsion, ballistic missiles, "century series" fighters (F–100, F–102, *et al.*), and research aimed at reducing the radar cross section of air vehicles.

The outbreak of the Korean War and the creation of ARDC in 1950 brought temporary funding and manpower relief to Air Force scientific research and technology development. However, the research laboratories were still spending most of their resources on near-term engineering development of new systems and engineering in support of the maintenance depots. "Over the horizon" (long-range technology) projects still took a decidedly back seat.

This lack of long-range planning hit home on October 4, 1957, when the Soviets placed the first artificial satellite in orbit around the earth. The shock to the U.S. public caused by Sputnik was profound.

The Air Force responded with a sustained scientific research and technology development effort unparalleled in the history of aviation warfare. General Bernard Schriever, Commander of ARDC, successfully advocated expanded emphasis in research and development funding. As a result, in 1961 the Air Force established Air Force Systems Command (AFSC), with responsibility for all research, development, procurement, production, testing, and evaluation.

With most of the elements in place, the Air Force came as close to the Arnold-von Karman vision as it has ever been. Some of the research conducted by Air Force laboratories under AFSC at this time included the advanced turbine engine gas generator program, a high-bypass turbofan engine for the giant C–5A airlifter, ramjet and scramjet power plants, aircraft and spacecraft electrical systems, composites (carbon-carbon) for use in structures subject to extremely high temperatures (i.e., jet and rocket engine nozzles and leading edges of aerospace vehicles), early research into revolutionary active phased array radars, airborne lasers, electronic warfare jammers, terminally guided laser weapons, and forward looking infrared technology. Also, new developments included fly-by-wire technology, which revolutionized aircraft maneuverability and control, and very large integrated circuit chips which were forerunners of today's electronics revolution.

Because of the long lead time from the inception of new technology to the deployment of a completed weapon system, much of this technology did not reach fruition until the 1990s when it performed with devastating effectiveness in the Persian Gulf War.

America's involvement in Southeast Asia in the late 1960s and early 1970s resulted in the diversion of funding from far-term research to support near term combat needs. Funding for research and development continued to drop with declines in the overall reductions in defense after the Vietnam War. Funding continued a boom and bust cycle through the 1970s, 1980s, and 1990s, resulting in some important gains during the boom times. But the ups and downs resulted in inefficiency and lost knowledge during the down times—exactly the situation Gen. Arnold had feared and tried to avoid.

AIR FORCE HAS RETURNED TO "BAD OLD DAYS"

With the end of the Cold War, the Air Force science research and development budget entered into a slide. Worse, reorganizations pushed advocates for science funding lower in the Air Force bureaucracy. With the 1992 merger of the Air Force Logistics and Systems Commands into the Materiel Command, a major voice was lost in the chain of command for scientific research. Science and technology fell to a distant third place behind procurement and logistics/maintenance. With a 1987 reorganization, the position of Assistant Secretary for Research, Development, and Logistics was eliminated, reducing the voice for science among the civilian leadership of the Air Force. The 1987 reorganization also removed the position of Deputy Chief of Staff for Research, Development, and Acquisition. These administrative actions left research and development virtually without a voice at the highest levels of Air Force headquarters.

The 15 volume New World Vistas Study undertaken by the Air Force Scientific Advisory Board and reported to the Chief of Staff of the Air Force in 1995 made a number of recommendations to reinvigorate Air Force Science and Technology. Air Force leadership has implemented very few if any of the recommendations.

In the mid–1990's, in a complete reversal of Air Force policy, the Air Force decided to

eliminate the graduate school of engineering within the Air Force Institute of Technology. This school ensured that scientific education was integrated into the training of Air Force officers and it provided additional research for the Air Force laboratories. Only after a storm of severe criticism did the Air Force agree to maintain the school.

The strongest evidence that the Arnold-von Karman model for the Air Force has collapsed is the initial science and technology budget the service submitted to the Secretary of Defense for fiscal 1999. Despite specific Defense Department guidance to maintain science and technology funding at the previous year's level, the Air Force tried to slash its science and technology funding by 15 percent below the fiscal 1998 level. This represented a cut of $250 million below the previously approved baseline for fiscal 1999. Apparently, this was done in an effort to support procurement, maintenance, and supply accounts.

The Air Force's budget request for fiscal 1999 would have set the level of funding for science and technology at only 1.3 percent of the total Air Force budget—one of the lowest levels in Air Force history. At this level, broad categories of scientific research would have been eliminated, forcing the cancellation of long-standing Air Force programs and threatening the irreversible loss of valued institutional knowledge. This extraordinary attempt to cut science and technology funding represented a giant leap backwards to the Army Air Corps mentality, when short-term expediency prevailed over ensured future excellence.

Fortunately, the Secretary of Defense overruled the Air Force recommendations and restored some of the funding before sending the budget to Congress. Still, the approved higher level of science and technology funding represents only 1.5 percent of the Air Force's total budget—the lowest of any of the three services in fiscal 1999 and unusually low for peacetime.

As we approach the 21st century, with future battles certain to be fought and won in the air and even space, technology looms as the dominant factor. Now more than ever, long-term investments are required to maintain technological—and thus military—superiority. Once, in an era of simpler technology, America's superior brainpower could overtake the enemy's technology through sudden spurts of scientific development. But that era is gone forever. A gap in today's science and technology funding may not show up as a warfighting deficiency for a generation or two. But by then, it will be impossible for even our nation's vast scientific resources to catch up. Gen. Arnold's prediction more than half a century ago has come to pass.

Likewise, another prediction of Gen. Arnold may yet come true—that the next war will be won not by pilots, but by scientists. Unfortunately, the Air Force is heading in a direction where our pilots will be inadequately supported by the best technology. The continued erosion of funding for scientific research and the continued aging of the science and technology community will leave the Air Force where it started—depending upon someone else's technology.

The vision of Gen. Arnold and Dr. von Karman is gone. What was intended to be the technology service is now behind the other services in future thinking. In short, today's Air Force is eating its own seed corn at such a rate that tomorrow's Air Force could be flying with yesterday's technology.

The legislation I introduce today is a modest attempt to restore the role of science and technology in the Air Force through organizational change. First, it would separate S&T management and funding from the management and funding of procurement. This would ensure higher visibility of S&T funding and make it more difficult to shift funds from S&T to pay for other requirements. This is in keeping with the Arnold-von Karman model, and was the procedure followed from the inception of the Air Force until the creation of the Air Force Materiel Command in 1992. The historical record shows that investment in S&T by the Air Force and its processors provided tremendous returns when put under separate management (i.e., the Experimental Engineering Division, McCook Field; Materiel Division, Wright Field; Air Research and Development Command, Wright Field; and Air Force Systems Command).

Second, the measure would create the position of Assistant Secretary of the Air Force for S&T. (A similar position existed under administrative action until 1987.) The Assistant Secretary would be responsible for the Air Force laboratories, Air Force Office of Scientific Research, and S&T funding. This would ensure that S&T had an advocate at the highest levels in the civilian leadership of the Air Force.

Third, the legislation will create the position of Deputy Chief of Staff for Science and Technology. This change would not require an additional Deputy Chief of Staff since it would designate one of the existing five Deputy Chiefs of Staff positions already authorized under law. Again, this provision represents more of a return to the historical Air Force organizational structure. Between 1950 and 1987, the Air Force maintained a position of Deputy Chief of Staff for Development.

The legislation requires the Air Force to establish an independent, outside panel to review priorities of S&T programs each year. The goal is to eliminate 5 percent of S&T programs each year and apply funds from the discontinued programs to new developing S&T programs.

The measure calls for the Secretary of the Air Force to contract with the National Research Council of the National Academy of Sciences to study the technology base of the Air Force and make recommendations.

In addition, the legislation establishes a nonbinding goal that S&T funding should be 2.5 percent of the annual Air Force total obligation authority. This level is slightly higher than the actual amount spent by the Air Force over the last 9 years, but it is well below the 5 percent goal recommended by Dr. von Karman.

The legislation also establishes the goal that over the next five years, 15 percent of science and technology funding should be invested in "new starts science and technology areas" identified in the 1997 New World Vistas study. This investment policy will direct the Air Force to invest in the long term key technologies needed to create the quantum leaps in capability in the next century.

These changes would have little or no direct effect on the total amount of Air Force spending. However, they are aimed at shifting priorities to give greater emphasis to S&T. But even more important, these changes would better integrate the needs of scientific research into all levels of decision-making within the Air Force.

More and more, our Nation will depend on air and space power for victory during military conflict. More and more, air and space power will depend on technology. However, with longer lead times for technology development, the nation no longer has the luxury of ramping up scientific research only during the time of crisis. Establishing science and technology as a priority for military aviation has worked in the past and should continue to work in the future to maintain our Nation's security.

The text of the bill follows:

H.R.—

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 "Air Force Science and Technology Reinvigoration Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) When the Air Force was established in 1947 as an independent service, its founders expected that it would ensure that scientific research and technology development would be a priority of America's aeronautical defenses.

(2) Scientific investigation, accompanied by the new knowledge it generates, is the cornerstone of air, space, and information superiority. To maintain air, space, and information superiority, a strong research base is critical. Sustaining a strong research and development base is a continuous effort, taking place both inside and outside the Air Force and involving the best minds of the Nation.

(3) The vision of Air Force founder General Henry H. Arnold and others—that the Air Force should be built around science—remains as vital today as it was more than 50 years ago.

(4) Investment in Air Force research and development has resulted in benefits to American industry, especially the aerospace industry, and made significant contributions to the American economy.

SEC. 3. SENSE OF CONGRESS REGARDING SCIENCE AND TECHNOLOGY FUNCTIONS OF THE DEPARTMENT OF THE AIR FORCE.

It is the sense of Congress that—

(1) to ensure sufficient financial resources are devoted to emerging technologies, not less than 2.5 percent of the funds available for obligation by the Air Force should be dedicated to science and technology;

(2) management and funding for science and technology by the Air Force should be separate from management and funding for acquisition by the Air Force;

(3) to increase long-term investments, not less than 15 percent of science and technology funds available for obligation by the Air Force should be invested in new technology areas, including critical information technology programs, for the next 5 years;

(4) to maintain a sufficient base of scientists and engineers to meet the technological challenges of the future, the Air Force should—

(A) increase the number of Air Force officers and civilian employees holding doctorate degrees in technical fields; and

(B) increase the number and variety of technical degrees at the master's level granted to Air Force officers and civilian employees from both the Air Force Institute of Technology and civilian universities; and

(5) to ensure Air Force science and technology does not stagnate, a concentrated effort should be made to eliminate 5 percent of science and technology programs each year, with funds from the discontinued programs used for new science and technology programs.

SEC. 4. AMENDMENTS RELATING TO SCIENCE AND TECHNOLOGY FUNCTIONS OF THE DEPARTMENT OF THE AIR FORCE.

(a) SEPARATION OF RESEARCH AND DEVELOPMENT FUNCTION FROM EQUIPPING FUNCTION OF SECRETARY OF THE AIR FORCE.—Section 8013(b) of title 10, United States Code, is amended—

(1) in paragraph (4), by striking "(including research and development)" and

(2) by adding at the end the following new paragraph:

"(13) Research and development.".

(b) RESEARCH AND DEVELOPMENT FUNCTION OF THE OFFICE OF THE SECRETARY OF THE AIR FORCE.—(1) Section 8014(c)(1) of such title is amended by adding at the end the following new subparagraph:

"(H) Research and Development.".

(2) Section 8014 of such title is amended—

(A) by striking out subsection (d); and

(B) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(c) ESTABLISHMENT OF ASSISTANT SECRETARY OF THE AIR FORCE FOR SCIENCE AND TECHNOLOGY.—(1) Section 8016 of such title is amended—

(A) in subsection (a), by striking out "four" and inserting in lieu thereof "five" and

(B) in subsection (b), by adding at the end the following new paragraph:

"(4) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Science and Technology. The Assistant Secretary shall have as his principal duty the overall supervision of science and technology functions of the Department of the Air Force.".

(2) Section 5315 of title 5, United States Code, is amended in the item relating to the Assistant Secretaries of the Air Force by striking out "(4)" and inserting in lieu thereof "(5)".

(d) ESTABLISHMENT OF DEPUTY CHIEF OF STAFF FOR SCIENCE AND TECHNOLOGY.—Section 8035 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) One of the Deputy Chiefs of Staff shall be the Deputy Chief of Staff for Science and Technology.".

SEC. 5. STUDY.

(a) REQUIREMENT.—The Secretary of the Air Force shall enter into a contract with the National Research Council of the National Academy of Sciences to study the technology base of the Air Force.

(b) MATTERS COVERED.—The study shall—

(1) recommend the minimum requirements to maintain a technology base that is sufficient, based on both historical developments and future projections, to project superiority in air and space weapons systems, and information technology;

(2) address the effects on national defense and civilian aerospace industries and information technology by reducing funding below the minimum level described in paragraph (1) of section 3; and

(3) recommend the appropriate level of staff holding baccalaureate, masters, and doctorate degrees, and the optimal ratio of civilian and military staff holding such degrees, to ensure that science and technology functions of the Air Force remain vital.

(c) REPORT.—Not later than 120 days after the date on which the study required under subsection (a) is completed, the Secretary shall submit to Congress a report on the results of the study.

THE BORDER PROTECTION AND INFRASTRUCTURE ACT OF 1998

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. PACKARD. Mr. Speaker, I would like to take this opportunity to applaud Congressman DUNCAN HUNTER (R–CA) for his ongoing efforts to curb the importation of illegal drugs at our Southwestern border. Last week Congressman HUNTER introduced the Border Protection and Infrastructure Act of 1998, an initiative that provides vital support along specific points of our border with Mexico.

This legislation falls in line with our recently launched plan for winning the war on drugs: decreasing demand, stopping supply, increasing accountability. Stopping supply hits close to home in my district, which lies just north of the San Diego border with Mexico. Nearly 70% of the nation's illegal drug supply comes across the borders in our region.

Congressman HUNTER's bill authorizes the construction of multi-barrier fencing at high-traffic corridors, including San Diego. The areas outlined in this legislation are generally stretches of border that have urban areas on either side and lack natural obstacles, making them ideal locations of smuggling drugs. Multiple barrier fencing has proved to be an effective tool in the battle against the importation of illicit substances. After the construction of fencing began in San Diego in 1991, cocaine interdiction increased by 1000% and murders along this border are now virtually non-existent.

I am pleased to join Congressman HUNTER in his effort to prevent illegal drug abuse by assuring that these substances never find their way into our country. Mr. Speaker, stopping supply is a key battle in the war on drugs. I urge my colleagues to support the Border Protection and Infrastructure Act of 1998.

HONORING CLARISA F. HOWARD

HON. JANE HARMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Ms. HARMAN. Mr. Speaker, I rise today to recognize Clarisa F. Howard and her efforts on behalf of City of Hope National Medical Center through her sponsorship of the celebration, "Commitment to Excellence—Commitment to Life."

Twenty-six years ago, Mrs. Howard began her corporate leadership in financial management, strategic business planning, operations and personal administration. As the President/CEO of bd Systems, Inc., a female-minority owned small aerospace and information technologies firm, she had dedicated herself to developing quality products and customer service. For these efforts, she has been recognized by the National Association of Women Business Owners 1998 NAWBO Businesswoman of the Year Award, the 1997 Ronald H. Brown Award for Courage, the 1996 AT&T Entrepreneur of the Year Award, and the 1996 El Camino College Foundation Roundtable Award.

In addition to her professional accomplishments, Mrs. Howard has an unwavering commitment to the community. She is a member of the National Association of Women Business Owners, The Trusteeship, the Southern California Chapter of the International Women's Forum, the Association of Black Women Entrepreneurs, and Emily's List. She supports inner city youth programs through in-kind donations, monetary contributions and bd technical assistance. bd's internship program for disadvantaged students provides mentoring and work experience while they pursue academic studies.

Medical research became important to her when her nephew, Anthony Nickols, was diagnosed with Non-Hodgkins Lymphoma. At the celebration on June 13, 1998, Mrs. Howard invites others to join her in support of the researchers and Anthony's physician so they might continue to search for cures to give hope to future generations.

OPPOSE THE "GEPHARDT CONSTITUTIONAL AMENDMENT" PROTECT THE FIRST AMENDMENT

HON. TOM DeLAY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 19, 1998

Mr. DELAY. Mr. Speaker, I have submitted to the House Committee on Rules the "Gephardt Constitutional Amendment" to amend the First Amendment for consideration by the House during debate on campaign reform.

I have agreed to offer the amendment, not in the hope that it will pass, but in the hope that the House will bury this dangerous idea forever.

The "Gephardt Constitutional Amendment," would permit Congress and the states to enact laws regulating federal campaign expenditures and contributions. H.J. Res. 47 would challenge all pre-existing First Amendment jurisprudence and would give to Congress and the states unprecedented, sweeping and undefined authority to restrict speech protected by the First Amendment since 1791.

Because it is vague and over-board, H.J. Res. 47 would give Congress a virtual "blank check" to enact any legislation that may abridge a vast array of free speech and free association rights that we now enjoy.

I request that the Amendment be printed in the RECORD pursuant to the Rules Committee request prior to consideration by the full House.

JOINT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO LIMIT CAMPAIGN SPENDING

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"Article—1

"Section 1. To promote the fair and effective functioning of the democratic process, Congress, with respect to elections for Federal office, and States, for all other elections, including initiatives and referenda, may adopt reasonable regulations of funds expended, including contributions, to influence the outcome of elections, provided that such regulations do not impair the right of the public to a full and free discussion of all issues and do not prevent any candidate for elected office from amassing the resources necessary for effective advocacy.

"Section 2. Such governments may reasonably defined which expenditures are deemed to be for the purpose of influencing elections, so long as such definition does not interfere with the right of the people fully to debate issues.

"Section 3. No regulation adopted under this authority may regulate the content of any expression or communication.".

The Gephardt Amendment is nothing more than a direct attack on our First Amendment freedoms. It is my hope that the House considers this amendment, and buries it forever.