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Senate

(Legislative day of Friday, September 22, 2000)

The Senate met at 9:31 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Gracious Father, in these troublesome days of conflict and consternation, frustration and fatigue, stress and strain, we come to You seeking Your special tonic for tiredness. I intercede on behalf of the Senators and their staffs and all who are feeling the energy-sapping tension of this time. I claim Your promise, ''As your days, so shall your strength be.''—Deuteronomy 33:25. Your strength is perfectly matched for whatever life will dish out today. You promise us the stamina of ever-increasing fortitude. In the quiet of this moment, we open the flood gates of our souls and ask You to flood our minds with a refreshing renewal of hope in You, our emotions with a calm confidence in help from You, and our bodies with invigorating health through You.

Thank You, mighty God, Creator of the universe and Re-creator of those who trust You, for this most crucial appointment of the day with You. You have commanded us to be still and know that You are God. Lift our burdens, show us solutions to our problems, and give us the courage to press on. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CHARLES E. GRASSLEY, a Senator from the State of Iowa, 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.

The PRESIDING OFFICER (Mr. VOINOVICH). The majority leader.

NOTICE—OCTOBER 23, 2000

A final issue of the Congressional Record for the 106th Congress, 2d Session, will be published on November 29, 2000, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through November 28. The final issue will be dated November 29, 2000, and will be delivered on Friday, December 1, 2000.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at ''Records@Reporters''.

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerkhouse.house.gov. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, signed manuscript. Deliver statements to the Official Reporters in Room HT–60.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Congressional Printing Management Division, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

WILLIAM M. THOMAS, *Chairman.*

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

SCHEDULE

Mr. LOTT. Mr. President, today the Senate will immediately proceed to a cloture vote on H.R. 2415, the bankruptcy legislation. Following the vote, it is hoped, if cloture is invoked, that there will be a reasonable amount of postcloture debate time to be followed by a vote on the adoption of the conference report.

As a reminder, the Senate will recess for the weekly party conferences from 12:30 to 2:15 p.m.

Also, today a vote on a continuing resolution may be necessary. But we are working on how that will be handled, and we should be able to determine that right after this recorded vote. If there is a vote on the continuing resolution, it is expected to be late this afternoon. But we are seeing if some other arrangement can be worked out. Senators will be notified if and when that vote is scheduled.

BANKRUPTCY REFORM

Mr. KENNEDY. Mr. President, I urge the Senate to reject the motion to invoke cloture on this flawed legislation. For three years, proponents and opponents of this so-called Bankruptcy Reform Act have disagreed about the merits of the bill. The credit card industry argues that the bill will eliminate fraud and abuse without denying bankruptcy relief to Americans who truly need it.

But scores of bankruptcy scholars, advocates for women and children, labor unions, consumer advocates, and civil rights organizations believe that the current bill is so flawed that it will do far more harm than good.

Every Member of the Senate must analyze these arguments closely and separate the myths from the facts. I believe a fair analysis leads to the conclusion that this bankruptcy bill is the credit industry's wish list to increase its profits at the expense of working families.

Proponents of the bankruptcy legislation argue that the current bill is an appropriate response to the bankruptcy crisis. But the facts indicate the opposite. The crisis is overstated, if it exists at all, and is no justification for this sweetheart deal for the credit card industry.

For several years, bankruptcy filings were on the rise. But current data reflect a decrease in filings. The so-called bankruptcy crisis has reversed itself—without congressional assistance. According to a report last month, the personal bankruptcy rate dropped by more than 9 percent in 1999, and continued to decline at a greater than 6 percent annual rate in the first nine months of this year. Bankruptcies are now at substantially lower levels than in 1997, 1998, or 1999. There have been 138,000 fewer personal bankruptcies in the current year than during the corresponding period of 1998, a cumulative two-year decline of over 15 percent.

This decline in personal bankruptcies is consistent with the view held by leading economists—the bankruptcy crisis is correcting itself. A harsh bankruptcy bill is unnecessary.

Supporters of the bill also argue that we need tough new legislation to eliminate fraud and abuse in the bankruptcy system and to instill responsibility in debtors. The argument sounds good, but it masks the truth about this excessively harsh and punitive bill.

The current bill is based on biased studies that have been bought and paid for by industry dollars and an industry public relations campaign that unfairly characterizes the plight of honest Americans. Supporters of a bankruptcy overhaul initially relied on a Credit Research Center report in 1997, which estimated that 30 percent of Chapter 7 debtors in the sample could pay at least 21 percent of their debts. But, as the Congressional General Accounting Office responded, ''the methods used in the Center's analysis do not provide a sound basis for generalizing the Center report's findings to the . . . national population of personal bankruptcy filings.''

VISA U.S.A. and MasterCard International funded several additional studies. One study determined that losses due to personal bankruptcies in 1997 totaled more than $44 billion. This study appears to be the source of the creditor rhetoric that bankruptcy imposes a hidden tax on each American family of $400 every year. But once again, the GAO concluded that the study's findings are shaky—at best. As the GAO stated, ''we believe the report's estimates of creditor losses and bankruptcy system costs should be interpreted with caution.''

The most recent and unbiased study—completed by the Executive Office for the U.S. Trustees—concluded that ''only a small percentage of current Chapter 7 debtors have the ability to pay any portion of their unsecured debts.'' That's consistent with the conclusion reached by others, including Time magazine, which reported that by the time individuals and families file for bankruptcy protection, more than 20 percent of their income before taxes is being used to pay interest and fees on their debts. The article goes on to say that ''The notion that debtors in bankruptcy court are sitting on many billions of dollars that they could turn over to their creditors is a figment of the imagination of lenders and lawmakers.''

We know the specific circumstances and market forces that so often push middle class Americans into bankruptcy.

We know that in recent years, the rising economic tide has not lifted all boats. Despite low unemployment, a soaring stock market, and large budget surpluses, Wall Street cheers when companies—eager to improve profits by down-sizing—lay off workers in large numbers. In 1998, layoffs were reported around the country in almost every industry—9,000 jobs were lost after the Exxon-Mobil merger—5,500 jobs were lost after Deutsche Bank acquired Bankers Trust—Boeing laid off 9,000 workers—Johnson & Johnson laid off 4,100. Kodak has cut 30,000 jobs since the 1980s and 6,300 just since 1997.

Often, when workers lose a good job, they are unable to recover. In a study of displaced workers in the early 1990s, the Bureau of Labor Statistics reported that only about one-quarter of these laid-off workers were working at full-time jobs paying as much as or more than they had earned at the job they lost. Too often, laid-off workers are forced to accept part-time jobs, temporary jobs, or jobs with fewer benefits or no benefits at all.

Divorce rates have soared over the past 40 years. For better or worse, more couples are separating, and the financial consequences are particularly devastating for women. Divorced women are four times more likely to file for bankruptcy than married women or single men. In 1999, 540,000 women who head their own households filed for bankruptcy to try to stabilize their economic lives. 200,000 of them were also creditors trying to collect child support or alimony. The rest were debtors struggling to make ends meet. This bankruptcy bill is anti-woman, and this Republican Congress should be ashamed of its attempt to enact it into law.

Another major factor in bankruptcy is the high cost of health care. 43 million Americans have no health insurance, and many millions more are under-insured. Each year, millions of families spend more than 20 percent of their income on medical care, and older Americans are hit particularly hard. A 1998 CRS Report states that even though Medicare provides near-universal health coverage for older Americans, half of this age group spend 14 percent or more of their after-tax income on health costs, including insurance premiums, co-payments and prescription drugs.

These are the individuals and families from whom the credit card industry believes it can squeeze another dime. The industry claims that these individuals and families are cheating and abusing the bankruptcy system, and that are irresponsibly using their charge cards to live in luxury they can't afford.

These working Americans are not cheats and frauds—but they do comprise the vast number of Americans in bankruptcy. Two out of every three bankruptcy filers have an employment problem. One out of every five bankruptcy filers has a health care problem. Divorced or separated people are three times more likely than married couples to file for bankruptcy. Working men and women in economic free fall often have no choice except bankruptcy. Yet this Republican Congress is bent on denying them that safety net.

This legislation unfairly targets middle class and poor families—and it

leaves flagrant abuses in place. Time and time again, President Clinton has told the Republican leadership that the final bill must included two important provisions—a homestead provision without loopholes for the wealthy, and a provision that requires accountability and responsibility from those who unlawfully—and often violently—bar access to legal health services. The current bill includes neither of these provisions.

The conference report does include a half-hearted, loop-hole filled homestead provision. It will do little to eliminate fraud. With a little planning—or in some cases, no planning at all—wealthy debtors will be able to hide millions in assets from their creditors. For example, Allen Smith of Delaware—a state with no homestead exemption—and James Villa of Florida—a state with an unlimited homestead exemption—were treated differently by the bankruptcy system. One man eventually lost his home. The other was able to hide $1.4 million from his creditors by purchasing a luxury mansion in Florida.

The Senate passed a worthwhile amendment to eliminate this inequity, but that provision was stripped from the conference report. Surely, a bill designed to end fraud and abuse should include a loop-hole free homestead provision. The President thinks so. As an October 12, 2000 letter from White House Chief of Staff John Podesta says, ''The inclusion of a provision limiting to some degree a wealthy debtor's capacity to shift assets before bankruptcy into a home in a state with an unlimited homestead exemption does not ameliorate the glaring omission of a real homestead cap.''

Yet there is no outcry from our Republican colleagues about the injustice, fraud, and abuse in these cases. In fact, Governor Bush led the fight in Texas to see that rich cheats trying to escape their creditors can hide their assets under Texas' unlimited homestead law.

In 1999, the Texas legislature adopted a measure to opt-out of any homestead restrictions passed by Congress. The legislature also expanded the urban homestead protection to 10 acres. It allowed the homestead to be rented out and still qualify as a homestead. It even said that a homestead could be a place of business. This provision gives the phrase ''home, sweet home'' new and unfair meaning.

The homestead loop-hole should be closed permanently. It should not be left open just for the wealthy. I wish this misguided bill's supporters would fight for such a responsible provision with the same intensity they are fighting for the credit card industry's wish list, and fighting against women, against the sick, against laid-off workers, and against other average individuals and families who will have no safety net if this unjust bill passes.

This legislation flunks the test of fairness. It is a bill designed to meet the needs of one of the most profitable industries in America—the credit card industry. Credit card companies are vigorously engaged in massive and unseemly nation-wide campaigns, to hook unsuspecting citizens on credit card debt. They sent out 2.87 billion—2.87 billion—credit card solicitations in 1999. And, in recent years, they have begun to offer new lines of credit targeted at people with low incomes—people they know cannot afford to pile up credit card debt.

Supporters of the bill argue that the bankruptcy bill isn't a credit card industry bill. They argue that we had votes on credit card legislation and some amendments passed and others did not. But, to deal effectively and comprehensively with the problem of bankruptcy, we have to address the problem of debt. We must ensure that the credit card industry doesn't abandon fair lending policies to fatten its bottom line and ask Congress to become its federal debt collector.

Two years ago, the Senate passed good credit card disclosure provisions that added some balance to the bankruptcy bill. It's disturbing that the provisions in the bill passed by the Senate this year were watered down to pacify the credit card industry. Even worse, some of the provisions passed by the Senate were stripped from the conference report.

The hypocrisy of this bill is transparent. We hear a lot of pious Republican talk about the need for responsibility when average families are in financial trouble, but we hear no such talk of responsibility when the wealthy credit card companies and their lobbyists are the focus of attention.

The credit card industry and congressional supporters of the bill attempt to argue that the bankruptcy bill will help—not harm—women and children. That argument is laughable.

Proponents of the bill say that it ensures that alimony and child support will be the number one priority in bankruptcy. That rhetoric masks the complexity of the bankruptcy system—but it doesn't hide the fact that women and children will be the losers if this bill becomes law.

Under current law, an ex-wife trying to collect support enjoys special protection. But under the pending bills, credit card companies are given a new right to compete with women and children for the husband's limited income after bankruptcy.

It is true that the bill moves support payments to the first priority position in the bankruptcy code. But that only matters in the limited number of cases in which the debtor has assets to distribute to a creditor. In most cases—over 95 percent—there are no assets, and the list of priorities has no effect.

The claim of ''first priority'' is a sham to conceal the real problem—the competition for resources after bankruptcy. This legislation creates a new category of debt that cannot be discharged after bankruptcy—credit card debt. It will, therefore, create intense competition for the former husband's limited income. Under current law, he can devote his post-bankruptcy income to meeting his basic responsibilities, including his student loans, his tax liability, and his support payments for his former wife and their children. But if this bill becomes law, one of his so-called ''basic'' responsibilities will be a new one—to Visa and MasterCard. We all know what happens when women and children are forced to compete with these sophisticated lenders— they always lose.

As thirty-one organizations that support women and children have said, ''Some improvements were made in the domestic support provisions in the Judiciary Committee . . . however, even the revised provisions fail to solve the problems created by the rest of the bill, which gives many other creditors greater claims—both during and after bankruptcy—than they have under current law.''

In addition, as 91—91—bankruptcy and commercial law professors wrote, ''Granting 'first priority' to alimony and support claims is not the magic solution the consumer credit industry claims because 'priority' is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95% of bankruptcy cases make no distributions to any creditors because there are no assets to distribute. Granting women and children first priority for bankruptcy distributions permits them to stand first in line to collect nothing.''

Based on the discredited bankruptcy studies, creditors also argue that ''no one will be denied bankruptcy protection. The ten percent of filers with the highest incomes and the lowest relative debt would be required to repay a portion of what they owed and the balance would be discharged, just as it is under current law.'' That's another credit card industry myth.

There is no doubt that this legislation will be harmful to working families who have fallen on hard times—families like those described in a Time magazine article earlier this year.

That article discussed the financial difficulties of the Trapp family, whom I had the privilege of meeting several months ago. They are not wealthy cheats trying to escape from their financial responsibilities. They are a middle class family engulfed in debt, because of circumstances beyond their control. Like half of all Americans who file for bankruptcy, the Trapp family had massive medical expenses—over $124,000 in doctors' bills that their insurance didn't cover.

The plight of the Trapp family is similar to that of many other American families with serious illness and injury. The combination of a major medical problem and a job loss pushed Maxean Bowen—a single mother—into bankruptcy. She was a social worker in

the foster-care system in New York City when she developed a painful condition in both feet that made her job, which required house calls, impossible. As a result, she had to give up her work and go on the unemployment rolls. Her income fell by 50 percent. She had to borrow from relatives, and she used her credit cards to make ends meet. Like so many others in similar situations, she believed that she would soon recover and be able to pay her debts. But, like thousands who file for bankruptcy, even when Maxean was able to work again, she owed far more than she could repay.

Maxean tried paying her creditors a few hundred dollars when possible, but it wasn't enough to keep her bills from piling up because of interest charges and late-payment fees. She said she was ''going crazy.''

Some of my colleagues have argued that Maxean Bowen, Charles and Lisa Trapp, and others featured in the Time magazine article wouldn't be subject to the harsh provisions in the bankruptcy bill before us today. But, although the conference report now includes a ''means test safe harbor'' for the poorest families, a careful, objective analysis demonstrates that all Americans would be affected by the provisions in the bill.

For example, proponents of the bill argue that the Trapp family would not be affected by the means test because their current income is below the state median income. That's not true. Before Mrs. Trapp left her job, the family's annual income was $83,000 a year or $6,900 a month. Under the bill, the Trapp family's previous six months' income would be averaged, so that they would have an assumed monthly income of about $6,200—above the state median—even though their actual monthly gross income at the time of filing was $4,800.

Based on the fictitious income assumed by the bankruptcy legislation, the Trapp family would be subject to the means test. And the means test formula—using the IRS standards—would assume that the Trapps have the ability to repay more than their actual income would allow.

Similarly, although the safe harbor provision would protect Maxean Bowen from the means test, other substantive and procedural provisions in the bill would apply to her. Maxean didn't have the money to pay her bankruptcy attorney and had to obtain financial assistance from relatives. If this legislation becomes law, the new requirements may make bankruptcy relief prohibitive.

The individuals and families featured in the article are well aware of the distortions and misrepresentations of their cases by defenders of this harsh Republican bill and by apologists for the credit card industry. The outraged response by these debtors is eloquent and powerful. As they have emphatically replied,

During the last year, each of us declared bankruptcy. It was one of the most difficult decisions any of us had to make, coming at the darkest hours in our lives. We saw no other way to stabilize our economic situations. Each of our families is now on the long path of trying to right ourselves financially . . . We have read the statements you have made about our cases on the floor of the Senate and in Mr. Gekas' letter to Time. We deeply resent the fact that you have misrepresented our cases to the American public. Contrary to what you have stated, each of us would have been severely affected by your bankruptcy bill.

Finally, proponents of the bill argue that it will help small businesses. Again, this is another credit card industry myth.

According to the Administrative Office of the Courts, business bankruptcies represented 2.9 percent of all filings in 1999. Since June 1996, those filings have declined by over 30 percent—30 percent. The relatively low number of business bankruptcy filings and the fact that filings are decreasing indicate that drastic changes in the law are unnecessary.

This bankruptcy reform bill isn't based on any serious business need. In fact, its overhaul of Chapter 11 will hurt—rather than help—small businesses. Chapter 11 was enacted to serve the interests of business debtors, creditors, and the other constituencies affected by business failures—particularly the employees. A principal goal of Chapter 11 is to encourage business reorganization in order to preserve jobs. Supporters of the bill ride roughshod over this important goal. They create more hurdles, additional costs, and a rigid, inflexible structure for small businesses in bankruptcy. As a result, fewer small business creditors will be paid, and more jobs will be lost.

This fundamental defect led AFL–CIO President John Sweeney to write, ''The Bankruptcy Reform Act of 2000 is an attack on working families. It will undermine a critical safety net for both families and financially vulnerable businesses and their workers. Businesses filing bankruptcy cases would be required to follow stringent new rules which create significant substantive and procedural barriers to reorganization and therefore place jobs at risk. Costly, unnecessary, and inflexible procedures will increase the risk that small businesses will be unable to reorganize. The bill also threatens jobs in significant real estate enterprises and retailers.''

As I mentioned earlier, a large number of professors of bankruptcy and commercial law across the country have written to us to condemn this bill and to urge the Senate not to approve it. As their letter eloquently states in its conclusion:

These facts are unassailable: H.R. 2415 forces women to compete with sophisticated creditors to collect alimony and child support after bankruptcy. H.R. 2415 makes it harder for women to declare bankruptcy when they are in financial trouble. H.R. 2415 fails to close the glaring homestead loophole and permits wealthy debtors to hide assets from their creditors. We implore you to look beyond the distorted ''facts'' peddled by the credit industry. Please do not pass a bill that will hurt vulnerable Americans, including women and children.

It is clear that the bill before us is designed to increase the profits of the credit card industry at the expense of working families. If it becomes law, the effects will be devastating. The Senate should reject this defective bankruptcy bill and the cynical attempt by the Republican leadership to pass it on the last day of this Congress. This bill is bad legislation. It eminently deserves the veto it will receive if it passes.

I urge the Senate to reject this cloture motion, and to reject this bill. I ask unanimous consent that the letter from the 91 law professors I mentioned be printed in the RECORD.

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

OCTOBER 30, 2000.

Re: The Bankruptcy Reform Act Conference Report (H.R. 2415)

DEAR SENATORS: We are professors of bankruptcy and commercial law. We have been following the bankruptcy reform process with keen interest. The 91 undersigned professors come from every region of the country and from all major political parties. We are not a partisan, organized group, and we have no agenda. Our exclusive interest is to seek the enactment of a fair and just bankruptcy law, with appropriate regard given to the interests of debtors and creditors alike. Many of us have written before to express our concerns about the bankruptcy legislation, and we write again as yet another version of the bill comes before you. This bill is deeply flawed, and we hope the Senate will not act on it in the closing minutes of this session.

In a letter to you dated September 7, 1999, 82 professors of bankruptcy law from across the country expressed their grave concerns about some of the provisions of S. 625, particularly the effects of the bill on women and children. We wrote again on November 2, 1999, to reiterate our concerns. We write yet again to bring the same message; the problems with the bankruptcy bill have not been resolved, particularly those provisions that adversely affect women and children.

Notwithstanding the unsupported claims of the bill's proponents, H.R. 2415 does not help women and children. Thirty-one organizations devoted exclusively to promoting the best interests of women and children continue to oppose the pending bankruptcy bill. The concerns expressed in our earlier letters showing how S. 625 would hurt women and children have not been resolved. Indeed, they have not even been addressed.

First, one of the biggest problems the bill presents for women and children was stated in the September 7, 1999, letter: ''Women and children as creditors will have to compete with powerful creditors to collect their claims after bankruptcy.''

This increased competition for women and children will come from many quarters: from powerful credit card issuers, whose credit card claims increasingly will be excepted from discharge and remain legal obligations of the debtor after bankruptcy; from large retailers, who will have an easier time obtaining reaffirmations of debt that legally could be discharged; and from creditors claiming they hold security, even when the alleged collateral is virtually worthless. None of the changes made to S. 625 and none being proposed in H.R. 2415 addresses these

problems. The truth remains: if H.R. 2415 is enacted in its current form, women and children will face increased competition in collecting their alimony and support claims after the bankruptcy case is over. We have pointed out this difficulty repeatedly, but no change has been made in the bill to address it.

Second, it is a distraction to argue—as do advocates of the bill—that the bill will ''help'' women and children and that it will ''make child support and alimony payments the top priority—no exceptions.'' As the law professors pointed out in the September 7, 1999, letter: ''Giving 'first priority' to domestic support obligations does not address the problem.''

Granting ''first priority'' to alimony and support claims is not the magic solution the consumer credit industry claims because ''priority'' is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95% of bankruptcy cases make NO distributions to any creditors because there are no assets to distribute. Granting women and children a first priority for bankruptcy distributions permits them to stand first in line to collect nothing.

Women's hard-fought battle is over reaching the ex-husband's income after bankruptcy. Under current law, child support and alimony share a protected post-bankruptcy position with only two other recurrent collectors of debt—taxes and student loans. The credit industry asks that credit card debt and other consumer credit share that position, thereby elbowing aside the women trying to collect on their own behalf. The credit industry carefully avoids discussing the increased post-bankruptcy competition facing women if H.R. 2415 becomes law. As a matter of public policy, the country should not elevate credit card debt to the preferred position of taxes and child support. Once again, we have pointed out this problem repeatedly, and nothing has been changed in the pending legislation to address it.

If addition to the concerns raised on behalf of the thousands of women who are struggling now to collect alimony and child support after their ex-husband's bankrupticies, we also express our concerns on behalf of the more than half a million women heads of household who will file for bankruptcy this year alone. As the heads of the economically most vulnerable families, they have a special stake in the pending legislation. Women heads of households are now the largest demographic group in bankruptcy, and according to the credit industry's own data, they are the poorest. The provisions in this bill, particularly the many provisions that apply without regard to income, will fall hardest on them. Under this bill, a single mother with dependent children who is hopelessly insolvent and whose income is far below the national median income would have her bankruptcy case dismissed if she does not present copies of income tax returns for the past three years—even if those returns are in the possession of her ex-husband. A single mother who hoped to work through a chapter 13 payment plan would be forced to pay every penny of the entire debt owed on almost worthless items of collateral, such as used furniture or children's clothes, even if it meant that successful completion of a repayment plan was impossible.

Finally, when the Senate passed S. 625, we were hopeful that the final bankruptcy legislation would include a meaningful homestead provision to address flagrant abuse in the bankruptcy system. Instead, the conference report retreats from the concept underlying the Senate-passed homestead amendment.

The Homestead provision in the conference report will allow wealthy debtors to hide assets from their creditors.

Current bankruptcy law yields to state law to determine what property shall remain exempt from creditor attachment and levy. Homestead exemptions are highly variable by state, and six states (Florida, Iowa, Kansas, South Dakota, Texas, Oklahoma) have literally unlimited exemptions while twenty-two states have exemptions of $10,000 or less. The variation among states leads to two problems—basic inequality and strategic bankruptcy planning. The only solution is a dollar cap on the homestead exemption. Although variation among states would remain, the most outrageous abuses—those in the multi-million dollar category—would be eliminated.

The homestead provision in the conference report does little to address the problem. The legislation only requires a debtor to wait two years after the purchase of the homestead before filing a bankruptcy case. Well-counseled debtors will have no problem timing their bankruptcies or tying-up the courts in litigation to skirt the intent of this provision. The proposed change will remind debtors to buy their property early, but it will not deny anyone with substantial assets a chance to protect property from their creditors. Furthermore, debtors who are long-time residents of states like Texas and Florida will continue to enjoy a homestead exemption that can shield literally millions of dollars in value.

These facts are unassailable: H.R. 2415 forces women to compete with sophisticated creditors to collect alimony and child support after bankruptcy. H.R. 2415 makes it harder for women to declare bankruptcy when they are in financial trouble. H.R. 2415 fails to close the glaring homestead loophole and permits wealthy debtors to hide assets from their creditors. We implore you to look beyond the distorted ''facts'' peddled by the credit industry. Please do not pass a bill that will hurt vulnerable Americans, including women and children.

Thank you for your consideration.

Peter A. Alces, College of William and Mary; Peter C. Alexander, The Dickinson School of Law, Penn State University; Thomas B. Allington, Indiana University School of Law; Allan Axelrod, Rutgers Law School; Douglas G. Baird, University of Chicago Law School; Laura B. Bartell, Wayne State University Law School; Larry T. Bates, Baylor Law School; Andrea Coles Bjerre, University of Oregon School of Law; Susan Block-Lieb, Fordham University School of Law; Amelia H. Boss, Temple University School of Law; William W. Bratton, The George Washington University Law School; Jean Braucher, University of Arizona; Ralph Brubaker, Emory University School of Law.

Mark E. Budnitz, Georgia State University; Daniel J. Bussel, UCLA School of Law; Arnold B. Cohen, Villanova University School of Law; Marianne B. Culhane, Creighton Law School; Jeffrey Davis, University of Florida Law School; Susan DeJarnatt, Temple University School of Law; Paulette J. Delk, Cecil C. Humphreys School of Law, The University of Memphis; A. Mechele Dickerson, William & Mary Law School; Thomas L. Eovaldi, Northwestern University School of Law; David G. Epstein, University of Alabama Law School; Christopher W. Frost, University of Kentucky, College of Law; Dale Beck Furnish, College of Law, Arizona State University; Karen M. Gebbia-Pinetti, University of Hawaii School of Law; Nicholas Georgakopoulos, University of Connecticut School of Law visiting Indiana University School of Law; Michael A. Gerber, Brooklyn Law School; Marjorie L. Girth, Georgia State University College of Law; Ronald C. Griffin, Washburn University School of Law; Professor Karen Gross, New York Law School; Matthew P. Harrington, Roger Williams University; Kathryn Heidt, University of Pittsburgh School of Law; Joann Henderson, University of Idaho College of Law; Frances R. Hill, University of Miami School of Law; Ingrid Hillinger, Boston College; Adam Hirsch, Florida State University; Margaret Howard, Vanderbilt University Law School; Sarah Jane Hughes, Indiana University School of Law; Edward J. Janger, Broklyn Law School.

Lawrence Kalevitch, Shepard Broad Law Center, Nova Southeastern University; Allen Kamp, John Marshall Law School; Kenneth C. Kettering, New York Law School; Lawrence King, New York University School of Law; Kenneth N. Klee, University of California at Los Angeles School of Law; Don Korobkin, Rutgers-Camden School of Law; John W. Larson, Florida State University; Robert M. Lawless, University of Missouri-Columbia; Leonard J. Long, Quinnipiac University School of Law; Professor Lynn LoPucki, University of California Law School; Lois R. Lupica, University of Maine School of Law; William H. Lyons, College of Law, University of Nebraska; Bruce A. Markell, William S. Boyd School of Law, UNLV; Nathalie Martin, University of New Mexico School of Law; Judith L. Maute, University of Oklahoma Law Center; Juliet Moringiello, Widener University School of Law; Jeffrey W. Morris, University of Dayton School of Law; Spencer Neth, Case Western Reserve University; Gary Neustadter, Santa Clara University School of Law; Nathaniel C. Nichols, Widener at Delaware; Scott F. Norberg, University of California, Hastings College of the Law; Dennis Patterson, Rutgers-Camden School of Law; Dean Pawlowic, Texas Tech University School of Law; Lawrence Ponoroff, Tulane Law School; Nancy Rappoport, University of Houston College of Law; Doug Rendleman, Washington and Lee Law School; Alan N. Resnick, Hofstra University School of Law.

Steven L. Schwarcz, Duke Law School; Alan Schwartz, Yale University; Charles J. Senger, Thomas M. Cooley Law School; Stephen L. Sepinuck, Gonzaga University School of Law; Charles Shafer, University of Baltimore Law School; Melvin G. Shimm, Duke University Law School; Ann C. Stilson, Widener University School of Law; Charles J. Tabb, University of Illinois; Walter Taggert, Villanova University Law School; Marshall Tracht, Hofstra Law School; Bernard Trujillo, U. Wisconsin Law School; Frederick Tung, University of San Francisco School of Law; William T. Vukowich, Georgetown University Law Center; Thomas M. Ward, University of Maine School of Law; Elizabeth Warren, Harvard Law School; John Weistart, Duke University School of Law; Elaine A. Welle, University of Wyoming, College of Law; Jay L. Westbrook, University of Texas School of Law; William C. Whitford, Wisconsin Law School; Mary Jo Wiggins, University of San Diego Law School; Jane Kaufman Winn,

Southern Methodist University; School of Law; Peter Winship, SMU School of Law; Zipporah B. Wiseman, University of Texas School of Law; William J. Woodward, Jr., Temple University.

Mr. GRASSLEY. Mr. President, we are about to vote on cloture on the bankruptcy bill. I urge my colleagues to vote for cloture.

The conference committee that produced this Bankruptcy Conference Report had an even 3–3 ratio. Obviously with this ratio, Democrats on the conference held an absolute veto over the bankruptcy bill. But here we are voting on a conference report that has the support of conferees on both sides of the aisle.

What's at stake with this vote?

If you vote ''no'' on cloture you are voting against bankruptcy protections for family farmers.

If you vote ''no'' on cloture you are voting against targeted capital gains tax relief for family farmers in bankruptcy.

If you vote ''no'' on cloture you are voting against a ''Patients' Bill of Rights'' for residents of bankrupt nursing homes.

If you vote ''no'' on cloture you are voting against provisions that Federal Reserve Chairman Alan Greenspan and Treasury Secretary Larry Summers say are crucial for protecting our financial markets.

There's a lot at stake with this vote. Let's vote for farmers. Let's vote for a ''Patients' Bill of Rights'' for residents of bankrupt nursing homes. Let's vote to protect our financial markets. Let's vote to protect our prosperity.

I urge my colleagues to vote for cloture.

Mr. LOTT. I believe we are ready to proceed to the vote.

BANKRUPTCY REFORM ACT OF 2000—CONFERENCE REPORT—Resumed

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2415, a bill to enhance security of United States missions and personnel overseas, to authorize appropriations for the Department of State for fiscal year 2000, and for other purposes.

Trent Lott, Chuck Grassley, Jeff Sessions, Richard Shelby, Fred Thompson, Mike Crapo, Phil Gramm, Jon Kyl, Jim Bunning, Wayne Allard, Thad Cochran, Craig Thomas, Connie Mack, Bill Frist, Bob Smith of New Hampshire, and Frank Murkowski.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 2415, a bill to enhance security of United States missions and personnel overseas, to authorize appropriations for the Department of State for fiscal year 2000, and for other purposes?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (When his named was called). Present.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. ASHCROFT), the Senator from Montana (Mr. BURNS), the Senator from Tennessee (Mr. FRIST), the Senator from Washington (Mr. GORTON), the Senator from Minnesota (Mr. GRAMS), the Senator from North Carolina (Mr. HELMS), the Senator from Oklahoma (Mr. INHOFE), the Senator from Vermont (Mr. JEFFORDS), the Senator from Arizona (Mr. MCCAIN), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. BURNS) and the Senator from North Carolina (Mr. HELMS) would each vote ''yea.''

Mr. REID. I announce that the Senator from New Mexico (Mr. BINGAMAN), the Senator from California (Mrs. FEINSTEIN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Vermont (Mr. LEAHY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The result was announced—yeas 53, nays 30, as follows:

[Rollcall Vote No. 294 Leg.]

YEAS—53

Abraham	DeWine	Murkowski
Allard	Domenici	Nickles
Bayh	Enzi	Robb
Bennett	Graham	Roberts
Biden	Gramm	Roth
Bond	Grassley	Sessions
Breaux	Gregg	Shelby
Brownback	Hagel	Smith (NH)
Bunning	Hatch	Smith (OR)
Byrd	Hutchinson	Snowe
Campbell	Hutchison	Stevens
Chafee, L.	Johnson	Thomas
Cleland	Kyl	Thompson
Cochran	Lincoln	Thurmond
Collins	Lugar	Torricelli
Craig	Mack	Voinovich
Crapo	McConnell	Warner
Daschle	Miller	

NAYS—30

Akaka	Harkin	Mikulski
Baucus	Hollings	Moynihan
Boxer	Inouye	Murray
Bryan	Kennedy	Reed
Conrad	Kerrey	Reid
Dodd	Kerry	Rockefeller
Dorgan	Kohl	Sarbanes
Durbin	Landrieu	Schumer
Edwards	Levin	Wellstone
Feingold	Lott	Wyden

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—16

Ashcroft	Grams	Lieberman
Bingaman	Helms	McCain
Burns	Inhofe	Santorum
Feinstein	Jeffords	Specter
Frist	Lautenberg	
Gorton	Leahy	

The PRESIDING OFFICER (Mr. L. CHAFEE). On this vote, the yeas are 53, the nays are 30, and 1 Senator responded present. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LOTT addressed the Chair.

Mr. MOYNIHAN. May we have order.

The PRESIDING OFFICER. May we have order in the Chamber please.

The majority leader.

Mr. LOTT. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked on the bankruptcy bill.

The PRESIDING OFFICER. The motion is so entered.

Mr. LOTT. Mr. President, I note that I will renew this motion with a vote at a time when we have the largest possible number of Senators here. I note there are some absentees, and I believe that could have made a difference in this vote. But we will persist in our effort to pass this important legislation.

I thank Senator GRASSLEY and Senator TORRICELLI and all who worked very hard on it. We will have another vote before the year is out, whenever that may be.

FSC REPEAL AND EXTRATERRITORIAL INCOME EXCLUSION ACT OF 2000

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate turn to Calendar No. 817, H.R. 4986, regarding foreign sales corporations, and following the reporting by the clerk, the committee amendments be immediately withdrawn, the compromise text regarding FSCs, which is contained in the tax conference report, be added as an amendment, which I will send to the desk, the bill then be immediately read for a third time, and passage occur, all without any intervening action, motion, or debate.

The PRESIDING OFFICER. Is there objection?

Mr. WELLSTONE. Mr. President, reserving the right to object.

Mr. GRAMM. Could we have order, Mr. President.

The PRESIDING OFFICER. There will be order in the Senate, please.

Mr. WELLSTONE. Some of us had amendments we wanted to offer. That is part of the legislative process. I want to have 10 minutes to speak on an amendment I wanted to offer on this bill.

Mr. LOTT. Mr. President, I respond to the Senator that I had planned to ask for a period of morning business with Senators permitted to speak for up to 10 minutes each. I will be glad to specify that the Senator would have the first 10 minutes to comment on this issue.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Mr. President, reserving the right to object, in the interest of allowing the Senate to vote, and following the majority leader's suggestion, I ask unanimous consent for 10 minutes in morning business to address this issue.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, is there objection to my request?

The PRESIDING OFFICER. Is there objection?

Mr. WELLSTONE. I will not object.

The PRESIDING OFFICER. Is there an objection?

Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

An act (H.R. 4986) to amend the Internal Revenue Code of 1986 to repeal the provisions relating to foreign sales corporations (FSCs) and to exclude extraterritorial income from gross income.

The Senate proceeded to consider the bill, which had been reported from the Committee on Finance, with amendments as follows:

(Omit the parts in boldface brackets and insert the parts printed in italic.)

H.R. 4986

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''FSC Repeal and Extraterritorial Income Exclusion Act of 2000''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. REPEAL OF FOREIGN SALES CORPORATION RULES.

Subpart C of part III of subchapter N of chapter 1 (relating to taxation of foreign sales corporations) is hereby repealed.

SEC. 3. TREATMENT OF EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting before section 115 the following new section:

''SEC. 114. EXTRATERRITORIAL INCOME.

''(a) EXCLUSION.—Gross income does not include extraterritorial income.

''(b) EXCEPTION.—Subsection (a) shall not apply to extraterritorial income which is not qualifying foreign trade income as determined under subpart E of part III of subchapter N.

''(c) DISALLOWANCE OF DEDUCTIONS.—

''(1) IN GENERAL.—Any deduction of a taxpayer allocated under paragraph (2) to extraterritorial income of the taxpayer excluded from gross income under subsection (a) shall not be allowed.

''(2) ALLOCATION.—Any deduction of the taxpayer properly apportioned and allocated to the extraterritorial income derived by the taxpayer from any transaction shall be allocated on a proportionate basis between—

''(A) the extraterritorial income derived from such transaction which is excluded from gross income under subsection (a), and

''(B) the extraterritorial income derived from such transaction which is not so excluded.

''(d) DENIAL OF CREDITS FOR CERTAIN FOREIGN TAXES.—Notwithstanding any other provision of this chapter, no credit shall be allowed under this chapter for any income, war profits, and excess profits taxes paid or accrued to any foreign country or possession of the United States with respect to extraterritorial income which is excluded from gross income under subsection (a).

''(e) EXTRATERRITORIAL INCOME.—For purposes of this section, the term 'extraterritorial income' means the gross income of the taxpayer attributable to foreign trading gross receipts (as defined in section 942) of the taxpayer.''.

(b) QUALIFYING FOREIGN TRADE INCOME.—Part III of subchapter N of chapter 1 is amended by inserting after subpart D the following new subpart:

''Subpart E—Qualifying Foreign Trade Income

''SEC. 941. QUALIFYING FOREIGN TRADE INCOME.

''(a) QUALIFYING FOREIGN TRADE INCOME.—For purposes of this subpart and section 114—

''(1) IN GENERAL.—The term 'qualifying foreign trade income' means, with respect to any transaction, the amount of gross income which, if excluded, will result in a reduction of the taxable income of the taxpayer from such transaction equal to the greatest of—

''(A) 30 percent of the foreign sale and leasing income derived by the taxpayer from such transaction,

''(B) 1.2 percent of the foreign trading gross receipts derived by the taxpayer from the transaction, or

''(C) 15 percent of the foreign trade income derived by the taxpayer from the transaction.

In no event shall the amount determined under subparagraph (B) exceed 200 percent of the amount determined under subparagraph (C).

''(2) ALTERNATIVE COMPUTATION.—A taxpayer may compute its qualifying foreign trade income under a subparagraph of paragraph (1) other than the subparagraph which results in the greatest amount of such income.

''(3) LIMITATION ON USE OF FOREIGN TRADING GROSS RECEIPTS METHOD.—If any person computes its qualifying foreign trade income from any transaction with respect to any property under paragraph (1)(B), the qualifying foreign trade income of such person (or any related person) with respect to any other transaction involving such property shall be zero.

''(4) RULES FOR MARGINAL COSTING.—The Secretary shall prescribe regulations setting forth rules for the allocation of expenditures in computing foreign trade income under paragraph (1)(C) in those cases where a taxpayer is seeking to establish or maintain a market for qualifying foreign trade property.

''(5) PARTICIPATION IN INTERNATIONAL BOYCOTTS, ETC.—Under regulations prescribed by the Secretary, the qualifying foreign trade income of a taxpayer for any taxable year shall be reduced (but not below zero) by the sum of—

''(A) an amount equal to such income multiplied by the international boycott factor determined under section 999, and

''(B) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the taxpayer directly or indirectly to an official, employee, or agent in fact of a government.

''(b) FOREIGN TRADE INCOME.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'foreign trade income' means the taxable income of the taxpayer attributable to foreign trading gross receipts of the taxpayer.

''(2) SPECIAL RULE FOR COOPERATIVES.—In any case in which an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products sells qualifying foreign trade property, in computing the taxable income of such cooperative, there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

''(c) FOREIGN SALE AND LEASING INCOME.—For purposes of this section—

''(1) IN GENERAL.—The term 'foreign sale and leasing income' means, with respect to any transaction—

''(A) foreign trade income properly allocable to activities which—

''(i) are described in paragraph (2)(A)(i) or (3) of section 942(b), and

''(ii) are performed by the taxpayer (or any person acting under a contract with such taxpayer) outside the United States, or

''(B) foreign trade income derived by the taxpayer in connection with the lease or rental of qualifying foreign trade property for use by the lessee outside the United States.

''(2) SPECIAL RULES FOR LEASED PROPERTY.—

''(A) SALES INCOME.—The term 'foreign sale and leasing income' includes any foreign trade income derived by the taxpayer from the sale of property described in paragraph (1)(B).

''(B) LIMITATION IN CERTAIN CASES.—Except as provided in regulations, in the case of property which—

''(i) was manufactured, produced, grown, or extracted by the taxpayer, or

''(ii) was acquired by the taxpayer from a related person for a price which was not determined in accordance with the rules of section 482,

the amount of foreign trade income which may be treated as foreign sale and leasing income under paragraph (1)(B) or subparagraph (A) of this paragraph with respect to any transaction involving such property shall not exceed the amount which would have been determined if the taxpayer had acquired such property for the price determined in accordance with the rules of section 482.

''(3) SPECIAL RULES.—

''(A) EXCLUDED PROPERTY.—Foreign sale and leasing income shall not include any income properly allocable to excluded property described in subparagraph (B) of section 943(a)(3) (relating to intangibles).

''(B) ONLY DIRECT EXPENSES TAKEN INTO ACCOUNT.—For purposes of this subsection, any expense other than a directly allocable expense shall not be taken into account in computing foreign trade income.

''SEC. 942. FOREIGN TRADING GROSS RECEIPTS.

''(a) FOREIGN TRADING GROSS RECEIPTS.—

''(1) IN GENERAL.—Except as otherwise provided in this section, for purposes of this subpart, the term 'foreign trading gross receipts' means the gross receipts of the taxpayer which are—

''(A) from the sale, exchange, or other disposition of qualifying foreign trade property,

''(B) from the lease or rental of qualifying foreign trade property for use by the lessee outside the United States,

''(C) for services which are related and subsidiary to—

''(i) any sale, exchange, or other disposition of qualifying foreign trade property by such taxpayer, or

''(ii) any lease or rental of qualifying foreign trade property described in subparagraph (B) by such taxpayer,

''(D) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

''(E) for the performance of managerial services for a person other than a related person in furtherance of the production of

foreign trading gross receipts described in subparagraph (A), (B), or (C).

Subparagraph (E) shall not apply to a taxpayer for any taxable year unless at least 50 percent of its foreign trading gross receipts (determined without regard to this sentence) for such taxable year is derived from activities described in subparagraph (A), (B), or (C).

''(2) CERTAIN RECEIPTS EXCLUDED ON BASIS OF USE; SUBSIDIZED RECEIPTS EXCLUDED.—The term 'foreign trading gross receipts' shall not include receipts of a taxpayer from a transaction if—

''(A) the qualifying foreign trade property or services—

''(i) are for ultimate use in the United States, or

''(ii) are for use by the United States or any instrumentality thereof and such use of qualifying foreign trade property or services is required by law or regulation, or

''(B) such transaction is accomplished by a subsidy granted by the government (or any instrumentality thereof) of the country or possession in which the property is manufactured, produced, grown, or extracted.

''(3) ELECTION TO EXCLUDE CERTAIN RECEIPTS.—The term 'foreign trading gross receipts' shall not include gross receipts of a taxpayer from a transaction if the taxpayer elects not to have such receipts taken into account for purposes of this subpart.

''(b) FOREIGN ECONOMIC PROCESS REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in subsection (c), a taxpayer shall be treated as having foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by paragraph (2).

''(2) REQUIREMENT.—

''(A) IN GENERAL.—The requirements of this paragraph are met with respect to the gross receipts of a taxpayer derived from any transaction if—

''(i) such taxpayer (or any person acting under a contract with such taxpayer) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

''(ii) the foreign direct costs incurred by the taxpayer attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

''(B) ALTERNATIVE 85-PERCENT TEST.—A taxpayer shall be treated as satisfying the requirements of subparagraph (A)(ii) with respect to any transaction if, with respect to each of at least 2 subparagraphs of paragraph (3), the foreign direct costs incurred by such taxpayer attributable to activities described in such subparagraph equal or exceed 85 percent of the total direct costs attributable to activities described in such subparagraph.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) TOTAL DIRECT COSTS.—The term 'total direct costs' means, with respect to any transaction, the total direct costs incurred by the taxpayer attributable to activities described in paragraph (3) performed at any location by the taxpayer or any person acting under a contract with such taxpayer.

''(ii) FOREIGN DIRECT COSTS.—The term 'foreign direct costs' means, with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

''(3) ACTIVITIES RELATING TO QUALIFYING FOREIGN TRADE PROPERTY.—The activities described in this paragraph are any of the following with respect to qualifying foreign trade property—

''(A) advertising and sales promotion,

''(B) the processing of customer orders and the arranging for delivery,

''(C) transportation outside the United States in connection with delivery to the customer,

''(D) the determination and transmittal of a final invoice or statement of account or the receipt of payment, and

''(E) the assumption of credit risk.

''(4) ECONOMIC PROCESSES PERFORMED BY RELATED PERSONS.—A taxpayer shall be treated as meeting the requirements of this subsection with respect to any sales transaction involving any property if any related person has met such requirements in such transaction or any other sales transaction involving such property.

''(c) EXCEPTION FROM FOREIGN ECONOMIC PROCESS REQUIREMENT.—

''(1) IN GENERAL.—The requirements of subsection (b) shall be treated as met for any taxable year if the foreign trading gross receipts of the taxpayer for such year do not exceed $5,000,000.

''(2) RECEIPTS OF RELATED PERSONS AGGREGATED.—All related persons shall be treated as one person for purposes of paragraph (1), and the limitation under paragraph (1) shall be allocated among such persons in a manner provided in regulations prescribed by the Secretary.

''(3) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership, S corporation, or other pass-thru entity, the limitation under paragraph (1) shall apply with respect to the partnership, S corporation, or entity and with respect to each partner, shareholder, or other owner.

''SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.

''(a) QUALIFYING FOREIGN TRADE PROPERTY.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'qualifying foreign trade property' means property—

''(A) manufactured, produced, grown, or extracted within or outside the United States,

''(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business for direct use, consumption, or disposition outside the United States, and

''(C) not more than 50 percent of the fair market value of which is attributable to—

''(i) articles manufactured, produced, grown, or extracted outside the United States, and

''(ii) direct costs for labor (determined under the principles of section 263A) performed outside the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation, and the direct costs for labor under clause (ii) do not include costs that would be treated under the principles of section 263A as direct labor costs attributable to articles described in clause (i).

''(2) U.S. TAXATION TO ENSURE CONSISTENT TREATMENT.—Property which (without regard to this paragraph) is qualifying foreign trade property and which is manufactured, produced, grown, or extracted outside the United States shall be treated as qualifying foreign trade property only if it is manufactured, produced, grown, or extracted by—

''(A) a domestic corporation,

''(B) an individual who is a citizen or resident of the United States,

''(C) a foreign corporation with respect to which an election under subsection (e) (relating to foreign corporations electing to be subject to United States taxation) is in effect, or

''(D) a partnership or other pass-thru entity all of the partners or owners of which are described in subparagraph (A), (B), or (C).

Except as otherwise provided by the Secretary, tiered partnerships or pass-thru entities shall be treated as described in subparagraph (D) if each of the partnerships or entities is directly or indirectly wholly owned by persons described in subparagraph (A), (B), or (C).

''(3) EXCLUDED PROPERTY.—The term 'qualifying foreign trade property' shall not include—

''(A) property leased or rented by the taxpayer for use by any related person,

''(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, and other than computer software (whether or not patented), for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

''(C) oil or gas (or any primary product thereof),

''(D) products the transfer of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of Public Law 96–72, or

''(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber.

''(4) PROPERTY IN SHORT SUPPLY.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, the President may by Executive order designate the property as in short supply. Any property so designated shall not be treated as qualifying foreign trade property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

''(b) OTHER DEFINITIONS AND RULES.—For purposes of this subpart—

''(1) TRANSACTION.—

''(A) IN GENERAL.—The term 'transaction' means—

''(i) any sale, exchange, or other disposition,

''(ii) any lease or rental, and

''(iii) any furnishing of services.

''(B) GROUPING OF TRANSACTIONS.—To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

''(2) UNITED STATES DEFINED.—The term 'United States' includes the Commonwealth of Puerto Rico. The preceding sentence shall not apply for purposes of determining whether a corporation is a domestic corporation.

''(3) RELATED PERSON.—A person shall be related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

''(4) GROSS AND TAXABLE INCOME.—Section 114 shall not be taken into account in determining the amount of gross income or foreign trade income from any transaction.

''(c) SOURCE RULE.—Under regulations, in the case of qualifying foreign trade property manufactured, produced, grown, or extracted within the United States, the amount of income of a taxpayer from any sales transaction with respect to such property which is treated as from sources without the United States shall not exceed—

''(1) in the case of a taxpayer computing its qualifying foreign trade income under section 941(a)(1)(B), the amount of the taxpayer's foreign trade income which would (but for this subsection) be treated as from sources without the United States if the foreign trade income were reduced by an amount equal to 4 percent of the foreign trading gross receipts with respect to the transaction, and

''(2) in the case of a taxpayer computing its qualifying foreign trade income under section 941(a)(1)(C), 50 percent of the amount of the taxpayer's foreign trade income which would (but for this subsection) be treated as from sources without the United States.

''(d) TREATMENT OF WITHHOLDING TAXES.—

''(1) IN GENERAL.—For purposes of section 114(d), any withholding tax shall not be treated as paid or accrued with respect to extraterritorial income which is excluded from gross income under section 114(a). For purposes of this paragraph, the term 'withholding tax' means any tax which is imposed on a basis other than residence and for which credit is allowable under section 901 or 903.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any taxpayer with respect to extraterritorial income from any transaction if the taxpayer computes its qualifying foreign trade income with respect to the transaction under section 941(a)(1)(A).

''(e) ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—

''(1) IN GENERAL.—An applicable foreign corporation may elect to be treated as a domestic corporation for all purposes of this title if such corporation waives all benefits to such corporation granted by the United States under any treaty. No election under section 1362(a) may be made with respect to such corporation.

''(2) APPLICABLE FOREIGN CORPORATION.—For purposes of paragraph (1), the term 'applicable foreign corporation' means any foreign corporation if—

''(A) such corporation manufactures, produces, grows, or extracts property in the ordinary course of such corporation's trade or business, or

''(B) substantially all of the gross receipts of such corporation may reasonably be expected to be foreign trading gross receipts.

''(3) PERIOD OF ELECTION.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the taxpayer. Any revocation of such election shall apply to taxable years beginning after such revocation.

''(B) TERMINATION.—If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraph (A) or (B) of paragraph (2) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

''(C) EFFECT OF REVOCATION OR TERMINATION.—If a corporation which made an election under paragraph (1) revokes such election or such election is terminated under subparagraph (B), such corporation (and any successor corporation) may not make such election for any of the 5 taxable years beginning with the first taxable year for which such election is not in effect as a result of such revocation or termination.

''(4) SPECIAL RULES.—

''(A) REQUIREMENTS.—This subsection shall not apply to an applicable foreign corporation if such corporation fails to meet the requirements (if any) which the Secretary may prescribe to ensure that the taxes imposed by this chapter on such corporation are paid.

''(B) EFFECT OF ELECTION, REVOCATION, AND TERMINATION.—

''(i) ELECTION.—For purposes of section 367, a foreign corporation making an election under this subsection shall be treated as transferring (as of the first day of the first taxable year to which the election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

''(ii) REVOCATION AND TERMINATION.—For purposes of section 367, if—

''(I) an election is made by a corporation under paragraph (1) for any taxable year, and

''(II) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of the first such subsequent taxable year to which such election ceases to apply) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

''(C) ELIGIBILITY FOR ELECTION.—The Secretary may by regulation designate one or more classes of corporations which may not make the election under this subsection.

''(f) RULES RELATING TO ALLOCATIONS OF QUALIFYING FOREIGN TRADE INCOME FROM SHARED PARTNERSHIPS.—

''(1) IN GENERAL.—If—

''(A) a partnership maintains a separate account for transactions (to which this subpart applies) with each partner,

''(B) distributions to each partner with respect to such transactions are based on the amounts in the separate account maintained with respect to such partner, and

''(C) such partnership meets such other requirements as the Secretary may by regulations prescribe,

then such partnership shall allocate to each partner items of income, gain, loss, and deduction (including qualifying foreign trade income) from any transaction to which this subpart applies on the basis of such separate account.

''(2) SPECIAL RULES.—For purposes of this subpart, in the case of a partnership to which paragraph (1) applies—

''(A) any partner's interest in the partnership shall not be taken into account in determining whether such partner is a related person with respect to any other partner, and

''(B) the election under section 942(a)(3) shall be made separately by each partner with respect to any transaction for which the partnership maintains separate accounts for each partner.

''(g) EXCLUSION FOR PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Any amount described in paragraph (1) or (3) of section 1385(a)—

''(1) which is received by a person from an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products, and

''(2) which is designated by the organization as allocable to qualifying foreign trade income in a written notice mailed to its patrons during the payment period described in section 1382(d),

shall be treated as qualifying foreign trade income of such person for purposes of section 114. The taxable income of the organization shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.''.

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(1) The second sentence of section 56(g)(4)(B)(i) is amended by inserting before the period ''or under section 114''.

[(2) Section 245 is amended by adding at the end the following new subsection:

[''(d) CERTAIN DIVIDENDS ALLOCABLE TO QUALIFYING FOREIGN TRADE INCOME.—In the case of a domestic corporation which is a United States shareholder (as defined in section 951(b)) of a controlled foreign corporation (as defined in section 957), there shall be allowed as a deduction an amount equal to 100 percent of any dividend received from such controlled foreign corporation which is distributed out of earnings and profits attributable to qualifying foreign trade income (as defined in section 941(a)).''.]

[(3)] *(2)* Section 275(a) is amended—

(A) by striking ''or'' at the end of paragraph (4)(A), by striking the period at the end of paragraph (4)(B) and inserting '', or'', and by adding at the end of paragraph (4) the following new subparagraph:

''(C) such taxes are paid or accrued with respect to qualifying foreign trade income (as defined in section 941).''; and

(B) by adding at the end the following the following new sentence: ''A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C).''.

[(4)] *(3)* Paragraph (3) of section 864(e) is amended—

(A) by striking ''For purposes of'' and inserting:

''(A) IN GENERAL.—For purposes of''; and

(B) by adding at the end the following new subparagraph:

''(B) ASSETS PRODUCING EXEMPT EXTRATERRITORIAL INCOME.—For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2)).''.

[(5)] *(4)* Section 903 is amended by striking ''164(a)'' and inserting ''114, 164(a),''.

[(6)] *(5)* Section 999(c)(1) is amended by inserting ''941(a)(5),'' after ''908(a),''.

[(7)] *(6)* The table of sections for part III of subchapter B of chapter 1 is amended by inserting before the item relating to section 115 the following new item:

''Sec. 114. Extraterritorial income.''.

[(8)] *(7)* The table of subparts for part III of subchapter N of chapter 1 is amended by striking the item relating to subpart E and inserting the following new item:

''Subpart E. Qualifying foreign trade income.''.

[(9)] *(8)* The table of subparts for part III of subchapter N of chapter 1 is amended by striking the item relating to subpart C.

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall apply to transactions after September 30, 2000.

(b) NO NEW FSCS; TERMINATION OF INACTIVE FSCS.—

(1) NO NEW FSCS.—No corporation may elect after September 30, 2000, to be a FSC (as defined in section 922 of the Internal Revenue Code of 1986, as in effect before the amendments made by this Act).

(2) TERMINATION OF INACTIVE FSCS.—If a FSC has no foreign trade income (as defined in section 923(b) of such Code, as so in effect) for any period of 5 consecutive taxable years beginning after December 31, 2001, such FSC shall cease to be treated as a FSC for purposes of such Code for any taxable year beginning after such period.

(c) TRANSITION PERIOD FOR EXISTING FOREIGN SALES CORPORATIONS.—

(1) IN GENERAL.—In the case of a FSC (as so defined) in existence on September 30, 2000, and at all times thereafter, the amendments made by this Act shall not apply to any transaction in the ordinary course of trade or business involving a FSC which occurs—

(A) before January 1, 2002; or

(B) after December 31, 2001, pursuant to a binding contract—

(i) which is between the FSC (or any related person) and any person which is not a related person; and

(ii) which is in effect on September 30, 2000, and at all times thereafter.

For purposes of this paragraph, a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.

(2) ELECTION TO HAVE AMENDMENTS APPLY EARLIER.—A taxpayer may elect to have the amendments made by this Act apply to any transaction by a FSC or any related person to which such amendments would apply but for the application of paragraph (1). Such election shall be effective for the taxable year for which made and all subsequent taxable years, and, once made, may be revoked only with the consent of the Secretary of the Treasury.

(3) RELATED PERSON.—For purposes of this subsection, the term ''related person'' has the meaning given to such term by section 943(b)(3) of such Code, as added by this Act.

(d) SPECIAL RULES RELATING TO LEASING TRANSACTIONS.—

(1) SALES INCOME.—If foreign trade income in connection with the lease or rental of property described in section 927(a)(1)(B) of such Code (as in effect before the amendments made by this Act) is treated as exempt foreign trade income for purposes of section 921(a) of such Code (as so in effect), such property shall be treated as property described in section 941(c)(1)(B) of such Code (as added by this Act) for purposes of applying section 941(c)(2) of such Code (as so added) to any subsequent transaction involving such property to which the amendments made by this Act apply.

(2) LIMITATION ON USE OF GROSS RECEIPTS METHOD.—If any person computed its foreign trade income from any transaction with respect to any property on the basis of a transfer price determined under the method described in section 925(a)(1) of such Code (as in effect before the amendments made by this Act), then the qualifying foreign trade income (as defined in section 941(a) of such Code, as in effect after such amendment) of such person (or any related person) with respect to any other transaction involving such property (and to which the amendments made by this Act apply) shall be zero.

● Mr. MCCAIN. Mr. President, I oppose H.R. 4986, the FSC Repeal and Extraterritorial Income Exclusion Act of 2000. Unfortunately, this legislation is an example of corporate welfare. Further, it does not adequately change the old Foreign Sales Corporation (FSC) program to prevent disputes with the European Union.

I am concerned that this legislation is an example of the costly corporate welfare that cripples our ability to respond to truly urgent social needs such as health care, education, and national security. The FSC benefits many major U.S. corporations, including General Electric, Boeing, Motorola, Caterpillar, Allied Signal, and Cisco Systems. In addition, the FSC also helps foreign firms, like Rolls Royce, that have plants located in America. However, few of these benefits actually trickle down to help the American worker. Instead, as the Congressional Budget Office points out, ''many FSCs are largely paper corporations with very few employees.'' On February 24, 2000, the Appellate Body of the World Trade Organization upheld a decision that this provision is an export subsidy and violates our WTO obligations.

This pending legislation is the third version of an export subsidy that was first introduced as the Domestic International Sales Corporation provision in the Revenue Act of 1971. However, this version of the bill does little to change the effects of the FSC, and actually makes it a bigger corporate giveaway. This legislation technically eliminates the FSC, but then replaces it with a new extraterritorial tax system that essentially maintains the current subsidy. In addition, this new scheme expands the subsidy to include full benefits for defense contractors and extends benefits to agricultural cooperatives. In order to meet WTO concerns, this legislation also allows foreign firms greater ability to utilize the FSC. The total cost of rewriting and expanding the FSC subsidy will cost the American taxpayers $42 billion between 2001 and 2010—all of which will come out of the surplus.

There is also extensive evidence that this export subsidy does not work very well. In a recent report, the Congressional Research Service states that the FSC increased the quantity of U.S. exports by a range of two-tenths of one percent to four-tenths of one percent. This report also states that ''traditional economic analysis indicates that FSC reduces overall U.S. economic welfare.'' The CBO agrees that ''export subsidies, such as FSCs, reduce global economic welfare and typically even reduce the welfare of the country granting the subsidy, even though domestic export-producing industries benefit.'' CBO also points out that FSCs increase both imports and exports, due to the effects of export subsidies on foreign exchange rates. This ''beggar-thy-neighbor'' effect will actually cause U.S. domestic companies in import-competing industries to reduce domestic investment and employment.

Finally, there is no assurance that this system actually fixes the problem. The European Union has agreed to wait until November, before announcing a $4 billion list of retaliatory tariffs against the FSC subsidy. However, they have not agreed to the actual changes in this legislation. The EU still has concerns about provisions in this legislation that grandfather the FSC, and they intend to have it reviewed by the WTO. It is fair to expect that we will end up debating this issue again within the next two years. It makes more sense for the Senate to eliminate the FSC completely in line with our obligations to the WTO.

Mr. President, our country is now in a position where we can begin paying down the national debt. Every American shoulders somewhere in the range of $19,000 in federal debt, because of the fiscal irresponsibility of their elected officials. I would like to make it clear that I remain a staunch supporter of free trade and open markets. However, if we intend to support a free trade regime that helps American consumers and taxpayers, we must not continue our policy of giving large corporations and special interests giant export subsidies.

This FSC legislation is simply an unnecessary federal subsidy that does not provide a fair return to the taxpayers who bear the heavy burden of its cost. I urge my colleagues to oppose this legislation, and instead examine the prospect of completely eliminating the FSC subsidy.●

Mr. BAUCUS. Mr. President, I rise to support the legislation before us today on Foreign Sales Corporations, FSC. However, I really object to the fact that we even have to address the issue of the FSC during this session of Congress.

The European Union, despite rhetoric in support for the WTO, is taking action after action that raises real doubt about their commitment. Let's quickly review the history that brought us to this place today.

The United States created the DISC in the early 1970s. Given the different nature of the U.S. and the European tax systems, the purpose was to put American exporters on an equal footing with their European competitors. In the 1980s, in response to a negative finding at the GATT, we replaced it with the FSC to make it GATT-compatible. The Europeans accepted this alteration.

Fast forward to the 1990s. The EU lost cases to the United States on beef hormones and on bananas. These were difficult issues for Europe. Yet, the EU did not seek a negotiated solution. Nor did they try to take corrective action. Instead, the EU used every legal and procedural trick in the GATT and WTO book to weasel out. They lost at every turn. This behavior of the EU, honoring the letter of the WTO while ignoring its spirit, is inappropriate and irresponsible. The EU should be a leader in ensuring that the credibility and integrity of the WTO process is maintained. They shouldn't be taking cheap legal dodges. Why should other WTO members comply promptly with WTO decisions if the EU thumbs its nose at the system?

Finally, the EU could no longer delay and circumvent implementation of these WTO decisions. The U.S. retaliates. Then, all of a sudden, we find ourselves challenged at the WTO on FSC. As far as I know, European companies did not beat a path to EU headquarters in Brussels insisting that they take us on over the FSC. Trade ministers in European capitals did not rush to Brussels with demands to file this case against us. Rather, the EU bureaucrats, angry at having lost two important cases to the United States, were going to fight back. So, we end up with the FSC case, and another example of the EU undermining the global trade system.

Deputy Secretary of the Treasury Stu Eizenstadt has done yeoman's work in trying to resolve this problem. The legislation before us is the fruit of

his labor. And we should all thank him for working so hard, with so many diverse interests, to craft a solution. Yet, from Europe, all we have heard is a series of denunciations. An insistence that this legislation violates the WTO. An apparent eagerness to move ahead with a massive multi-billion dollar retaliation list against the United States. What a travesty!

I support this change in our law. And I express my appreciation to the other Senators who have allowed this legislation to move forward under unanimous consent, despite their interest in offering amendments to the bill. But I also call on the political leadership in Europe to step back and look at what their representatives in Brussels are doing. Please reflect on the danger to the integrity of the WTO of the actions that your EU bureaucrats have taken.

The committee amendments were withdrawn.

The amendment (No. 4356) was agreed to.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

The bill (H.R. 4986), as amended, was read the third time and passed.

Mr. ROTH. Mr. President, this bill passed by the Senate satisfies the United States' WTO obligations and ensures that U.S. companies will compete on a level playing field in the global marketplace.

By enacting this legislation, we will avoid a needless trade dispute, protect the American economy, and satisfy our international obligations to our trading partners. This bill also represents a continuation of this Senate's outstanding record of accomplishment in promoting free trade. This legislation is the third significant piece of trade legislation passed by the Senate this year. I believe you would have to search long and hard to find a better record of trade legislation.

I don't believe it is necessary to go through the extended history of the dispute between the United States and the European Union that gave rise to the need for the bill before us. The bill represents a good faith attempt to comply with the WTO's ruling that the current FSC provisions constitute an illegal export subsidy. This bill withdraws the current FSC provisions and, in their place, makes fundamental adjustments to the Internal Revenue Code that incorporate territorial features akin to those of several European tax systems. The bill not only addresses the specific concerns raised by the WTO, it also takes into account the comments received from the EU in the course of consultations over the last eight months.

I want to stress the need to pass this bill. Failure to do so could result in the imposition of retaliatory duties against American exports to the European Union. Under the WTO rules, the EU will have the right to retaliate against U.S. exports as of today unless this legislation is passed. A failure to enact this legislation would prove costly for the American worker, the American farmer, and for American business.

So it is with a great sense of satisfaction that we pass this bill today. I compliment the Senate on its farsighted vote for passage of this legislation.

Mr. ROTH. Mr. President, I would like to address the comprehensive tax and Medicare conference report that is pending before the Senate. We have worked long and hard on this package, but the result is certainly worth the effort. If our objective is to provide legislation that promotes an environment conducive to jobs, opportunity and growth—security for our families and retirees—and greater access to quality health care, then this is a package worthy of praise.

The numerous provisions in this legislation are too many to address in a single floor statement, and they certainly cover a lot of important initiatives. But they have a central theme: strengthening individuals and famiies—increasing prosperity, building security in retirement, promoting access to health care, improving quality of life, and assisting small businesses and farmers.

This legislation offers over 50 provisions to strengthen IRAs and pension plans. With broad bipartisan support, it increases IRA contributions from $2,000 to $5,000, and allows a $1,500 IRA catch-up contribution for those age 50 and above. The increase in the amount an individual is allowed to put away will enable IRA participants to earn a full $1 million more for retirement, if they save the maximum amount each year and begin their program at age 25.

This is tremendous empowerment, Mr. President, but it is only the beginning of what this legislation will do. It also allows individuals to increase contribution limits in 401(k), 403(b), and 457 plans from $10,500 to $15,000 a year. And it allows employees over the age of 50 to make additional $5,000 contributions to these plans.

This is especially important for women, many of whom take time off from work to raise children. Now, when they return, they can make critical catch-up payments to strengthen their retirement savings. And for those individuals who change jobs, this legislation provides easier transfers to be made between IRAs and employer plans, and it reduces the complexity of plan administration.

One of the most innovative new tools provided in this legislation is the creation of the Roth 401(k). Like the Roth IRA, the Roth 401(k) will allow employees to make after-tax contributions to accounts where distributions will be tax free at retirement. This allows investment income to grow faster, as it is taxed only once—when it is earned. Interest build-up and withdrawal—like the Roth IRA—remain free from taxation.

To increase access to quality health care, this legislation includes major refinements to the Balanced Budget Act of 1997. These are in addition to $27 billion worth of refinements enacted last year, as part of the Balanced Budget Refinement Act of 1999. This legislation offers improved benefits for Medicare seniors, expanding preventative benefits, lowering out-of-pocket outpatient costs, and covering several new exams, screening and therapies.

Going even further, this legislation provides improved access to Medigap coverage and protects access to important drugs. It lowers out-of-pocket hospital costs, strengthens rural, teaching, and critical access hospitals, and protects funding for home health services. It also increases access to care for nursing home patients. In the area of health care, alone, this legislation provides more than $30 billion in additional funding over the next five years.

Retired Americans will also be happy to note that this legislation fixes a math mistake made in computing the Social Security cost-of-living adjustment for last year. The increase should have been 2.5% instead of the 2.4% that was actually awarded. The correction we've included in this bill means seniors will be receiving more than $5 billion in additional payments over the next ten years.

For children, we take an important step to strengthen the State Children's Health Insurance Program by establishing policies for the retention and redistribution of unspent SCHIP funds. We also include measures to begin to protect the financial integrity of the Medicaid program. For individuals and families, we provide an above-the-line deduction for payment of medical insurance premiums for those who do not participate in an employer-sponsored medical plan.

We also provide an above-the-line deduction for long-term care insurance, and we allow individuals who incur long-term care expenses providing for relatives an extra tax deduction.

To help our family farmers and small businesses, this legislation offers a 100% deduction for payment of medical insurance for self-employed individuals. It creates FFARM accounts—tax-deferred savings accounts for farmers and fishermen, allowing a deduction of up to 20% of the income deposited into a custodial account.

Going even further to provide tax relief for small businesses, this legislation extends the Work Opportunity Tax Credit. It allows small businesses to use cash accounting methods without limitation, and clarifies and extends a number of expansion provisions and business deductions, including the business meal deduction. And these are only a few of many other provisions to support America's small businesses, the engine behind the historic economic expansion our nation enjoys.

Again, increasing opportunity and improving the quality of life is what this legislation is all about. For this reason, we have also included an important provision to help AMTRAK

build important infrastructure, to improve services, and help answer critical transportation needs throughout the country. There are some areas, Mr. President, where congestion from auto and air traffic are running at maximum levels. The answer is a modernized and efficient rail service—one that includes high-speed trains, not only to move passengers along the Eastern corridor, but all across America.

As a New York Times editorial correctly observed: ''Eighteen of the 20 most congested airports nationwide are in cities on designated high-speed rail corridors. The time has come for Congress and transportation officials to promote high-speed rail service as a means alleviating air traffic congestion.''

Strengthening AMTRAK will not only help ease car and air congestion, but it will also help revitalize inner cities, encouraging downtown redevelopment. It will also promote jobs in construction, engineering, manufacturing, and service industries.

Finally, Mr. President, to strengthen our urban areas and promote greater opportunity for individuals and families in our cities, this legislation creates 40 new ''renewal communities'' and gives those poor areas a number of tax incentives to assist them in building up their economic base. Among other things, these communities—located in urban and rural areas—would get a zero percent capital gains rate to attract much needed investments. This bill also provides incentives to invest in low income areas around the country and to clean up brownfields anywhere in the U.S. This community renewal package also contains long awaited increases in the low income housing tax credit and the private activity bond volume cap. Both of these caps have not been adjusted since 1986 and have lost over 40 percent of their original value. This package also contains a number of measures to help school renovation and construction.

Each of the provisions in this legislation will go far toward promoting an environment of opportunity and growth—security for our families and retirees—greater access to quality health care, and an improved quality of life.

Mr. President, as we consider this conference report on legislation to provide tax relief and to protect and strengthen Medicare and Medicaid, there is a lot of talk about the irregular process by which the legislation was created. No one is more unhappy than I that regular order was not adhered to. I have long labored in trying to reach a bipartisan consensus on the many important matters that comes before the Finance Committee.

However, I do not believe it useful for me to dwell on the causes of irregular order. Suffice it to say that cooperation must come from both sides. When it doesn't, when Senators instead invoke their rights at every turn, bipartisanship suffers.

As to the President's veto threat, it should be remembered that our early Presidents believed that the veto was available only to check the Congress from going beyond its constitutional authority. Later Presidents judged legislation on the whole of its merits: does the bill do more harm than good? I find it hard to find in his letter any mention of the harm he sees in this legislation. Rather, he says that this legislation is different from what he proposed, and therefore, he has ''no choice but to veto it.'' I find this assertion somewhat remarkable.

The Congress and the Presidency are comprised of 536 individuals. In fashioning legislation as far-reaching as this, no one can expect perfection from his own point of view. When I read the President's list of disappointments, I did not find it any longer than mine. And my reaction is generally shared by my colleagues. We are all pleased by some items. We are all disappointed by some other items, or by their omission.

That is because, Mr. President, this legislation is bipartisan in its content. Republican Members may be displeased that we included school construction bonds or dropped the FUTA tax reduction. Democrats may be displeased that we included a tax break for employees to buy their own health insurance or that we dropped the low-income savers tax credit. But where there are over a hundred provisions, it is not possible to write a bill the way each of us might wish.

It was clearly our intention to put together a package that would be signed into law. It was my desire that Senator MOYNIHAN be present during House-Senate negotiations, but the House majority objected. So, instead, I kept Senator MOYNIHAN informed, sought his counsel, and advocated his cause.

I think he did fairly well. He was successful in garnering increased funding for graduate medical education, increased funding for hospitals, increased DSH payments in both Medicare and Medicaid, and—this is very important—a special transition rule for New York with respect to the Medicaid upper payment level issue. On the tax side, he successfully obtained the AMTRAK provision to build a train station in New York City. And, as I recall, he was also an advocate of section 809 and 815 insurance provisions that have been included in the conference report.

Senator MOYNIHAN also asked, as did others, for the inclusion of long-term health care provisions and inclusion of a school-construction bond proposal. These were incorporated in a modified form. Perhaps not a total victory, but a substantial one nevertheless.

This progress was not accomplished easily. The chairman of the Ways and Means Committee has been steadfastly opposed to the creation and expansion of tax credits. Thus he fought the inclusion of several tax credit proposals, including those for AMTRAK and for school construction.

He was able to block several of them but not these two supported by the Senator from New York. And because these provisions were included, the chairman of the Ways and Means opposes this conference report.

Some Members have taken to the floor to try to create a picture that a few of us got in a room and wrote a bill entirely our way. But the fact is that some in the room lost and some outside the room won. And that is because, as a group, we had a paramount objective of constructing a balanced bill that would be signed into law.

I recall my own effort to remove the application of the nondiscrimination clause from the catch-up provision of the retirement security title. Everyone in the room agreed with my position. But the bill is not written that way. My amendment was dropped out of deference to the wishes of a Democrat, Congressman BEN CARDIN, who had worked on this legislation in the House.

We tried to write a balanced bill that would be signed into law.

In each of the past four weeks, there was some reason to believe that Congress was about to finish its work for the year. So in drafting this bill, we had to act quickly. I have given a great deal of thought to the process employed. I do not believe that if we had had bipartisan meetings with votes on the particular items, the text of the bill would be any different. What was lost in the process followed was any bipartisan appreciation of why the text is what it is. That is unfortunate.

At this stage, all I can ask is that you look at the text and decide if this is a good bill. You owe it to your constituents to do that. Do you want to provide Social Security recipients with the increased COLA they deserve? Do you want to protect American businesses from European Union retaliation against our exports? Do you want to update our tax laws to provide for greater retirement security? Do you want to provide tax incentives for impoverished communities? Do you want to provide more money for hospitals, hospices, home health, and nursing homes? Do you want to increase the minimum wage?

Or do you want to deny all the benefits of this legislation to your constituents because of the procedure by which the text was born?

This bill does not contain everything I'd like to see. It's not perfect. But it's a good bill, one that will help a great many Americans. It will help individuals and families prepare for greater security in retirement. It will help seniors receive improved Medicare coverage and a higher cost-of-living adjustment in their Social Security checks.

It will help small businesses and family farmers. It will improve education and ease traffic congestion. It will improve inner cities and help our hospitals. These are good objectives. They are objectives shared on both sides of the aisle.

And I encourage my colleagues to join me in voting for this legislation.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent there be a period of morning business with Senators permitted to speak for up to 10 minutes each between now and 12:30 p.m., with the time equally divided between the two leaders. And I ask consent, in order to get some fair debate, that the distinguished ranking member of the Finance Committee be recognized for the first 10 minutes, Senator WELLSTONE for the second 10 minutes, Senator GRAMM for the third 10 minutes, and Senator DURBIN for the fourth 10 minutes.

Mr. DASCHLE. Mr. President, reserving the right to object, I just do so to inquire of the majority leader about the schedule for the remainder of the day. It appears that the only remaining legislative item to be taken up today may be the continuing resolution.

Mr. LOTT. Correct.

Mr. DASCHLE. As I understand it, we do not have an objection to taking up the continuing resolution under a voice vote.

Mr. BUNNING. Yes, we do.

Mr. DASCHLE. We do have an objection?

Mr. BUNNING. Yes, we do.

Mr. LOTT. Mr. President, if the Senator would yield, as we had discussed, we hope when the House does act within the next, hopefully, 20 or 30 minutes, we would talk further and make some decisions about whether or not we would want to modify that continuing resolution in any way.

If we couldn't, of course, then we would see if we could clear it by a voice vote. We don't have it done yet, but we haven't gotten to that point yet. Within 30 minutes, we hope to get a clarification of when a vote would occur or if any modification might be forthcoming.

I don't want to go too far beyond just saying that right now. Senator DASCHLE and I are exchanging ideas. I do think we have reached a point where we need to make some decisions. Senators as well as House Members and the administration need to know what to expect. I think, to be perfectly honest, nobody wants to step up and say we have to look at an alternative. I am prepared to do that. I believe Senator DASCHLE is prepared to join me in that. We ask your indulgence for at east 30 minutes, and then we will see what we can do at that point.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, I amend my request that after Senator DURBIN, Senator HUTCHISON be included in the queue.

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

Mr. LOTT. I thank my colleagues and yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

TRADE ISSUES

Mr. MOYNIHAN. Mr. President, the majority leader has, on several occasions, noted that this Congress, particularly this session of this Congress, has been singular in the number of major trade measures that have been enacted.

With the cooperation of the minority leader, with the full support of the chairman of the Finance Committee, Senator ROTH—who was here just a moment ago but whose schedule required that he leave as soon as the unanimous consent measure was adopted—we have agreed to major trade legislation with sub-Saharan Africa —that entire part of the continent; to expand the Caribbean Basin Initiative, which is hugely important in the aftermath of the North American Free Trade Agreement—which suddenly put island nations and nations on the isthmus below Mexico at a disadvantage, which no one intended and which we have now been able to redress in some considerable measure. The permanent normal trade relations with China was one of the most important pieces of legislation we have dealt with in a half century in the Congress. And we passed the Tariff Suspension and Trade Act of 2000, granting, among other things, permanent normal trade relations to Georgia, just last week.

Now as the closing days are at hand, or may be at hand—in any event, it is the first of November—we have taken this action by unanimous consent to adopt an amended version of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000. That is a long title for a simple proposition. The World Trade Organization ruled that a measure in our Tax Code which has been in place for many years now, the Foreign Sales Corporation, which gave a tax benefit for income earned overseas—it was to encourage overseas sales—was contrary to the World Trade Organization rules.

I think we do not disagree; when we look at the rules, look at the law, the ruling was correct. But we had to then change our laws in order to give equivalent treatment to American corporations working overseas so that they would remain competitive in those markets, but would not be in violation of the WTO rules. If we were not to do that, sir, and do it today, we would be subject to $4 billion a year in tariff retaliation from the European Union. It had the potential of a ruinous trade war. We have seen the animosity that arises over bananas. How the United States ever got into the business of exporting bananas, I do not know. I think I understand some of the politics involved, but that was unfortunate. But look at how quickly reactions occurred in Europe. Just wait, if $4 billion in retaliatory tariffs were to close off American access to European markets selectively—the more sensitive items chosen, the greatest damage doable—if that were the disposition of the ministers in Brussels, and it might well be.

Well, it is not going to happen. We have done this properly. It is no coincidence that the Finance Committee, under the chairmanship of my revered friend from Delaware, Senator ROTH, adopted this measure—it is a House measure, of course—on the same day we passed out the bill to grant China permanent normal trade relations. These are trade matters of great importance.

We did it. The House and Senate subsequently agreed to a slightly different version, which we have adopted today. It will have to go back to the House. There will be no problem. The House conferees have already agreed, in the comprehensive tax bill and the Balanced Budget Refinement bill, to the exchanges.

So it is a good day and a good morning's work. Not every morning do we avoid a trade war. This morning we did. We did not have an hour to lose. The deadline was November 1. We often do things at the last minute around here. But we often do things well also.

I see my friend from Texas is on the floor. I know he would agree that avoiding a trade war over the Foreign Sales Corporation is a very good thing indeed. We have done it this morning with not a moment to lose. My friend from Texas will recall the deadline of November 1. And it is now November 1. We have done well.

I thank Senator DURBIN and others who had amendments they wanted to offer—Senator WELLSTONE, Senator BRYAN. They had every right to do so, and they could have done so. They chose not in the larger interest of the United States. I think we should express our particular gratitude to them for their forbearance.

I have said my piece. I thank all on behalf of Senator ROTH and the Finance Committee, which acted unanimously in this regard. We have dodged a big bullet. We did it usefully and quickly in the spirit of cooperation about trade matters, which will mark this Congress. Perhaps we might even get that fact reported in the press somewhere. If not, we can maybe start a web site of our own. It would be worth it.

Mr. President, I thank you for your courtesy. I see the assistant majority leader on the floor, and I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I ask unanimous consent to address the Senate for 2 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. NICKLES. Mr. President, I thank my colleague from New York for his leadership, as well as Senator ROTH.

This is an area where we have worked in a bipartisan way with the administration. It is important on international trade work. It is important that we avoid countertariffs that could possibly be enacted. I think it is good

news. I am glad we were able to get it passed. I am glad we could have some bipartisan cooperation. I think in many respects that is due to the leadership of the Senator from New York and the Senator from Delaware. I compliment both for their leadership, and I am pleased we are able to pass this legislation today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I am actually going to take about 2 minutes. I know Senator DURBIN wants to speak.

I say to Senator MOYNIHAN from New York that it is an important bill. There were a number of us, however, who objected. I know how strongly Senator MOYNIHAN feels about this legislation. I know that this is an important issue in our trade policy. I want him to know, given the tremendous respect I have for him—I think the tremendous respect that every Senator has for him—that for my own part my standing objection was focused not so much on the substance of this legislation. It was what some of us have been talking about over and over again, which is that the Senate cannot function as a great institution when Senators are not allowed to bring amendments to the floor.

There are some aspects of this bill that bother me. One of them has to do with hundreds of millions of dollars of subsidy for the tobacco industry to peddle tobacco in poor countries and in developing countries, which I think has the consequence of killing children. We don't need to be subsidizing this. Senator DURBIN is far more the expert. He can speak more about the substance of it.

I wanted to offer an amendment. I wanted to join Senator DURBIN with an amendment to knock this corporate welfare subsidy to tobacco companies out.

I am also concerned about additional subsidies that go to the pharmaceutical industry, and, frankly, the doubling of the subsidy that goes to arms exports.

The point is that it is hard to be a good Senator and it is hard for the Senate to be a good Senate when we don't have the opportunity to come to the floor with amendments and try to improve a piece of legislation. Senators can vote up or down. I know that Senator MOYNIHAN is in favor of this process.

I take exception with the majority leader over the way we are doing this. Now we are at the very end of the process, and we certainly don't want to see harsh consequences as a result of this not going through. That is why I won't object.

I will listen to the counsel of the Senator from New York. I find his counsel usually to be wise counsel.

I hope the Senate will operate differently and that there will be an opportunity for Senators to come to the floor with amendments and to be legislators to try to improve policy.

I find it outrageous, unconscionable, and egregious that we still have corporate welfare for the tobacco industry to peddle its death products to other nations and ultimately end up killing young people and children. That to me is outrageous.

I yield the floor. I yield my time to Senator DURBIN.

Mr. MOYNIHAN. Mr. President, I thank the Senator from Minnesota. He feels strongly. And he is right. But there are moments when we just have to get something done and go on to the next measure.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized.

Mr. DURBIN. Mr. President, it is my understanding that Senator WELLSTONE yielded to me the remainder of his time.

The PRESIDING OFFICER. He did, but the order was for the Senator from Texas to proceed.

The Senator from Texas.

Mr. GRAMM. Mr. President, if the Senator from Illinois is going to talk about the issue before us, I would like to grant him the courtesy of letting him go ahead and speak. I am going to thank the Senator from New York, as I always do. But I want to speak about another subject. If he wants to talk about this subject, let me yield to him, and if the Chair will come back to me when he finishes his 10 minutes.

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

The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank my colleague from the State of Texas. We disagree on substance but we have a cordial relationship on the Senate floor. I thank him for his courtesy.

I also congratulate Senator MOYNIHAN for his leadership in the closing months of this session. Senator MOYNIHAN, as he is facing retirement, has really been a leader on issues that will have a lasting impact on this world. It has been the hallmark of his congressional and public career. I note in personal conversations with him that he takes great pride in these accomplishments. I believe they will inure to the benefit of this country for generations to come. I thank him for his great service to the State of New York and to our Nation throughout his public life.

This morning I had an opportunity to object and could have been one, I guess, to stop this effort to enact at the last minute this Foreign Sales Corporation provision. I did not. The decision not to object was made after a lot of deliberation and consideration.

I would like to describe the reason why I was prepared to object and offer an amendment, and to assure my colleague that they have not heard the end of this debate.

This Foreign Sales Corporation provision is a $4 billion annual subsidy to over 7,000 companies in America which export overseas. Between 15 and 30 percent of their income from sales overseas will not be subject to taxes in the United States.

That is a windfall to these companies. It is a windfall which gives them an opportunity for more profits and, I argue as well, to create more jobs.

In many instances, in my State this Foreign Sales Corporation provision means that some of the major exporters from Illinois and across the United States have a chance to thrive and grow.

I am one who is a Democrat and proud of it and proud of my labor support. But I also believe very passionately that globalization and free trade are the future.

If they in fact are the future, we should do everything legally possible to encourage export that creates good paying jobs in the United States. And for that reason, I don't stand in general objection to the Foreign Sales Corporation. I believe that what we are talking about in this provision can be good for our economy and our workers, and in that respect I can support it. But I do have an objection to one element of it. When you look at the over 7,000 corporations that are going to benefit from this tax subsidy, you will find on that list names of three corporations which I would like to call to your attention: Philip Morris, R.J. Reynolds, and Brown & Williamson.

To make it clear, we are saying that the companies that make tobacco products can now continue to sell them overseas with a subsidy from the Federal Treasury to the tune of over $100 million a year. We are saying to these purveyors of these deadly tobacco products that we, in fact, are going to help you in selling your product overseas.

Allow me to put this in perspective. The tobacco companies I have named will have domestic profits in the U.S. of $7.2 billion, and we are giving them $100 million to subsidize the sale of tobacco products overseas. Some would stand up and say, well, Senator, why would you pick out the tobacco companies? If you are going to go after companies and the products they make, why wouldn't you go after a lot of other companies, too?

Perhaps some arguments can be made along those lines. But let me tell you why I think we should deal with tobacco exports in a different manner than other products being exported. I will use for my evidence on this the statements of Philip Morris, self-published on their website as of 10 days ago. You see all these soft, little gauzy commercials about Philip Morris feeding poor people, helping the elderly, providing scholarships. My friends and those who are witnessing this debate, this is just eyewash. This is an effort by the tobacco companies to tell you they are warm and loving people.

Well, these warm and loving people sell a product that kills 400,000 Americans a year. The No. 1 preventable cause of death in America today continues to be tobacco. We have just enacted legislation giving a Federal tax

subsidy to these same tobacco companies to sell this deadly product overseas. Is there any doubt that it is deadly? Well, for decades, the tobacco companies said: You can't prove it; there is no science behind it. We can prove that tobacco may not be harmful.

Well, they finally gave up on that sad and disgraceful claim. This is what their web site started publishing 10 days ago. This is Philip Morris. I will read it into the RECORD:

> Cigarette smoking and disease in smokers: We agree with the overwhelming medical and scientific consensus that cigarette smoke causes lung cancer, heart disease, emphysema, and other serious diseases in smokers. Smokers are far more likely to develop serious diseases like lung cancer than nonsmokers. There is no safe cigarette. These are and have been the messages of public health authorities world-wide. Smokers and potential smokers should rely on these messages in making all smoking-related decisions.

Having said that, we have just awarded to the companies that make this deadly product, and want to sell it overseas, a $100 million-a-year tax subsidy. Do you know what that means? It means that the United States of America, which for over a century has been a leader in public health causes around the world, is now going to be a leader in purveying this deadly cigarette and tobacco product in Third World countries.

Visit any country that you choose overseas and look at what you see. With the exception of countries such as Poland which, surprisingly, has enacted good legislation to stop tobacco advertising that appeals to children, in country after country, you find the most outrageous, disgraceful activity by American tobacco companies subsidized by American taxpayers selling their deadly product overseas.

In the Philippines, a very Catholic country, they give away these calendars showing religious images with American tobacco products. These are the things which American tobacco companies will now be doing with the help of this tax subsidy from Federal taxpayers.

Allow me to tell you what we face here. Since 1990, Philip Morris sales have grown by 80 percent overseas. Smoking currently causes more than 3½ million deaths each year throughout the world. Within 20 years, the number is expected to rise to 10 million, with 70 percent of all deaths from smoking in developing countries. Listen to this statistic. This ought to tell you how important this issue is to the world. Tobacco will soon be the leading cause of disease and premature death worldwide, surpassing AIDS, malaria, and tuberculosis.

Do you take any pride as an American citizen that it is our tobacco companies selling these products to children and to unsuspecting people around the world, which will soon be the public health scourge of our globe? Do you take any comfort or satisfaction in the decision we have just made within a few minutes to give a $100 million subsidy each year to these tobacco companies so they can peddle this deadly product to kids and unsuspecting people in countries around the world? Can you hold your head up high as an American, proud that we are now subsidizing this deadly product? Can you visit these countries and see the Marlboro Man and all of the logos we have seen disappearing in America re-emerging in these Third World countries as more and more people are lured into tobacco addiction? Can you be proud as an American of that fact?

I am not. I am saddened by it. I am saddened that this leadership refused to allow this bill to even be considered on the floor for an amendment. But that has been the story of the Senate for month after month. We have been afraid to face the reality of debate, afraid to face the tough votes. And for some members from those States that produce tobacco or happen to be friendly to tobacco companies, it would have been a tough vote. But these Senators have been protected from even facing this issue. It is a tax subsidy to tobacco companies that will literally kill people around the world.

This country, of which I am so proud to be part, and the State I represent—I am so proud to be their Senator here—will become known to people around the world as the source of death and disease. People now are worried about death from malaria and tuberculosis and AIDS. Sit tight because in a few years you will see other deadly diseases coming across your land—emphysema, lung cancer, heart disease—from America's tobacco products. Marlboros, Camels, all of these products will be overseas.

After they put on these sweet little commercials about how much they just love these children and they love these elderly people—they put on these sweet little commercials and spend a lot of money to tell you how lovable Philip Morris is—go to the Philip Morris web site and see what this lovable company sells to make the profits to take Meals on Wheels to an elderly lady.

They sell a product which they now readily concede causes death and disease. After 40 years of denial, they finally admitted it. We have decided that we want to subsidize their efforts. It is a sad day in the Senate. I can certainly support this tax effort for the many corporations that will use it responsibly to sell good products overseas, but to think that this Senate will be party to this decision, it is a sad day.

It is no surprise. A few years ago when we wanted to hold the tobacco companies accountable for their solicitation of children, it was stopped by the Republican leadership in the Senate. When the Clinton-Gore administration said these tobacco companies owe Federal taxpayers for what they have done to them over the years as they settled, and pay the States for what they had done to their citizens as well, the Republican leadership said, no, stop the lawsuit; don't sue the tobacco companies; leave them alone. These poor tobacco companies, leave them alone. They only have $7.2 billion annually in profits.

Well, I believe the Clinton-Gore administration is right. I believe the American people deserve this lawsuit. They deserve the tobacco companies being held accountable and they deserve that these companies finally stop soliciting our children, addicting our children, aggressively stop selling their products to our children. I have been in Congress for 18 years. For the last 12 years, I guess I have fought on this issue more than any other. I can assure my friends in the Senate it is not the end of the debate. To those who want to give this gift to the tobacco companies, they can expect this fight to continue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

CONGRATULATING SENATOR MOYNIHAN

Mr. GRAMM. Mr. President, I congratulate our dear colleague from New York. I thank him for his leadership in defense of trade. We had these running debates, most of them related to the Presidential campaign. Most have nothing to do with the business of the Senate in these waning hours of the session. Instead they are about who deserves or what deserves credit for the golden economic era in which we live. I think the plain answer is, more than anything else, the creation of a wealth-generating machine through world trade is responsible for this economic golden age in which we live.

Our colleague is what I think of as an ''old-timey'' Democrat. There used to be a lot more of them here than there are now. Unfortunately, there is going to be one fewer. Some might think the number would be zero after Senator MOYNIHAN. But there was a time when there was a bipartisan consensus in favor of world trade. Unfortunately, now it is so easy to demagog against trade because you can identify a potential loser. If a company shuts down, whether it was inefficient or ''moved off to Mexico,'' the claim is, ''They moved off to Mexico.'' Everybody who loses a job there knows it. But the 10 or 100 jobs we create for every 1 we lose, people do not know why they were created. So it is hard, politically, to stand up for economic freedom. But what is a more basic economic freedom than the right to produce things and sell them all around the world?

I would also like to say, in an era where a lot of people are running away and hiding on the issue of Social Security or pretending the problem is somehow going to go away, I again congratulate our colleague from New York for being willing to stand up on that issue. He has made it clear that unless we do something about Social Security, unless we create a wealth source

to pay benefits, we are perpetuating a cruel hoax where we are going to end up, in 12 or 15 years, having to make excruciatingly painful choices. These are not just choices about spending cuts versus taxes, but really they are choices we will have to make between our parents and our children, between the security of our parents and the economic opportunity of our children. We will have to make those choices because of failed leadership right now to deal with this issue.

I did not want to pass up this chance to say to my colleague from New York I am glad he came our way. I am proud to call him my friend and colleague.

I remember the first dealing I ever had with the Senator from New York. It was on a TV talk show. I don't know if he remembers it. We sort of had a sharp exchange. I would like to say I am not as ignorant as I used to be. I thank our colleague from New York for being an instructor for me and for America. I am proud of his academic background. I am proud to share it with him.

Mr. MOYNIHAN. Mr. President, I thank my learned and ever accommodating—almost always accommodating friend. I have learned so much from him. If he knew how little economics I brought to this body, he would appreciate how much he has added to it. I am grateful, as a scholar ought to be. Across the aisle, I admire him so much and only wish he were on this side. But he has helped both sides on the issues that matter. That is what is important. I thank my friend.

DECISIONS FOR THE NEW CONGRESS

Mr. GRAMM. Mr. President, I want to comment on where we are. I am sure the American people are confused. They hear the President saying one thing, they hear Congress saying another. They see chaos, they see gridlock, they see politics as usual. I am sure they are wondering what is this all about. Let me try, in the remaining moments I have, to explain.

We are at the end of an 8-year Presidency. Americans are going to the polls next Tuesday to make a fundamental decision. But we have a President in the White House now who would like to make the decision for the future while he is still President, by forcing Congress to spend far beyond the budget we wrote and far beyond the budget he wrote. The President has, in essence, said that if we will spend 30 percent more on social programs in Health and Human Services than we spent last year, if we will then make some permanent changes in law in addition to that spending, such as giving amnesty to people who have broken the Nation's laws and come to the country illegally, he will sign this bill and let us go home.

Let me tell you why we are not going to do that and why we are going to resist. First, I do not believe the American people want Bill Clinton, or this Congress for that matter, making decisions for the new President and the new Congress. It is time to have an election. It is time to move on. What we have is a President who almost is unhappy because the focus of attention is on the two men who are now running for President. And so, he believes that by vetoing bills he has agreed to sign and by demanding more and more spending, he gets his name back in the paper and gets on television.

Let me tell you why we should say no. We should say no because the American people ought to decide. If we did what Bill Clinton is calling on us to do, before the new President ever took his hand off the Bible we would have spent between a third and a half of the budget surplus.

I think the American people think they are deciding in this election. If people want to spend this money, they can vote for AL GORE. If they want to use the money to let working people have a tax cut and to invest it in rebuilding Social Security and Medicare, they can vote for George Bush. But however they are going to vote, Bill Clinton should not be making the decision to spend it before the American people can vote.

Let me convert it down to a simple number. For every day that we simply fund at this year's level the remaining parts of Government that are not yet appropriated for, we save between $88 and $133 million a year. By just continuing to fund at this year's level and waiting for the next President to arrive, over a 12-month period we would spend $32 billion less by not creating all these new programs, by not hiring all these new Government employees, by not making the President the president of every school board in America.

Nobody knows what $132 billion is so let me convert it into something you know. As you know, you can buy a very nice pickup truck for $20,000. You can buy basically a loaded Chevrolet or Ford pickup, full-size pickup, for $20,000. By simply saying no to Bill Clinton for 6 more days and simply leaving spending at its current level, we could buy 1.6 million pickup trucks. I think the American people understand what 1.6 million pickup trucks are.

I know there are some people who hope, even at this last minute, to cut a deal with Bill Clinton and bring to the floor of the Senate a bill that will spend $32 billion more on social programs. Let me tell you, today is Wednesday. We are going to have an election on Tuesday. They have never put an election off in American history. I just want to say to people, a deal is not going to happen. If a deal is cut today, spending $32 billion, basically taking 1.6 million pickup trucks right off people's driveways and out of their garages, I am going to object. We are not going to vote to spend that money before the people of America can vote in this election.

They are going to decide, depending on how they vote. They may tell us to spend it and a lot more, or they may say give some of it back. We may create a wealth base for Social Security but that is going to be decided by voters. But what is not going to be decided by this President and what is not going to be decided by this Congress before the election is that we are going to go on a massive spending spree. That is not going to happen.

How do I know it is not going to happen? Because today is Wednesday. Under the rules of the Senate, if a few people say no, it can't be done, it will not be done.

I think what we ought to do on a bipartisan basis is to pass a resolution funding the Government through the election, let the American people speak, and let them say what they want to happen with this money. Not Bill Clinton because he is on the way out. Let them say through this election and whom they elect what they want done.

It is not the time to be listening to the voices of the past. It is time to be looking to the future. Let's pass this CR through the election, keep spending where it is right now, and let the American people speak on Tuesday. Then we can come back here, we will have heard the message from back home, and we can respond to it.

I think that is the rational thing to do, and that is what I am going to support. I also believe that is what is going to happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

TRIBUTE TO TEXAS SAILORS LOST ABOARD THE U.S.S. ''COLE''

Mrs. HUTCHISON. Mr. President, I rise today to talk about a very sad time. It has been a sad time for America. I want to focus on the sadness in Texas.

Mr. President, last week Texas laid to rest three of her sons, killed in the terrorist attack on the U.S.S. *Cole*. Seaman Timothy Gauna of Rice, Petty Officer Ronchester Santiago of Kingsville, and Fireman Gary Swenchonis of Rockport, were killed in the October 12 disaster.

Since then, I have visited with the families of these three sailors. I met with some of them at the *Cole* memorial service in Norfolk, VA. Fine, loving individuals, they are trying, as we all are, to make sense of the senseless.

These young men had their lives ahead of them. They wanted to go to college, to travel, to raise their own families. They volunteered for the Navy because they loved their country and wanted to give something back, and now they are gone.

It may not be possible for us to understand the magnitude of this loss to the families involved.

Can we know the anguish of Mr. Swenchonis, whose son Gary was laid

to rest in the same cemetery as Gary's grandfather? A son with just 2 months left on his enlistment?

Will we ever understand the loss of Rogelio Santiago, a Navy veteran himself, who was planning a trip with his son Ron to his native Philippines in December?

Have we ever experienced the bewilderment of Sarah Gauna, who said she would never hang up the phone with her boy until she had made him laugh, as she waited days to learn the awful truth about Timothy?

We cannot feel the depth of sorrow of these families, but we are all diminished by their loss because U.S.S. *Cole* was a small patch of American soil and on that patch we lost our own.

Today, as we come and go in our ordinary routine, life is anything but routine for those they left behind.

Today, the U.S.S. *Cole*, crippled but proud, has begun the long journey home. She is under tow for a rendezvous with another larger vessel that will literally carry her home to America.

The ship is cold. It is dark and quiet. But the spirit of the fallen Texans and the 14 others who lost their lives carries on in the valiant efforts of their 300 shipmates. They saved the ship and they mean to rebuild it to fight another day.

In the words of her Commanding Officer, ''We're going to get this ship back home [and] put back together so that she can again sail and defend American freedom throughout the world.''

That is exactly what is going on today in so many other distant places across the globe. Today we remember the *Cole*, but she was just one representative of a proud service that is still on watch.

Today as most Americans get up for work, have breakfast with their families, perhaps attend a son or daughter's school play or athletic event, we may not think much about the tens of thousands who left their families alone on a pier months ago to sail into harm's way, expecting, but not really knowing for sure, if they would come home.

Just today—November 1—on, over, or under the seven seas, more than 41,000 sailors and marines are standing watch on the bridge of a warship, landing aircraft onto the deck of a carrier, manning nuclear power plants leagues beneath the surface, training to land ashore from the sea.

These thousands do not count a much greater number ashore who repair the ships, maintain the aircraft, and perform a host of other activities that mark an ordinary day in the life of a superpower.

Those young men and women are out there serving under our flag in places where they are not always welcome but whose presence is reassuring.

Every once in a while, we hear from them. Not when they are landing their fighter onto the rolling deck in pitch blackness, scared but exhilarated all the same. We do not read about it when they bring their ship alongside an oiler, two 10,000-ton machines just 90 feet apart at 15 knots for 3 hours replenishing their stores at sea to extend the reach of freedom.

There are no cameras there for the 19 year-old Marine guard at the gate of the overseas naval installation at 3 o'clock in the morning who must decide in an instant whether the vehicle approaching him is loaded with explosives or is just a shipmate coming back from liberty.

They do not seek our recognition, but at times, that is demanded of us. Unfortunately, now is one of those times. At a time such as this, we cannot believe what we see but we marvel at the courage and dedication of these young people.

I received an e-mail message that has been circulated around the world, shared with me by Knox and Kay Nunnally, whose son attends the Naval Academy. A helicopter pilot from the U.S.S. *Hawes* recorded what he saw when he was assigned the task of taking airborne photos of the stricken *Cole* pierside in Yemen, just days after the tragedy. His words bring home to us just what it is we ask of our sailors and marines:

> I will tell you that right now there are 250-plus sailors just a few miles away living in hell on earth. You can't even imagine the conditions they're living in, and yet they are still fighting 24 hours a day to save their ship and free the bodies of those still trapped and send them home.
>
> As bad as it is, they're doing an incredible job. The very fact that these people are still functioning is beyond my comprehension. Whatever you imagine as the worst, multiply it by ten and you might get there.
>
> I wish I had the power to relay to you what I have seen, but words just won't do it. I do want to tell you the first thing that jumped out at me—the Stars and Strips flying. I can't tell you how that made me feel . . . even in this God forsaken hell-hole our flag was more beautiful than words can describe.
>
> The U.S.S. *Cole* and her crew is sending a message: even acts of cowardice and hate can do nothing to the spirit and pride of the United States. I have never been so proud of what I do, or of the men and women that I serve with as I was today.

Mr. President, it has been said that young fighting men and women don't endure the risks they do for such lofty goals as patriotism, freedom, democracy, or all the other reasons why older generations send young generations into war.

Rather, these young men and women fight for the buddy next to them in the foxhole; in the next bunk over; in the back of the cockpit.

If that is so, then there can be no greater honor for Timothy Gauna, Ron Santiago, and Gary Swenchonis than that their sad and painful deaths force us to remember, through them, their shipmates and all the other thousands of American fighting men and women who are out there doing the extraordinary everyday, just so that we can live our everyday lives.

As we remember the words of the Navy Hymn, we honor the memory of these three Texans by calling to mind those they left behind:

> O hear us when we cry to thee, for those in peril on the sea.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. 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. BIDEN. Mr. President, I ask unanimous consent to proceed in morning business for 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

THE BANKRUPTCY BILL

Mr. BIDEN. Mr. President, we just had a vote on a cloture motion on the bankruptcy bill, which did not prevail; that is, cloture was not invoked. I just want to make a short statement now because we will be back at this again.

This has been a prolonged and complicated process that brought us to this point today. I personally believe it need not have been so long nor have been so complicated. We should not have had to wait for this legislation as long as we have. We should have just stepped up to this earlier. But here we are.

I heard a number of things stated in the well of the Senate as we were voting on cloture relative to this legislation about which I think people were misinformed. A lot of statements were being made that did not reflect what is actually in this bankruptcy bill.

I know many of my colleagues are not happy with the bill. But on balance the bankruptcy reform bill still deserves the strong support of the Senate. We will return to this issue later this month, and I would like to put to rest some of the assertions made.

We have what we call a very strong safe harbor provision in this bill, to protect families that are below the median income, along with allowing them adjustments for additional expenses, that will assure that only those with the real ability to pay in bankruptcy are steered from chapter 7 to chapter 13.

The Senate language, giving judges the discretion to determine whether or not there are special circumstances that justify those expenses, prevailed over the very strict House language. The bottom line is, if you are someone who is listed by the national statistics as being poor—many folks keep saying poor folks will be hurt by this—you are not even in the deal here. You are not even in the deal. You are protected. That is what we mean by the safe harbor.

This provision has been strengthened with an additional protection for those between 100 and 150 percent of the national median income. So if you have

an income that is 150 percent above the median income, you will get only a very cursory means test.

I heard on the floor today people saying how poor folks and lower middle income folks were really going to be hurt by this. That is simply not true.

Compared to current law, this provision provides increased protection against creditors who try to abuse the so-called reaffirmation process.

This bill imposes new requirements on credit card companies to explain to their customers the implications of making minimum payments on their bills every month.

A feature of this legislation that I think deserves much more emphasis is historic improvement in the treatment for family support payments, child support, and alimony. I heard my colleagues on my side of the aisle down there saying this hurts women and children.

Compared to current law, there are numerous new, specific protections for those who depend on support payments and alimony payments. The improvements are so important that they have the endorsement—I want everybody to hear this—they have the endorsement of the National Child Support Enforcement Association. This is the outfit that comes to us and says: Look, you have to provide additional help in seeing to it that child support payments are paid by deadbeat dads. The National Child Support Enforcement Association, the National Association of District Attorneys, the National Association of Attorneys General, they all support this bill because of these protections. These are the people who actually are in the business of making sure family support payments are made.

One passage from the letter sent to the Senate Judiciary Committee deserves repeating. Referring to critics of the legislation, those men and women who are on the front lines of the struggle to enforce family support agreements say:

> For the critics appear content to sacrifice the palpable advantages which this legislation would provide to support creditors—

That is, the women and children who depend on support payments.

> to defeat of this legislation, based on the vague and unarticulated fears that women will be unfairly disadvantaged as bankruptcy creditors—in more ways than one, the critics would favor throwing out the baby with the bath water.

This is a letter from the people who go out on behalf of women, collecting child support payments for their children.

They say this bankruptcy bill is a good bill.

I think the last line from the letter deserves special stress. I quote:

> No one who has a genuine interest in the collection of support should permit such inexplicit and speculative fears to supplant the specific and considerable advantages which this reform legislation provides to those who need support.

I can think of no stronger rebuttal to the arguments we have seen and heard recently about the supposed effects of this legislation on women and children who depend on alimony and child support.

Mr. President, I ask unanimous consent that the full text of this letter be printed in the RECORD.

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

DISTRICT ATTORNEY FAMILY SUPPORT BUREAU,
San Francisco, CA, September 14, 1999.

Re S. 625 [Bankruptcy Reform Act].

DEAR SENATORS: I am writing this letter in response to the July 14, 1999 letter prepared by the National Women's Law Center. That letter asserts in conclusory terms that the Bankruptcy Reform Act would put women and children support creditors at greater risk than they are under current bankruptcy law. The letter ends with the endorsement of numerous women's organizations.

I have been engaged in the profession of collecting child support for the past 27 years in the Office of the District Attorney of San Francisco, Family Support Bureau. I have practiced and taught bankruptcy law for the past ten years. I participated in the drafting of the child support provisions in the House version of bankruptcy reform and testified on those provisions before the House Subcommittee on Commercial and Administrative Law this year.

I believe it is important to point out that none of the organizations opposing this legislation which are listed in the July 14th letter actually engages in the collection of support. On the other hand, the largest professional organizations which perform this function have endorsed the child support provisions of the Bankruptcy Reform Act as crucially needed modifications of the Bankruptcy Code which will significantly improve the collection of support during bankruptcy. These organizations include:

1. The National Child Support Enforcement Association.
2. The National District Attorneys Association.
3. The National Association of Attorneys General.
4. The Western Interstate Child Support Enforcement Council.

The thrust of the criticism made by the National Women's Law Center is that by not discharging certain debts owed to credit and finance companies, the institutions would be in competition with women and children for scarce resources of the debtor and that the bill fails ''to insure that support payments will come first.'' They say that the ''bill does not ensure that, in this intensified competition for the debtor's limited resources, parents and children owed support will prevail over the sophisticated collection departments of these powerful interests.''

With all due respect, nothing could be further from the truth. While the argument is superficially plausible, it ignores the reality of the mechanisms actually available for collection of domestic support obligations in contrast with those available for non-support debts.

Absent the filing of the bankruptcy case, no professional support collector considers the existence of a debt to a financial institution as posing a significant obstacle to the collection of the support debt. The reason is simple: the tools available to collect support debts outside of the bankruptcy process are vastly superior to those available to financial institutions and, in the majority of cases, take priority over the collection of non-support debts.

More than half of all child support is collected by earnings withholding. Under federal law such procedures have priority over any other garnishments of the debtor's salary or wages and can take as much as 65% of such salary or wages. By contrast the Consumer Credit Act prevents non-support creditors from enforcing their debts by garnishing more that twenty-five percent of the debtor's salary.

In addition, there are many other techniques that are only made available to support creditors and not to those ''sophisticated collection departments of . . . [those] powerful interests:'' These include:

1. Interception of state and federal tax refunds to pay child support arrears.
2. Garnishment or interception of Workers' Compensation or Unemployment Insurance Benefits.
3. Free or low cost collection services provided by the government.
4. Use of interstate processes to collect support arrearage, including interstate earnings withholding orders and interstate real estate support liens.
5. License revocation for support delinquents.
6. Criminal prosecution and contempt procedures for failing to pay support debts.
7. Federal prosecution for nonpayment of support and federal collection of support debts.
8. Denial of passports to support debtors.
9. Automatic treatment of support debts as judgments which are collectible under state judgment laws, including garnishment, execution, and real and personal property liens.
10. Collection of support debts from exempt assets.
11. The right of support creditors or their representatives to appear in any bankruptcy court without the payment of filing fees or the requirements of formal admission.

While the above list is not exhaustive, it is illustrative of the numerous advantages given to support creditors over other creditors. And while all of these advantages may not ultimately guarantee that support will be collected, they profoundly undermine the assumption of the National Women's Law Center that the mere existence of financial institution debt will somehow put support creditors at a disadvantage. To put it otherwise, support may sometimes be difficult to collect, but collection of support debt does not become more difficult simply because financial institutions also seek to collect their debts.

The National Women's Law Center analysis includes without specification that the support ''provisions fail to insure that support payments will come first, ahead of the increased claims of the commercial creditors.'' Professional support collectors, on the other hand, have no trouble in understanding how this bill will enhance the collection of support ahead of the increased claims of commercial creditors. To them, such creditors are irrelevant outside the bankruptcy process. And in light of the treatment of domestic support obligations as priority claims under current law and the enhanced priority treatment of such claims in the proposed legislation, this objection seems particularly unfounded.

Where support creditors are indeed at a disadvantage under current law is during the bankruptcy of a support debtor. Under existing bankruptcy law support creditors frequently have to hire attorneys to enforce support obligations during bankruptcy or attempt the treacherous task of maneuvering through the complexities of bankruptcy process themselves. Attorneys working in the federal child support program—indeed, even experienced family law attorneys—may find bankruptcy courts and procedures so unfamiliar that they are ineffective in ensuring that the debtor pays all support when due.

Ideally, procedures for the enforcement of support during bankruptcy should be self-executing and uninterrupted by the bankruptcy process. The pending bankruptcy reform legislation goes far in this direction. To suggest that women and children support creditors are not vastly aided by this bill is to ignore the specifics of the legislation.

In the first place support claims are given the highest priority. Commercial debts do not have any statutory priority. Thus when there is competition between commercial and support creditors, support creditors will be paid first. And, unlike commercial creditors, support creditors must be paid in full when the debtor files a case under chapter 12 or 13. Unlike payments to commercial creditors, the trustee cannot recover as preferential transfers support payments made during the ninety days preceding the filing of the bankruptcy petition, and liens securing support may not be avoided as they may be with commercial judgment liens. Unlike commercial creditors, support creditors may collect their debts through interception of income tax refunds, license revocations, and adverse credit reporting, all—under this bill—without the need to seek relief from the automatic bankruptcy stay.

In addition, support creditors will benefit—again, unlike commercial creditors—from chapter 12 and 13 plans which must provide for full payment of on-going support and unassigned support arrears. Further benefits to support creditors which are not available to commercial creditors is the security in knowing that chapter 12 and 13 debtors will not be able to discharge other debts unless all postpetion support and prepetition unassigned arrears have been paid in full.

Finally, and most importantly, support creditors will receive—even during bankruptcy—current support and unassigned arrearage payments through the federally mandated earnings withholding procedures without the usual interruption caused by the filing of a bankruptcy case. Like many other provisions of the bill, this provision is self-executing, the bankruptcy proceeding will not affect this collection process. Frankly, and contrary to the assertions of the National Women's Law Center, it is difficult to conceive how this bill could better insure that ''support payments will come first, ahead of the increased claims of the commercial creditors.''

The National Women's Law Center states that some improvements were made in the Senate Judiciary Committee. This organization may wish to think twice about that conclusion. What the Senate amendments did was to distinguish in some cases between support arrears that are assigned (to the government) and those that are unassigned (owned directly to the parent). The NWLC might have a point if assigned arrears were strictly government property and provided no benefit to women and children creditors. However, upon a closer look, arrears assigned to the government may greatly inure to the benefit of such creditors.

In the first place the entire federal child support program was created to recover support which should have been paid by absent parents, but was not. Such recovered funds became and remain a source of funding to pay public assistance benefits, especially by the states which contribute about one half of the costs of such benefits.

More directly significant, however, is the fact that under the welfare legislation of 1996 (the Personal Responsibility and Work Opportunity Reconciliation Act) support arrearage assigned to the government and not collected during the period aid is paid reverts to the custodial parent when aid ceases. This scenario will become increasingly common in the very near future as the five year lifetime right to public assistance ends for individual custodial parents. In such cases this parent will face the double whammy of being disqualified from receiving the caretaker share of public assistance and—because of the Senate amendments—not receiving arrears or intercepted tax refunds because they were assigned at the time the debtor filed for bankruptcy protection.

In addition, prior to the Senate Judiciary Committee amendments a debtor could not obtain confirmation of a plan if he were not current in making all postpetition support payments. The advantage of this scheme was that it was self-executing. Under the Senate amendments a debtor may obtain confirmation even when he is not paying his on-going support obligation. He is only required to provide for such payments in his plan. In such cases it will then be the burden of the support creditor to bring a bankruptcy proceeding to dismiss the case if the debtor stops paying. While this procedure is a welcome addition to the arsenal of remedies available to support creditors, it should not have supplanted the self-executing remedy which required the debtor to certify he was current in postpetition support payments before the court could confirm the plan.

While the Senate version of bankruptcy reform should certainly be amended to restore the advantages of the earlier draft, it does, even in its present form, provide crucial improvements in the protections and advantages afforded spousal and child support creditors over other creditors during the bankruptcy process. These improvements will ease the plight of all support creditors—men, women, and children—whose well-being and prosperity may be wholly or partially dependent on the full and timely payment of support. Congress has created the federal child support program within title IV–D of the Social Security Act. It is the opinion of those whose job it is to carry out this program that the Bankruptcy Reform Act provides the long overdue assistance needed for success in collecting money during bankruptcy for child and spousal support creditors.

Most of the concerns raised by the groups opposing the bill do not, in fact, center on the language of the domestic support provisions themselves. Instead they are based on vague generalized statements that the bill hurts debtors, or the women and children living with debtors, or the ex-wives and children who depend on the debtor for support. It is difficult to respond point by point to such claims when they provide no specifics, but they appear to fall into two categories.

The first suggests that the reform legislation will result in leaving debtors with greater debt after bankruptcy which will ''compete'' with the claims of former spouses and children. As discussed above there is little likelihood that such competition would adversely affect the collection of support debts. In any event the bill does little to change the number or types of nondischargeable debt held by commercial lenders. it will slightly expand the presumption of nondischargeability for luxury goods charged during the immediate pre-bankruptcy period and will make debt incurred to pay a nondischargeable debt also nondischargeable. It is doubtful that either provision will, in reality, have much effect on the vast majority of ''poor but honest'' debtors who do not use bankruptcy as a financial planning mechanism or run up debts immediately before filing for bankruptcy in anticipation of discharging those obligations.

The second contention is presumably directed at a number of provisions in the bill that are designed to eliminate perceived abuses by debtors in the current system. The primary brunt of this attack is borne by the so-called ''means testing'' or ''needs based bankruptcy'' provisions which would amend the current language of Section 707(b). Most of the opposition appears to stem from the notion that means testing would be a wholly novel proposition. Such a conclusion is plainly incorrect. Virtually every court that has ever considered the issue holds that Section 707(b) already includes a means test or, more accurately, a hundred or a thousand means tests, one for each judge who considers the issue. The current Code language sets no standards or guidelines for applying this test, thus leaving the outcome of a motion subject to the unstructured discretion of each bankruptcy judge. The proposed bankruptcy reform legislation attempts to prescribe one test that all courts must apply.

The precise terms of that standard have been under constant revision since the bankruptcy reform bills were introduced last year, and undoubtedly they will continue to be fine-tuned to ensure that they strike a balance between preventing abuse and becoming unduly expensive and burdensome. But mere opposition to any change in the present law, and vague claims that any and all attempts to address such existing abuses as serial filings are oppressive and will harm women and children, does nothing to advance the dialogue. And worse, the critics appear content to sacrifice the palpable advantages which this legislation would provide to support creditors during the bankruptcy process for defeat of this legislation based on vague and unarticulated fears that women will be unfairly disadvantaged as bankruptcy debtors. In more ways than one the critics would favor throwing out the baby with the bath water. No one who has a genuine interest in the collection of support should permit such inexplicit and speculative fears to supplant the specific and considerable advantages which this reform legislation provides to those in need of support.

Yours very truly,

PHILIP L. STRAUSS,
Assistant District Attorney.

Mr. BIDEN. Mr. President, I want to briefly address two issues that have been raised by the President and by the opponents of this legislation. I honestly believe, compared to the many substantial victories for the Senate position in this legislation, these two issues fall short of justifying a change in the overwhelming support bankruptcy reform has received in the last two sessions of Congress.

First, there is the issue of this homestead cap. I heard people on the floor voting, saying: There is no protection in here, no protection at all. You just let people get away. You allow the Burt Reynolds of the world to go out there and buy multimillion-dollar homes and then declare bankruptcy. This is unfair.

First of all, do you think any of the creditors want that to happen? The companies are concerned about this, along with interest groups that are concerned about this. And on the consumer side, do you think they want people being able to escape having to pay what they owe because they are able to bury assets in a multimillion-dollar home?

So where is this coming from? First, the homestead cap. One of the most egregious examples of abuse under the current law is the ability of wealthy individuals, on the eve of filing for

bankruptcy, having the ability to shelter their income from legitimate creditors by buying an expensive home in one of a handful of States that have an unlimited homestead exemption in bankruptcy. This is one of the most egregious abuses, but it is actually pretty rare, involving only a few of the millions of bankruptcies that have been filed in recent years. Nevertheless, it is an abuse that should be eliminated.

There are reasons that the Senate included a strong provision. That was a hard cap of $100,000 in the value of a home; that is, if your home was worth more than $100,000, your creditors could go after the remainder of that money, but if it was $100,000 or less, your creditors could not get it because we have a principle in this country of not taking away your home based on bankruptcy.

This provision, though, was struck by the House. They did not like the hard cap of $100,000. So what we did was we reached a compromise to avoid the worst abuses as a last-minute move to shelter assets from creditors. That last-minute move to avoid legitimate debts has been eliminated.

To be eligible under any State's homestead exemption, a bankruptcy filer must have lived in that State for the last 2 years before filing. If you buy a home within 2 years of filing, your exemption is capped at $100,000. Put another way, you have to have a pretty good estate plan in order to escape bankruptcy by buying a multimillion-dollar home.

You have to know, under the law, if we had passed it today—and 2 years from now you go bankrupt—so you go out 2 years ahead of time and move into a State that allows you to buy a multimillion-dollar home to escape bankruptcy. So you move into that State 2 years ahead of time, and 2 years ahead of time you buy the home. You take all your assets that you are worried it is going to cost you, and you put them into a home.

Let me tell the Senate, that is a pretty good plan. I don't know how many people know over 2 years ahead of time that they are going to go bankrupt and take all their money out and put it into a home. Granted, I would prefer a hard cap, but the truth is, if you don't buy the home 2 years prior to declaring bankruptcy, the cap is $100,000. So there are a lot of canards that have been used to defeat this cloture motion. I might say to my colleagues, if they want to eliminate the worst abuse of the homestead exemption, then they should have voted for the conference report.

That brings me to the last major issue, the one that has, unfortunately, generated a lot more heat than light. That is what we have come to call—and I saw my colleague a moment ago—the SCHUMER amendment, because of the energy and dedication of my friend and worthy opponent, in this case—hardly ever in any other case—Senator SCHUMER. We all know of the confrontations, sometimes peaceful, sometimes tragically violent, that have occurred in recent years between pro-life and pro-choice groups over access to family planning clinics. Because of the threat to the constitutional right of the people who run those clinics and their patrons, Congress, with my support and President Clinton's signature, passed a bill, the strongest proponent of which was the Senator from New York, the Free Access to Clinic Entrances Act of 1993. The law makes it a crime punishable by fines as well as imprisonment to block access to family planning clinics.

Some of those who have been arrested and prosecuted under the law have brazenly announced that they plan to declare bankruptcy to escape the consequences of their crimes, specifically to avoid paying damages. Some of those individuals have, in fact, filed bankruptcy. But in no case—in no case that I am aware of or anyone else can show me or no case that the Congressional Research Service was able to find—has any individual escaped paying a single dollar of liability by filing bankruptcy. Not a dollar, not a dime, not a penny, it hasn't happened. I don't believe it will happen.

The reason is simple: Current bankruptcy law already states that such settlements for ''willful and malicious conduct'' are not dischargeable in bankruptcy. If that were not enough, current case law supports a very strong reading of the provisions of the current law. When one clinic demonstrator who violated a restraining order attempted to have a settlement against her be wiped out in bankruptcy, her claim was rejected out of hand by the court. The violation of the restraining order setting physical limits around the clinic has been ruled to be willful and malicious under the current code. The penalties assessed against the violator were not dischargeable in bankruptcy.

I ask unanimous consent to print in the RECORD a letter from the Congressional Research Service confirming, as of October 26, that an exhaustive authoritative search did not reveal any reported decisions where such liability was discharged under U.S. bankruptcy code.

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

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, October 26, 2000.

MEMORANDUM

To: Hon. Charles Grassley, Attention: John McMickle
From: Robin Jeweler, Legislative Attorney, American Law Division
Subject: Westlaw/LEXIS survey of bankruptcy cases under 11 U.S.C. §523.

This confirms our phone conversation of October 25, 2000. You requested a comprehensive online survey of reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters. Our search did not reveal any reported decisions where such liability was discharged under the U.S. Bankruptcy Code.

The only reported decision identified by the search is *Buffalo Gyn Womenservices, Inc.* v. *Behn (In re Behn)*, 242 B.R. 229 (Bankr. W.D.N.Y. 1999). In this case, the bankruptcy court held that a debtor's previously incurred civil sanctions for violation of a temporary restraining order (TRO) creating a buffer zone outside the premises of an abortion service provider was nondischargeable under 11 U.S.C. §523(a)(6), which excepts claims for ''willful and malicious'' injury. The court surveyed the extant and somewhat discrepant standards for finding ''willful and malicious'' conduct articulated by three federal circuit courts of appeals. It granted the plaintiff's motion for summary judgment and denied the debtor/defendant's motion to retry the matter before the bankruptcy court. Specifically, the court held:

''[W]hen a court of the United States issues an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order (as is proven either in the bankruptcy court or (so long as there was a full and fair opportunity to litigate the question of volition and violation) in the issuing court) are ipso facto the result of a 'willful and malicious injury.'''—242 B.R. at 238.

Mr. BIDEN. Again, Mr. President, the only case I could find, in fact, held, as I had predicted, that willful and malicious conduct denies you from being discharged in bankruptcy, in a case where a woman was arrested for violating a restraining order or getting too close to the clinic, tried to discharge the fines against her in bankruptcy, and could not.

I repeat: No one has escaped liability under the Fair Access to Clinic Entrances Act through the abuse of the bankruptcy code, not one. As strongly as feelings are on both sides of this issue, the Schumer amendment is, I must say, a solution in search of a problem. I would support it just to make sure we have the extra protection, but in the absence of the Schumer amendment, there is no reason for the Senate to reverse its opinion on the legislation that had received such strong support.

We voted today on trying to get to a conference report that had a strong Senate stamp on it. I think we made a mistake. I think part of the reason why we made a mistake in not invoking cloture was we had a number of absences. There are 16 or 17 or 18 absences, as I count it; 15 or thereabouts were for cloture. But we will come back to it again, as the majority leader has said.

This does not in any way do anything to allow people to violate the free access to clinics law. And it actually helps women and children who depend on support payments and alimony payments. I will speak to it more later.

I see the majority leader is on the floor for important business. I thank the Chair and yield the floor.

Mr. LOTT. Mr. President, I thank Senator BIDEN for his comments and for yielding the floor at this time.

UNANIMOUS CONSENT AGREEMENT—H.J. RES. 122

Mr. LOTT. Mr. President, I ask unanimous consent that at 2:15 p.m., the Senate turn to the continuing resolution, H.J. Res. 122, if received from the House, and the resolution be read the third time, agreed to, and the motion to reconsider be laid upon the table.

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

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2000

Mr. LOTT. Mr. President, I further ask unanimous consent that the Senate proceed immediately to Calendar No. 428, H.J. Res. 84, and following the reporting by the clerk, the amendment at the desk sponsored by myself be agreed to, the resolution be read the third time and passed, and the motion to reconsider be laid upon the table.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (H.J. Res. 84) making further continuing appropriations for the fiscal year 2000, and for other purposes.

There being no objection, the Senate proceeded to consider the joint resolution.

The amendment (No. 4357) was agreed to, as follows:

Strike all after the resolving clause and insert the following:

That Public Law 106–275, is further amended by striking the date specified in section 106(c) and inserting ''November 14, 2000.''

Amend the title so as to read: ''Making further continuing appropriations for the fiscal year 2001, and for other purposes.''

The resolution (H.J. Res. 84), as amended, was read the third time and passed.

Mr. LOTT. Mr. President, I announce then to the Senate that the continuing resolution to be passed at 2:15 today provides for a continuing of the Government for 1 day. The resolution just passed provides for Government funding through November 14, 2000.

I thank the Democratic leader for his cooperation on this. I know he has been involved in this process, trying to find a date that is fair and reasonable to all interested parties. I know it is not easy, but I think this is the right thing to do. I hope the House will accept this resolution and then we would proceed to wrap things up after that.

In light of this agreement, there will be no further votes today. All Senators will be notified when the next vote will occur in the Senate.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the majority leader leaves, we understand his role. He is the leader here, and it is not easy. I can't speak for everyone on this side, but I can speak for a few. We hope when we come back that we will come back with a fresh view as to what needs to be done and hopefully we can get things done.

I ask the leader, is there some assurance—I guess that is the word—is there some certainty that the House will accept this? What has the leader learned?

Mr. LOTT. Mr. President, I have spoken to the Speaker of the House. There have been staff contacts with the leadership on both sides of the aisle. It is my impression that the leadership on both sides will work for this to be accepted. We had some discussion about a different date, but the House felt very strongly that this date was preferred to the later one, and that is basically one of the reasons why we settled on this date. Hopefully, they will move quickly to accept this and then we will be able to go do our responsibilities in other areas.

I say also that while we will be home and will not be here for awhile, there has been further progress made on the Labor-HHS and Education appropriations bill. I understand there are only a few issues remaining. The staff will not be on vacation. Work will continue. It would be my hope that the areas of disagreement can be worked out and when we come back on November 14, we will have a vote or two and that is all, that we would be done with it. But hope springs eternal, and it doesn't always come true. That is what we are thinking about right now.

Mr. REID. I say to the leader, the President is excited about this. It is my understanding that he will do what is necessary in this instance. I repeat that when we come back here, I hope we can move this forward. With minor exceptions, the work done by Senator STEVENS and Senator BYRD and others on the Labor-HHS bill is really good work. I hope we can wrap it up very quickly.

Mr. LOTT. We have seen here today persistence does pay off. Yesterday very little was said about it, but a lot of credit goes to the members of the committee that produced the Water Resources Development Act under the chairmanship of BOB SMITH. There was some disagreements with the House, but they put their shoulder to the wheel and we passed that very important legislation last night. Today, thanks to a lot of good effort by Senator DASCHLE and Senator REID, and working with Senators on our side, we were able to move the FSC legislation, which we had not been able to get done earlier. So at this very moment, we are continuing to work to get agreement on the bankruptcy vote. I agree that this is an indication of why we probably should take a time-out. We didn't pass that cloture today because of absentees. I believe when we get everybody here, cloture will be invoked, and we will go forward with that important legislation.

Again, I thank the Senator for his good work as always.

I yield the floor.

UNANIMOUS-CONSENT REQUEST—S. 13

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 13, the Class Act. I further ask consent that the Senate proceed to its consideration, and an amendment at the desk submitted by Senator SESSIONS be agreed to, the bill be read the third time and passed, and that the motion to reconsider be laid upon the table. Further, I ask that the bill remain at the desk, and that when the Senate receives from the House H.R. 254, the Senate proceed to its consideration, all after the enacting clause be stricken and the text of S. 13, as amended, be inserted in lieu thereof. I further ask that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and all previous action on S. 13 be vitiated.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, a member of the minority has requested that on his behalf I object to this action, and based upon that request, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SESSIONS. Mr. President, Senator GRAHAM of Florida and I have been working on this bill. This legislation, in sum, provides that families that are saving for college tuition under prepaid college tuition plans, which are growing in popularity in America, the money they save and the interest that accrues on those plans not be taxable by the Federal Government. That is what this law would do if passed.

What we are doing in America today is we have a public policy to encourage families, through loan subsidies and other forms of incentives and delays in payments of interest, to borrow money to pay for college. But people who are saving money, even under State prepaid college tuition plans, are taxed on the money they save. This is a disincentive for the best way to pay for college tuition; that is, saving for college. Well over 40 States have these prepaid plans and the few States that don't are moving to develop them. It is working very well. The Federal tax policy ought to affirm what these States are doing and make this tax-free.

I just note that this is a middle class program. For example, 71 percent of the participating families in the Florida prepaid college program have annual incomes under $50,000, and 25 percent have incomes of less than $30,000; 81 percent of the contracts in Wyoming's savings plan have been purchased by families with annual incomes of less than $34,000; 62 percent of the contracts in Pennsylvania have been purchased by families with annual incomes of less than $35,000. The average monthly contribution to a family's college savings account in 1995 in Kentucky was $43.

So what we are saying is let's have a good public policy. Let's encourage

people to save and make sure it is a wise thing for them to do financially. If we can achieve that, I think it would be good. As far as I understand, there is only one person in this who has an objection. I would be delighted to know who that was. Senator GRAHAM and I would like to talk to them to see if the problem they have can be worked out. I think it is good public policy. Both Vice President GORE and Governor Bush have made statements that clearly indicate their support for this kind of public policy. I am working with Senator DASCHLE, the Democratic leader, and I thank him for his assistance on this legislation, dealing with an issue he thought important to his State.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

BANKRUPTCY REFORM

Mr. REID. Mr. President, I know my friend from Illinois wishes to speak at some length. First, I have a couple of comments. On the recently completed vote on cloture regarding bankruptcy, I think that is an example of why we need to follow Senate procedures the way we have for 200-plus years. Here is the bankruptcy bill brought up on a bill under the jurisdiction of the Foreign Relations Committee. Some Members who should have been weren't in that conference. I just think it is a very poor way to do business.

I think that we in the minority have been treated unfairly on a number of occasions this year. In an effort to show my displeasure—and that is a real soft, cool word because I feel more strongly than that—I voted against invoking cloture.

There comes a time when we have to work as legislators, and as Senators. If things don't change here, there are going to be other unfortunate procedures such as this, even though there is support for the substance of the legislation.

Also, Senator SCHUMER had a very strong point in this legislation. He and I cosponsored an amendment that is very simple. It said that these people—these very, in my opinion, evil people, who go to clinics where women come to get advice—some people may not like the advice they get in these clinics because some of the advice results in obtaining an abortion. But we live in a free country; people have the right to go where they want to go and talk about what they want. What these women are doing is lawful, not illegal. People spray chemicals into those facilities, and they can't get rid of the stench for up to 1 year, and many times they have to simply tear the insides of the facility down so it can be reused. In this legislation, Senator SCHUMER and I said if you do that, you cannot discharge that debt in bankruptcy as a result of the damages incurred, whether to the facilities or those women who use those facilities.

That provision should be in this legislation. For it not to be is wrong, and I understand that the chief advocate of the legislation—I don't know this to be a fact—Senator GRASSLEY, was willing to accept the provision. However, it was not in there. This is wrong and, as a matter of procedure and as a result of the substantive issue that I just talked about, I am satisfied with my vote. I have no second thoughts. I did the right thing. Unless there is a different method of approaching this bankruptcy reform, which I agree is badly needed, there are going to be roadblocks all along the way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

IN MEMORY OF MARLENE CALDWELL CARLS

Mr. DURBIN. Mr. President, I rise today to pay tribute to Marlene Carls, a very special person who worked in my Springfield office for nearly 20 years. Marlene passed away on October 24.

My wife Loretta first introduced me to Marlene almost 20 years ago when I was running for a seat in the U.S. House of Representatives. Loretta told me Marlene was an excellent worker and she hoped that she would join my campaign. So I sat down with Marlene and offered her a deal she could not refuse. I offered her a beat-up old desk, a run-down office, and not much pay, if she was willing to work for a candidate who had lost three straight elections. In a moment of weakness, she accepted. Marlene was part of our family from that day forward.

Marlene was born to be a caseworker and she was the best. She had a heart of gold. She cared so much for the people she was helping. She would take on immigration cases, foreign adoptions, and so many difficult and complicated matters. She would help constituents get the answers they needed. It wasn't just professional assistance to people in time of need; it was much more. Marlene Carls treated people asking for help as members of the family. She did her job so well that I used to get fan mail from constituents who could not thank me enough for the wonderful work that Marlene did.

With the immigration cases, we would continue to see the fruit of her work for many years. Marlene and I would go to naturalization ceremonies in Springfield twice a year. And as they would call out the name of a new citizen she would nudge me and say, ''Boss''—she always called me ''Boss''—''Boss, that's one of ours.'' It was the same kind of pride a mother has when her son or daughter crosses the stage at a graduation ceremony. She knew the people she had helped; she cared about them; she rejoiced in their success and happiness.

She showed the same caring for our military cases: mothers and fathers desperate to reach their sons and daughters in uniform—to bring them home for an emergency—to get them out of a scrape—or just to learn if they were alive in a crisis.

Marlene learned the military lingo and reached the point where she could charm the stripes off a sergeant or the stars off a general. Many families in Illinois found peace of mind because of Marlene Carls' hard work.

And she took such delight in knowing that someone's life had been made a little better off because of her efforts.

Marlene, or ''Mo'' as we came to call her, was proud of her family. Her son Kelly Carls, her daughter Cathleen Stock, and her two grandchildren, Kayla Lynn and Julia Anne Stock, were the apples of her eye. I was pleased to watch their progress through her eyes.

Marlene also had so many friends. At her memorial service last Friday in Springfield, the chapel was packed with family, fellow staffers, and friends from other governmental offices. The group from the National Park Service where we have our senatorial office came out in uniform to be there for Marlene—clergy from many different religions and many ordinary people who had the good luck of asking Marlene for a helping hand.

Mo was active as a volunteer for the Alzheimer's Association and the American Cancer Society. In everything she did, people and a concern for people took first place. In our office, her care for others and wise advice led people to call her ''Mama Mo.''

A lesser known fact is that Marlene was an amazing writer. I remember she had written a piece in a contest and won a free trip to Hollywood. She was just so proud of that.

She had a long-time dream to visit Ireland. Over her desk was a picture of herself and ''Tip'' O'Neill. She really valued that photograph as a reminder of her Irish heritage. She and Kathy Anderson of my staff had the trip to Ireland planned. But they weren't able to make the journey because of Marlene's illness. At her wake, I closed with an Irish blessing from all of us to a wonderful person and great public servant.

May the road rise up to meet you.
May the wind be always at your back.
May the sun shine warm upon your face,
The rain fall soft upon your fields.
And until we meet again,
May God hold you in the hollow of His hand.

We will dearly miss Marlene Carls.

(The remarks of Mr. DURBIN pertaining to the introduction of S.J. Res. 56 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

STELLER SEA LION

Mr. STEVENS. Mr. President, I have been criticized in the national media and many of the local media here about the Steller sea lion rider that is on the Labor, Health and Human Services appropriations bill. Riders are really

emergency items of legislation that are necessary because of the time of year. We are about ready to end our deliberations and this is the only piece of legislation to which we could attach this provision.

I want to take time now to explain why this is necessary. The Labor, Health and Human Services appropriations bill still contains this provision.

The difficulty is that the National Marine Fisheries Service has shut down the Nation's largest fishery, and it does not even know why. In response to a lawsuit filed by extreme environmental groups, the National Marine Fisheries Service has failed to show any relationship between fishing and the Steller sea lion, which it considers to be endangered.

These procedural failures have led a Federal judge to shut down all fishing in the 100,000 square miles which encompass the prime fishing grounds for pollock off Alaska. This is an area larger than the State of Oregon and twice the size of New York. It is a coastline which would stretch from the District of Columbia to Florida.

The National Marine Fisheries Service continues to blame fishermen for the sea lion decline. Right now, Alaska fishermen and Alaska coastal communities are losing $1 million a day. If fishing does not resume in January, Alaska coastal communities will be ghost towns by the end of the year.

The Alaska groundfish fishery accounts for 40 percent of America's commercial fish harvest. Alaskan cod, pollock, and other species are sold in grocery stores and restaurants throughout our Nation.

Besides fishermen, the injunction that is in place impacts airlines, shipping companies, regional ports, and transportation labor. Alaska seafood exports contribute almost $1 billion towards our annual trade deficit. Most of that is exports to Asia. Incidentally, that is where we get most of our imports.

Alaska's annual seafood processing payroll is about $240 million. That is the processing of this product alone. Seafood exports offset the transportation cost of consumer goods imported by at least 15 percent. Dutch Harbor and Kodiak, two large seaports in my State, are the No. 1 and No. 4 fishing ports of the United States. Fishing in those communities pays the cost of teachers, police, firemen, and other public servants. The fishing industry is the only industry in those areas.

This was all brought about because of biological opinions that have been issued by the Fisheries Service. The National Marine Fisheries Service found that fishing did not harm sea lions on five separate occasions in the last decade: Twice in 1991, twice in 1996, and again in March of 1998. In April of 1998, extreme environmental groups filed suit to shut down these fisheries. The National Marine Fisheries Service's next biological opinion reversed the position of that agency 180 degrees. It reversed the prior five decisions and found that fishing had caused jeopardy to these sea lions.

There was no scientific breakthrough that led to that decision. In fact, what happened was they changed the person who wrote the decision. The Federal judge rejected the scientific analysis in that biological opinion as inadequate.

Today, the agency has still not justified the sea lion mitigation measures it wants to impose. Because of the agency's repeated failure to justify its own proposals, the judge shut down all fishing for pollock in this critical area. The new biological opinion is based upon a concept called ''localized depletion.'' This is the hypothesis of the biologist who put together the last biological opinion that the judge refused to accept.

This is based on the idea that fishing vessels take food away from sea lions. There is no science to support that conclusion or that theory. In fact, the trawling that takes place for pollock occurs at depths below which the sea lions forage for food. Pollock schools are much larger than the entire fleet. They cover an area far beyond what a fleet could cover.

I have a chart that shows the concentrated fishing efforts of the pollock fleet in a period of 4 weeks in 1995. The total efforts of this fleet failed to disperse the massive school of pollock. Beginning the 26th of January, the pollock was concentrated. The next week it was still concentrated. The third week it was concentrated. The fourth week it was concentrated. Despite the fact the fleet was there on top of that pollock the whole time, the pollock did not move. In fact, the fishing effort did not disperse the pollock.

The concept the biologist used was the fishing effort in an area is localized, and it depletes the pollock locally and, therefore, there is no food for the sea lions after the trawling takes place. That is absolutely not true. Pollock move around in natural migration patterns, not as a result of fishing effort.

Few people realize this is the largest biological mass of fish in the world. It is an enormous fishery, and it has grown because of our fishing practices—it has not been depleted because of fishing practices.

The National Marine Fisheries Service has failed to study the impact of predators on the sea lion population. We now see in Alaska soaring numbers of killer whales and falling numbers of sea lions and other species upon which the killer whale preys. Science shows that killer whales feed on juvenile sea lions, the same age class of sea lions that is causing the overall decline in that species.

Recently, a killer whale washed up on a beach in Alaska. When it was examined, there were 14 steller sea lion tags in its stomach. One killer whale had eaten 14 sea lions.

In addition, I hope Members have seen video footage of killer whales in our State that take sea lions right off the beach. It is a monstrous video that shows how these enormous killer whales come right up on the beach and take the sea lions off the beach. The National Marine Fisheries Service admits the killer whale is a predator and is a major cause of the declining sea otter population in our State, but it is unwilling to accept the fact that killer whales are involved in the decline of the sea lion.

This is hard for us to understand, very frankly. There has been a shift in this decision, as I said, 180 degrees. We fail to understand why this monstrous agency, which I normally support, could be swayed by the decision of one man because of a lawsuit that was filed by extreme environmentalists.

Most scientists now believe that sea lions are declining as part of their natural population cycle. I have another chart that shows this cycle. As the temperature and other conditions in the North Pacific have changed, the sea lions have declined and the pollock have increased. One of the things that has happened in the North Pacific is the abundance of high oil content fish, such as herring, has fallen while the low oil content species, such as pollock and cod, have increased. Published research shows that sea lions need to eat high oil content fish to survive.

For instance, in southeastern Alaska where high oil content fish are still plentiful, a different subpopulation of steller sea lions is increasing in size while its western cousins are decreasing. We believe it is a problem of diet, as far as the sea lions' decline is concerned, and that those who assert that sea lions can survive on pollock alone are absolutely wrong.

Some scientists believe pollock fishing in critical habitats actually helps sea lions. This is because the pollock off my State are highly cannibalistic. Adult pollock eat juveniles in very large numbers. Trawlers target adult pollock which are over 3 years of age, whereas sea lions eat the smaller juvenile fish that would otherwise be eaten by the cannibalistic adult pollock population.

The net result of these ocean changes is that as our pollock population has increased, the sea lion population has decreased. Yet the decision of the biologist was that the reason for the sea lion population decline was the lack of availability of pollock. The National Marine Fisheries Service should know better than to shut down the largest private sector employer in Alaska without a good reason.

Right now they do not have a reason based upon science. Their conclusion is based entirely upon a lawsuit filed by an extreme environmental group, which also has no science behind it. This is absolutely wrong. That is why I have insisted on keeping this rider in place which will allow the fishery to continue on the basis of the protections that were already in place to protect the sea lions.

We have agreed not to invade the sea lion rookeries. In fact, we have set up protection areas around them. Our industry has contributed $1 million toward sea lion research to help find out some of the reasons for their decline.

We have appropriated a sizable amount of money to the National Marine Fisheries Service and the Alaska SeaLife Center to continue the research to find out why sea lions are declining. For myself and most of us who have spent our adult lives on the oceans around our State, I believe it is the overabundance of orcas, the killer whale population, that is causing the decline in the sea lions of the western population.

I repeat. Under the rider, fishing will continue until July 1, 2001 under all the restrictions that were in effect. These protective measures include restrictions on trawl fishing near sea lion rookeries, haul-outs, and foraging areas.

There are no-entry zones for fishing vessels near sea lion rookeries and haul-outs.

We have limitations on the harvest levels inside critical habitat.

We have split the pollock season into four different seasons to reduce the impact on the areas where the sea lions are.

We have reduced the daily catch rate through cooperative fishing. We have a very conservative process for setting the total allowable catch level, which actually is 13 percent lower than what would have been projected in 2001.

We require Federal observers to monitor harvest levels, including harvests inside any critical habitat area. And there are additional sea lion mitigation measures that are in effect.

We do not, however, believe there should be a complete cessation of this enormous fishery. This is an enormous fishery. Two and a half billion pounds of fish are brought ashore from this massive population every year. Yet as we show, as we take mature pollock, the pollock biomass continues to grow. If we do not take that mature pollock from this biomass, it will once again go back to eating its own young and decrease.

So this rider is absolutely necessary to preserve the most massive and valuable fishery off our shores. I do hope those who criticize it will take time to read the opinions I am going to place in the RECORD.

Mr. President, I ask unanimous consent to have printed in the RECORD summaries of the opinions that were written, the conclusions and opinions written before the extreme environmentalists entered this issue, and the summary of the one that has been filed now by those who came on the scene after that lawsuit was filed.

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

DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE, SILVER SPRING, MD, MARCH 2, 1998.

Memorandum for: Dr. Gary Matlock, Director, Office of Sustainable Fisheries.

From: Hilda Diaz-Soltero, Director, Office of Protected Resources.

Subject: Endangered Species Act Section 7 Biological Opinion on the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery, the 1998 Total Allowable Catch Specifications, and the effects on Steller Sea Lions (*Eumetopias jubatus*).

Attached is the Biological Opinion on the effects of the Fishery Management Plan (FMP) for the Gulf of Alaska groundfish fishery, the 1998 Total Allowable Catch specifications and its effects on the endangered western population of Steller sea lions (*Eumetopias jubatus*). The biological opinion concludes that the 1998 fishery is not likely to jeopardize the continued existence and recovery of Steller sea lions or to adversely modify critical habitat. Please note that the biological opinion only addresses the 1998 fishery, not the continued implementation of the GAO FMP for groundfish beyond 1998. The Alaska Region will need to reinitiate section 7 consultation for the fishery in 1999 and beyond.

DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE, SILVER SPRING, MD, APRIL 19, 1991.

Memorandum for: The Record.

From: William W. Fox, Jr.

Subject: Endangered Species Act Section 7 Consultation Concerning the Bering Sea and Aleutian Islands Groundfish Fishery Management Plan and its Impacts on Endangered and Threatened Species.

Based on the attached Biological Opinion, we conclude that the Bering Sea and Aleutian Islands (BSAI) groundfish fishery, as currently managed and conducted, is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of the National Marine Fisheries Service.

This opinion considers all aspects of the fishery including the Total Allowable Catch (TAC) specifications for 1991. Steller sea lion research efforts to assess the status of the population and the factors involved in the population decline will also continue. The available results will be used during the 1992 specification process.

The Steller sea lion final rule (November 26, 1990, 55 FR 49204) established 3-nationalmile buffer zones around major sea lion rookeries in the Gulf of Alaska and the Bering Sea. As outlined in the final rule, NMFS intends to undertake further rulemaking after considering additional protective regulations and the need for critical habitat designation for Steller sea lions. NMFS will solicit comments from the Steller Sea Lion Recovery Team, other experts, and the general public on the need to modify the existing buffer zones or to create additional buffer zones.

An Incidental Take Statement is not included with this Biological Opinion because a limited incidental take is already authorized for Steller sea lions under Section 114 of the Marine Mammal Protection Act (50 CFR 229.8). In addition, the quota established in the regulations at 50 CFR 227.12(a)(4) has not been exceeded.

DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE, SILVER SPRING, MD, APRIL 19, 1991.

Memorandum for: The Record.

From: William W. Fox, Jr.

Subject: Endangered Species Act Section 7 Consultation Concerning the Gulf of Alaska Groundfish Fishery Management Plan and Its Impacts on Endangered and Threatened Species.

Based on the attached Biological Opinion, we conclude that the Gulf of Alaska (GOA) groundfish fishery, as currently managed and conducted, is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of the National Marine Fisheries Service.

This opinion considers all aspects of the fishery including the Total Allowable Catch (TAC) specifications for 1991. Currently, this includes only an interim TAC of 17,500 metric tons (mt) for walleye pollock in the Western/Central Regulatory Area and 850 mt in the Eastern GOA Regulatory Area. The final pollock TAC specification for 1991 is still under review. Steller sea lion research efforts to assess the status of the population and the factors involved in the population decline will also continue. The available results will be used during the continuing 1991 TAC consultation and during the 1992 specification process.

The Steller sea lion final rule (November 26, 1990, 55 FR 49204) established 3-nauticalmile buffer zones around major sea lion rookeries in the Gulf of Alaska and the Bering Sea. As outlined in the final rule, NMFS intends to undertake further rulemaking after considering additional protective regulations and the need for critical habitat designation for Steller sea lions. NMFS will solicit comments from the Steller Sea Lion Recovery Team, other experts, and the general public on the need to modify the existing buffer zones or to create additional buffer zones.

An Incidental Take Statement is not included with this Biological Opinion because a limited incidental take is already authorized for Steller sea lions under Section 114 of the Marine Mammal Protection Act (50 CFR 229.8). In addition, the quota established in the regulations at 50 CFR 227.12(a)(4) has not been exceeded.

DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE, SILVER SPRING, MD, SEPTEMBER 20, 1991.

Memorandum for: The Record.

From: William W. Fox, Jr.

Subject: Endangered Species Act Section 7 Consultation Concerning the 1991 Gulf of Alaska Groundfish Fishery Walleye Pollock Total Allowable Catch Specification.

Based on the attached Biological Opinion, we conclude that the fourth quarter 1991 Gulf of Alaska walleye pollock fishery, as herein described, is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of the National Marine Fisheries Service.

The management measures implemented with the 1991 GOA walleye pollock total allowable catch (TAC) remain in effect. To minimize the likelihood that the fourth quarter harvest will exceed the 1991 TAC, NMFS will open the fishery for only a predetermined period of time. Daily reporting of all processors will be required, as well as 100 percent observer coverage on vessels over 60 feet in length.

An Incidental Take Statement is not included with this Biological Opinion because

a limited incidental take is already authorized for Steller sea lions under Section 114 of the Marine Mammal Protection Act (50 CFR 229.8). In addition, the quota established in the regulations at 50 CFR 227.12(a)(4) has not been exceeded.

[Excerpts From Biological Opinion on 2000 TAC Specifications for BSAI and GOA Groundfish Fisheries, and the AFA]

REINITIATION—CLOSING STATEMENT

This concludes formal consultation on the 2000 TAC specifications for the BSAI and GOA groundfish fisheries, and the American Fisheries Act. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or designated critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or designated critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation of consultation.

The conclusions of this Biological Opinion were based on the best scientific and commercial data available during this consultation, NMFS recognizes the uncertainty in these data with respect to potential competition between the western population of Steller sea lions and the BSAI and GOA fisheries for Pacific cod. NMFS also recognizes that it has a continuing responsibility to make a reasonable effort to develop additional data (51 FR 19952). To fulfill this responsibility, NMFS has identified crucial information necessary to address this question again in one year. That information will result from analyses listed in the Conservation Recommendations. NMFS will consider the results of these studies as new information that reveals effects of the agency action that may affect listed species or designated critical habitat in a manner or to an extent not considered in this opinion.

* * * * *

CONCLUSION

After reviewing the current status of the Steller sea lion, the environmental baseline for the action area, the effects of the proposed 1999–2002 Atka mackerel fishery, the cumulative effects, and the conservation measures that will result from recommendations of the NPFMC, it is NMFS's biological opinion that the action, as proposed, is not likely to jeopardize the continued existence of the Steller sea lion or adversely modify its critical habitat. Barring any need for reinitiation prior to implementation of the fishery in 2003, this opinion will remain in effect until the end of calendar year 2002.

After reviewing the current status of the Steller sea lion, the environmental baseline for the action area, the effects of the proposed 1999–2002 BSAI pollock fishery, and the cumulative effects, it is NMFS' biological opinion that the action, as proposed, is likely to jeopardize the continued existence of the western population of Steller sea lions and adversely modify its critical habitat.

After reviewing the current status of the Steller sea lion, the environmental baseline for the action area, the effects of the proposed 1999–2002 GOA pollock fishery, and the cumulative effects, it is NMFS' biological opinion that the action, as proposed, is likely to jeopardize the continued existence of the western population of Steller sea lions and adversely modify its critical habitat.

* * * * *

After reviewing the current status of the Steller sea lion, the environmental baseline for the action area, the effects of the 1999 BSAI and GOA groundfish fisheries with the TAC levels proposed, the cumulative effects, and the conservation measures that will result from recommendations of the NPFMC, it is NMFS' biological opinion that the action, as proposed, is not likely to jeopardize the continued existence of the Steller sea lion or adversely modify its critical habitat. This opinion is contingent upon development and implementation of a reasonable and prudent alternative to avoid jeopardy and adverse modification as found in the December 3, 1998 Biological Option on the BSAI and GOA pollock fisheries.

This opinion will remain in effect until the end of calendar year 1999, at which time the issue of competition between these fisheries and Steller sea lions should be re-examined. The conservation recommendations provided below include recommendations for studies to be completed in the interim period. The results of those studies should facilitate re-examination of the question of competition between these groundfish fisheries and the Steller sea lion.

Mr. STEVENS. Mr. President, there is no reason to interrupt this fishery. There is great reason to try to find out why the steller sea lion is declining. We have a massive effort to try to determine that. We will cooperate in any way we can to save this population. But we do not want to lose this massive biomass in the process.

If this trawl fishery does not continue, it will decline back to where it was before the trawl fishery was started. I think those who criticize us would do well to study the science and talk to people who know something about these steller sea lions and the fisheries, and quit listening to these extremist political people who are involved in this process, as far as the environmental groups are concerned.

PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. STEVENS. Mr. President, on behalf of the leader, I send a concurrent resolution to the desk providing for a conditional adjournment of Congress until November 14, 2000, and I ask unanimous consent that the resolution be agreed to, and the motion to reconsider be laid upon the table. I ask that the clerk read the resolution.

The PRESIDING OFFICER (Mr. CRAPO). The clerk will report the resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 159) providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives:

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Wednesday, November 1, 2000, or Thursday, November 2, 2000, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Tuesday, November 14, 2000, or until such time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Wednesday, November 1, 2000, or Thursday, November 2, 2000, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until noon on Monday, November 13, 2000, at 2 p.m., or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

There being no objection, the concurrent resolution (S. Con. Res. 159) was considered and agreed to.

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

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

PHYSICIAN-ASSISTED SUICIDE LAW

Mr. WYDEN. Mr. President, I am pleased this morning that the Senate thus far is functioning the way it should when it comes to new controversial matters such as my State's physician-assisted suicide law. I have been forced to filibuster the tax bill since late last week because at that time there was an effort to stuff the Nickles legislation into that package in the dead of night. This legislation troubles me greatly because I believe it will cause unnecessary suffering for patients in every corner of the country. It involves law enforcement—specifically, the Drug Enforcement Administration—in a process that is so sensitive with respect to helping patients who are suffering around our country.

This legislation has never been marked up by the committee of jurisdiction in the Senate. It has never been open to amendment by the Senate. It has not cleared even one of the traditional hurdles to which important legislation is subjected when it is introduced in the Senate.

This is legislation that has over 50 leading health organizations, including the American Cancer Society, stating that it is going to hurt pain care for the dying. It is also fair to say that the senior Senator from Oklahoma, Mr. NICKLES, has a number of organizations that support his efforts. When we have

a number of organizations, respected organizations, that disagree about a very sensitive, totally new issue before the Congress, the Senate certainly should move carefully to evaluate the consequences of its actions.

I spoke with the President of the United States about this matter twice on Monday. I was pleased to read the comments of the President expressing concern about the bill's impact on pain care and on physicians. I am absolutely convinced that if this legislation were to become law, there would be many health care providers in this country who are opposed to physician-assisted suicide, as I am, who would be very fearful about treating pain aggressively because the Nickles legislation criminalizes decisions with respect to pain management.

The people of Oregon, who have a ballot in their hand such as this one right now, want to know that this ballot really counts. The people of Oregon, in coffee shops and beauty parlors all over the State, when they are considering how to vote right now, are asking themselves: Does this ballot really count? When we vote on a matter that is critical to us, particularly on a measure that has historically been left to the States, we want to make sure that people 3,000 miles away won't substitute their personal moral and religious beliefs for ours on a matter that has historically been left to us to decide.

I can tell the people of Oregon now that their vote still counts. As of today, whether you vote for my party or the party of Senator NICKLES, it doesn't matter. This ballot, as of this morning in the State of Oregon, still counts, regardless of whether you are a Democrat or a Republican, a Liberal, a Conservative, Independent. Regardless of your political persuasion, as of now in the State of Oregon, this ballot still counts.

Your vote is important. I hope folks at home exercise that right. Their vote still means something. I am going to do my best to see that it continues to count when Congress reconvenes after the election.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

COMMUNITY SCHOOL DISTRICT DEPENDENCE

Mr. CRAIG. Mr. President, as the Senator from Oregon is leaving the floor, I thank him for the cooperation and bipartisan work he and I were able to accomplish this year, through the Forests and Public Land Management Subcommittee that I chair on the Energy and Natural Resources Committee, by passing and yesterday having the President sign the community school district dependent bill that goes a long way toward stabilizing our schools and our county governances within the rural resource dependent communities of the western public land States.

Mr. WYDEN. Will the Senator yield briefly?

Mr. CRAIG. I am happy to yield.

Mr. WYDEN. I appreciate my colleague yielding. I thank him for the extraordinary bipartisan approach he has taken throughout this session.

I think 18 months ago, when the session began and we were tackling the county payments question, particularly rural schools and roads, nobody thought we could put together a bipartisan coalition. Two sides were completely dug in. One side said we should totally divorce these payments from any connection to the land; others went the other way and said let's try to incentivize a higher cut. I believe the Senator from Idaho, in giving me the opportunity that he has as the ranking Democrat on the forestry subcommittee, has shown that we can take a fresh approach on these natural resources issues—in particular, timber.

I appreciate my colleague yielding me the time. I am looking forward to working with him again next session because it was an exhilarating moment to have the first major natural resources bill in decades come to the floor of the Senate, as our legislation did.

I thank my colleague for letting me intrude on his time. I have had a chance to be part of a historic effort with my friend from Idaho, and it has been a special part of my public service. I thank him for that.

Mr. CRAIG. I thank the Senator from Oregon. Both he and I have learned that when you try to change a law that is actually 92 years old, or adjust it a little bit, it is difficult to do. We were able to do that. Next year, there will be a good number of challenges on public lands and natural resource issues. I look forward to working with Senator WYDEN.

ELECTRICITY PRICE SPIKES

Mr. CRAIG. Mr. President, I very recently came to the floor and expressed my grave concern about the reliability of affordable electricity. I am not alone in my concerns about this issue. Indeed, some of the loudest voices expressing similar concerns about energy prices are coming from not just Idaho but California, and specifically from my distinguished colleagues from California here in the Senate.

By my comments today, I do not diminish or in any way cast doubt about the substantial hardships experienced by the ratepayers in California, particularly southern California. Indeed, I have great empathy for them, primarily because Pacific Northwest ratepayers are bracing for power shortages in the near future that will cause energy prices to soar and hurt large and small businesses alike and put some residential customers in danger, especially during the cold and hot periods of the year in our region of the Pacific Northwest. I share equal concerns with the citizens of California.

We must confront the obvious facts facing all energy consumers today.

There is an energy supply crisis in the United States. It is clear that the administration didn't see it coming, or at least ignored it. We in the Congress heard no alarms from the Department of Energy and were given not enough warning during the last 8 years that an energy supply crisis was about to threaten the electrical industry of our country.

One of the very few pieces of energy legislation that was sent to Congress for review and passage was the administration's Comprehensive Electrical Competition Act in April 1999. This legislation was purported to result in $20 billion in savings a year to America's energy consumers. However, this legislation would not have precluded the crisis in California, the kind that Californians experienced this summer. Indeed, the legislation was full of mandates and rules that didn't offer any economic incentives or investments in new supplies.

Moreover, the legislation included a renewable portfolio mandate that did not include cheap hydropower as a renewable. I know the Presiding Officer and I talked about it at that time—that all of a sudden we had an administration that was not going to include hydropower as a renewable. This renewable portfolio requirement would have made electricity more expensive and more scarce to the consumer. Part of the problem in California appears to be that it is unwilling to accept the tradeoff of high prices required by environmental regulations. Either the tough environmental standards that currently exist in California are an acceptable cost of energy consumption or California must make necessary environmental adjustments for more abundant supplies at a cheaper price.

In addition, the administration must reexamine the use of the price caps that apparently have caused the supply problems in California.

Mr. President, these are some of the reasons why the legislation failed to get the desired support in Congress from a majority of the Members which included many Democrats as well as Republicans. We recognized you simply can't just go out and say here is the energy, what it is going to cost, cap it at prices, and put all these environmental restrictions on it. It is going to ultimately get to the consumer and, boy, did it get to them in California this summer. Many of us were justifiably concerned about the impact such legislation would have on the current electrical supply network that supports the most reliable electric service found anywhere in the world.

The administration did not adequately explain how the legislation would prevent energy supply problems from occurring if its legislation was passed—perhaps because it simply didn't have an adequate explanation or, if it knew the facts, it certainly wasn't willing to have them known publicly.

Rather than wait for Federal direction on this issue, many States embarked on their own experiment with electrical restructuring. Some of those State programs appeared to be experiencing some success by giving to their electricity consumers choice of energy suppliers without jeopardizing reliable service. However, other States are experiencing great difficulties ensuring reliable service at affordable prices. And California happens to be one of those States.

I am not interested in pointing blame for failures. I am interested in getting at the facts and understanding them as they relate to how they contributed to the failures so that objective assessments of future legislative proposals can be made to avoid what happened in California again in the coming years. Moreover, I want to ensure that the distinguished Members from California have all of the facts necessary to fully understand and appreciate the role the Bonneville Power Administration plays in the California markets. There were a lot of accusations made this summer about how the Bonneville Power Administration was handling its electrical supply. I think the facts are soon to be known and an entirely different story will emerge.

I fully expect the facts to prove that the Bonneville Power Administration has not contributed to the energy cost crisis in California and that BPA can and will continue to play a positive role in bringing affordable surplus electricity from the Pacific Northwest to the California markets when that surplus is available.

For these reasons, it is imperative to get relevant information about the California energy price crisis to Congress and the American people as soon as possible. It has come to my attention that the Federal Energy Regulatory Commission's investigative report on California's wholesale electricity markets is complete and ready for distribution. I was told just this morning that they have finally decided to release it.

Indeed, in a news report yesterday, I read that a Democrat Commissioner from FERC stated that the FERC could not find evidence that California power rates were unjust and unreasonable. The Commissioner also told the reporters that there was no evidence of abuse by energy companies operating within the State.

This is important information that must be shared and now will be shared with Congress and all electrical consumers. The news reports also say the Federal Energy Regulatory Commission report would address sweeping structural changes in California's independent supply operator, or ISO, which controls the high voltage transmission grid, and the State's power transmission grid, and the State's power exchange, where power is bought and sold.

It has come to my attention that the FERC report has been complete since October 16. There was some effort to keep it quiet, but it appears now to be breaking on the scene. This important information has been available and is now, as I say, beginning to come out. I do not understand why Congress should resist this kind of information. It ought to be made immediately available to Members of the Senate Energy and Natural Resources Committee and the committee of jurisdiction for FERC issues and shared with members of the House Commerce Committee, where all of these issues will have to be considered.

Indeed, one of the FERC Commissioners recognized its importance and talked about the issuance of this report. Commissioner Hebert captured these thoughts with some pretty eloquent words on October 19 when he said:

> Rather than wait for November 1 to release the findings of our staff's investigation—

Which they finally did. He felt it was important that they do it at this time. He said—

> I urge the Chairman to release the completed report now.

It seems that Commissioner is finally getting his way.

> Open government requires it; fairness does as well.

And, most importantly, on this kind of information.

> The people of California should have as much time as possible to digest findings and consider the options presented.
>
> Justice Brandeis often remarked, ''Sunshine is the best disinfectant.'' Let the sun shine on our staff's report.

The Commissioner is speaking of the FERC staff.

> It can only help heal the raw emotions rampant in the State of California.

It is time Californians look at themselves and decide what went wrong in California because it wasn't as a result of the Bonneville Power Administration hoarding its power or choosing not to send power to California. It was California now finding out that some of the environmental restrictions they wanted in their marketplace are going to be very expensive restrictions indeed for which the average consumer of California will have to pay.

With that, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:29 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HUTCHINSON.)

MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 2001

The PRESIDING OFFICER. Under the previous order, H.J. Res. 122 is passed.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, for the leader, I ask unanimous consent that there be a period for morning business until 3 p.m. with the time between now and 3 p.m. divided between the two leaders.

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

FFARRM ACT

Mr. GRASSLEY. Mr. President, the tax relief bill we are about to pass contains many very popular tax cut measures that will be good for Americans and good for the country. One of the provisions included in the package is The Farm, Fisherman, and Ranch Risk Management Act—FFARRM.

This is a proactive measure that would give farmers a five-year window to manage their money. It would allow them to contribute up to 20% of the annual income to tax-deferred accounts, known as FFARRM accounts. The funds would be taxed as regular income upon withdrawal.

If the funds are not withdrawn five years after they were invested, they are taxed as income and subject to an additional 10% penalty. So, farmers will be able to put away savings in good years so they will have a little bit of a cushion in bad years.

Agriculture remains one of the most perilous ways to make a living. The income of a farm family depends, in large part, on factors outside their control. Weather can completely wipe out a farm family. At best, it can cause their income to fluctuate wildly. The uncertainty of International markets also threatens a farm family's income.

If European countries impose trade barriers on farm commodities, or if Asian countries devalue their currency, agricultural exports and the income of farmers will fall.

Today, farmers face one of their most severe crises with record low prices for grain and livestock. The only help for these farmers has been a reactionary policy of government intervention. While this aid is necessary to help farmers pull through the current crisis, it's merely a partial short-term solution.

Farmer Savings Accounts will help the farmer help himself. It's not a new government subsidy for agriculture and it will not create a new bureaucracy purporting to help farmers. It will simply provide farmers with a fighting chance to survive the down times and an opportunity to succeed when prices eventually increase.

Another important provision in this bill deals with farmers who want to income average but aren't able to because of the alternative minimum tax. A few years ago, Congress reinstated income averaging for farmers because we recognized that farmers' income fluctuated from year to year.

Unfortunately, many farmers are not able to make use of this benefit because they're subject to the alternative minimum tax. Our tax relief bill will fix this problem for tens of thousands of farmers.

There are many other farmer-friendly measures that I and others advocated in the Senate bill. Unfortunately, some of our House counterparts didn't agree with us. I believe that will change next year and I will certainly be working hard to pass these in the next Congress.

In the meantime, we have some very good and necessary pro-farmer proposals before us that can be passed this year.

I only hope the Clinton-Gore administration doesn't veto the family farmer by vetoing this bill.

Thank you Mr. President.

SMALL BUSINESS REAUTHORIZATION CONFERENCE REPORT

Mr. GRASSLEY. Mr. President, I would like to take a moment to discuss some of the health care provisions in the tax bill. It's not a perfect bill, but it contains a lot of items that will improve health care in this country.

Let me touch on the issue of Medicare equity. We in Iowa have been frustrated by the inequitable payment formulas that hurt cost-efficient states like ours. These disparities exist in both traditional Medicare and in the Medicare+Choice program. Well, this bill takes a major step toward correcting this injustice. I'd like to walk through some of the reasons why this bill is good for health care in Iowa.

This bill corrects the Medicare Disproportionate Share program, known as ''DISH,'' as proposed in a bill I sponsored with Senator ROBERTS and others. This program helps hospitals that treat large numbers of uninsured patients. It's obvious that many rural Americans are uninsured, and that rural hospitals meet their duty to treat these people. But from its inception, this program has discriminated against rural hospitals. They have had to meet a much higher threshold than large urban hospitals have. Well, this bill finally equalizes the thresholds for all hospitals. There's still more work to do on this program, but this is a major step forward for equity in Medicare.

The bill also reforms the Medicare Dependent Hospital program, as proposed in legislation I co-sponsored with Senator CONRAD and many others. Many rural areas have aged populations, and this is especially true in Iowa. So this designation benefits small rural facilities that have more than 60% Medicare patients. But incredibly, hospitals only receive this benefit if they met that level way back in 1988! Unfortunately, the Medicare program is full of this kind of outdated, unreasonable rules. That's why we need Medicare reform. But in the meantime, I'm glad to report that this bill would correct this particular problem: if a rural hospital has been over that 60% level in recent years, it qualifies. That's great news for rural hospitals.

Other key provisions of the bill strengthen our Sole Community Hospitals, knock down obstacles to the success of the Critical Access Hospital program for rural areas, and enhance rural patients' access to emergency and ambulance services.

The bill also helps hospitals—including all Iowa hospitals, both urban and rural—by providing a full Medicare payment increase to offset inflation in 2001.

Low payment rates for Iowa and other efficient states have prevented the Medicare+Choice program from taking root in Iowa and offering seniors the full range of health care options available elsewhere. I am pleased that the bill provides a major boost to entice plans to enter such regions, raising the minimum monthly payments for plans in rural areas from $415 to $475 per month, and for urban areas from $415 to $525 per month. These increases were proposed in a bill I co-sponsored with Senator DOMENICI and others, and I am hopeful that they will soon provide Iowans with the same range of choices available to seniors in other areas.

The bill gives rural seniors access to the best medical care through telemedicine, as I have worked with Senator JEFFORDS and many others to do. In rural areas, medical specialists are not readily available. For many seniors, traveling long distances is simply not feasible. But technology now makes it possible for patients to go to their local hospital or clinic and be seen by a specialist hundreds of miles away. We in Iowa have tremendous capacity to take advantage of this. Yet for too long, the Medicare bureaucracy has put up every barrier it could think of to telemedicine. But this bill changes that, greatly expanding the availability of Medicare payment for services provided by telemedicine, Medicare patients will now have access to the world's best doctors and medical care regardless of where they live.

The bill protects funding for home health services by delaying a scheduled 15% cut in payments, as well as providing a full medical inflation update. It's not secret that I, like many of my colleagues, would have preferred to see that 15% cut canceled permanently rather than simply delayed for another year. I hope that we will accomplish that next year.

The bill also protects the access of our neediest beneficiaries to home health services when they use adult day care services. Patients can only receive home care under Medicare if they are ''homebound,'' and the bureaucracy has said that patients who leave their home for health care at an adult day care facility—such as many Alzheimer's patients—are no longer homebound. This has forced patients who are capable of living in their homes to move into institutions, just to get health care. I am very pleased that this bill includes the common-sense legislation I co-sponsored with Senator JEFFORDS to correct this Catch-22.

I am also very pleased that the bill addresses the Medicare hospice benefit, providing for a higher payment increase for inflation. The bill also deals with the ''six-month rule'' for hospice eligibility, clarifying that it is only a guideline, not an inflexible requirement. These provisions respond to concerns aired at my Aging Committee hearing on hospice in September, and I look forward to continued work in the 107th Congress to strengthen hospice care.

The legislation extends the moratorium on therapy caps and provides Medicare beneficiaries in nursing homes with access to critical services. The Balanced Budget Act of 1997 included a $1,500 cap on occupational, physical and speech-language pathology therapy services received outside a hospital setting. Thirty-one days after the law was implemented, an estimated one in four beneficiaries had exhausted half of their yearly benefit. Furthermore, it was those beneficiaries in need of the most rehabilitative care that were penalized by being forced to pay the entire cost for these services outside of a hospital setting. I fought successfully during last year's Balanced Budget Refinement Act for a two-year moratorium on the therapy caps while the Health Care Financing Administration studies the issue; I am pleased to see this effort recognized and the moratorium extended for an additional year.

The bill protects the right of patients in Medicare+Choice plans to return to their Medicare Skilled Nursing Facility of origin if they have to leave that facility for a brief hospitalization. Without this right, there have been instances in which patients in religiously affiliated nursing facilities have not been permitted to return to those facilities after hospitalization. I am gratified that the bill includes the legislation I co-sponsored with Senator MACK on this issue.

The bill discontinues a policy to phase out Medicaid cost-based reimbursement to our nation's 3,000 Rural Health Clinics and 900 Community Health Centers. In its place, it provides a reimbursement solution to ensure that these essential primary care providers can continue to serve millions of uninsured and under-insured Americans. The bill establishes a prospective payment system in Medicaid for federally certified Rural Health Centers and Community Health Centers. This provision creates an equitable payment system for these providers and ensures that the health care safety net remains strong and secure.

As one example, the legislation also provides Medicare beneficiaries with greater access to the most thorough type of colon cancer screening—colonoscopy. As Chairman of the Senate Special Committee on Aging, I held

a hearing earlier this year to raise awareness about the far-reaching and devastating effects of colon cancer. This year 129,400 Americans will be diagnosed with this type of cancer and 56,000 Americans will die from it. However, if detected and treated early, colorectal cancer is curable in up to 90 percent of diagnosed cases. I fully support an expanded colon cancer screening benefit for Medicare beneficiaries and urge all older Americans to put the benefit to use.

For the first time, medical nutrition therapy may be reimbursed by Medicare for patients with diabetes or renal disease. As part of the Balanced Budget Act of 1997, Congress instructed the Institute of Medicine (IOM) to conduct a study of the benefits of nutrition therapy. IOM reported that nutrition therapy would improve the quality of care and would be an efficient use of Medicare resources. I cosponsored legislation to expand Medicare coverage to include nutrition therapy; offering coverage for beneficiaries with diabetes or renal disease is a step in the right direction.

In another first, this bill eliminates the arbitrary time limitation on Medicare coverage of immunosuppressive drugs following an organ transplant. Medicare covers expensive transplant operations but fails to follow through with coverage of the drugs necessary to preserve the transplanted organ; reimbursement is currently limited to the first three years following the procedure. While last year's BBRA extended coverage in some cases for an additional eight months, this legislation drops any time limitation for coverage of drugs critical to the health of transplant patients. This is common sense policy I am glad to support.

I plan to come to the floor on other occasions to discuss other provisions of this bill. While I'm not completely satisfied, I think there is a lot that will help Americans get the health care they need and deserve.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I am going to speak, if I may, over the next few minutes, on a couple of different, unrelated subject matters. The first I would like to spend a few minutes talking about is the situation in Colombia, South America, and, as we have watched events unfold over the last several days, the great concern I have about a deteriorating situation in that nation.

Then, second, I will spend a couple of minutes talking about two of our colleagues who decided to retire from the Senate this year, Senator CONNIE MACK of Florida, my good friend, and Senator PAT MOYNIHAN of New York. I will take a few minutes on these separate, distinct subject matters. I appreciate the indulgence of the Chair.

EVENTS IN COLOMBIA

Mr. DODD. Mr. President, I am deeply concerned about events in Colombia. It is a wonderful nation, one of the oldest continuous democracies in Latin America. It is a nation with a wonderful, rich heritage, delightful people, a nation that has made significant contributions to the stability and well-being in Latin America historically. Over the last few decades, we have seen Colombia become a nation whose sovereignty, whose very nationhood, is placed in jeopardy because of the turmoil that is shredding this marvelous nation and wonderful people.

Earlier this year, Congress considered the administration's $1.3 billion emergency request to support the program called Plan Colombia. I voted for that program, as did a majority of our colleagues in the Senate of the United States and the House of Representatives. I said at the time of the debate, that while I believed a substantial assistance package was absolutely necessary to help address the multiple challenges confronting the Colombian people and the Andean region as a whole, I would not have allocated the monies among the various programs in the exact same way as the administration had proposed, nor would I have fashioned the assistance package exactly the same way that the Congressional package which was signed into law.

That is often times the case here. This is not unique. But there were those who expressed deep concerns about how the package was put together. I happened to have been one of them. But I also thought it was so vitally important the United States should take a stand and try to do what we could to make a difference in Colombia, not just because of the relationship we have with the democratic nation to our south but for the very enlightened self-interest of trying to deal with the crippling problem of drug addiction and drug abuse in this country. Let me explain why, as many of my colleagues and others are already familiar.

I believe we as Americans need to respond to Colombia's difficulties because, among other things, Colombia is currently the world's leading supplier of cocaine and a major source of heroin. That means the difficulties Colombia faces are not simply a Colombian problem; they are our problem as well, since these illicit substances end up in the United States, in our cities and small towns all across this country.

Today there are an estimated 14 million drug consumers in the United States; 3.6 million of the 14 million are either cocaine or heroin addicts. Colombian heroin and cocaine are the substances of choice in nearly 80 percent of the total U.S. consumption of these drugs.

The impact on U.S. communities has been devastating. Every year, 52,000 Americans lose their lives in drug-related deaths throughout this Nation. The numbers are going up, and 80 percent of the product is coming from Colombia. This is why we cannot sit idly by and do nothing.

The economic costs, we are told, of these deaths and drug-related illnesses and problems exceed $110 billion a year. That is a sizable financial impact.

The $1.3 billion that we appropriated to help Colombia respond to this situation is what was decided would be helpful. That is why I supported it, despite, as I mentioned earlier, the difficulties I had with it.

A little history is important to give the American people some idea of what the nation of Colombia has been through over the last decade and a half or two decades.

Colombia's current crisis did not just happen overnight. Yet its civil society has been ripped apart for decades by the violence and corruption which rages in that nation. Colombia has long been characterized as having one of the most violent societies in the Western Hemisphere. It means historically Colombian civil leaders, judges, and politicians have put their lives in jeopardy simply by aspiring to positions of leadership and responsibility.

Over this past weekend, for example, there were press reports that 36 candidates running for Colombia's municipal elections had been murdered by the time of the election. That is just in the last 2 weeks. An additional 50 of these candidates for municipal office were kidnaped in the nation of Colombia. On a daily basis, judges, prosecutors, human rights activists, journalists, and even church officials live in fear for their lives.

That has been the state of Colombian life for far too long. Between 1988 and 1995, more than 67,000 Colombians were victims of political violence in the small nation to our south. Political violence continued in the last half of the 1990s. Between 10,000 and 15,000 people have lost their lives since 1995, losing between 2,000 and 3,000 people annually to this violence.

Life in Colombia has been made even more difficult as a result of additional violence and intimidation by drug traffickers, and these are one of the major causes of it. The right wing paramilitaries and left-wing revolutionary groups are also responsible. High-profile assassinations of prominent Colombian officials trying to put an end to the drug cartels began more than 20 years ago with the 1984 murder of the Minister of Justice, Rodrigo Lara Bonilla.

In 1985, a year later, terrorists stormed the Palace of Justice in Colombia and murdered 11 supreme court justices, gunned down 11 supreme court justices who supported the extradition of drug traffickers.

A year later in 1986, another supreme court justice was murdered by drug traffickers, as well as a well-known police captain and prominent Colombian journalist who had spoken out against these cartels. These narco-terrorists

then commenced on a bombing campaign in that nation throughout the year on shopping malls, hotels, neighborhood parks, killing scores and scores of innocent people and terrorizing the general population.

Before the drug kingpin Pablo Escobar was captured and killed by the police in 1993, he had been directly responsible for the murder of more than 4,000 Colombians. That was one individual.

It is rather heartening that despite the deaths that occurred just in the last few days and the kidnappings of people who run for public office, despite the fears that are pervasive in this society, some 140,000 people allowed their names to appear on electoral ballots last Sunday for various government offices including governors, mayors and other municipal posts. It is an act of real courage.

We are about to have an election in this country, and we think it is a tough day if we face a negative ad run by one of our opponents or if we get a screen door slammed in our face or someone calls us a name. In Colombia, when you run for public office, even at very local levels your life is in jeopardy for doing so.

I express my admiration for the Colombian people and the people of great courage who run for public office who try to maintain this stability which is critically important.

In the midst of all of this, there are over a million displaced people in Colombia. An estimated 1.5 million Colombians have been displaced because of the narco-trafficking wars, and civil conflict that has raged in their society. Thousands upon thousands leave Colombia, their native country, every single year, many coming to the United States, many to Europe and elsewhere to flee the ravaging terrorism that is raging throughout their country.

This is the background for what has occurred over the four decades and why I wanted to take a few minutes this afternoon and make a couple of suggestions to the incoming new administration, whether it is an administration under Vice President GORE and JOE LIEBERMAN or one under George Bush and Dick Cheney. It will be important as we look at Latin America, that this be one of the dominant and first issues to be analyzed and discussed and a new formulation put together to help us do a better job in contributing to the solution of this problem.

In 1994, it became clear that drug money had penetrated even the highest levels of Colombian society and called into question the legitimacy of the Presidential election of Ernesto Samper. Even today fear of kidnaping and targeted killings by members of Colombia's drug organization has Colombia citizens living in fear for their lives.

Colombia's tragic situation was very much on my mind when I voted for the emergency assistance requested this year. I said at that time that I believed it was critically important that we act expeditiously on the assistance package because our credibility was at stake with respect to responding to a genuine crisis in our own hemisphere, one that was directly affecting the lives of our own citizens.

We also needed to make good on our pledge to come to the aid of President Pastrana and the people of Colombia in their hour of crisis, a crisis that has profound implications for institutions of democracy in Colombia and throughout this hemisphere.

No one I know of asserts that things have dramatically turned around in Colombia since Congress passed the emergency supplemental package. Colombians across the political spectrum struggle each and every day to cope with the escalating violence of warring right-wing and left-wing paramilitary organizations and the existence of narco-trafficking terrorists prepared to coopt all forms of civil society for its own financial gains.

The Colombian economy is in distress with the worst recession in modern history causing significant unemployment, hardship among Colombia's middle class and its poorest people.

The economic situation in the countryside is deeply troubling. A significant percentage of its rural population is barely able to eke out a living, as I mentioned earlier, with more than 1 million rural Colombians already displaced from their villages from economic necessity or continuing fear of the civil conflict.

Not surprisingly, these displaced persons have become the innocent foot soldiers in the ever-expanding illicit coca production that gets processed into cocaine and ultimately finds its way into American schools and neighborhoods across this Nation.

As we have seen over the last several weeks and months, these problems have not remained within Colombia's borders, another reason why I felt a certain urgency to talk about this subject matter this afternoon. The nation of Ecuador has felt the effects of conflict in southern Colombia as refugees from the drug war have fled across the border into Ecuadorean territory.

Kidnaping for ransom, a weekly occurrence in Colombia, seems to have affected its neighbors. Several weeks ago, 10 foreign nationals working for an oil company in Ecuador were abducted into southern Colombia. Two hostages were able to escape, but the fate of the remaining eight is unknown. Sporadic conflict has occurred in recent days with other neighbors.

A Panamanian village was attacked by members of a paramilitary unit and Colombian authorities have lodged complaints about alleged border incursions by Venezuelan forces seeking to eradicate illicit crops close to the Colombian-Venezuelan border. The Brazilian Government has deployed 22,000 troops to the Amazon region in order to strengthen its defenses along its 1,000-mile border with Colombia. Sporadic fighting between Colombia forces and FARC units—that is the left-wing guerrilla forces—have led to unwelcome incursions into Brazilian territory by both organizations.

Narco-traffickers have also begun to exploit the Amazon region of Brazil for their own purposes as well.

The Colombian problem is spreading. It is now reaching the borders of its neighbors—Ecuador, Brazil, Venezuela, and Panama. This situation must be high on the agenda of this incoming administration and some new formulation of how to address this is in desperate need.

On the assistance front, at the moment the United States is carrying the lion's share of responsibility for trying to help Colombia, I mentioned the $1.3 billion in emergency aid we adopted this year. That has to change. It cannot just be the United States. Colombia's requirements are significant and varied, and there are many areas where European and regional assistance would be extremely beneficial to the Colombian people who are on the front lines of this conflict.

Innocent men, women, and children are trapped in the middle of clashes among guerrilla organizations, drug cartels, and Colombia's security and police forces. Government efforts to either protect them or create a climate where alternative gainful employment is available have been insufficient, to put it mildly. U.S. financial assistance is heavily focused on the military component of Colombia's counter narcotic efforts, with lesser amounts available for other programs, such as alternative development programs, the protection of human rights workers, resettlement of displaced persons, and judicial and military reforms.

The United States should do more to assist Colombia on the economic front by moving forward in the remaining days of this Congress—now that we are going to have a lame duck session. This Congress should extend NAFTA parity to Colombia and other members of the Andean Trade Preference Agreement. This would tremendously help Colombia work its way out of its current economic recession, by giving a boost to an important domestic industry, in creating more jobs for average Colombians other than in the coca fields producing cocaine.

I have enormous respect for the manner in which President Pastrana has quickly and so aggressively taken steps to entice Colombia's largest guerrilla organizations to come to the negotiating tabling following on the heels of his election into office.

President Pastrana is a courageous leader, one who has personally been victimized by these kidnapings I mentioned earlier, someone who has shown great courage, great leadership, in trying to bring an end to the civil conflict in his country. So I admire him immensely and have great respect for the efforts he has made.

The agenda for these ongoing talks that President Pastrana has pursued

was intended to cover the waterfront of economic and social issues that must be addressed if four decades of civil conflict are to be brought to a close in Colombia.

Unfortunately, for a variety of reasons, there has been little tangible progress to date in these peace efforts—not because of any lack of effort on the part of President Pastrana, I might add.

I believe Colombia needs more assistance from the international community to help it find a formula for jumpstarting this peace process and dealing with the social and economic problems in the country that have produced it.

I laud the interest and attention given to the peace efforts by the United Nations Secretary General, but others in a position to be constructive should also become engaged before the process collapses entirely.

Moreover, in the final analysis, it is not going to be possible to rid Colombian society of the narco-trafficking cancer while the civil conflict is ongoing and a hindrance to building broad-based support for Colombia's counter narcotics initiatives. U.S. domestic and international support would be more readily sustainable were that the case as well.

The international community, by and large, has given only lip service to Colombia's problems and has resisted publicly endorsing Plan Colombia or helping with the peace process. If regional or European political leaders have suggestions for better ways to go about containing illicit drug production in Colombia, and elsewhere, then let them speak up.

I think it is critically important that the Organization of American States take a far more active role in assisting with Colombia's current crisis, particularly with respect to enhancing regional support. Among other things, I believe OAS Secretary General Cesar Gaviria should give serious consideration to convening an emergency summit meeting of the region's leaders before this year's end. The purpose of this summit would be to reach agreement on additional regional steps to ensure that the operations in Colombia do not adversely impact others in the region, either through increased refugee flows or relocated illicit drug operations.

European governments, particularly those that have expressed concerns about the social and political fallout of Plan Colombia and the ongoing civil conflict, need to do far more than simply wring their hands. Civil society needs to be strengthened in Colombia in order to ensure that every Colombian's rights are protected.

Additional judicial and military reforms must be implemented in order for the rule of law to become the norm and military impunity to cease once and for all. Economic investments, especially in alternative development programs, must be forthcoming if peasants who currently depend on coca cultivation to feed their families are to have meaningful alternative employment. All of these areas are well within the financial resources and expertise of our European allies to undertake, if they are truly concerned about the future of Colombia.

For their part, Colombian authorities must undertake a sustained and serious dialog with local mayors, church officials, civic leaders, and affected communities throughout Colombia to hear from them their concerns and fears about aspects of Plan Colombia that may result in thousands more displaced Colombians, particularly in the rural areas of that nation.

While aerial eradication of cocoa crops seems the most effective method for attacking illicit production at the source, authorities should also be open to at least considering the possibility of funding other methods of eradication, such as manual eradication utilizing local farmer organizations.

Mr. President, to sum up, what I am calling for is a major international commitment to tackle the Colombian crisis. President Clinton has determined that Plan Colombia is worthy of U.S. support; that is in our national interest to do so—and I believe it is—given the impact we are feeling in our own society as a result of the narco-trafficking that occurs here.

A bipartisan Congress signed up to that position when it voted to appropriate the $1.3 billion in emergency assistance. Having said that, I do not believe Plan Colombia can ultimately be successfully implemented if only the U.S. and Colombian Governments are participants. Unless U.S.-Colombian authorities come to this view fairly soon and begin a serious effort to regionalize and internationalize this effort, Plan Colombia is going to die on the vine for lack of political support.

Time is running out for the people of Colombia. Frankly, time is running short for everyone committed to democracy and democratic values in that country. We must not let international reticence or inertia allow the drug kingpins to win the day.

TRIBUTE TO SENATOR CONNIE MACK

Mr. DODD. Mr. President, it is with particular and personal regret that I deliver these remarks today about the Senator from Florida. In a number of areas and on a range of issues, I, like many of us, have come to rely on CONNIE MACK'S knowledge and good judgment—and his good humor. He has been an outstanding Senator. More importantly, I have come to cherish his friendship and the friendship of his wonderful wife and partner for four decades, Priscilla.

CONNIE MACK is concluding his 12th year of service in the Senate. In that period of time, he has accomplished a great deal for his State and for our country. He has worked diligently and effectively to protect the environment of his State. He stood against drilling off Florida's vast and majestic shoreline. He has promoted the restoration of the Florida Everglades, one of our Nation's premier national treasures. Time and time again, in ways large and small, CONNIE MACK has acted to safeguard his State's rare and fragile natural beauty. For this generation, and for generations to come, the name of CONNIE MACK will mean a great deal—to the citizens of Florida and people throughout the country—if for no other reason than for that contribution.

Perhaps the most profound contribution, however, of this very warm and gracious colleague of ours is the contribution he has made to our Nation in the area of cancer awareness and medical research. In these areas, it can be said, I believe without any hesitation, that no one has done a greater service to his fellow Americans in these last number of years than CONNIE and Priscilla MACK.

CONNIE and Priscilla know through hard personal experience the terrible toll that cancer and disease can take on individuals and families. They know as well as anyone that early detection of cancer is the first and best weapon in the battle to save lives. That is why they have made early detection of cancer not just a concern, but a cause.

By educating others about the importance of early detection, by spreading awareness that it is an easy, fast, and safe way to save lives, they have played a very critical role in helping countless Americans avoid the full devastation of this disease. I daresay, among those tens of thousands of American men and women who every year conquer cancer because they detected it early, a great many of them owe a debt of thanks to CONNIE and Priscilla MACK.

Together, they have received numerous honors and awards, including: the National Coalition for Cancer Research Lifetime Achievement Award; the National Coalition for Cancer Survivorship Ribbon of Hope Award; the American Cancer Society's Courage Award; and Susan Komen Breast Cancer Foundation's Betty Ford Award.

But Senator MACK has not been satisfied just with promoting early detection. He has worked for a day when early detection of cancer and other diseases will no longer be necessary because they will no longer exist. He has worked diligently and successfully to increase our Nation's investment in medical research. He understands that research can provide answers and ultimately cures for many of the ailments that continue to plague humankind. Maybe not today, but one day.

And years from now, when—we hope—cures will be found, America and the world will reflect with gratitude on those who dared to envision a better future by supporting the basic research from which those cures derived. And among those whom future generations will thank, I believe that few will be thanked more than the Senator from Florida, CONNIE MACK.

In addition to witnessing his work on the environment and health, I have had the pleasure to serve with Senator MACK on the Committee on Banking, Housing, and Urban Affairs. There he brought his vast experience as a community banker to bear on the critical financial services issues of the day. And today our Nation's policies in the area of financial services bear the imprint of his experience and judgment.

CONNIE and I also served together for a time on the Foreign Relations Committee. There, too, he distinguished himself by his thoughtful, courteous manner. And while we did not always agree—in fact, we used to have some good, healthy arguments on American-Cuban policies—I never faced a more diligent or worthy opponent than CONNIE MACK. I always respected his positions and the people he represented in those debates. He is a worthy ally and opponent. I shall miss him.

For me, CONNIE MACK has been not only a colleague. He has been a gifted, accomplished leader. He has been a gentleman. And he has been a friend. He has graced this institution with civility and reason. He and Priscilla will be sorely missed. I look forward to many years of continued friendship.

TRIBUTE TO SENATOR MOYNIHAN

Mr. DODD. Mr. President, the last colleague I want to spend a few minutes talking about is one we have all come to know and appreciate for his valued service in the Senate and his valued service to this country over many, many years.

PAT MOYNIHAN is a special Senator and a special individual. It is exceedingly difficult to summarize in words what this remarkable man has meant to the Senate, what he has meant to our Nation, and, indeed—and this is no exaggeration—what he has meant to the world in which we live.

As a soldier, a teacher, an author, an ambassador, and, over the past number of years, a Senator, very few have done so much so well. Few have put so much learning and such deep understanding to the service of the common good.

If America is the world's indispensable nation, it can be said that PATRICK MOYNIHAN is one of America's indispensable leaders. He is the only American ever to serve in four successive Presidential administrations.

Two of those administrations were headed by Republican presidents and two by Democrats—reflecting a bipartisan appreciation of this man's rare gifts of insight and effective action.

PAT MOYNIHAN served as a leading domestic policy advisor under Presidents Kennedy, Johnson, and Nixon. Later he would be selected by President Nixon to serve as United States Ambassador to India, and by President Ford to serve as our Nation's representative to the United Nations.

PAT MOYNIHAN has written or edited some eighteen books. The subjects of those books reflect the extraordinary range of his intellect—from poverty, race, education and urban policy to welfare, arms control, government secrecy, and international law. The list goes on.

He has received over sixty honorary degrees from institutions of higher learning all across the globe.

He has received countless awards which, like his writings and his honorary degrees, speak to his vast curiosity and accomplishment.

Among these awards are: the American Political Science Association's Hubert Humphrey Award for ''notable public service by a political scientist''; the International League of Human Rights Award; the John LaFarge Award for Interracial Justice; the Agency Seal Medallion of the Central Intelligence Agency for ''outstanding accomplishments . . . with full knowledge that his achievements would never received public recognition''; the Thomas Jefferson Award for Public Architecture from the American Institute of Architects; the Thomas Jefferson Medal from the American Philosophical Society for Distinguished Achievement in the Arts or Humanities; and the Heinz Award in Public Policy for ''having been a distinct and unique voice in this century—independent in his convictions, a scholar, teacher, statesman, and politician, skilled in the art of the possible.''

Earlier this year, the United States Courthouse on Pearl Street in New York City was named after the senior Senator from New York. It is a fitting and appropriate honor. No one has done more than he to make our Nation's public buildings and public spaces reflect the high ideals and common purposes of America's citizenry.

For four decades he has labored to transform Pennsylvania Avenue in our Nation's capital. More than anyone else, he is responsible for reviving this majestic boulevard—in fulfillment of L'Enfant's noble vision of a ''grand axis . . . symbolizing at once the separation of powers and the fundamental unity in the American government.'' Today, his guiding hand can be seen in even a cursory glance down that avenue—in the Navy Memorial, Pershing Park, the Reagan Building, and Ariel Rios—not to mention neighboring masterpieces such as Union Station and the Thurgood Marshall Building.

Thomas Jefferson once said that ''Design activity and political thought are indivisible.'' The sentiments behind those words are not just shared by PAT MOYNIHAN. They have functioned as a kind of code of conduct in his careful approach to developing America's public places. And perhaps no American since Jefferson himself has had a more profound impact on the look and feel of those places than the man to whom I pay tribute today.

But he has not only worked to enshrine our ideals in our public places. He has ennobled our public discourse, and enhanced life for all Americans. In so many areas he has made a deep and lasting contribution. He has worked to protect our natural treasures, as well as our man-made ones. He has been a leader—and often a visionary—in supporting cleaner, safer, faster modes of transportation. He has fought a long and sometimes lonely battle for humane and effective welfare policy.

He has rung a warning bell to call upon our Nation to reform retirement programs for future generations. And always, always, he has worked to promote peace and freedom throughout the world.

I had the honor of serving with Senator MOYNIHAN on the Special Committee on the Year 2000 Technology Problem. Senator BENNETT and I chaired that Committee—and I think I can speak for both he and I in saying that no one did more to focus the Senate and the nation's attention on the urgent need to address the Y2K problem than the senior Senator from New York. In fact, I distinctly recall a ''Dear Colleague'' letter he sent to every Senator several years ago, in which he warned about a looming technological crisis then known to only a handful of people, most of them computer scientists. It was typical PAT MOYNIHAN: erudite, prescient, compelling.

PAT MOYNIHAN knows the good that government can accomplish when its leaders act with vision, courage, and cooperation.

But he also knows what government cannot, and should not, do or try to do. He told us years ago, for instance, that there is no substitute for a strong family.

He understands only too well the sentiments expressed by the poet William Butler Yeats:

> Parnell came down the road, he said to a cheering man:
> Ireland will get her freedom and you will break stone.

Like Yeats, PAT MOYNIHAN knows that freedom achieved is a victory in and of itself. And while we may be cheering, we have to go back to the drudgery of day-to-day life. But freedom and democracy are to be cheered.

The Senate will not see another like PAT MOYNIHAN for some time because there has been no one like him. There has been no one like him with whom I have had the privilege and pleasure of serving. He has done a remarkable job for this Nation. He has made this Senate a better institution because of his presence here.

We will miss him and his good wife, Liz, who has done so much in her own right. We wish them the very best as they begin this new chapter of their extraordinary lives. The Good Lord is not done with PAT MOYNIHAN yet. All of us expect great things coming from this very distinguished man.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

TRIBUTE TO SENATOR PAT MOYNIHAN

Mr. MURKOWSKI. Mr. President, I listened with great attention to my friend, Senator DODD, who I think expresses the feelings that we all have for Senator MOYNIHAN. I first met Senator MOYNIHAN before I came to the Senate. He visited Alaska, my home. Nobody could suggest that he is anything but awe-inspiring, enthusiastic, and interested, the type who leaves one after a short meeting with the feeling that here indeed is an extraordinary individual, a true statesman, a visionary. And the type of individual who we have all had an opportunity to share and enjoy and love during his tenure here.

I extend my heartiest best wishes to Senator MOYNIHAN and his family as he departs this body, and it is with fondness for the contributions he has made. He has made this a much better body because of his contributions. I share the sentiments of my colleague from Connecticut.

NUCLEAR WASTE IN CALIFORNIA

Mr. MURKOWSKI. Mr. President, let me remind those of you who have followed the issue of energy in this country and the contribution of the nuclear industry of 20 percent of the electricity that is generated in this Nation, with an observation that I made some time ago, and that is this industry is strangling on its waste as a consequence of the inability of the Federal Government to honor the sanctity of a contract made some years ago—that the Government would take that waste beginning in 1998. The ratepayers, over the last decades, have extended about $11 billion to the Federal Government to ensure that the Federal Government would be financially able to take the waste.

The bottom line is that 1998 has come and gone, and the Federal Government is in violation of its contractual commitment. As a consequence, litigation is pending for this breach of contract, subjecting the taxpayers to somewhere between $40 billion and $60 billion in liability.

Now, I stated some time ago on this issue that if you throw the waste up in the air, it has to come down somewhere. Nobody wants it. I was wrong on that. It was thrown up in the air and now it is coming down. Where is it coming down? Well, it is coming down in California, in a place called San Onofre. That is near La Jolla, north of San Diego. It is on the California coast where there are decommissioned and operating nuclear plants.

I ask unanimous consent that an article from the Los Angeles Times of today, November 1, be printed in the RECORD.

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

[From the Los Angeles Times, Nov. 1, 2000]

APPROVAL OF NUCLEAR WASTE PLAN ADVOCATED

(By Seema Mehta)

Staff at the state's top coastal agency recommended approval this week of Southern California Edison's plans to store thousands of spent nuclear fuel rods at San Onofre nuclear power plant, at least until 2050.

Environmentalists say the California Coastal Commission will be approving the creation of a coastal nuclear waste dump just south of the Orange County border, but the agency's staff says it has no choice under federal law.

''The state of California is preempted from imposing upon nuclear power plant operators any regulatory requirements concerning radiation hazards and nuclear safety,'' the staff for the coastal commission emphasized in bold letters in its report.

A federal official said that there was no risk from the closely monitored nuclear waste, and that environmentalists were needlessly sounding alarms.

''There's a lot of fear among people who really don't understand the nature of the material,'' said Breck Henderson, a spokesman with the U.S. Nuclear Regulatory Commission. ''Everyone thinks nuclear waste is 55-gallon drums full of green golb that we're going to throw in a hole in the ground. They think the drums will rust away and, pretty soon, the water in their tap glows green when it comes out. That's just not the way it is.''

The plant's two remaining operating reactors, which provide energy for 2.5 million homes from Santa Barbara to San Diego, are due to shut down by 2022. A smaller reactor was shut down in 1992. By law, the U.S. Department of Energy must safely dispose of all the site's fuel rods, which contain spent uranium and will be radioactive for thousands of years.

But no high-level radioactive dump exists yet, and controversial plans for a possible site in the Yucca Mountains in Nevada are moving at a snail's pace. Feasibility studies and other technical evaluations of the remote Nevada site, 237 miles northeast of Los Angeles and 90 miles northwest of Las Vegas, have been so delayed that activists worry that temporary storage facilities at San Onofre will become a de facto permanent, West Coast repository for nuclear waste.

''Nothing about storing nuclear waste is temporary,'' said Mark Massara, Sierra Club's coastal programs director. ''Without any planning oversight or review, we're establishing a nuclear waste dump on one of most heavily visited beaches in all of Southern California.''

Henderson of the nuclear commission conceded that Yucca Mountain is a ''political football, I don't know too many people who expect to start shipping fuel there [soon].''

However, he insisted that the federal government has to take responsibility for the fuel, and it will eventually. But with a long line of utilities across the country waiting to get rid of nuclear waste, all sides agree there will be nuclear waste at San Onofre for a good half-century.

Spent nuclear fuel is stored in metal containers under water in cooling pools at the plant. They will be wrapped in two layers of steel and moved to reinforced concrete casks, said Ray Golden, spokesman for San Onofre.

This method, known as dry casking, is considered safer than the cooling pools because it requires less maintenance, leaving less room for error, Henderson said.

But activists worry that the casks will be housed next to working reactors, and could be vulnerable to terrorist attack.

Henderson said antinuclear groups often use such scare tactics. He said his agency would never allow on-site storage if it were unsafe. The casks will weigh more than 100 tons, and could withstand shots from antitank weapons.

''You'd have to hug it for a year to get the same radiation as an X-ray,'' he said.

State coastal commissioners can't debate any of these issues.

''The commission would have liked the ability to look at it, to review whether this was appropriate,'' said commission Chairwoman Sam Wan. ''But we didn't have the legal right to do so.''

Mr. MURKOWSKI. Mr. President, this article explains that ''The California Coastal Commission will be approving the creation of a coastal nuclear waste dump just south of the Orange County border.''

The repository will be at the San Onofre Nuclear Power Plant, and thousands of spent nuclear fuel rods would be stored there by Southern California Edison until the year 2050. That is 50 years, Mr. President. Isn't it interesting that the State of California, which has refused to site even a low-level nuclear waste storage facility in the Mojave Desert is now going to be home to a high-level nuclear waste dump near the beaches of southern California?

Referring briefly to the proposed Ward Valley waste facility, which would handle medical waste and other low-level waste—the Secretary of the Interior, Bruce Babbitt, stopped this site from becoming a reality. As a consequence, that waste is currently stored in hospitals and research facilities and universities—generally, anywhere near where the waste is created. A lot of it is medical waste and other low-level waste associated with diagnostic tests, cancer treatment and other types of medical and scientific research. But it is all over the place. It is in places that weren't designed to store that waste long-term.

However, national environmental groups and Hollywood activists made Ward Valley a rally cry, claiming water would be contaminated by the waste and seep through the desert and ultimately into the Colorado River. This is low-level material that we are talking about. It involves clothing, like gloves and coveralls from utility workers, material from medical research and any other items that have come into contact with radioactive materials. This low-level waste is produced at hospitals, powerplants, and research facilities that store this waste and periodically transfer it to waste facilities in South Carolina or Utah.

However, these same groups apparently are powerless to stop the San Onofre storage. Why? Because the responsibility to regulate high-level waste belongs to the Federal Government, not the State. And since the Federal Government has not done its job, the bottom line is that there is no Federal repository for high-level nuclear waste, as promised by the U.S. Government. It is an obligation that has been unfulfilled by the eight years of the Clinton-Gore administration,

who has chosen to ignore the contract, hoping they can get out of town and the election will be over before this issue comes up.

How ironic that this issue of the failure of the Federal Government to honor its contract should come up just a little less than a week before the election. As I have stated, that repository was supposed to open in 1998. Failure to do so left the States to come up with their own solutions and subjects the taxpayers to billions of dollars in liability. High-level waste includes spent fuel rods removed from nuclear reactors. This Senator from Alaska introduced S. 1287 in this Congress to allow the high-level nuclear waste to go to the proposed Yucca Mountain high-level storage facility in Nevada for temporary storage as soon as the facility was licensed in 2006.

The California delegation voted against that bill and the Clinton administration vetoed the bill. We are one vote short of a veto override. One of the arguments made was that there was a possibility that the nuclear waste could seep into the water table and move into California. Imagine that. Now I don't believe that is possible, nor do a great number of respected scientist. However, isn't it ironic that Californians will now have to cope with those fears in their own backyard because Yucca is still not opened? Rather than worry about waste in Nevada, they get to worry about waste in California. The site at San Onofre has operational nuclear plants as well as a shut down research reactor. Unfortunately, once shut down begins, they have no place to take the waste, so the waste stays there on the area adjacent to the Pacific Ocean, an area not designed for long-term storage of waste. Nevertheless, there is no alternative because the Federal Government has failed to fulfill its obligation to take spent fuel beginning in 1998.

Let me make it clear, I don't believe there is any danger from the dry casks that will be stored at San Onofre, any more than there was a danger from the low-level waste that would have been effectively stored in the Mojave Desert that could not safely be stored at the Ward Valley site. This California solution—if it is a solution—simply confirms what we have been saying all along: No one wants this waste, but it has to go somewhere. It has finally come down and landed in San Onofre. If the waste isn't ultimately shipped to the temporary facility at Yucca Mountain, it is going to be stored at 80 sites throughout the United States. California now may have its own central repository, at least for Southern California Edison.

Mr. President, this solution is not a solution. And what people need to realize is this situation is really just the tip of the iceberg. While it is applicable to California today, there are over 80 sites throughout this country that will become de facto Yucca Mountains. That is the consequence of not opening up a permanent storage site. And many other states are in the same situation as California—waste to store and no place to store it. To give you some idea, in Florida, 16 percent of the electricity comes from nuclear plants, 5 nuclear power reactors, and almost 2,000 metric tons of waste is in storage. In Michigan, 24 percent of the electricity comes from 4 nuclear power reactors, with 1,500 metric tons of waste on hand there.

In Ohio, 11 percent of electricity is generated from nuclear energy by two nuclear plants with 520 tons of waste.

In Washington State, 6 percent of the electricity comes from nuclear, and there is about 300 tons of research reactor fuel.

In Pennsylvania, 38 percent of its power comes from nine nuclear reactors with 3,000 metric tons of waste.

This situation in California just proves what I have been saying all along. If we don't take responsible action now to solve our high-level waste problems by siting a repository in the Nevada desert, we will end up with somewhere in the area of 80 to 100 sites throughout the Nation storing this waste in environments that are not approved environments for long-term storage. What is happening in California today will happen all over the nation. They will now have, in California, their very own mini-Yucca Mountain for the next 50 years.

The voters in California, Pennsylvania, Michigan, Wisconsin, Ohio, Florida, and Illinois need to understand who bears the responsibility for this lack, if you will, of a conscientious effort to take the waste at the time it was contracted for in 1998.

I can only assume that Vice President GORE wants to keep this waste in the States near schools, and hospitals—wherever it is temporarily stored. And the reality of what happened in California today at San Onofre is simply the tip of the iceberg.

This administration has been totally inept in meeting its responsibilities to the nuclear industry; It has breached a contract, it has ignored the contribution of the nuclear industry and its contribution to providing 20 percent of the clean, emissions-free power generated in this country; and, totally ignored the reality that with that clean power comes the responsibility of determining how to handle the waste.

They have handled it all right. They set it in concrete in California in the new site, as I have indicated, at San Onofre, north of San Diego near La Jolla, CA.

Imagine creating a coastal nuclear waste just south of Orange County.

ANNIVERSARY OF THE SAVANNAH RIVER SITE

Mr. THURMOND. Mr. President, I rise today to congratulate the Savannah River Site, located in my hometown of Aiken, South Carolina, on it's fiftieth anniversary. On November 28, 1950, President Truman announced the construction of the Savannah River Site. In celebration of this important milestone, I would like to insert the following essay recounting the rich history of this American institution into the CONGRESSIONAL RECORD.

I would also like to extend my appreciation to Mr. James M. Gaver, the Director of the Office of External Affairs at the Savannah River Operations Office and the unofficial ''Savannah River Site historian'' for writing the following composition. I ask unanimous consent that his essay be inserted into the RECORD.

Without objection the essay was ordered printed in the RECORD.

ESSAY BY MR. JAMES M. GAVER

For the Central Savannah River Area (CSRA), the Cold War created greater change than the Civil War, an unlikely storyline in the deep South. Between 1950 and 1955 a transformation occurred with breathtaking speed that eradicated small railroad towns, farms, and mill villages typical of mid twentieth-century Southern life on the Savannah. These familiar agrarian settings were replaced with a technological complex built and operated by men and women who came from all parts of the country. International events and science had come to South Carolina and Georgia in the form of the Savannah River Plant. This industrial complex of nine manufacturing and process areas integrated into one plant was needed to produce plutonium and tritium for the nation's defense.

The participants in the making of the Savannah River Plant—scientists, engineers, construction workers, local politicians, community members, and uprooted residents—were a study in diversity. Yet each, driven by patriotism, contributed to the success of the project. The production line and laboratory were the chosen theaters of war for the scores of scientists, industrial managers, engineers, and support personnel of all descriptions. With families in tow, they became atomic age homesteaders within the Savannah River Valley. Environmental researchers joined their ranks, charting physical change within the plant area and helping give birth to the discipline of ecology. Construction workers and craftsmen came in droves to participate in an industrial and engineering ''event'' that ranked with the construction of the Panama Canal. Industrial boosters and state and local politicians crowed at the site selection that rooted atomic energy development in the CSRA. For them, the country's need marvelously coincided with the economic need of their constituencies. The final profile belongs to the 6,000 individuals or 1,500 families relocated from the 315 square mile area selected for the plant in Aiken, Barnwell, and Allendale counties, South Carolina. Their contribution was remarkable, changing the course of their family's histories.

With Japan's surrender on August 14, 1945, Americans began to celebrate the end of the war and make plans for the future. Their euphoria was shortlived. It was swiftly replaced by images of an Iron Curtain, Soviet domination and terror, mushroom clouds, fears of radiation, and the potential for mass destruction. The Cold War began in Europe over the remains of Nazi Germany as the Allies began planning for postwar Europe. Germany was divided into two nations and the U.S. Congress appropriated billions of dollars to our Allies in Western Europe for defense and economic aid.

Between 1945 and 1947, mistrust between the United States and Soviet Russia hardened into belief systems. The Truman Doctrine presented to Congress on March 12,

1947, sketched out the political situation. Two worlds were emerging, one in which people lived in freedom, while the second was bent on coercion, terror, and oppression. Global conflict resulted as opposing economic and social systems were pitted against one another on a technological battlefield. Furthermore, continued advancement within the atomic bomb program that had just ended one war was considered critical to wage the next.

After a job well done, some Manhattan Project scientists and engineers returned to the private sector. Du Pont, the main contractor for Hanford, also retired from the field of atomic energy. The Manhattan Project continued with a core group of atomic bomb project veterans under the direction of the indomitable General Leslie Groves. The nation's third and fourth plutonium bombs, Shot Able and Shot Baker, were tested at Bikini Atoll in the Pacific in July 1946. These tests gave an invited audience of military officers, congressmen, journalists, and scientists firsthand knowledge of the power of the bombs. The high profile of the tests ensured that atomic weapons research and development remained in the forefront of the nation's defense strategy during this uneasy peacetime.

Responsibility for America's atomic arsenal had been transferred from the military to the civilian Atomic Energy Commission (AEC) established by the Atomic Energy Act of 1946. The commission was composed of a five-member board that served full-time, assisted by scientific and military advisory committees. Headed by TVA veteran David Lilienthal, the AEC was in the process of recasting the nation's atomic energy program when the Soviets exploded their first atomic weapon on August 27, 1949. On September 23, 1949, President Truman announced the end of the U.S. monopoly in atomic bombs. The Soviet test, named Joe I by the American press, shocked the American public, its leaders, scientists, and intelligence agencies. The Commission and its advisors began a new evaluation of their proposed program energized by ''the old spirit of emergency.''

The need for the thermonuclear bomb provoked serious debate within a small circle of individuals that included the members of the AEC's General Advisory Committee, the AEC commissioners and staff, the Senate and House Joint Committee on Atomic Energy, Defense Department officials, and a group of concerned scientists. Would an H-bomb improve our retaliatory strength enough to justify the diversion of materials from the A-bomb program? Would large bombs such as the ''Super'' merely give the illusion of security? No consensus was reached. Truman then created a subcommittee of the National Security Council. Secretary of State Dean Acheson, Secretary of Defense Louis Johnson, and AEC Chairman David Lilienthal were appointed to provide direction. President Truman received the sub-committee's recommendation that the United States should proceed with an all-out nuclear effort. He signed this recommendation to develop all forms of atomic weapons, including the ''Super,'' on January 31, 1950. This recommendation would lead to the announcement of the Savannah River Plant by the close of the year.

Preliminary designs for the new hydrogen bomb required quantities of tritium, a radioactive isotope of hydrogen, to be fused with deuterium, another isotope of hydrogen, for energy release. While Hanford's production reactors were already producing tritium, weapon design in the early 1950s suggested a dramatic increase in the need for tritium. To provide tritium for design and testing purposes for the short term, Hanford's reactors would be used. For long term production, the AEC determined that two new production reactors of significantly different design were to be built at a new location. In May 1950, the cost of the new plant was forecasted at $247,854,000 and a base of operations was established in Washington in late June to shepherd the new plant into reality. Curtis Nelson was selected as the AEC manager for the new project. Nelson was a likely candidate. A civil engineer by training with experience in managing large construction projects, he was on assignment as U.S. liaison to Canada's nuclear program at Chalk River, Ontario, when he was posted as the manager for the new project. Highly enriched uranium (HEU) fuel rods were needed to increase tritium production, but the process for making tritium was not yet fully tested. Data from Canada's NRX heavy-water reactor that used HEU fuel rods could provide data for the American effort and Nelson was already on hand. Cooperation with the Canadian program could be helpful in America's bid to win the arms race.

Du Pont was chosen as the prime contractor for the plant. The chemical firm's work during the Manhattan Project at Oak Ridge on the X–10 complex; the design, construction, and wartime operation of the production facility at Hanford; and Du Pont's postwar role as technical advisors on various developing atomic energy projects positioned the Delaware-based firm for the job. Du Pont was released from its Hanford assignment in 1946 at its own request, turning over operation of the plant to General Electric. Four years later, the firm, then headed by atomic energy pioneer Crawford Greenewalt, was asked by the White House and the Commission to reprise its role. Du Pont's acceptance of the enormous job was announced on August 2, 1950. The Du Pont firm established the Atomic Energy Division (AED) within its Explosives Department and began putting together a team for the new project and division.

Planning began immediately with site selection and reactor design uppermost in mind. Du Pont worked closely with the AEC, helping to mold the plant it would operate. When the North Korean Army drove across the 38th parallel into the Republic of Korea in June 1950, the Atomic Energy Commission decided to add three more reactors to the two already planned, adding to the complexity of the proposed plant. With legislation in place to provide a legal basis for the AEC's intended acquisition, a tract in South Carolina's Barnwell and Aiken counties was chosen out of 114 candidate sites for the new plant. The search that began in June ended on November 10th with the search committee's recommendation for the South Carolina site. Water, abundant in supply and low in mineral content, topography, the isolated character of the site, an available labor pool, and military defense all figured into the Site's selection.

Reaction to the public announcement of the site selection on November 28, 1950 was jubilant in Georgia and South Carolina. Senator Edgar A. Brown and Augusta's Chamber of Commerce Secretary, Lester Moody, had been working for months to secure the new plant for the CSRA. Clark Hill Dam, Hartwell Dam, and the new H-bomb plant were evolutionary steps in the shaping of the area's industrial future. Atomic piles, known as reactors, would soon rub shoulders and share the river water with Graniteville and Augusta's textile mills. Newspaper headlines clamored that Augusta would become a metropolis, Aiken a ''fast growing city,'' and Barnwell and environs would quickly follow suit.

Slicing through the clamor were the voices of those displaced by the plant. Residents of Ellenton (population 600), Dunbarton (population 231), Hawthorne, Meyers Mill, Robbins, Leigh, and farmers and tenants within the outlying areas listened sadly and carefully as AEC, U.S. Army Corps of Engineers, Du Pont, and local officials outlined what was ahead for them. Eighteen months were allotted for the staged evacuation of 1500 families. Ellenton residents were to be evacuated by March 1, 1952, Dunbarton residents by June 15. Land appraisers would contact owners, beginning the acquisition process. Those in construction priority areas had six weeks notice. The many families who rented or sharecropped for their livelihood were also deeply affected. In a month usually filled with warm thoughts of home and the upcoming holidays, ''the DPs,'' those displaced by the federal taking, grappled with future plans under the scrutiny of reporters who told their story to the nation. Some displaced families chose to physically move their homes out of the area, relocating in the new town of New Ellenton, Jackson, or other environs. Others moved to existing neighboring communities.

The original boundaries also included the communities of Jackson and Snelling; when acquisition plans were finalized, these communities were not affected. In 1952, a corridor was added from the site to the Savannah River along Lower Three Runs Creek in Barnwell and Allendale counties. The South Atlantic Real Estate Division of the U.S. Army Corps of Engineers (COE) conducted the acquisition program, ultimately acquiring 1,706 tracts of land, totaling 200,742 acres. Seventy four percent of the acquired properties were farms cultivated in corn, cotton, and peanuts. Small tenant farms were in the majority; the agricultural labor pool was predominantly African American. The plant area was closed to the public on December 14.

Sign posted at Ellenton, South Carolina border. ''It is hard to understand why our town must be destroyed to make a bomb that will destroy someone else's town that they love as much as we love ours, but we feel that they picked not just the best spot in the U.S. but the best in the world. We love these dear hearts and gentle people, who live in our home town.''

Between January 1951 and 1955, the Atomic Energy Commission constructed a self-sufficient industrial plant that was considered the largest single construction job it had ever undertaken. Its magnitude and scope were unequaled, in a half century punctuated by immense engineering and construction projects such as the Panama Canal, Tennessee Valley Authority, and the AEC's own Manhattan Project-era plants at Oak Ridge, Tennessee, and Hanford, Washington. At peak construction in September 1952, 38,582 workers labored 54 hours a week under the direction of Du Pont engineers. South Carolina (25,019) and Georgia (13,776) contributed the majority of the project's construction force; however, forty-nine states and the Panama Canal Zone were also represented in the ranks.

Design flowed from Du Pont and its subcontractors drawing tables through the national laboratories and the Atomic Energy Commission. Five reactors, two chemical separations plants, a heavy water plant, a fuel and target manufacturing area, and laboratories were joined by over sixty miles of railroad, 230 miles of new roads, the state's first cloverleaf intersection, power plants, and other infrastructure. Three safety awards were earned by the project, a coup for Du Pont's Construction Field Manager Bob Mason. And an esprit de corps, shown in the project newspaper ''SRP News and Views'' and in athletics and other recreational events, was fostered by the schedule, secrecy, purpose, and magnitude of the project.

Between 1950 and 1960, the Savannah River communities grew substantially as they absorbed the incoming work force. Augusta grew by 25 percent, North Augusta tripled its population, while Aiken, Williston, and Barnwell doubled in size. Jackson, a rim community, achieved town status, as did New Ellenton located to the north of the plant.

The trailer cities that had housed the construction workers and their families were archaeological sites by 1960. More lasting were an estimated 5,465 homes built to accommodate operating staff and their families in the surrounding counties. The Housing and Home Finance Administration provided grants after AEC review to offset the expansion of basic community services. The affected communities experienced growing pains in all directions, as schools, roads, water and sewage systems, parks, and basic community needs were all impacted.

Inside the plant fence, the Community Chest Program was chosen by the plant management as a way for workers to show their community support. Each year money was energetically collected in support of this program, and contributors would indicate which community should receive their donation. In 1952, $50,908 were contributed; a year later contributions soared to $74,015. The new atomic community already had neighborhood pride.

In education, the AEC made great strides in the fields of science and technology. Under an agreement with the Southern Regional Education Board in 1956, a cooperative program began in which college students could attend classes and work at the plant alternating terms. Georgia Institute of Technology and University of Florida students were the first to sign up. Grants were also made to regional universities to fund the development of programs in atomic energy and related fields. At the high school level, science students were invited on Thomas Alva Edison's birthday to come to the plant and tour facilities to learn about the peaceful applications of atomic energy. Civic talks were given and science fairs held. Finally, membership in professional organizations abounded and local chapters of heretofore national organizations were established in the Central Savannah River Area.

Massive amounts of concrete, steel, rebar, lumber, and macadam were used to create the Savannah River Plant. Construction statistics are staggering, attesting to the epic nature of the undertaking. However, the construction activity was confined to an industrial core area, leaving a large buffer zone of land untouched by industrial construction. In this zone, an equally epic undertaking mostly orchestrated by nature occurred. A ''garden'' grew up around the machine.

The U.S. Forest Service, under contract with the AEC, set out about 10,000,000 pine seedlings along the plant perimeter for screening and erosion control in 1952–53, and then launched a forest management program for an additional 60,000 acres. Their efforts, combined with the retirement of thousands of acres of farmland from cultivation, the impact of intensive grading from construction, and human neglect factored into the making of a new landscape. A green space with an incredible diversity of plant and animal life grew up in its stead.

Scientific knowledge concerning the environmental impact of industry, atomic or otherwise, was limited in 1950. Ecology was a developing field. The AEC, with a strong sense of stewardship, invited scientists from the Universities of Georgia and South Carolina to collect baseline data on plant and animal communities that would provide a ''before'' picture with which to measure the impact of the Plant's processes on the environment. Du Pont, already a leader in the field of industrial ecology, was responsible for bringing a team from the Academy of Natural Sciences in Philadelphia under the leadership of Dr. Ruth Patrick to the plant to perform a biological study of the Savannah River. The University of Georgia developed a program that went beyond inventory, that became the Savannah River Ecology Laboratory. Under the direction of Dr. Eugene Odum, a large-scale study of ecological succession began. Ecologists studied the dynamics of change within the environment as the impress of centuries of agriculture disappeared and natural succession occurred. Radiation ecology studies were also an early research focus. While the Cold War mission was the prime mover in the shaping of the Savannah River Plant, the stewardship of the land acquired for that purpose was also part of the compact made with the American people.

Since those earliest days, the employees of the Savannah River Site have had sustained success in meeting their commitments to the nation. They have safely fulfilled their primary mission of producing plutonium and tritium for the national defense—to this day the Site has maintained a 100 percent on-time record of production and delivery of tritium to the Department of Defense. In the realm of basic science, they advanced the knowledge of particle physics with the proof of the existence of the neutrino in 1956. Their advances in nuclear materials production led to additional missions of creating radioactive isotopes for medical diagnosis and treatment; industrial and research programs; and NASA space missions, from Voyager to Cassini, now on its way to Saturn. They designed and built the largest radioactive waste vitrification facility in the world, the Defense Waste Processing Facility, where highly radioactive liquid waste is transformed into a solid glass form for safe storage and ultimate disposition. Their early concern for the environment and study of the ecological consequences of their operations led to the designation of SRS as the first National Environmental Research Park in 1972. They discovered the natural habitat of the bacterium that causes Legionnaires' Disease.

The end of the Cold War brought significant change to the Savannah River Site. The national defense mission continued with the recycling and replenishment of tritium from dismantled nuclear weapons, but increased attention was brought to bear on waste management and environmental restoration activities. This new focus included adapting defense-specific technologies to peacetime applications, which benefitted greatly from the Site infrastructure and the historical expertise of the Site workforce. For example, Site expertise in handling tritium (a form of hydrogen) has yielded hydride technologies that have applications in the transportation and energy industries. Advances in robotics and environmental monitoring and cleanup technologies, such as proving the existence of deep subsurface microbes and employing them for in-situ remediation of wastes, have led to applications not just at SRS, but across the country and around the world. The Savannah River Ecology Laboratory, widely recognized as the birthplace of the modern science of ecology, has a laboratory at Chernobyl, Ukraine, where scientists share their expertise in helping the Ukrainians recover from that disaster.

Today, the future of the Savannah River Site looks as bright as it did 50 years ago. In the area of stockpile stewardship, it will continue its key national defense mission as the nation's sole source for tritium using a new Tritium Extraction Facility now under construction. It will also provide a backup source for plutonium weapon components, called pits, should the nation require that increased capacity. In the area of nuclear materials stewardship, it will contribute to our nation's nonproliferation efforts to reduce the global nuclear danger. It will receive surplus weapons plutonium from other DOE sites for safe, secure storage pending disposition; some of the plutonium will be stored in one of the old reactors which previously created the plutonium. It will prepare that surplus plutonium for final disposition. One new facility will immobilize the plutonium in ceramic disks that will be encased in canisters of protective radioactive glass at the Defense Waste Processing Facility. Other new facilities, the Pit Disassembly and Conversion Facility and the Mixed-Oxide Fuel Fabrication Facility, will convert the plutonium from dismantled weapons into commercial reactor fuel which will provide electrical power while it is slowly converted into non-weapons-usable spent fuel. It will also down-blend weapons-usable highly enriched uranium into a low-enrichment form usable as fuel in commercial power reactors. In the area of environmental stewardship, it will develop technologies and practices to manage wastes and clean up the environment more efficiently and cost effectively. Its longstanding support for, and from, its neighbors in the Central Savannah River Area will reinforce its commitment to success in all these endeavors.

FAREWELL TO TOM MCILWAIN

Mr. LOTT. Mr. President, before this session of the 106th Congress comes to an end, I'd like to take the time to say farewell to Tom McIlwain, who served on my staff this year as a fellow from the National Marine Fisheries Service (NMFS). Prior to coming to my staff in March, he served as Fishery Administrator for the NMFS Southeast Fishery Center. Tom is a native of my hometown, Pascagoula, Mississippi. He understands the importance of oceans and fisheries issues to the Gulf Coast, and the Mississippi coast in particular.

This is Tom's second stint as a fellow on my staff. Back when I was a member of the other chamber, and Tom worked for the State of Mississippi, he spent a year as a fellow on my staff advising me on oceans and fisheries matters. Tom is a longtime expert in this area. His advice and counsel was just as vital to me this year as it was back then.

As a member of the Senate Committee on Commerce, Science, and Transportation, I have participated in development and passage of a number of oceans and fisheries authorization bills during this session, and Tom has advised me on every one of them. This year alone, he assisted in the enactment into public law of the National Marine Sanctuaries Amendments Act of 2000, Fishermen's Protective Act Amendments of 1999, Yukon River Salmon Act of 1999, and the Fisheries Survey Vessel Authorization Act of 1999, and the Senate passage of the Pribilof Islands Transition Act, the Coastal Zone Management Act of 2000, Atlantic Coastal Fisheries Act of 2000, Shark Finning Prohibition Act, Coral Reef Conservation Act of 2000, and Marine Mammal Rescue Assistance Act of

1999. I expect several of the latter bills to be enacted this year.

Tom also identified key funding shortfalls in NMFS and State of Mississippi programs for the Gulf of Mexico. His concern that Gulf of Mexico needs were being overlooked as NMFS funding was increased to address high-profile issues in other regions of the country led me to fight for additional funding for our region. The NMFS appropriation for Fiscal year 2001 includes an additional $8.25 million for red snapper research and $1 million to expand the NMFS Mississippi Laboratory at Pascagoula. I know he is pleased with that the State of Mississippi will receive much needed additional funding for coastal impact assistance, almost $28 million in Fiscal Year 2001. This vital piece of the Conservation and Reinvestment Act was authorized and funded this year.

I wish Tom and his wife Janet all the best as they prepare for his next assignment within NMFS. I know that whatever he does, he will bring to it the same keen insight, practical solutions, and good humor that has served him so well in the past.

A MEMORIAL TO ELIZABETH KNIGHT BUNCH

Mr. LOTT. Mr. President, we were all saddened to learn of the death of a long-time Senate employee and good friend, Ms. Betty Bunch. Betty died last week after a long struggle with a pulmonary infection.

Betty started working for the Senate on January 3, 1977, when she moved to Washington, DC, to be the office manager for Senator Malcolm Wallop, the Republican Senator from Wyoming. As a graduate of the University of Wyoming, Ms. Bunch worked for some years at the University before deciding to move East with the Senator.

After serving Senator Wallop for 10 years, Betty transferred to the Committee on Rules and Administration and worked for ranking member Senator TED STEVENS of Alaska. In July 1991, Betty moved to the Senate Sergeant at Arms office and worked on a number of projects for the Education and Support Services team of the Computer Center.

One of Betty's major projects was to assist with the final construction planning for the Sergeant at Arms' operations move to the Postal Square building. She was very involved in the relocation of the Senate's computer and communications center and staff, as well as the financial and procurement staffs. This was a major initiative, and Betty accomplished it with the utmost professionalism.

Betty continued on a number of special projects for the Sergeant at arms until her retirement in June 1999. In total, Betty served the Senate well for over 22 years.

We will all miss her loyalty, professionalism, integrity, and wonderful sense of humor. Her son Jamie and daughter-in-law Glennis are in our thoughts and prayers.

VICTIMS OF GUN VIOLENCE

Mr. DURBIN. Mr. President, it has been more than a year since the Columbine tragedy, but still this Republican Congress refuses to act on sensible gun legislation.

Since Columbine, thousands of Americans have been killed by gunfire. Until we act, Democrats in the Senate will read the names of some of those who have lost their lives to gun violence in the past year, and we will continue to do so every day that the Senate is in session.

In the name of those who died, we will continue this fight. Following are the names of some of the people who were killed by gunfire one year ago today.

November 1, 1999:

Carlester Johnson, 17, Memphis, TN;

Rory Longs, 20, Chicago, IL;

Orlando Rangel, 23, Chicago, IL;

Patrice Thomas, 21, Houston, TX;

Donnell Tucker, Jr., 22, Baltimore, MD;

Adrian Miller, 43, Detroit, MI; and

John Ellis Wright, Jr., Fort Wayne, IN.

We cannot sit back and allow such senseless gun violence to continue. The deaths of these people are a reminder to all of us that we need to enact sensible gun legislation now.

HEALTH CARE FINANCING ADMINISTRATION

PAYMENTS FOR OUTPATIENT SERVICES

Mr. GRAMM. Mr. President, I am very concerned about how the Medicare program has chosen to pay the 10 free-standing cancer hospitals for outpatient services. It appears that the Health Care Financing Administration has ignored the explicit intent of the provisions we enacted last year as part of the Balanced Budget Refinement Act—provisions intended to help these critically important health care institutions.

Mr. ROTH. Senator, I share the Senator's concern. Last year, the Congress was concerned about how cancer hospitals would fare under the new Medicare outpatient prospective payment system. Cancer hospitals face many unique costs and the advent of exciting new treatments caused many to question the wisdom of applying the new outpatient prospective payment system to these facilities. To this end, the Finance Committee proposed and the Congress enacted provisions to protect these important facilities.

In brief, this provision created a permanent ''hold harmless'' for cancer hospitals. We instructed the Medicare program to pay cancer centers the same proportion of the facility's cost covered in 1996. In addition, we instructed the Secretary of the Department of Health and Human Services to make interim payments to these facilities consistent with this hold harmless.

Mr. GRAMM. The Secretary has ignored our concerns and intent. The Secretary has allowed the Medicare program to withhold 15 to 20 percent of the interim payments owed to cancer facilities. The Medicare program will not pay cancer hospitals these withheld funds for up to 4 years.

Mr. ROTH. I investigated this issue with the Health Care Financing Administration, HCFA, to ensure that they are not proceeding in a way that disadvantages these facilities and protects access to important cancer services. It is my understanding that the Medicare fiscal intermediaries are keeping the interim payments to these facilities artificially low in order to avoid the risk of overpayments.

While I think it is appropriate to make interim payments to facilities as accurately as possible, paying these facilities as low as 80–85 percent of what HCFA estimates final costs to be seems too low. If in fact these reductions are lower than previous rates of reduction when a system transition has been implemented, then I strongly urge HCFA to immediately review their proposal to make upward adjustments in the payment rates. Also, I urge the Administration to give special attention to the expeditious handling of the initial cost reports from cancer hospitals as they are submitted over the next few months in order to determine what appropriate payment levels need to be.

Mr. GRAMM. I agree with the Senator. I believe that the Secretary's actions are counter productive and I strongly urge including language in the CONGRESSIONAL RECORD that would make our intent clear.

Mr. ROTH. I, too, support restating within the CONGRESSIONAL RECORD our intent with regard to last year's Medicare bill.

LABOR-HHS-EDUCATION FUNDING BILL

Mr. KENNEDY. Mr. President, in every area of public policy, we have to make choices and set priorities.

How much do we spend on defense? And how much do we spend on domestic priorities?

How much do we protect our forests and natural resources? How much do we allocate to health care, education, law enforcement, and other obvious priorities?

How heavy should the tax burden be? How much do we need to do to protect Medicare and Social Security for the future generations?

Often, we have to make difficult choices.

But when it comes to protecting workers from injuries in the modern workplace and increased investments in education, I say there is no choice. It's not one or the other. We must do both.

But I'm convinced that our Republican friends want to do neither.

They don't want to protect workers from the dangers of the modern workplace. They don't want to protect them from repetitive motion injuries in their offices. Or from eyestrain at their computer screens.

But they also don't want to make the targeted investments in education that we need for smaller class sizes, quality teachers, and modern schools.

On Sunday night, Republican and Democratic House and Senate appropriators and the White House came to a bipartisan agreement on increasing funding for the nation's schools and communities.

On Monday, the Republican leadership rejected that agreement, jeopardizing critical support for the nation's public schools, college students, families, and workers.

Once again, the GOP Congress has earned the name the ''Anti-Education Congress.''

Once again, the GOP Congress is putting special interests ahead of education.

They failed to reauthorize the Elementary and Secondary Education Act for the first time in 35 years. Last May, we considered only eight amendments to the bill over six different days, when Senator LOTT suddenly abandoned the debate and moved to other legislation. The bill has never seen the light of day again.

By contrast when the bankruptcy bill was debated, our Republican colleagues did everything they could to satisfy the credit card companies. That bill was debated for 16 days, and 55 amendments were considered.

Now, while schools and parents wait to see whether Congress will increase its investment in education, Republicans find time to bring up the bankruptcy bill again.

Obviously, when the credit card companies want a bill, our Republican friends put everything else aside to get it done. But when it comes to education, the voices of parents and children and schools and communities always go unheard.

Every year since they have been in the majority, Republicans have left education funding until the very end. As we've had to do every year since the GOP took over the majority in Congress in 1995, we must be especially vigilant on education funding. Over and over, we've heard the Republican rhetoric of support, but the reality is just the opposite.

They say education is a priority. We thought the Republicans might finally put aside their opposition to education. But it's all talk and no action.

At the beginning of this Congress, on January 6, 1999, Senator LOTT said, ''Education is going to be a central issue this year . . . For starters, we must reauthorize the Elementary and Secondary Education Act. That is important.''

As recently as July 25, Senator LOTT said, ''We will keep trying to find a way to go back to this legislation this year and get it completed.''

They say they want to invest in education, but their record shows they won't and don't. Year after year, it's the same sad story.

In 1995, they tried to abolish the Department of Education and slash $1.7 billion of education funds.

In FY96, they proposed to cut discretionary funds for education by $3.9 billion, and to cut for student loans by $14 billion.

In FY97, they proposed to cut education by $3.1 billion. In FY98, they tried to cut education by $200 million below the President's request, and in FY99 they tried to cut education by $2.8 billion below the President's request.

With the strong leadership of President Clinton, all of these reactionary GOP anti-education schemes were defeated, and federal funding for education steadily increased.

Nevertheless, the anti-education Republicans in Congress continue to give education the lowest priority. They say they want to make education a high priority—but their rhetoric never matches the reality. It's four weeks after the fiscal year began, and the Republicans have just rejected a strong bipartisan education funding agreement. And now, for the GOP, the education funding bill is MIA—missing in action.

The House Republican majority did break their word when they rejected the bipartisan education funding agreement. They broke their word to the appropriators and the White House who negotiated the agreement. And, they broke their promise to the American people that they would do something for education across the country.

I want to be sure that my colleagues on both sides of the aisle understand what was at stake in the agreement.

By rejecting the agreement, the Republican leadership is rejecting $1.75 billion to reduce class size. That's an increase of $450 million over last year, to help communities hire an additional qualified teachers to reduce class size in the early grades to 18.

By rejecting the agreement, the Republican leadership is rejecting $1 billion for after-school activities—an increase of $547 million over last year.

Each day, 5 million children, many as young as 8 or 9 years old, are home alone after school. Juvenile delinquent crime peaks in the hours between 3 p.m. and 6 p.m. Children left unsupervised are more likely to be involved in anti-social activities and destructive patterns of behavior.

Under the successful 21st Century Community Learning program, students are able to have expanded learning opportunities in school facilities, in cooperation with community organizations and other educational and youth development agencies.

Massachusetts has greatly benefitted from this successful program. Worcester Public Schools received a $1.2 million federal grant recently to expand after-school opportunities. Boston received $306,000, so that three middle schools in high need areas can create high-quality learning centers that meet the needs of their communities. Chelsea, Holyoke, and Springfield have also received grants under this vital program. We should help more communities increase after-school opportunities for children.

By rejecting the agreement, the Republican leadership is also rejecting $585 million for teacher quality programs, an increase of $250 million over last year. That means denying millions of teachers access to high quality professional development and mentoring. With training in proven effective teaching practices and the newest technologies, teachers can help all children meet high academic standards and graduate from school prepared for the 21st century workplace.

By rejecting the agreement, the Republican leadership is rejecting $6.6 billion for IDEA, an increase of $1.7 billion over last year. That means undermining local efforts to help children with disabilities get a good education.

By rejecting the agreement, the Republican leadership is rejecting $250 million for states to help failing schools, an increase of $116 million over last year. That means denying help needed to turn around thousands of low-performing schools.

By rejecting the agreement, the Republican leadership is rejecting a maximum Pell grant of $3,800, an increase of $500 over last year. That means denying many needy college students a much-needed increase in their Pell grants.

By rejecting the agreement, the Republican leadership is rejecting $325 million for GEAR UP, an increase of $125 million over last year. That means denying low-income middle and high school students the extra mentoring and financial assistance they make college a reality for their future.

By rejecting the agreement, the Republican leadership is rejecting a new program to provide $1.333 billion for school repair and renovation. That means denying schools the support they need to meet their most urgent repair and renovation needs.

Elementary and secondary schools are in urgent need of repair and renovations, so that students can learn and teachers can teach in safe and up-to-date facilities. It's estimated that $112 billion is needed, just to repair existing schools across the nation in poor condition. Nearly one third of all public schools are more than 50 years old. 14 million children in a third of the nation's schools are learning in substandard buildings. Half of all schools have at least one unsatisfactory environmental condition. The problems with ailing school buildings aren't the problems of the inner city alone. They exist in almost every community—urban, rural, or suburban.

Sending children to learn and teachers to teach in dilapidated, overcrowded facilities sends a message to

these students and their teachers. It tells them they don't matter. No CEO would tolerate a leaky ceiling in the board room, and no teacher should have to tolerate it in the classroom. We need to do all we can to ensure that children are learning in safe, modern buildings.

Republicans have also rejected the Administration's proposal to provide $25 billion in interest-free bonds to help communities build and modernize 6,000 new schools to alleviate overcrowding and repair crumbling and dilapidated buildings.

The President's proposal is the right approach because it maintains Davis-Bacon protections for workers. The Davis-Bacon Act requires contractors to pay construction workers locally prevailing wages, thereby ensuring that federally assisted construction projects are not used to undermine local wages. Paying prevailing wages ensures that taxpayers have quality construction work performed by well trained, highly skilled, efficient workers. It is short-sighted and unacceptable to build new schools for children to improve their learning, and then allow construction workers to be paid sub-standard wages.

Republicans opposed to Davis-Bacon continue to repeat the myth that the Davis-Bacon Act increases the cost of school construction. Study after study shows that it does not. Recent studies of prevailing wage laws in Michigan, in Maryland and other Mid-Atlantic states, and in New Mexico and other western states, show that prevailing wage laws do not increase the cost of school construction.

Congress has given strong bipartisan support to the Davis-Bacon Act ever since it was first passed in 1931. Paying prevailing wages makes good policy sense. It enhances productivity and quality. It strengthens skills training in the construction industry. It protects the wages and benefits of local construction workers. Even Ronald Reagan promised to support Davis-Bacon.

Republican leaders should be ashamed of themselves for denying this urgently needed help for schools, communities, and families across the country.

The Republican Congress has put education last too many times, and it should be held accountable in the voting booths on November 7.

Voters should also recognize that the Republican candidate for President, Governor Bush, has a track record that is no better on education, and he should be held accountable, too.

If Governor Bush's record in Texas is any indication, average Americans—who work day after day to make ends meet—will be an after-thought in a Bush Administration.

The Republican Congress says he has the answers on education. He calls his record in Texas an ''education miracle.'' But if you look at the record, it is more of an ''education mirage'' than an ''education miracle.''

Under Governor Bush, in 1998, according to the National Center for Education Statistics, Texas ranked 45th in the nation in high school completion rates. 71 percent of high school dropouts in Texas are minorities. Hispanic students in Texas drop out at more than twice the rate of white students in the state.

So if education is the biggest civil rights issue in America, as Governor Bush claimed in the Presidential debates, he flunked the test in Texas.

Last August, the College Board reported that nationally, from 1997 to the year 2000, SAT scores have increased—but in Texas, they have decreased. In 1997, Texas was 21 points below the SAT national average—and by 2000, the gap had widened to 26 points.

Then, last Thursday, Governor Bush heard more bad news. The RAND Corporation released an education bombshell that raises serious questions about the validity of even the gains in student achievement in Texas claimed by the Governor.

The RAND bombshell was all the more embarrassing, because in August, Governor Bush said, ''Our state . . . has done the best . . . not measured by us but measured by the RAND Corporation, who take an objective look as to how states are doing when it comes to educating children.''

Clearly, at that time, Governor Bush trusted the conclusions made by the RAND Corporation. He was referring to a RAND report that looked at scores in Texas from 1990 to 1996. In fact, Senator HUTCHISON cited those findings on the floor of the Senate on Thursday.

But most of the years covered by the earlier RAND report were before Bush became Governor. The new RAND report, released earlier this week, analyzes scores from 1994 to 1998, when George W. Bush was the Governor.

The achievement gap in Texas is not closing—it is widening. And what is the Governor's solution? Tests, tests, and more tests. In August, Governor Bush said, ''Without comprehensive regular testing, without knowing if children are really learning, accountability is a myth, and standards are just slogans.''

We all know that tests are an important indication of student achievement. But the RAND study questions the validity of the Texas state test, because Governor Bush's education program was ''teaching to the test,'' instead of genuinely helping children to learn.

If we want a true solution, we should look at the success of states such as North Carolina, which is improving education the right way—investing in schools, improving teacher quality, and expanding after-school programs—all in order to produce better results for students. SAT scores went up in North Carolina by 10 points between 1997 and 2000.

The Bush Plan mandates tests and more tests for children—but it does nothing to ensure that schools actually improve and children actually learn.

We know that immediate help for low-performing schools is essential. We know that we can turn around failing schools, when the federal government and states and parents and local schools work together as partners to provide the needed investments.

In North Carolina, low-performing schools are given technical assistance from special state teams that provide targeted support to turn around low-performing schools. In the 1997–98 school year, 15 North Carolina schools received intensive help from these state assistance teams. In August 1998, the state reported that most of these schools achieved ''exemplary'' growth—and not one of the schools remained in the ''low-performing'' category. Last year, 11 North Carolina schools received similar help. Nine met or exceeded their targets.

That's the kind of aid to education that works—not just tests, but realistic action to bring about realistic change for students' education.

Instead of taking steps that work, Governor Bush abandons low-performing schools. He proposes a private school voucher plan that drains needed resources from troubled schools and traps low-income children in them.

In the Vietnam War, it was said that we had to destroy some villages in order to save them. That's what Governor Bush has in store for failing schools—a Vietnam War strategy that will destroy schools instead of saving them.

Parents want smaller class sizes, where teachers can maintain order and give children the one-on-one attention they need to learn.

Parents want qualified teachers for their children—a qualified teacher in all of their classes.

Parents want schools that are safe and modern learning environments for their children.

Parents and students alike want an increase in Pell Grants, to help students afford the college education they need in order to have successful careers in the new economy.

The vast majority of Americans want us to address these challenges. And AL GORE and Democrats in Congress will do just that. They will continue to fight hard and well for the education priorities that parents and local schools are demanding.

EDUCATION PRIORITIES

Mr. VOINOVICH. Mr. President, today is November 1st, one month after the beginning of the new fiscal year and less than one week before the 2000 elections. Most of us in this body had anticipated that by now, we would be home in our respective states instead of here in Washington. However, we are once again in the midst of gridlock with a President who, despite his eight years in office, still does not understand how to delineate the proper role of government at the federal, state and local level.

Our forefathers referred to this differentiation as federalism, and outlined this relationship in the 10th Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Just the other day, in response to his veto of the Treasury-Postal appropriations bill, the President made the claim that we in Congress were taking care of ourselves first before we take care of education, and that he could not ''in good conscience'' sign a bill that would do so.

I would say to the Chair that I am as committed to the need to provide our children with a quality education as any member of this body—Democrat or Republican—and just as committed as the President.

But what the President and my friends on the other side want to do with respect to education is all wrong and it smacks of election year politics.

The reality is that the President has his priorities all mixed up. Over the last eight years, he has missed a fundamental opportunity to reform Social Security. Over the last eight years, he has missed the opportunity to reform Medicare. Over the last eight years, he has missed the opportunity to revamp and upgrade our military.

As my colleagues know, both Governor Bush and Vice President GORE have made education among their top priorities in their campaigns. As such, I believe in a few short months from now, Congress and the new President will work together to craft an ESEA reauthorization bill, which I am confident will pass quickly and be signed into law.

However, instead of waiting a few months to allow his successor the opportunity to reauthorize the Elementary and Secondary Education Act, ESEA, this President seems consumed with constructing education policy through the appropriations process.

In this appropriation cycle, the President has demanded more than $4 billion in new education spending primarily for additional teachers, after school programs and school facilities, plus billions of additional dollars for school construction bonds.

Let me state emphatically to my colleagues: these activities are not federal responsibilities.

What is a federal responsibility is giving state and local leaders the flexibility to spend funds the way that makes the most sense for their particular school districts.

On this side of the aisle, we are saying, ''we trust our teachers, and principals and school superintendents to make decisions on education spending.'' We are saying we will give you education funds and if you want to spend them on hiring teachers or building schools you can, but if your needs are new technology or books or training or special education, you ought to be able to spend the money on those programs. This is the right approach.

Throughout American history, the federal government's role in educating America's youth has traditionally been relatively minor. The U.S. Constitution and the Federalist Papers affirm that the primary responsibility for education lies with those closest to our students in our states and localities.

It is parents, teachers, local school districts and states who have done the lion's share with respect to educating our children, not Washington. And the numbers back up this fact.

Right now in America, the Federal Government only provides 7 percent of the funds for education.

Let me repeat that because that fact is hardly ever discussed: the Federal Government only provides 7 percent of the funds for education in this nation.

That means 93 percent of each dollar that is spent on education comes from state taxes or local taxes or some other non-federal source.

Yet, this Administration would have the American people believe that all good things spring from Washington and that ''top down'' command-and-control policies from the White House work best.

To them, the local school districts in America—the parents and teachers and administrators across this nation—have no earthly idea how to educate their own children, nor do they know what their needs are.

Believe it or not, most states are already investing in teachers and in school construction and in technology and after school programs.

Most States have the money to pay for education—for teachers, for classroom materials, and for school construction.

The National Governors Association reports that 46 states have a budget surplus and at least 36 states have a comfortable surplus. As a result, many states have been able to increase spending on education while cutting taxes.

Does it make sense, then, for the White House to dangle a $4 billion carrot in front of America's school districts when so many states are reporting budget surpluses and are cutting taxes?

The federal government has billions of dollars of unmet needs.

We have a national debt of $5.7 trillion—a debt that is costing us $224 billion in interest payments a year, and $600 million per day just to pay the interest.

Out of every federal dollar that is spent, 13 cents will go to pay the interest on the national debt. In comparison, 16 cents will go for national defense; 18 cents will go for non-defense discretionary spending; and 53 cents will go for entitlement spending. Right now, we spend more federal tax dollars on debt interest than we do on the entire Medicare program.

Yet the President is willing to spend billions of dollars on what are state and local government responsibilities instead of targeting those funds on what are true federal needs.

Clearly, states are the ones with the resources for school construction, and they are, in fact, using them for that purpose.

When I was Governor, I felt so strongly about the importance of building new schools that I started the Ohio School Facilities Commission. Because of what we were able to do in Ohio, the General Accounting Office reported earlier this year that Ohio's increase in school construction spending from 1990–1997 was the ninth greatest in the nation in percentage terms, and the eighth greatest in terms of dollar amount.

In addition, thanks to the settlement our states have negotiated with the tobacco industry—something I fought hard to achieve—Ohio has more than $10 billion in additional revenues.

Governor Taft has pledged to fully address the facility needs of every Ohio school district within the next 12 years. His proposal for allocating $23 billion in state and local resources included a plan to fund the building needs of Ohio's 49 vocational school districts, accelerate the pace of work for our largest urban school districts, and in short give all districts an opportunity to address their immediate facility needs.

And in New Jersey, Governor Christine Todd Whitman announced recently that her state has begun spending money on a plan to build $12 billion worth of classrooms over the next 10 years.

States have invested in teachers as well. In Ohio, we realized that young teachers needed mentors to show the way. So we started a program that pays teachers $1,500 to serve as mentors to younger teachers.

And because professional development is important, I initiated Ohio's participation in the National Board of Professional Teaching Standards.

I felt it was so important for us to prepare our teachers that we began encouraging teachers in Ohio to participate by paying their application fees and the cost to take the test. Teachers who passed the National Board of Professional Teaching Standards certification process were rewarded with a bonus of $2,500 for 10 years.

As a result of these commitments, Ohio has ranked fourth in the nation in professional development by the National Commission on Teaching and America's Future. And Congress continues to recognize the value of this organization.

In short, like most states, Ohio is getting it done for education. But what really upsets me is the fact that the President is calling on Ohio taxpayers to send money to Washington so that the federal government can turn around and send it to states that are not meeting their responsibilities—responsibilities that are totally and absolutely state or local obligations.

Right now, the President is pushing to spend $1.75 billion on a school class size reduction program, but, with

120,000 teachers already in Ohio, this program at best yields only 1.5% increase in the number of teachers in my state.

In fact, even if the President gets all the money he wants, 47% of Ohio's public school districts and community schools will not even receive enough money from the President's program to hire a single teacher. Not a single one.

The Clinton class size reduction proposal undermines local control and the ability of school districts to spend money where it is needed most. But it goes to the point that the Clinton-Gore administration wants to be all things to all people.

I say to my colleagues, if we really want to do something for education, then we should live up to the federal commitment to IDEA.

In 1975, Congress passed the Individuals with Disabilities Education Act (IDEA), a program designed to help mainstream young men and women with disabilities so they could obtain a quality education. Congress thought it was such a national priority, that it promised that the Federal Government would pay up to 40 percent of the cost of this program.

However, through fiscal year 2000, the most that Washington provided to our school districts under IDEA is 12.6 percent of the educational costs for each handicapped child. The remainder of the cost for IDEA falls on State and local governments.

Earlier this year, the Senate passed two amendments that I offered regarding IDEA. The first said that Washington should live up to its commitment to fund IDEA at the 40% level before it allocates new education money.

The second would allow school districts to use federal money for IDEA. Or, if the district wanted to spend the money on new teachers or new facilities, they could do so.

If the Federal Government was fully funding IDEA, most of the education initiatives the President and my colleagues are proposing—school construction, after-school programs, and new teachers—could be and likely would be taken care of at the State and local level.

The Federal Government does have important responsibilities like national defense, infrastructure, Medicare and Social Security and we must also look at real federal priorities such as prescription drugs and responding to the cries of our health care system that has been short changed by the 1997 Balanced Budget Act. However, Washington must figure out how to sustain paying for its responsibilities before making new commitments.

Because of the President's spending programs, the Labor HHS appropriations bill is, at last count, already at $113 billion. Last year, we spent $96 billion for the same bill. That's nearly an 18 percent increase.

This appropriations bill contains more than $43 billion for the Department of Education. In the President's own budget, he asked for only $40 billion. Still, that is almost double the $21.1 billion in discretionary education spending allocated by the Federal Government just 10 years ago in fiscal year 1991, and nearly 5 times the $8.2 billion spent on discretionary education spending 25 years ago in 1976.

The President and my colleagues across the aisle must stop acting as if they are the Nation's school board, trying to fund every education program possible.

I believe our State and local leaders should be given the flexibility they need to spend their Federal education dollars to live up to our obligations with respect to IDEA, freeing them to address state and local education needs that have not yet been met.

It is my hope that in the waning days of this Congress, we will find the strength to recognize what is a federal responsibility and what is not and act accordingly. We can no longer count on the President to do so: it is up to us.

OBJECTION TO PROCEEDING TO H.R. 4020

Mr. WYDEN. Mr. President, I rise today to state my objection to any unanimous consent request for the Senate to proceed to or adopt H.R. 4020, authorizing the expansion of the boundaries of Sequoia National Park to include Dillonwood Giant Sequoia Grove, unless or until S. 2691, to provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, is discharged, unamended, from the House of Representatives Resources Committee and passed, unamended, by the House of Representatives. I do so consistent with the commitment I have made to explain publicly any so-called ''holds'' that I may place on legislation.

S. 2691 is a bipartisan bill, authored by myself and Senator SMITH of Oregon, and supported by all the members of Oregon's congressional delegation. It passed the Senate Energy and Natural Resources Committee, as well as the entire Senate, unanimously. This legislation protects the current and future drinking water source for the city of Portland, home to one in four Oregonians.

Despite its broad support, and my personal appeal to the Resources Committee, that committee has failed to act on it. Oregonians expect their elected representatives will act responsibly to protect Portland's drinking water source. As a result, I cannot agree to H.R. 4020 until S. 2691 clears the House of Representatives unamended.

THE BANKRUPTCY REFORM BILL

Mr. KERRY. Mr. President, I strongly believe that reform of our bankruptcy laws is necessary. During the 105th and 106th Congress, I have supported legislation to reform bankruptcy laws and end the abuse of the system. However, I am very disappointed that I am unable to support the conference report of the Bankruptcy Reform Bill because I believe it is unfair and unbalanced, was completed without appropriate consideration by the Minority party, includes an inequitable homestead provision and is unfair to many working families.

I am very concerned that the decision to file for bankruptcy is too often used as an economic tool to avoid responsibility for unsound business decisions and reckless acts by both individuals and businesses. There has been a decline in the stigma of filing for bankruptcy and appropriate changes are necessary to ensure that bankruptcy is no longer considered a lifestyle choice.

This legislation includes a number of important reforms which I support. I am pleased that the small business provisions originally included in the Senate bill have been changed to give small businesses adequate time to develop a reorganization plan during bankruptcy proceedings. I had previously included an amendment to the Senate bill that increased this time for small businesses. I am also pleased that the conference report includes my amendment to expand the credit committee membership under Chapter 11 bankruptcies to include small businesses. I believe this will ensure better access and information for small businesses creditors. Unfortunately, reasonable and necessary reforms were included in a bill that on the whole fails to take a balanced approach to bankruptcy reform. I had hoped that through a legitimate legislative process we would arrive at a compromise that would have ended the abuses but still provided our most vulnerable citizens with adequate protections. Instead, I believe that the conference report protects wealthy debtors by allowing them to use overly broad homestead exemptions to shield assets from their creditors. The Senate passed, by a bipartisan vote of 76–22, an amendment to create a $100,000 nationwide cap on any homestead exemption. However, this provision was not included in the Conference Report. Instead, the conferees included a meaningless cap with a two-year residency requirement that wealthy debtors could easily avoid. Moreover, the bill's safe harbor is illusory and will not benefit individuals in most need of help. Because the safe harbor is based on the combined income of the debtor and the debtor's spouse, many single mothers who are separated from their husbands and who are not receiving child support will not be able to take advantage of the safe harbor provision.

I am also very disappointed that the conference report does not include an amendment offered by Senator COLLINS and myself, which was included in the Senate bill, that would make Chapter 12 of the Bankruptcy Code, which now applies to family farmers, applicable

for fishermen. I believe that this provision would have made bankruptcy a more effective tool to help fishermen reorganize effectively and allow them to keep fishing while they do so.

In addition to its failure to protect many consumers, the bill fails to require that the credit industry share responsibility for reducing the number of bankruptcy cases. It does not require specific disclosures on monthly credit card statements that would show the time it would take to pay off a balance and the cost of credit if only minimum payments are made. It also does nothing to discourage lenders from further increasing the debt of consumers who are already overburdened with debt.

Finally, this bill is the result of a conference process that violated and deprived the rights of Senators. In October, the House appointed conferees for the Bankruptcy Reform Act and without holding a conference meeting, the Majority filed a conference report striking international security legislation and replacing with a reference to a bankruptcy reform bill introduced earlier that same day. This makes a mockery of the legislative process and demeans the United States Senate.

I am hopeful that during the 107th Congress, we can develop bipartisan legislation that would encourage responsibility and reduce abuses of the bankruptcy system.

BBA CUTS TO MEDICARE PROVIDERS

Mr. BAUCUS. Mr. President, I rise today to bring attention to the important issue of the Balanced Budget Act, BBA, of 1997, its revision in 1999, and the importance of providing further relief to the many patients and providers who have been negatively affected by its implementation.

The BBA included a series of cuts to Medicare providers, including hospitals, nursing homes, and home health agencies. Though intended to cut about $112 billion from Medicare over the five-year period from 1998 to 2001, recent estimates indicate that over twice that amount will be cut by the BBA. And although Congress restored about $16 billion in funding to Medicare in 1999, much work remains to be done. Particularly in rural America, Congress should restore funding to Medicare programs for telehealth, hospital and home health care, among others.

Nationwide, 25 percent of seniors live in rural areas. And though the BBA has hit all hospitals hard, rural facilities have suffered disproportionately from the 1997 legislation. According to a June report by the Medicare Payment Advisory Commission, small rural hospitals have significantly lower operating margins than rural facilities, on average 0.4 and 3.8 percent, respectively. Congress will do America's rural hospitals a great disservice by not enacting further BBA relief this year.

With respect to telemedicine, a means of providing care for Medicare beneficiaries with the use of advanced telecommunications equipment, Congress can act this year to further the use of this important tool. Mr. President, in my state of Montana, where over 75 percent of seniors live in rural areas, there is no psychiatrist east of Billings—an area the size of the State of Florida. Telemedicine could work wonders toward providing rural beneficiaries with access to specialty care, including psychiatric care. Although Congress mandated telehealth reimbursement as part of the BBA, the scope of that reimbursement is very limited.

We should also provide relief for home health care, one of the areas hit hardest by the BBA. Originally scheduled for a $16 billion cut, home health payments under Medicare were actually reduced by more than $68 billion, over four times the original amount intended. We need to preserve access to home care services by eliminating the scheduled 15 percent additional reduction in Medicare reimbursement. We should also provide 10 percent bonus payments to rural home care agencies, a provision that was included in both the Senate Finance and House Ways and Means BBA relief bills this year.

Mr. President, Congress should not let politics and partisan priorities to interfere with providing a basic human need to the people of our country. I urge my colleagues join me by acting on further BBA relief this year.

ERGONOMICS

Mr. KENNEDY. Mr. President, OSHA has been attempting to implement an ergonomics standard for the past ten years. But each year, Congress has delayed the standard. And now, even though a bipartisan group of appropriators agreed to a reasonable compromise on this issue late Sunday night, the Republican leadership rejected it—because the business lobbyists demanded it and insisted that millions of workers wait even longer for a safe and healthy workplace.

Each year, 1.7 million workers suffer from ergonomic injuries, and nearly 600,000 workers lose a day or more of work because of these injuries suffered on the job. Ergonomic injuries account for over one-third of all serious job-related injuries.

These injuries are painful and often crippling. They range from carpal tunnel syndrome, to severe back injuries, to disorders of the muscles and nerves. Carpal tunnel syndrome keeps workers off the job longer than any other workplace injury. This injury alone causes workers to lose an average of more than 25 days, compared to 17 days for fractures and 20 days for amputations.

The ergonomics issue is also a women's issue, because women workers are disproportionately affected by these injuries. Women make up 46 percent of the overall workforce—but in 1998 they accounted for 64 percent of repetitive motion injuries and 71 percent of carpal tunnel cases.

The good news is that these injuries are preventable. The National Academy of Sciences and the National Institute of Occupational Safety and Health have both found that obvious adjustments in the workplace can prevent workers from suffering ergonomic injuries and illnesses.

Congress has a responsibility to ensure that the nation's worker protection laws keep pace with changes in the workforce. Early in this century, the industrial age created deadly new conditions for large numbers of the nation's workers. When miners were killed or maimed in explosion after explosion, we enacted the Federal Coal Mine Safety and Health Act. As workplace hazards became more subtle, but no less dangerous, we responded by passing the Occupational Safety and Health Act to address hazards such as asbestos and cotton dust.

Now, as the workplace moves from the industrial to the information age, our laws must evolve again to address the emerging dangers to American workers. Ergonomic injuries are one of the principal hazards of the modern American workplace—and we owe it to the 600,000 workers who suffer serious ergonomic injuries each year to address this problem now.

Ergonomic injuries affect the lives of working men and women across the country. They injure nurses who regularly lift and move patients. They injure construction workers who lift heavy objects. They harm assembly-line workers whose tasks consist of constant repetitive motions. They injure data entry workers who type on computer keyboards all day. Even if we are not doing these jobs ourselves, we all know people who do. They are mothers and fathers, brothers and sisters, sons and daughters, friends and neighbors—and they deserve our help.

We need to help workers like Beth Piknick of Hyannis, Massachusetts, who was an intensive care nurse for 21 years, before a preventable back injury required her to have a spinal fusion operation and spend two years in rehabilitation. Although she wants to work, she can no longer do so. In her own words, ''The loss of my ability to take care of patients led to a clinical depression. . . . My ability to take care of patients—the reason I became a nurse—is gone. My injury—and all the losses it has entailed—were preventable.''

We need to help workers like Elly Leary, an auto assembler at the now-closed General Motors Assembly plant in Framingham, Massachusetts. Like many, many of her co-workers, she suffered a series of ergonomic injuries—including carpal tunnel syndrome and tendinitis. Like others, she tried switching hands to do her job. She tried varying the sequence of her routine. She even bid on other jobs. But nothing helped. Today, years after her injuries, when she wakes up in the morning, her hands are in a claw-like shape. To get them to open, she has to run hot water on them.

We need to help workers like Charley Richardson, a shipfitter at General Dynamics in Quincy, Massachusetts in the mid-1980's. He suffered a career-ending back injury when he was told to lift a 75 pound piece of steel to reinforce a deck. Although he continued to try to work, he found that on many days, he could not perform the lifting and the use of heavy tools. For years afterwards, his injury prevented him from participating in basic activities. But the loss that hurt the most was having to tell his children that they couldn't sit on his lap for more than a few minutes, because it was too painful. To this day, he cannot sit for long without pain.

We need to protect workers like Wendy Scheinfeld of Brighton, Massachusetts, a model employee in the insurance industry. Colleagues say she often put in extra hours at work to ''get the job done.'' She developed carpal tunnel syndrome, using a computer at work. As a result, Wendy lost the use of her hands, and is now permanently unable to do her job, drive a car, play the cello, or shop for groceries.

Even though it may be too late to help Beth, Elly, Charley and Wendy, workers just like them deserve an ergonomics standard to protect them from such debilitating injuries.

As long ago as 1990, Secretary of Labor Elizabeth Dole in the Bush Administration called ergonomic injuries ''one of the nation's most debilitating across-the-board worker safety and health illnesses.'' Since that time, over 2,000 scientific studies have examined the issue, including a comprehensive review by the National Academy of Sciences. All of these studies tell us the same thing—it's long past time to enact an ergonomics standard to protect the health of American workers and prevent these debilitating injuries in the workplace.

Last fall, when we considered the Labor-HHS appropriations bill, opponents of an ergonomics standard wanted us to wait for the National Academy of Sciences to complete a further study before OSHA establishes a standard. But it was just another delaying tactic. As we said then, over 2,000 studies on ergonomics have already been carried out.

In 1997, the National Institute for Occupational Safety and Health reviewed 600 of the most important of those studies. In 1998, the National Academy of Sciences reviewed the studies again. Congress even asked the General Accounting Office to conduct its own study.

The National Academy of Sciences found that work clearly causes ergonomic injuries. They concluded that ''the positive relationship between the occurrence of musculoskeletal disorders and the conduct of work is clear.'' The National Institute for Occupational Safety and Health agreed. They found ''strong evidence of an association between MSDs and certain work-related physical factors.''

The Academy also found that ergonomics programs are effective. As the Academy found, ''Research clearly demonstrates that specific interventions can reduce the reported rate of musculoskeltal disorders for workers who perform high-risk tasks.'' The GAO has concluded that good ergonomics practices are good business. Its report declared, ''Officials at all the facilities we visited believed their ergonomics programs yielded benefits, including reductions in workers' compensation costs.''

The truth is that the Labor Department's ergonomics rule is based on sound science. In addition to the National Academy of Sciences and the National Institute of Occupational Safety and Health, medical and scientific groups have expressed widespread support for moving forward with an ergonomics rule. The American College of Occupational and Environmental Medicine, representing over 7,000 physicians, has stated that ''there is . . . no reason for OSHA to delay the rule-making process while the NAS panel conducts its review.'' The American Academy of Orthopedic Surgeons, representing 16,000 surgeons, the American Association of Occupational Health Nurses, representing 13,000 nurses, and the American Public Health Association, representing 50,000 members, all agree that an ergonomics rule is necessary and based on sound science.

Many members of the business community support ergonomics protections, because they agree that good ergonomics practices are good business. Currently, businesses spend $15 to 20 billion each year in workers' compensation costs related to these disorders. Ergonomic injuries account for one dollar of every three dollars spent for workers' compensation. If businesses reduce these injuries, they will reap the benefits of lower costs, greater productivity, and less absenteeism.

That's certainly true for Tom Albin of Minnesota Mining and Manufacturing, who said, ''Our experience has shown that incorporating good ergonomics into our manufacturing and administrative processes can be effective in reducing the number and severity of work-related musculoskeletal disorders, which not only benefits our employees, but also makes good business sense.''

Similarly, Peter Meyer of Sequins International Quality Braid has said, ''We have reduced our compensation claims for carpal tunnel syndrome through an effective ergonomics program. Our productivity has increased dramatically, and our absenteeism has decreased drastically.''

This ergonomics rule is necessary, because only one-third of employers currently have effective ergonomics programs. Further delay is unacceptable, because it leaves too many workers unprotected and open to career-ending injuries. Ten years is long enough. Since OSHA began working on this standard in 1990, more than 6.1 million workers have suffered serious injuries from workplace ergonomic hazards.

It is time to end these injuries—and end all the misinformation too. The current attack on OSHA's ergonomics standard is just the latest in a long series of mindless attacks by business against needed worker protections for worker's health and safety. Whose side is this Congress on? American employees deserve greater protection, not further delay. It's time to stop breaking the promise made to workers, and start supporting this long overdue ergonomics standard now.

WATER RESOURCES DEVELOPMENT ACT OF 2000

Mr. TORRICELLI. Mr. President, I applaud the Senate's passage of the Water Resources Development Act of 2000, WRDA, S. 2796. This legislation is critical to my State of New Jersey, which is so dependent upon its rivers, estuaries, and coasts for its livelihood. New Jersey relies on these unique resources as avenues for freight and business, recreational and harvest fishing, and a vibrant tourism industry. Indeed, it is imperative that these resources be kept environmentally and economically viable.

Along these lines, I am pleased that the Senate has agreed to pursue environmentally responsible alternatives for addressing flooding along the Passaic River. I originally introduced language to address this issue, which represents a new era in flood control, in 1998. S. 2796 authorizes the U.S. Army Corps of Engineers (Corps) to use up-to-date criteria in developing a new environmentally and economically responsible alternative. Such an alternative will take into account non-structural options, such as land buyouts and wetlands preservation. The bill also directs the Corps to study the possible acquisition of open space in the Highlands region of New Jersey as a way of reducing low-land flooding.

I also applaud the Senate's authorization of more than $1.7 billion to bring the channels of the New York and New Jersey Harbor to a depth of 50 feet. This authorization is based on the findings of the New York-New Jersey Harbor Navigation Study which was designed to evaluate the navigational needs of the Port of New York and New Jersey over the next 50 years. The results of the study have made clear the need for deepening the channels of Port Jersey, Kill Van Kull, Newark Bay, Arthur Kill, and Bay Ridge Channels to a depth of 50 feet.

While the region has relied on the maritime industry for over two hundred years, the port lacks the capacity to accommodate new deep draft shipping vessels. More than a decade ago, Congress authorized the deepening of these channels to 45 feet which has begun and is on track to be completed in the next few years. But this is only the beginning. In order to maintain the

165,000 jobs and $22 billion in annual economic activity port commerce generates, these channels must go to 50 feet.

Once clean materials from these deepening projects, and other projects from around the nation, have been dredged we should not neglect possible beneficial uses. Within WRDA, there is a $2 million annual authorization for the Corps to develop a program that will allow all eight of its regional offices to market eligible dredged material to public agencies and private entities for beneficial reuse.

I want to thank my colleagues, particularly Senators SMITH, BAUCUS, and VOINOVICH for their assistance and cooperation in developing this legislation. My colleagues have been remarkably helpful in this matter, having worked closely with me to ensure that the final bill incorporated language based on my legislation S. 2385, the Dredged Material Reuse Act, which I introduced earlier this year. They have understood the need, and I am grateful that they have agreed to include it in this legislation.

Beneficial reuse is a largely underutilized concept. As a result, unwanted dredged material is often dumped on the shorelines of local communities. Through a program of beneficial reuse the dredged material would be sold to construction companies and other developers who would be eager to have this material available.

Mr. President, the people of Southern New Jersey are all too familiar with this situation. Current plans by the Corps calls for more than 20 million cubic yards of unwanted material dredged from the Delaware River to be placed on prime waterfront property along the Southern New Jersey shoreline. However, with some effort and encouragement, the Corps has recently identified nearly 13 million cubic yards of that material for beneficial reuse in transportation and construction projects.

We should learn from beneficial reuse that contracting companies, land development companies, and major corporations want this material. This means we need to encourage the Corps to market dredged material for beneficial reuse up-front so that communities will not be confronted with the same problems faced by the citizens of Southern New Jersey.

The program created by this legislation will give the Army Corps the authority and the funding they require to begin actively marketing dredged material from projects all across the United States. It recognizes the need to keep our nation's rivers and channels efficient and available to maritime traffic while ensuring that communities are treated fairly.

Of equal, if not greater importance, to the small businesses and shore communities of New Jersey is the protection of our beaches. Recreational activity at our beaches is extremely important to NJ, supporting an annual tourist economy of $17 billion.

However, due to beach erosion, many of our shore communities have lost revenue on which they depend. This lost revenue affects the local tax base, property values, results in lost jobs and diminished quality of life in coastal regions.

Rebuilding and protecting our beaches is vital to the health of our economy. With 127 miles of shoreline and a booming tourist industry, simply watching the beaches erode is not an alternative. From commercial and recreational fishermen, to bait and tackle shops and restaurants, our shore communities depend on healthy coastlines.

With this in mind, I applaud the Senate for authorizing in WRDA several Corps projects to protect and re-nourish New Jersey beaches.

One project authorizes the Corps to re-nourish beaches along the entire stretch of Long Beach Island, from Barnegat Inlet to Little Egg Inlet, in Ocean County, New Jersey. This $51.2 million project authorizes the Corps to create dunes and beaches along the coastline municipalities of Long Beach Island, including: Harvey Cedars, Surf City, Ship Bottom, Beach Haven and Long Beach Township.

Another project for shore protection authorizes the Corps, at a total cost of $30 million, to re-nourish beaches on the 1.8 mile stretch in Port Monmouth along the Raritan Bay and Sandy Hook Bay Shoreline, by constructing floodwalls, levees, dunes, dune grass, dune fencing, dune walk-overs, and suitable beachfill.

Finally, I commend the Senate for including language I supported that would direct the Secretary of the Army to develop and implement procedures to give recreational benefits the same budgetary priority as storm damage reduction and environmental protection in cost-benefit analysis for Corps beach replenishment projects. Currently, the Corps is not required to list recreation benefits in its cost-benefit analysis of beach projects. This language is similar to legislation I introduced earlier this year, and I am pleased that this initiative has been passed in the Senate's WRDA Conference Report.

Prior to the 1986 Water Resources Development Act, the Corps viewed recreation as an equally important component of its cost-benefit analysis. However, the 1986 bill omitted recreation as a benefit to be considered, and New Jersey coastal communities have suffered.

It is imperative that federal policy base beach nourishment assistance on the entirety of the economic benefits it provides. Beach replenishment efforts ensure that our beaches are protected, property is not damaged, dunes are not washed away, and the resources that coastal towns rely on for their lifeblood are preserved.

Mr. President, it is for these reasons that I support the passage of WRDA. New Jersey relies on its unique water resources and this legislation will go a long way towards maintaining our economic and environmental health.

SPACE AND THE CHALLENGES AHEAD

Mr. AKAKA. Mr. President, this past week Washington, DC was the site of a global meeting of space faring nations at the International Space Symposium. A question raised at this event was how the United States' position, as a leader in both government sponsored and commercial space industry and exploration, is to be maintained in the future in light of emerging competitors and markets around the world.

As a partner in the construction of the International Space Station, we have entered into the greatest example of international cooperation to date. As NASA director Dan Goldin remarked at the Symposium, the Space Station will be a partnership of 16 countries, including the U.S., Russia, Japan, the eleven members of the European Union, and Brazil. The Expedition 1 crew left for the Space Station at 1:53 AM, Tuesday morning, marking October 31, 2000, as the date that humanity began its permanent residence in space. American astronaut Bill Shepherd and Russian cosmonauts Yuri Gidzenko and Sergei Krikalev will dock with the Space Station on Thursday and begin assembly tasks as new elements are added to the orbiting outpost. At completion, the Space Station will have a pressurized volume larger than the cabin and cargo hold of a 747 airliner. Of the seven modules, six will house laboratories. With these, the United States and the nations of the world will have the opportunity to use the resources and capabilities of the Space Station for scientific and technological research. The U.S. laboratory module will have racks, or lab space, for individual experiments, as well as sites where independent research payload can be attached. Some portion of each will be dedicated to commercial use.

As expected, a host of physical science experiments will use the research racks, payload sites, and Earth-viewing windows. Platforms will also be available to test communications systems. Exciting experiments are proposed in the life sciences and other fields only now recognizing the opportunities that exist in space. Studies in porous-ceramic bone replacement, gene transformation, and drug design will all benefit from extended experiments in the weightless environment of the Space Station. The ISS also provides an avenue for other countries to have access to space, for experimentation and exploration, thereby diminishing the need for their own space launch vehicle and potential missile capabilities. We must seize this opportunity for international cooperation, fair access to space, and limitless scientific and technological advancement.

As the International Space Station demonstrates, the future poses many opportunities for the Unites States in space. However, it likewise presents several risks. Also discussed at the International Space Symposium were

the threats facing the U.S. space industry. One of the largest and most worrisome for our long-term health and viability is a lack of trained, competent, technically skilled workers. The space sector employs between 400,000 and 1,000,000 people. Assuming a 25 year career span, this indicates a need for about 150,000 new employees a year. This does not take into account the fact that the space industry workforce is aging and that the skills used in the space sector, such as system level engineering, problem solving and trouble shooting, and general technical aptitude, are needed in other industries as well. A recent study found that the space sector dropped from being the third most popular field for young people to enter in 1990 to seventh in 1999. The space industry is finding it harder to both recruit and retain technically skilled workers.

I bring this to our colleagues' attention, Mr. President, because the federal government is facing a similar threat. Shortages in workers with scientific and technical training are being faced by many Executive agencies and government labs, as well as the federal space community. As difficult as it is for the commercial space industry to recruit and retain qualified employees, it is even harder for the federal government. Now, and for the foreseeable future, the federal government will continue to be the biggest client for the space industry with its civil and military space ventures. The federal government needs to be able to make decisions regarding selection of products, services and systems and have the personnel to use them. It must also have the personnel to advise Congress and federal regulatory agencies in making intelligent, informed and prudent decisions that will encourage competition and success in the commercial space industry.

The Federal and commercial space industry recognize the risk the shortage of technically skilled workers present to the nation's long-term prosperity and viability. As the ranking member of the Subcommittee on International Security, Proliferation and Federal Services, I am interested in how we can avert what most certainly poses a threat to our national security and economic well-being. The Federal Government is attempting to address those factors in its work environment that make it less attractive to technically skilled workers, while emphasizing the rewarding and fulfilling public service careers available. A way for the Federal Government to increase the number of qualified workers could be a partnership with universities to encourage the skills and training needed to enter the field. The Federal Government should aggressively promote its student loan repayment program to attract young college graduates who may turn away from Federal service because they are burdened with school debts. This program, which has been authorized since 1991, was never implemented due to budget cuts, hiring freezes, and downsizing over the past decade. Since last March, Senators DURBIN, VOINOVICH, and I have urged the Office of Personnel Management to implement the loan repayment program because we viewed it as an opportunity to encourage young people to join the Federal Government. We were successful in expanding the benefit beyond the scope of the initial authorization through an amendment to the FY01 DoD Authorization Act, which was signed by the President on October 30, 2000.

The loan repayment program will be a critical component for the Federal Government in its effort to recruit and retain highly qualified professional, technical, or administrative personnel by allowing Federal agencies to repay up to $40,000 of an employee's student loans. In addition to attracting recent college graduates, efforts to retain experienced federal employees will include loan repayment programs for those who pursue additional academic training. We stand at the threshold of an age of opportunity and challenge. Our future as a global leader in space depends on having the people to meet this challenge. I urge my colleagues to join me in fostering an interest in public service among our nation's youth so that they will pursue careers that further our nation's federal space programs.

THE SMALL BUSINESS, HEALTH, TAX, AND MINIMUM WAGE ACT

Mr. JOHNSON. Mr. President, I am deeply concerned that important efforts to support small businesses are jeopardized by the many unrelated amendments that have been added to H.R. 2614 the Small Business, Health, Tax, and Minimum Wage Act. I ask my colleagues to join me in working to pass important legislation vital to preserve the Certified Development Company Program, the Small Business Innovation Research Program, and the reauthorization of the Small Businesses Administration. As Congress prepares to adjourn, it is irresponsible to prevent action on these important issues.

I am very concerned that innocent provisions that support small businesses and job creation are being held hostage in a debate over unrelated issues. H.R. 2614 was introduced as a bill to amend the Small Business Investment Act to make improvements to the certified development company program. This program provides gap financing which is vital to foster entrepreneurship and create economic opportunities. In recent days, however, this bill has been loaded down with numerous provisions that completely overshadow this program and threaten to shatter our chance to authorize these programs before Congress adjourns.

I am proud to speak out on behalf of the real intent of H.R. 2614 which would help small businesses succeed. There is an old proverb used in my state of South Dakota which advises; ''Don't put off until tomorrow what can be done today.'' Today, we should strip out the politically charged amendments that have been tacked onto this bill and pass legislation both parties agree is important to our economy, our local communities, and many businesses and families across the country.

It is careless not to reauthorize these important programs because of election year politics which bogged down the legislation with unrelated issues. Congress should vote on the genuine issues with regard to small business programs. We must not let certain partisan differences cause us to turn away from our opportunity to promote the entrepreneurial spirit of our country.

There are many issues before this body which evoke strong differences of opinion, however, authorizing these important small business programs are not among them. I urge my colleagues to join me in securing the passage of this important legislation and not allow these widely supported initiatives to fall victim to nonrelated amendments thrown together in the closing days of Congress.

DIRECT-TO-CONSUMER ADVERTISING AND RISING PRESCRIPTION DRUG PRICES

Mr. JOHNSON. Mr. President, anyone who has lived or visited in the United States during the last few years has been exposed to a phenomenon which is uniquely American. I speak of the direct-to-consumer advertising of prescription medicines.

U.S. pharmaceutical manufacturers will spend an amount this year very close to $2 billion on advertising to the general public. This can be compared to about just $150 million in 1993—which explains why no one can avoid these advertisements even if they wanted to. They are ubiquitous—TV, radio, newspapers, and magazines are all replete with prescription drug ads.

Typically, the drugs that are most heavily advertised are among those that ultimately are the most heavily prescribed. According to a recently released National Institute for Health Care Management study, for example, the seven drugs in 1999 which had more than $1 billion in sales were advertised an average of $58.5 million each. Together, they contributed an estimated 24.3 percent toward the increases in total expenditures of prescription drugs during 1999.

Clearly, advertising works, just as it always has.

Advocates of this relatively new technique to increase name brand prescription sales will say that consumers become more aware of treatment possibilities and may have a better starting point for discussion with their physicians. Other observers believe this practice artificially increases demand from consumers who are still not fully

educated enough to know about less expensive, or maybe even safer, alternatives. Certainly, the advertising costs are passed along to the consumer.

Is the information value worth the yearly increases in drug costs that advertising inevitably causes? Are patients getting the best individualized choices of medicines or the just best advertised ones? Are generic drugs, often an excellent cost-effective alternative, getting equal consideration?

Frankly, I have my concerns about this practice. Many professional organizations have gone on record as opposing the kinds of direct-to-consumer advertising that goes on today. I believe it bears very close watching and we all need to closely scrutinize its value and its place within the health care system.

NEW JERSEY STORMWATER MANAGEMENT PROJECT

Mr. TORRICELLI. Mr. President, I rise today regarding a matter of great importance to the entire State of New Jersey. My home state is confronted with an array of complex challenges related to the environment and economic development. However, one issue in particular, the over development of land and stormwater management, has become especially concerning because of the impact it is having on our watersheds and floodplains.

As you may know, this past August vast parts of northern New Jersey were devastated by flooding caused by severe rainfall. The resulting natural disaster threatened countless homes, bridges and roads, not to mention the health, safety and welfare of area residents. The total figure for damages in Sussex and Morris Counties alone has been estimated at over $50 million, and area residents are still fighting to restore some degree of normalcy to their lives. According to the Federal Emergency Management Agency, in just those two counties, 34 dams were damaged, 6 bridges were damaged and 4 were destroyed, and 10 municipal buildings were damaged.

While the threat of future floods continues to plague the region, one New Jersey institution is taking concrete steps to prevent another flooding catastrophe. The New Jersey Institute of Technology, NJIT, has been studying the challenges posed by flooding and stormwater flows for some time, and is ready to create a multi-agency federal partnership to continue this important research.

NJIT is one of New Jersey's premier research institutions and is uniquely equipped to carry out this critical stormwater research. The university has a long and distinguished tradition of responding to difficult public-policy challenges such as environmental emissions standards, aircraft noise, traffic congestion and alternative energy. More broadly, NJIT has demonstrated an institutional ability to direct its intellectual resources to the examination of problems beyond academia, and its commitment to research allows it to serve as a resource for unbiased technological information and analysis. Indeed, I originally requested that NJIT be given the funds to take on this Stormwater flood control and management project.

Despite that, the 2000 Water Resources Development Act, WRDA, still presents an excellent opportunity for NJIT to partner with the federal government and solve the difficult problem of flood control. At my request, and in close coordination with my House colleagues from the state delegation, the final version of this important legislation includes a provision directing the U.S. Army Corps of Engineers to develop and implement a stormwater flood control project in New Jersey and report back to Congress within three years on its progress. While the Corps of Engineers is familiar with this problem at the national level, it does not have the first-hand knowledge and experience in New Jersey that NJIT has accrued in its 119 years of service to New Jersey. Including NJIT's expertise and experience in this research effort is a logical step and would greatly benefit the Army Corps, as well as significantly improve the project's chances of success.

Therefore, I urge the New York District of the Corps of Engineers to work closely with my office and NJIT to ensure the universities full participation in this study. By working together, we can create a nexus between the considerable flood control expertise of the Army Corps and NJIT, and finally solve this difficult problem for the people of New Jersey. I hope my colleagues will support my efforts in this regard.

SENATE'S FAILURE ON JUDICIAL NOMINATIONS IN 106TH CONGRESS

● Mr. LEAHY. Mr. President, of the 105 judicial vacancies that have occurred so far this year, the Senate has acted to fill only 39. The last year of the Bush Administration, a presidential year in which we had the reverse situation with a Republican President and a Democratic Senate, the Senate confirmed 66 judges—70 percent more than the number confirmed this year. Over the 2-year span of this Congress, the Senate will have confirmed only 73 judges. By contrast, the Democratic Senate in the last two years of President Bush's Administration confirmed 124 judges—70 percent more judges than the number confirmed by this Congress. Indeed, in the last eleven weeks of Congress in 1992, a Democratic Senate held four judicial nominations hearings and confirmed 29 judges. In the last eleven weeks of this Congress, Republicans will have managed to hold no hearings and confirm no judges.

President Clinton has tried to make progress on bringing greater diversity to our federal courts. He has been successful to some extent. With our help, he could have done so much more. We will end this Congress without having acted on any of the African American nominees sent to us to fill vacancies on the Fourth Circuit and finally integrate the Circuit with the highest percentage of African American population in the country, but the one Circuit that has never had an African American judge. We could have acted on the nomination of Kathleen McCree Lewis and confirmed her to the Sixth Circuit to be the first African American woman to sit on that Court. Instead, we will end the year without having acted on any of the outstanding nominees to the Sixth Circuit pending before us.

This Judiciary Committee reported only three nominees to the Courts of Appeals all year. We held hearings without even including a nominee to the Courts of Appeals and denied a Committee vote to two outstanding nominees who succeeded in getting hearings. I certainly understand the frustration of those Senators who know that Roger Gregory, Judge James Wynn, Kathleen McCree Lewis, as well as Judge Helene White, Bonnie Campbell and others should have been considered by this Committee and voted on by the Senate this year.

There continue to be multiple vacancies on the Third, Fourth, Fifth, Sixth, Ninth, Tenth and District of Columbia Circuits. With 24 current vacancies, our appellate courts have nearly half of the total judicial emergency vacancies in the federal court system. I note that the vacancy rate for our Courts of Appeals is more than 12 percent nationwide. If we were to take into account the additional appellate judgeships included in the Hatch-Leahy Federal Judgeship Act of 2000, S. 3071, a bill that was requested by the Judicial Conference to handle current workloads, the vacancy rate on our federal courts of appeals would be more than 17 percent.

The Chairman declares that ''there is and has been no judicial vacancy crisis'' and that he calculates vacancies at ''less than zero.'' The extraordinary service that has been provided by our corps of senior judges does not mean there are no vacancies. In the federal courts around the country there remain 66 current vacancies and 12 more on the horizon. With the judgeships included in the Hatch-Leahy Federal Judgeship Act of 2000, there would be over 135 vacancies across the country. That is the truer measure of vacancies, many of which have been long-standing judicial emergency vacancies in our southwest border states. The Chief Judges of both the Fifth and Sixth Circuits have had to declare their entire courts in emergencies since there are too many vacancies and too few Circuit judges to handle their workload.

After creating 85 additional judgeships in 1990, Congress reduced the vacancies from 131 in 1991, to 103 in 1992, to 112 in 1993, to 63 in 1994. Vacancies were going down and we were acting with Republican and Democratic Presidents to fill the 85 judgeships created

by a Democratic Congress under a Republican President in 1990. We will end this session with more vacancies than at the end of the session in 1994, without having added the judgeships requested by the Judicial Conference. Since Republicans assumed control of the Senate in the 1994 election, the Senate has not closed the vacancy gap at all and the workloads in many of our courts have gotten significantly worse. More vacancies are continuing longer, and it has taken longer to confirm nominees to existing vacancies. We have lost ground and squandered opportunities for progress in the past six years.

As I have pointed out, the vacancies are most acute among our Courts of Appeals and in our southwest border States. We have not acted to add the judgeships requested by the Judicial Conference to meet increased workloads over the last decade. According to the Chief Justice's 1999 year-end report, the filings of cases in our Federal courts have reached record heights. In fact, the filings of criminal cases and defendants reached their highest levels since the Prohibition Amendment was repealed in 1933. Also in 1999, there were 54,693 filings in the 12 regional Courts of Appeals. Overall growth in appellate court caseload last year was due to a 349 percent upsurge in original proceedings. This sudden expansion resulted from newly implemented reporting procedures, which more accurately measure the increased judicial workload generated by the Prisoner Litigation Reform Act and the Antiterrorism and Effective Death Penalty Act, both passed in 1996.

I regret to report again today that the last confirmation hearing for federal judges held by the Judiciary Committee was in July, as was the last time the Judiciary Committee reported any nominees to the full Senate. Throughout August, September, October, and now into November, there were no additional hearings held or even noticed, and no executive business meetings included any judicial nominees on the agenda. By contrast, in 1992, the last year of the Bush Administration, a Democratic majority in the Senate held three confirmation hearings in August and September and continued to work to confirm judges up to and including the last day of the session. During that presidential election year the Senate confirmed 66 judges; this year the Senate will not reach 40.

I continue to urge the Senate to meet its responsibilities to all nominees, including women and minorities. That highly-qualified nominees are being needlessly delayed is most regrettable. The Senate should have joined with the President to confirm well-qualified, diverse and fair-minded nominees to fulfill the needs of the federal courts around the country.

I regret that the Judiciary Committee did not hold additional hearings after July, that the Senate only acted on 39 nominees all year, and that we took so long on so many of them. I deeply regret the lack of a hearing and a vote on so many qualified nominees, including Roger Gregory, Judge James Wynn, Judge Helene White, Bonnie Campbell, Enrique Moreno and Allen Snyder. The Senate squandered a number of important opportunities to help our courts and should have accorded these qualified and outstanding nominees fair up or down votes.●

INTERNET FALSE IDENTIFICATION PREVENTION ACT OF 2000

● Mrs. FEINSTEIN. Mr. President, I am pleased to have worked with Senator COLLINS on Senate passage of S. 2924, the ''Internet False Identification Prevention Act of 2000.'' This legislation is an important step forward in the fight against identity theft.

''The Internet False Identification Prevention Act of 2000'' recognizes that the crime of identity theft has entered the Internet age, and that the Federal government has a responsibility to bring our identity theft laws up to speed. The primary law governing false identification documents was enacted in 1982, well before the advent of websites and e-mail.

Specifically, this legislation prohibits individuals from knowingly producing, distributing, or offering for download from the Internet computer files or templates that are designed to make counterfeit identification documents.

While the total number of false identification documents sold on the Internet is unknown, purveyors of false identification documents have used the Internet to sell their wares to a much broader market, and to distribute these documents as quickly as they can be downloaded from a website. According to a study by the Senate Committee of Government Affairs, one web site operator reported that he sold 1,000 fake IDs a month yielding $600,000 in annual sales.

The ''Internet False Identification Prevention Act of 2000'' also closes a loophole in current law that permitted manufacturers of false identification documents to escape liability by displaying a disclaimer, ''Not a Government Document.'' These disclaimers, however, can be easily removed. The bill also directs the Attorney General and the Secretary of the Treasury to coordinate efforts to investigate and prosecute the distribution of false identification documents on the Internet.

I would note that this bill contains an exemption from criminal liability for certain ''interactive computer services.'' This language reflects a narrow, one-time solution and I want it to be clear that this should not be considered as a precedent.

Congress has debated the issue of whether the liability of certain Internet service providers should be limited with respect to particular activities of their subscribers or users of their services. This is a complicated question, requiring careful deliberation and evaluation of the short- and long-term consequences. A full debate on this issue is needed in the 107th Congress.●

ADDITIONAL STATEMENTS

RECOGNIZING THE ROLE OF PHARMACISTS

● Mr. JOHNSON. Mr. President, every year in October there is recognition made of our nation's pharmacists in the form of National Pharmacy Week. This year's designation was October 22–28, 2000. I would like to take a few minutes to talk about that profession and its role in the safe, cost-effective delivery of medication to American citizens.

I have great respect for the innovation that this nation's scientists have demonstrated to continually produce new and better ''wonder drugs'' that have played a major role in the prevention and treatment of disease. Farther down the line within the drug delivery system are pharmacists, using those same drugs every day, getting them to patients along with information for their safe use.

The role of the pharmacist is changing. In addition to the traditional role of accurately dispensing prescription drugs, today's pharmacists are successfully involved in all areas of the drug use process. The result of this involvement, often termed ''pharmacy care'' has made a huge positive difference in many studies within the areas of anticoagulation, asthma and diabetes treatment, pain control and many others. When pharmacists are proactively involved, there have been demonstrations of not only increased effectiveness and fewer adverse reactions, but cost savings as well.

Within the startling report issued earlier this year by the Institute of Medicine, which pointed out that tens of thousands of American die every year from medical errors, was a recommendation to increase the utilization of pharmacists and pharmacy care.

So today I would like to congratulate the pharmacy profession for its accomplishments in improving patient care. During this Congress several bills have included provisions to encourage and support pharmacy care. I believe this is a fascinating approach that we should strongly consider as we continue to work toward optimizing the safe and cost-effective use of prescription drugs.●

TRIBUTE TO MARY JANE COLTON ON HER RETIREMENT

● Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Mary Jane Colton, who will retire from my staff next week after 20 years of service to the people of New Hampshire as an employee of the U.S. Senate.

Mary Jane is known throughout the state for her compassion and success in helping New Hampshire citizens with problems they may be having with the federal government. As a chief caseworker on my staff, and as State Office Director for Senator Gordon Humphrey before me, she was critical in managing a constituent service operation that was second to none. Mary Jane helped many senior citizens, veterans, parents, and communities with problems they had with the federal government. From assisting a small community in its battle to receive its own zip code, to helping a local veteran get a long-awaited service medal, Mary Jane's legacy has had a great impact on the Granite State.

Mary Jane's compassion is also evident in her home and personal life. For many years she has cared for her elderly and infirm parents in her home, so they would not be separated by being placed in a state nursing home.

As Mary Jane leaves public service, I wish her the best in all of her future endeavors. I know she will be working full-time on her passion: Antiques. She will now be able to focus on her on-line antiques business—an enjoyable and hopefully lucrative second career.

Good luck, Mary Jane. Thank you for all that you have done for me and for the people of New Hampshire. It is an honor to represent you in the U.S. Senate.●

TRIBUTE TO ERIC KINGSLEY

● Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute to Eric Kingsley as he leaves his position as Executive Director of the New Hampshire Timberland Owners Association, NHTOA.

Eric's five year tenure at NHTOA has been marked by progress and success. The organization's programs and services have grown to meet the needs and concerns of its members, and have established a strong, stable foundation for the association's future.

Through the years, I have grown to value Eric's input on the many issues that significantly impact New Hampshire's timberlands. Eric has done an outstanding job of keeping me, and other policymakers, informed on the issues and has been a true leader in making sure the voice of NHTOA was heard throughout the country.

Of all of Eric's achievements at NHTOA, perhaps his most important success came this past spring. Eric helped lead the charge to defeat the Environmental Protection Agency's ill-considered proposal to treat some forestry activities as ''point source pollution'' under the Clean Water Act. These rules, known as the Total Maximum Daily Loads—TMDL Rule—would have required landowners, foresters, and homeowners to obtain federal permits before conducting a timber harvest and could have exposed them to lengthy bureaucratic delays and costly citizen lawsuits.

This past May, I held a field hearing in Whitefield, New Hampshire, on the TMDL rule. Eric was a persuasive witness, providing thoughtful and compelling testimony. He also organized hundreds of foresters to ensure their message was heard loud and clear in Washington. Thanks in large part to Eric's leadership on this issue, EPA withdrew the section of the TMDL rules that adversely affected forestry.

My staff and I have also worked closely with Eric on issues of importance to the White Mountain National Forest. When the President issued his ''roadless'' initiative stripping the people of New Hampshire and New England of the opportunity to have a meaningful voice in the management of their public lands, Eric was there to ensure we took this Administration to task.

Eric also rose to the occasion in the face of destruction from Mother Nature's wrath. The Ice Storm in January 1998 brought unprecedented challenges to New Hampshire's forest lands. Hundreds of thousands of acres were significantly damaged. Eric worked closely with me and my colleagues to help us turn this tragedy into an opportunity. Today, not only has the federal government provided resources to help recover from the storm, but we have a record number of acres under forest stewardship plans.

My staff and I have worked with Eric on a wide variety of other issues during his time at NHTOA. I have always been impressed with his dedication and the depth of knowledge he displayed on issues ranging from estate tax reform to rural economic development. Eric has always been an effective and honest advocate for the causes he holds close to his heart. I know he will be greatly missed by NHTOA's 1,500 members.

I wish Eric well in all his future endeavors, and am confident he will succeed in whatever pursuits he chooses. It is an honor to represent him in the Senate.●

MESSAGE FROM THE PRESIDENT

REPORT ON THE CONTINUATION OF THE SUDAN EMERGENCY—MESSAGE FROM THE PRESIDENT—PM 137

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the Sudan emergency is to continue in effect beyond November 3, 2000, to the *Federal Register* for publication.

The crisis between the United States and Sudan that led to the declaration on November 3, 1997, of a national emergency has not been resolved. The Government of Sudan has continued its activities hostile to United States interests. Such Sudanese actions and policies pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For these reasons, I have determined that it is necessary to maintain in force the broad authorities necessary to apply economic pressure on the Government of Sudan.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 31, 2000.*

CONTINUATION OF SUDAN EMERGENCY

On November 3, 1997, by Executive Order 13067, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan. By Executive Order 13067, I imposed trade sanctions on Sudan and blocked Sudanese government assets. Because the Government of Sudan has continued its activities hostile to United States interests, the national emergency declared on November 3, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond November 3, 2000. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency for 1 year with respect to Sudan.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 31, 2000.*

MESSAGE FROM THE HOUSE

ENROLLED BILLS SIGNED

The following bills, previously signed by the Speaker of the House, were signed on today, November 1, 2000, by the President pro tempore (Mr. THURMOND):

S. 501. An act to address resource management issues in Glacier Bay National Park, Alaska.

S. 503. An act designating certain land in the San Isabel National Forest in the State of Colorado as the ''Spanish Peaks Wilderness.''

S. 610. An act to direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes.

S. 710. An act to authorize the feasibility study on the preservation of certain Civil War battlefields along the Vicksburg Campaign Trail.

S. 748. An act to improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes.

S. 1030. An act to provide that the conveyance by the Bureau of Land Management of

the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws.

S. 1088. An act to authorize the Secretary of Agriculture to convey certain administrative sites in national forests in the State of Arizona, to convey certain land to the City of Sedona, Arizona for a wastewater treatment facility, and for other purposes.

S. 1211. An act to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner.

S. 1218. An act to direct the Secretary of the Interior to issue to the Landusky School District, without consideration, a patent for the surface and mineral estates of certain lots, and for other purposes.

S. 1275. An act to authorize the Secretary of the Interior to produce and sell products and to sell publications relating to the Hoover Dam, and to deposit revenues generated from the sales into the Colorado River Dam fund.

S. 1367. An act to amend the Act which established the Saint-Gaudens Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes.

S. 1778. An act to provide for equal exchanges of land around the Cascade Reservoir.

S. 1894. An act to provide for the conveyance of certain land to Park County, Wyoming.

S. 2069. An act to permit the conveyance of certain land in Powell, Wyoming.

S. 2300. An act to amend the Mineral Leasing Act to increase the maximum acreage of Federal leases for coal that may be held by an entity in any 1 State.

S. 2425. An act to authorize the Bureau of Reclamation to participate in the planning, design, and construction of the Bend Feed Canal Pipeline Project, Oregon, and for other purposes.

S. 2872. An act to improve the cause of action for misrepresentation of Indian arts and crafts.

S. 2882. An act to authorize the Bureau of Reclamation to conduct certain feasibility studies to augment water supplies for the Klamath Project, Oregon and California, and for other purposes.

S. 2951. An act to authorize the Commissioner of Reclamation to conduct a study to investigate opportunities to better manage the water resources in the Salmon Creek watershed of the upper Columbia River.

S. 2977. An act to assist in the establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles.

S. 3022. An act to direct the Secretary of the Interior to convey certain irrigation facilities to the Nampa and Meridian Irrigation District.

H.R. 2498. An act to amend the Public Health Service Act to provide for recommendations of the Secretary of Health and Human Services regarding the placement of automatic external defibrillators in Federal buildings in order to improve survival rates of individuals who experience cardiac arrest in such buildings, and to establish protections from civil liability arising from the emergency use of the devices.

H.R. 4788. An act to amend the United States Grain Standards Act to extend the authority of the Secretary of Agriculture to collect fees to cover the cost of services performed under the Act, to extend the authorization of appropriations for the Act, and to improve the administration of the Act.

H.R. 4868. An act to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

At 11:25 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 1670. An act to revise the boundary of Fort Matanzas National Monument, and for other purposes.

S. 1880. An act to amend the Public Health Service Act to improve the health of minority individuals.

S. 2020. An act to adjust the boundary of the Natchez Trace Parkway, Mississippi, and for other purposes.

S. 2789. An act to amend the Congressional Award Act to establish a Congressional Recognition for Excellence in Arts Education Board.

S. 3239. An act to amend the Immigration and Nationality Act to provide special immigration status for certain United States international broadcasting employees.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 207. An act to amend title 5, United States Code, to make permanent the authority under which comparability allowances may be paid to Government physicians, and to provide that such allowances be treated as part of basic pay for retirement purposes.

H.R. 1653. An act to complete the orderly withdrawal of the NOAA from the civil administration of the Pribilof Islands, Alaska, and to assist in the conservation of coral reefs, and for other purposes.

H.R. 2903. An act to reauthorize the Striped Bass Conservation Act, and for other purposes.

H.R. 4020. An act to authorize the addition of land to Sequoia National Park, and for other purposes.

H.R. 5540. An act to extend for 11 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted; to provide for additional temporary bankruptcy judges; and for other purposes.

ENROLLED BILLS SIGNED

A message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 782. An act to amend the Older Americans Act of 1965 to extend authorizations of appropriations for programs under the Act, to modernize programs and services for olders individuals, and for other purposes.

H.R. 4864. An act to amend title 38, United States Code, to reaffirm and clarify the duty of the Secretary of Veterans Affairs to assist claimants for benefits under laws administered by the Secretary, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

At 12:09 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following joint resolution:

H.J. Res. 122. Joint resolution making further continuing appropriations for the fiscal year 2001, and for other purposes.

At 3:00 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the amendment of the Senate to the bill (H.R. 2462) to amend the Organic Act of Guam, and for other purposes.

The message also announced that the House disagreed to the amendments of the Senate to the bill (H.R. 4846) to establish the National Recording Registry in the Library of Congress to maintain and preserve recordings that are culturally, historically, or aesthetically significant, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 397. Concurrent resolution voicing concern about serious violations of human rights and fundamental freedoms in most states of Central Asia, including substantial noncompliance with their Organization for Security and Cooperation in Europe (OSCE) commitments on democratization and the holding of free and fair elections.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, November 1, 2000, he had presented to the President of the United States the following enrolled bills:

S. 501. An act to address resource management issues in Glacier Bay National Park, Alaska.

S. 503. An act designating certain land in the San Isabel National Forest in the State of Colorado as the ''Spanish Peaks Wilderness.''

S. 610. An act to direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes.

S. 710. An act to authorize the feasibility study on the preservation of certain Civil War battlefields along the Vicksburg Campaign Trail.

S. 748. An act to improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes.

S. 1030. An act to provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws.

S. 1088. An act authorize the Secretary of Agriculture to convey certain administrative sites in national forests in the State of Arizona, to convey certain land to the City of Sedona, Arizona for a wastewater treatment facility, and for other purposes.

S. 1211. An act to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner.

S. 1218. An act to direct the Secretary of the Interior to issue to the Landusky School District, without consideration, a patent for the surface and mineral estates of certain lots, and for other purposes.

S. 1275. An act to authorize the Secretary of the Interior to produce and sell products and to sell publications relating to the Hoover Dam, and to deposit revenues generated

from the sales into the Colorado River Dam fund.

S. 1367. An act to amend the Act which established the Saint-Gaudes Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROTH, from the Committee on Finance, without amendment:

S. 3267: An original bill to amend the Internal Revenue Code of 1986 to maintain retiree health benefits under the Coal Industry Retiree Health Benefit Act of 1992 and adjust inequities related to the United Mine Workers of America Combined Benefit Fund (Rept. No. 106–512).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ROTH:

S. 3267. An original bill to amend the Internal Revenue Code of 1986 to maintain retiree health benefits under the Coal Industry Retiree Health Benefit Act of 1992 and adjust inequities related to the United Mine Workers of America Combined Benefit Fund; from the Committee on Finance; placed on the calendar.

By Mr. SMITH of Oregon:

S. 3268. A bill to amend the Oil Pollution Act of 1990 to improve provisions concerning the recovery of damages for injuries resulting from oil spills; to the Committee on Environment and Public Works.

By Mr. DURBIN:

S.J. Res. 56. A joint resolution proposing an amendment to the Constitution of the United States to abolish the electoral college and to provide for the direct popular election of the President and Vice President of the United States; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT:

S. Con. Res. 159. A concurrent resolution providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Mr. SMITH of Oregon:

S. 3268. A bill to amend the Oil Pollution Act of 1990 to improve provisions concerning the recovery of damages for injuries resulting from oil spills; to the Committee on Environment and Public Works.

FISHERMEN AND AQUACULTURE OIL SPILL ASSISTANCE ACT

Mr. SMITH of Oregon. Mr. President, today I am introducing legislation to address concerns raised by a number of my constituents with respect to the Oil Pollution Act in the aftermath of the New Carissa incident. This legislation, the Fishermen and Aquaculture Oil Spill Assistance Act, is the first step toward ensuring that small businesses, such as the fishermen and shellfish producers in my state, who are impacted by these oil spills, are not victimized a second time by a lengthy claims procedure under the OPA.

For the benefit of my colleagues who are not aware of this incident, the New Carissa was a large wood-chip freighter that ran aground near Coos Bay, Oregon last year and leaked 60,000 gallons of oil. This devastated the coastal environment in that area, and temporarily damaged some of the important oyster beds for which Coos Bay is well-known in the seafood industry. In fact, we still have the ship's stern section sitting off-shore, marring the natural beauty of the Oregon coast.

Over the last several months I have heard from my constituents from that part of the Oregon coast, who are extremely dissatisfied with both the emergency response planning and the claims process under the Oil Pollution Act as it applies to aquaculture producers. With respect to the emergency response plans, the complaint has been that the concerns of shellfish producers are not necessarily taken into account in the development of these plans and that quick action in the early hours of a spill could protect the areas where the oyster beds are present. On the matter of the claims process, the complaint has been that there is little small businesses can do in the immediate term if the responsible party fails to make the interim payments to claimants required under the OPA.

This legislation addresses the concerns by authorizing the President to offer loans to fishermen and aquaculture producers who are mired in the claims process, but have not been receiving the required interim payments. This would help these small, often family-owned, businesses meet their most pressing expenses should the claims procedure become a drawn out affair. Secondly, this legislation calls upon the Secretary of Commerce and the Administrator of the Environmental Protection Agency to study the claims process and the emergency response plans to determine if they adequately protect the interests of seafood producers and submit any recommendations to the Congress. Ultimately, my aim is to ensure that future oil spill incidents do not cause the same problems to others that oyster producers in Oregon have suffered following the New Carissa spill.

I am pleased that my friend from the Oregon delegation, Mr. DEFAZIO, intends to introduce a companion measure today in the House of Representatives. Over the upcoming holidays we intend to look over this matter again and reintroduce this legislation, after receiving further feedback from our constituents, early in the 107th Congress.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 3268

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 ''Fishery and Aquaculture Oil Spill Assistance Act''.

SEC. 2. INTEREST; PARTIAL PAYMENT OF CLAIMS.

Section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705) is amended by adding at the end the following:

''(c) LOAN PROGRAM.—

''(1) IN GENERAL.—The President shall establish a loan program to assist injured parties in meeting financial obligations during the claims procedure described in section 1013.

''(2) CONDITION FOR LOAN.—A loan may be awarded under paragraph (1) only to a fisherman or aquaculture producer to whom a responsible party has failed to provide an interim payment under subsection (a).''.

SEC. 3. USES OF THE FUND.

Section 1012(a) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)) is amended—

(1) in paragraph (5)(C), by striking the period at the end and inserting ''; and''; and

(2) by adding at the end the following:

''(6) the making of loans to assist any injured party in paying financial obligations during the claims procedure described in section 1013.''.

SEC. 4. STUDY.

Not later than 270 days after the date of enactment of this Act, the Secretary of Commerce, in consultation with the Administrator of the Environmental Protection Agency, shall submit to Congress a study that contains—

(1) an assessment of the effectiveness of the claims procedures and emergency response programs under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) concerning claims filed by, and emergency responses carried out to protect the interests of, fishermen and aquaculture producers; and

(2) any legislative or other recommendations to improve the procedures and programs referred to in paragraph (1).

Mr. DURBIN:

S.J. Res. 56. A joint resolution proposing an amendment to the Constitution of the United States to abolish the electoral college and to provide for the direct popular election of the President and Vice President of the United States; to the Committee on the Judiciary.

THE ELECTORAL COLLEGE

Mr. DURBIN. Mr. President, earlier this morning I held a press conference with a colleague of mine from the State of Illinois, RAY LAHOOD. RAY LAHOOD is a Congressman from the city of Peoria, and a Republican. It was interesting to see a bipartisan press conference at this point in the congressional session.

Congressman LAHOOD and I agree on an issue which could become supremely important in just a few days. Given the tight Presidential race this year, we have the possibility that the winning candidate for President might not win the popular vote in our country. This

potential outcome highlights a serious and persistent flaw in our current system of electing a Chief Executive of the United States.

I am introducing a joint resolution to amend the Constitution to replace the electoral college with the direct election of the President and Vice President.

I introduced a similar measure in 1993 with Congressman GERALD KLECZKA of Wisconsin in the House. I will be doing the same in the Senate. But I hope to attract the support of colleagues on both sides of the aisle regardless of the outcome on November 7.

The electoral college is an antiquated institution that has outlived its purpose. It was the product of contentious debate and a great deal of controversy. Most of the delegates to the Constitutional Convention in 1787 felt that the process of selecting a President should not be left up to a direct vote of the people. And most agreed with the sentiments of George Mason of Virginia, who said, ''it were as unnatural to refer the choice of a proper character for Chief Magistrate to the people, as it would be to refer a trial of colors to a blind man.''

After a prolonged debate, an indirect method of electing the President was adopted. This compromise plan, known as the Electoral College Method, provided for the election of the President and Vice President by State appointed electors. Under Article II, Section 1, Clause 2 of the Constitution as amended by the 12th Amendment in 1804, each state is required to appoint in a manner determined by the state legislature a number of electors equal in number to its congressional representation. If no candidate receives a simple majority of electoral votes, then the House of Representatives chooses the President from the three candidates with the greatest number of votes and the Senate similarly chooses a Vice President from the top two contenders for that office.

The commonly held opinion among the delegates in 1787 was that matters of such gravity should not be left up to the average citizen. Moreover, the discussions of the convention reveal that the delegates questioned whether voters in one State could have enough relevant knowledge regarding the character of public men living hundreds of miles away. In addition, the delegates from the less populous States were concerned that a direct election of the President would enhance the power and prestige of the more populous states.

But today, these concerns are no longer compelling—if they ever were.

The 17th amendment to the Constitution was ratified in 1913 and provided for the direct popular election of U.S. Senators. Before that, Senators were chosen by State legislatures. But come 1913, we decided to trust the people to choose the Senators. I don't believe our Nation suffered by that decision. I think the Senate as an institution has been enhanced by that decision. It is no longer a back-room deal in a State capitol that sends a Senator to Washington, it is a decision made by the people of each State in an open and free election.

The incredible advances in communication technologies since the 18th Century render moot the concerns that citizens do not have enough information to make an informed decision about a President. Clearly potential voters today have more information about presidential candidates than their counterparts had 200 years ago regarding their directly elected Representatives to Congress.

It has been argued that smaller States have a slight advantage in the current system, because states receive a minimum of three electoral votes, regardless of their population. However, any serious study of presidential campaigns would demonstrate that the more populous states, with their large electoral prizes, as well as medium sized swing states, have the true advantage. The winner-take-all aspect in each State motivates presidential candidates to focus on States with a moderate or large number of electoral votes, assuming the candidates believe they have a chance to win the popular vote there. Less populous States with only a few electoral votes are largely ignored. Also States that are heavily leaning toward one of the presidential candidates are similarly ignored.

You do not see AL GORE and JOE LIEBERMAN spend that much time in the State of Texas, nor do you find George W. Bush visiting the State of New York very often. Most campaigns have written off certain States. So the people in that State do not see much of the Presidential campaign except for national coverage.

Clearly, there is a reason why there have been more congressionally proposed constitutional amendments on this subject than any other. The electoral college system, as it stands today, has several major defects. The most significant of these are the result of voting schemes other than a direct popular vote. The most prevalent example is the unit vote or so-called winner-take-all formula. The unit vote is the practice of awarding all of a State's electoral votes to the candidate with a popular vote plurality in the State, regardless of whether the plurality is one vote or one million votes. All States and the District of Columbia with the exception of the States of Maine and Nebraska have adopted this method.

In doing my research on this isue, I learned that Maine and Nebraska vote by congressional district and allocate their Presidential electors accordingly.

The first problem with the electoral college system is that it is inherently unfair and may disenfranchise voters. Senator Birch Bayh—father of our colleague, Senator EVAN BAYH—discussed this problem on the floor of the Senate when he introduced a resolution to abolish the electoral college on January 15, 1969. During his floor statement he said:

> As a result, the popular vote totals of the losing candidate at the State level are completely discounted in the final electoral tabulation. In effect, millions of voters are disenfranchised if they happen to vote for the losing candidate in their State.

The famous Missouri Senator Thomas Hart Benton, who was the first Senator to serve in the Senate for 30 years, further pointed out the injustice of this system when he said:

> To lose votes is the fate of all minorities, and it is their duty to submit; but this is not the case of votes lost, but of votes taken away, added to those of the majority and given to a person to whom the minority is opposed.

Another problem with the electoral college system is that it often leads to wide disparities between the popular vote and the electoral vote. For example, since 1824, when the popular vote first began to be recorded along with the electoral vote, winners of presidential elections have averaged 51 percent of the popular vote as compared to an average of 71 percent of the electoral vote. In comparison, the losing main opponents have averaged 42 percent of the popular vote, but just 27 percent of the electoral vote. Year to year statistics vary greatly.

A more serious problem is that the electoral college system can lead to Presidents who received fewer popular votes than their main opponent. In fact, this has happened 3 times out of the 42 presidential elections since 1824.

Another indication as to the likelihood of a non-majority President can be seen in the elections of 1844, 1880, 1884, 1960, and 1968, in which the main opponent lost the popular vote by an average of only 0.3 percent. This is in stark contrast to the winning margin in electoral votes for these elections, which averaged 17 percent. Other close presidential elections occurred in 1916, 1948, and 1976. In those years, if a mere few thousand votes had been switched in a few key states where the vote was close, a different candidate would have won the White House. In 1916, for example, a shift of only 2,000 votes in California would have made Charles Evans Hughes President, despite Woodrow Wilson's half-million popular vote advantage. And in 1976, a 6,000 vote shift in Ohio and a 4,000 vote shift in Hawaii would have elected Gerald Ford, even though Jimmy Carter won the popular vote by 1.6 million ballots.

One can conclude that approximately one in fourteen presidential elections have resulted in a non-majority President, while one in five have nearly resulted in one.

Senator Birch Bayh eloquently pointed out the risk of this system in his floor statement on January 15, 1969:

> The present electoral vote system has in the past, and may in the future, produce a President who has received fewer popular votes than his opponent. I cannot see how such a system can be beneficial to the American people. I see, instead, only grave dangers that could divide this Nation at a critical hour if the President-elect lacked a popular mandate.

The third pernicious flaw in the electoral college system is that it produces artificial distortions in the political process. The fact that presidential candidates cater to the larger and swing states often gives undue influence to a limited number of contested States. So-called safe States are given scant or no attention by candidates—who have limited time, energy, and resources. Senator Thomas J. Dodd, the distinguished Senator from Connecticut who was known as an ardent crusader and civil rights advocate, argued convincingly on this subject soon after President Kennedy's narrow victory in 1960. He said:

The shift of a few thousand votes in these States would have elected Dewey in 1948. The shift of a few thousand votes in Illinois and New Jersey could have changed the result of an election as close as this past one. There is something wrong with an election system which hinges, not on the vote of 70 million, but on the vote of several thousand in a few key States.

The issue isn't simply that every vote matters in a close election. The issue is the injustice of a few thousand votes in just a few states having a disproportional impact on a National election. Why should a vote in Missouri or Florida be worth more to a presidential candidate than one in Wyoming, Mississippi, or Rhode Island?

The fourth and last major flaw in the electoral college system is that electors, in general, are not bound to cast their vote in accordance with the popular vote results from their State. While some States require a binding oath or pledge under penalty of law, the majority of States have no or an insignificant penalty. This leads to the disturbing possibility that a President, in an election with a close electoral vote, could win through subterfuge. Instances of rogue electors casting votes contrary to the results in their State have occurred in the following years: 1948, 1956, 1960, 1968, 1972, 1976, and 1988.

Since 1797, when Representative William L. Smith of South Carolina offered the first Constitutional amendment proposing to reform our procedure for electing the President, hardly a session of Congress has passed without the introduction of one or more similar proposals. According to the Congressional Research Service, approximately 109 constitutional amendments on electoral college reform were introduced in Congress between 1889 and 1946. Another 265 were introduced between 1947 and 1968. The distinguished Senator from South Carolina Olin Johnston summed up the sentiments of many of the critics of the electoral college system when he said on the floor of the Senate on January 5, 1961:

All of these proposals recognized . . . that the so-called electoral college system has never functioned as contemplated by the framers of the Constitution.

While all of these attempts failed, the most successful effort took place after the 1968 presidential election when third party candidate George Wallace received 46 electoral votes. In that election, there was considerable concern that no candidate would receive a majority of electoral votes and that the new President would be selected by the House of Representatives. As a result, H.J. Res. 681 was introduced by Representative Emanuel Celler in the 91st Congress, proposing to abolish the electoral college and replace it with the direct popular election of the President and Vice President. Included in H.J. Res. 681 was a provision for a runoff election if no candidate received at least 40 percent of the popular vote. While this joint resolution passed the House on September 18, 1969, by a vote of 338–70, it died in the Senate because of a filibuster by Senators from small States and southern States.

The joint resolution I am introducing today is similar to H.J. Res. 681, in that it calls for the direct election of the President and Vice President and includes a provision for a runoff election. More specifically, in the event that no candidate receives at least 40 percent of the popular vote, a runoff would be held 21 days after the general election between the two candidates with the greatest number of popular votes. This resolution builds upon a proposal I offered with Representative GERALD KLECZKA in 1993 and other resolutions introduced in the current Congress by Representatives RAY LAHOOD and JAMES LEACH.

Every public opinion poll indicates that an overwhelming majority of Americans want to elect their President directly by popular vote. Direct popular election has been endorsed in the past by a large number of civic-minded groups including the American Bar Association, the AFL–CIO, the UAW, U.S. Chamber of Commerce, the National Federation of Independent Business, and the NAACP.

If we believe that the President represents and speaks for the people of this great country, then we have an obligation to allow the people to have their voices heard. Abraham Lincoln once said, ''Public opinion is everything. With it, nothing can fail. Without it, nothing can succeed.''

Mr. President, to reiterate, as Congressman LAHOOD and I said in our bipartisan press conference, although this is an issue which apparently seems so rational and so easy to argue, it is one that has run into a lot of debate on the floor of the Senate. I spoke to one of my colleagues from a smaller State and told him what I was doing. He said: I'll oppose you all the way because my tiny State has three electoral votes, and the Presidental candidate has been spending a lot of time in my State and would spend no time there if we had to rely on a popular vote.

But it seems strange to me we rely on a popular vote for virtually every other election in America but not the Presidential election. If we have a disparity between the popular vote for President and the electoral vote for President, if we have someone elected President who does not receive a majority of the votes of the American people, it will create a problem for that administration. It is tough enough to lead in this great Nation, tough enough for a President to muster popular support for difficult decisions to be made. But if that President does not bring a mandate from the people to the office, his power will be diminished.

I sincerely hope that does not occur. But whether or not, I hope my colleagues will join me supporting this effort to abolish the electoral college and say we trust the people in this country. The arguments made over 200 years ago do not apply today. The people of this country should choose the President as they choose Members of Congress as well as U.S. Senators.

I ask unanimous consent a copy of the legislation be printed in the CONGRESSIONAL RECORD.

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

S.J. RES. 56

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 to the States for ratification:

''ARTICLE—

''SECTION 1. The President and Vice President shall be elected by the people of the several States and the district constituting the seat of government of the United States.

''SECTION 2. The electors in each State shall have the qualifications requisite for electors of Representatives in Congress from that State, except that the legislature of any State may prescribe less restrictive qualifications with respect to residence and Congress may establish uniform residence and age qualifications. Congress shall establish qualifications for electors in the district constituting the seat of government of the United States.

''SECTION 3. The persons having the greatest number of votes for President and Vice President shall be elected, if such number be at least 40 per centum of the whole number of votes cast for such offices in the general election. If no persons have such number, a runoff election shall be held 21 days after the general election. In the runoff election, the choice of President and Vice President shall be made from the persons who received the two highest numbers of votes for each office in the general election.

''SECTION 4. The times, places, and manner of holding such elections, and entitlement to inclusion on the ballot for the general election, shall be prescribed in each State by the legislature thereof; but Congress may at any time by law make or alter such regulations. Congress shall prescribe by law the time, place, and manner in which the results of such elections shall be ascertained and declared.

''SECTION 5. Each elector shall cast a single vote jointly applicable to President and Vice President in any such election. Names of candidates shall not be joined unless they shall have consented thereto and no candidate shall consent to his or her name's

being joined with that of more than one other person.

''SECTION 6. Congress may by law provide for the case of the death of any candidate for President or Vice President before the day on which the President-elect or the Vice President-elect has been chosen; and for the case of a tie in any such election.

''SECTION 7. Congress shall have the power to implement and enforce this article by appropriate legislation.

''SECTION 8. This article shall take effect one year after the twenty-first day of January following ratification.''.

ADDITIONAL COSPONSORS

S. 2287

At the request of Mr. L. CHAFEE, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2287, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

SENATE CONCURRENT RESOLUTION 159—PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. LOTT submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 159

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Wednesday, November 1, 2000, or Thursday, November 2, 2000, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Tuesday, November 14, 2000, or until such time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Wednesday, November 1, 2000, or Thursday, November 2, 2000, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until noon on Monday, November 13, 2000, at 2 p.m., or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

AMENDMENTS SUBMITTED

FSC REPEAL AND EXTRATERRITORIAL INCOME EXCLUSION ACT OF 2000

LOTT AMENDMENT NO. 4356

Mr. LOTT proposed an amendment to the bill (H.R. 4986) to amend the Internal Revenue Code of 1986 to repeal the provisions relating to foreign sales corporations (FSCs) and to exclude extraterritorial income from gross income; as follows:

Strike all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''FSC Repeal and Extraterritorial Income Exclusion Act of 2000''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. REPEAL OF FOREIGN SALES CORPORATION RULES.

Subpart C of part III of subchapter N of chapter 1 (relating to taxation of foreign sales corporations) is hereby repealed.

SEC. 3. TREATMENT OF EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting before section 115 the following new section:

''SEC. 114. EXTRATERRITORIAL INCOME.

''(a) EXCLUSION.—Gross income does not include extraterritorial income.

''(b) EXCEPTION.—Subsection (a) shall not apply to extraterritorial income which is not qualifying foreign trade income as determined under subpart E of part III of subchapter N.

''(c) DISALLOWANCE OF DEDUCTIONS.—

''(1) IN GENERAL.—Any deduction of a taxpayer allocated under paragraph (2) to extraterritorial income of the taxpayer excluded from gross income under subsection (a) shall not be allowed.

''(2) ALLOCATION.—Any deduction of the taxpayer properly apportioned and allocated to the extraterritorial income derived by the taxpayer from any transaction shall be allocated on a proportionate basis between—

''(A) the extraterritorial income derived from such transaction which is excluded from gross income under subsection (a), and

''(B) the extraterritorial income derived from such transaction which is not so excluded.

''(d) DENIAL OF CREDITS FOR CERTAIN FOREIGN TAXES.—Notwithstanding any other provision of this chapter, no credit shall be allowed under this chapter for any income, war profits, and excess profits taxes paid or accrued to any foreign country or possession of the United States with respect to extraterritorial income which is excluded from gross income under subsection (a).

''(e) EXTRATERRITORIAL INCOME.—For purposes of this section, the term 'extraterritorial income' means the gross income of the taxpayer attributable to foreign trading gross receipts (as defined in section 942) of the taxpayer.''.

(b) QUALIFYING FOREIGN TRADE INCOME.—Part III of subchapter N of chapter 1 is amended by inserting after subpart D the following new subpart:

''Subpart E—Qualifying Foreign Trade Income

''Sec. 941. Qualifying foreign trade income.

''Sec. 942. Foreign trading gross receipts.

''Sec. 943. Other definitions and special rules.

''SEC. 941. QUALIFYING FOREIGN TRADE INCOME.

''(a) QUALIFYING FOREIGN TRADE INCOME.—For purposes of this subpart and section 114—

''(1) IN GENERAL.—The term 'qualifying foreign trade income' means, with respect to any transaction, the amount of gross income which, if excluded, will result in a reduction of the taxable income of the taxpayer from such transaction equal to the greatest of—

''(A) 30 percent of the foreign sale and leasing income derived by the taxpayer from such transaction,

''(B) 1.2 percent of the foreign trading gross receipts derived by the taxpayer from the transaction, or

''(C) 15 percent of the foreign trade income derived by the taxpayer from the transaction.

In no event shall the amount determined under subparagraph (B) exceed 200 percent of the amount determined under subparagraph (C).

''(2) ALTERNATIVE COMPUTATION.—A taxpayer may compute its qualifying foreign trade income under a subparagraph of paragraph (1) other than the subparagraph which results in the greatest amount of such income.

''(3) LIMITATION ON USE OF FOREIGN TRADING GROSS RECEIPTS METHOD.—If any person computes its qualifying foreign trade income from any transaction with respect to any property under paragraph (1)(B), the qualifying foreign trade income of such person (or any related person) with respect to any other transaction involving such property shall be zero.

''(4) RULES FOR MARGINAL COSTING.—The Secretary shall prescribe regulations setting forth rules for the allocation of expenditures in computing foreign trade income under paragraph (1)(C) in those cases where a taxpayer is seeking to establish or maintain a market for qualifying foreign trade property.

''(5) PARTICIPATION IN INTERNATIONAL BOYCOTTS, ETC.—Under regulations prescribed by the Secretary, the qualifying foreign trade income of a taxpayer for any taxable year shall be reduced (but not below zero) by the sum of—

''(A) an amount equal to such income multiplied by the international boycott factor determined under section 999, and

''(B) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the taxpayer directly or indirectly to an official, employee, or agent in fact of a government.

''(b) FOREIGN TRADE INCOME.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'foreign trade income' means the taxable income of the taxpayer attributable to foreign trading gross receipts of the taxpayer.

''(2) SPECIAL RULE FOR COOPERATIVES.—In any case in which an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products sells qualifying foreign trade property, in computing the taxable income of such cooperative, there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

''(c) FOREIGN SALE AND LEASING INCOME.—For purposes of this section—

''(1) IN GENERAL.—The term 'foreign sale and leasing income' means, with respect to any transaction—

''(A) foreign trade income properly allocable to activities which—

''(i) are described in paragraph (2)(A)(i) or (3) of section 942(b), and

''(ii) are performed by the taxpayer (or any person acting under a contract with such taxpayer) outside the United States, or

''(B) foreign trade income derived by the taxpayer in connection with the lease or rental of qualifying foreign trade property for use by the lessee outside the United States.

''(2) SPECIAL RULES FOR LEASED PROPERTY.—

''(A) SALES INCOME.—The term 'foreign sale and leasing income' includes any foreign trade income derived by the taxpayer from the sale of property described in paragraph (1)(B).

''(B) LIMITATION IN CERTAIN CASES.—Except as provided in regulations, in the case of property which—

''(i) was manufactured, produced, grown, or extracted by the taxpayer, or

''(ii) was acquired by the taxpayer from a related person for a price which was not determined in accordance with the rules of section 482,

the amount of foreign trade income which may be treated as foreign sale and leasing income under paragraph (1)(B) or subparagraph (A) of this paragraph with respect to any transaction involving such property shall not exceed the amount which would have been determined if the taxpayer had acquired such property for the price determined in accordance with the rules of section 482.

''(3) SPECIAL RULES.—

''(A) EXCLUDED PROPERTY.—Foreign sale and leasing income shall not include any income properly allocable to excluded property described in subparagraph (B) of section 943(a)(3) (relating to intangibles).

''(B) ONLY DIRECT EXPENSES TAKEN INTO ACCOUNT.—For purposes of this subsection, any expense other than a directly allocable expense shall not be taken into account in computing foreign trade income.

''SEC. 942. FOREIGN TRADING GROSS RECEIPTS.

''(a) FOREIGN TRADING GROSS RECEIPTS.—

''(1) IN GENERAL.—Except as otherwise provided in this section, for purposes of this subpart, the term 'foreign trading gross receipts' means the gross receipts of the taxpayer which are—

''(A) from the sale, exchange, or other disposition of qualifying foreign trade property,

''(B) from the lease or rental of qualifying foreign trade property for use by the lessee outside the United States,

''(C) for services which are related and subsidiary to—

''(i) any sale, exchange, or other disposition of qualifying foreign trade property by such taxpayer, or

''(ii) any lease or rental of qualifying foreign trade property described in subparagraph (B) by such taxpayer,

''(D) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

''(E) for the performance of managerial services for a person other than a related person in furtherance of the production of foreign trading gross receipts described in subparagraph (A), (B), or (C).

Subparagraph (E) shall not apply to a taxpayer for any taxable year unless at least 50 percent of its foreign trading gross receipts (determined without regard to this sentence) for such taxable year is derived from activities described in subparagraph (A), (B), or (C).

''(2) CERTAIN RECEIPTS EXCLUDED ON BASIS OF USE; SUBSIDIZED RECEIPTS EXCLUDED.—The term 'foreign trading gross receipts' shall not include receipts of a taxpayer from a transaction if—

''(A) the qualifying foreign trade property or services—

''(i) are for ultimate use in the United States, or

''(ii) are for use by the United States or any instrumentality thereof and such use of qualifying foreign trade property or services is required by law or regulation, or

''(B) such transaction is accomplished by a subsidy granted by the government (or any instrumentality thereof) of the country or possession in which the property is manufactured, produced, grown, or extracted.

''(3) ELECTION TO EXCLUDE CERTAIN RECEIPTS.—The term 'foreign trading gross receipts' shall not include gross receipts of a taxpayer from a transaction if the taxpayer elects not to have such receipts taken into account for purposes of this subpart.

''(b) FOREIGN ECONOMIC PROCESS REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in subsection (c), a taxpayer shall be treated as having foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by paragraph (2).

''(2) REQUIREMENT.—

''(A) IN GENERAL.—The requirements of this paragraph are met with respect to the gross receipts of a taxpayer derived from any transaction if—

''(i) such taxpayer (or any person acting under a contract with such taxpayer) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

''(ii) the foreign direct costs incurred by the taxpayer attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

''(B) ALTERNATIVE 85-PERCENT TEST.—A taxpayer shall be treated as satisfying the requirements of subparagraph (A)(ii) with respect to any transaction if, with respect to each of at least 2 subparagraphs of paragraph (3), the foreign direct costs incurred by such taxpayer attributable to activities described in such subparagraph equal or exceed 85 percent of the total direct costs attributable to activities described in such subparagraph.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) TOTAL DIRECT COSTS.—The term 'total direct costs' means, with respect to any transaction, the total direct costs incurred by the taxpayer attributable to activities described in paragraph (3) performed at any location by the taxpayer or any person acting under a contract with such taxpayer.

''(ii) FOREIGN DIRECT COSTS.—The term 'foreign direct costs' means, with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

''(3) ACTIVITIES RELATING TO QUALIFYING FOREIGN TRADE PROPERTY.—The activities described in this paragraph are any of the following with respect to qualifying foreign trade property—

''(A) advertising and sales promotion,

''(B) the processing of customer orders and the arranging for delivery,

''(C) transportation outside the United States in connection with delivery to the customer,

''(D) the determination and transmittal of a final invoice or statement of account or the receipt of payment, and

''(E) the assumption of credit risk.

''(4) ECONOMIC PROCESSES PERFORMED BY RELATED PERSONS.—A taxpayer shall be treated as meeting the requirements of this subsection with respect to any sales transaction involving any property if any related person has met such requirements in such transaction or any other sales transaction involving such property.

''(c) EXCEPTION FROM FOREIGN ECONOMIC PROCESS REQUIREMENT.—

''(1) IN GENERAL.—The requirements of subsection (b) shall be treated as met for any taxable year if the foreign trading gross receipts of the taxpayer for such year do not exceed $5,000,000.

''(2) RECEIPTS OF RELATED PERSONS AGGREGATED.—All related persons shall be treated as one person for purposes of paragraph (1), and the limitation under paragraph (1) shall be allocated among such persons in a manner provided in regulations prescribed by the Secretary.

''(3) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership, S corporation, or other pass-thru entity, the limitation under paragraph (1) shall apply with respect to the partnership, S corporation, or entity and with respect to each partner, shareholder, or other owner.

''SEC. 943. OTHER DEFINITIONS AND SPECIAL RULES.

''(a) QUALIFYING FOREIGN TRADE PROPERTY.—For purposes of this subpart—

''(1) IN GENERAL.—The term 'qualifying foreign trade property' means property—

''(A) manufactured, produced, grown, or extracted within or outside the United States,

''(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business for direct use, consumption, or disposition outside the United States, and

''(C) not more than 50 percent of the fair market value of which is attributable to—

''(i) articles manufactured, produced, grown, or extracted outside the United States, and

''(ii) direct costs for labor (determined under the principles of section 263A) performed outside the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation, and the direct costs for labor under clause (ii) do not include costs that would be treated under the principles of section 263A as direct labor costs attributable to articles described in clause (i).

''(2) U.S. TAXATION TO ENSURE CONSISTENT TREATMENT.—Property which (without regard to this paragraph) is qualifying foreign trade property and which is manufactured, produced, grown, or extracted outside the United States shall be treated as qualifying foreign trade property only if it is manufactured, produced, grown, or extracted by—

''(A) a domestic corporation,

''(B) an individual who is a citizen or resident of the United States,

''(C) a foreign corporation with respect to which an election under subsection (e) (relating to foreign corporations electing to be subject to United States taxation) is in effect, or

''(D) a partnership or other pass-thru entity all of the partners or owners of which are described in subparagraph (A), (B), or (C).

Except as otherwise provided by the Secretary, tiered partnerships or pass-thru entities shall be treated as described in subparagraph (D) if each of the partnerships or entities is directly or indirectly wholly owned by persons described in subparagraph (A), (B), or (C).

''(3) EXCLUDED PROPERTY.—The term 'qualifying foreign trade property' shall not include—

''(A) property leased or rented by the taxpayer for use by any related person,

''(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, and other than computer software (whether or not patented), for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

''(C) oil or gas (or any primary product thereof),

''(D) products the transfer of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of Public Law 96–72, or

''(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber.

''(4) PROPERTY IN SHORT SUPPLY.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, the President may by Executive order designate the property as in short supply. Any property so designated shall not be treated as qualifying foreign trade property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

''(b) OTHER DEFINITIONS AND RULES.—For purposes of this subpart—

''(1) TRANSACTION.—

''(A) IN GENERAL.—The term 'transaction' means—

''(i) any sale, exchange, or other disposition,

''(ii) any lease or rental, and

''(iii) any furnishing of services.

''(B) GROUPING OF TRANSACTIONS.—To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

''(2) UNITED STATES DEFINED.—The term 'United States' includes the Commonwealth of Puerto Rico. The preceding sentence shall not apply for purposes of determining whether a corporation is a domestic corporation.

''(3) RELATED PERSON.—A person shall be related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

''(4) GROSS AND TAXABLE INCOME.—Section 114 shall not be taken into account in determining the amount of gross income or foreign trade income from any transaction.

''(c) SOURCE RULE.—Under regulations, in the case of qualifying foreign trade property manufactured, produced, grown, or extracted within the United States, the amount of income of a taxpayer from any sales transaction with respect to such property which is treated as from sources without the United States shall not exceed—

''(1) in the case of a taxpayer computing its qualifying foreign trade income under section 941(a)(1)(B), the amount of the taxpayer's foreign trade income which would (but for this subsection) be treated as from sources without the United States if the foreign trade income were reduced by an amount equal to 4 percent of the foreign trading gross receipts with respect to the transaction, and

''(2) in the case of a taxpayer computing its qualifying foreign trade income under section 941(a)(1)(C), 50 percent of the amount of the taxpayer's foreign trade income which would (but for this subsection) be treated as from sources without the United States.

''(d) TREATMENT OF WITHHOLDING TAXES.—

''(1) IN GENERAL.—For purposes of section 114(d), any withholding tax shall not be treated as paid or accrued with respect to extraterritorial income which is excluded from gross income under section 114(a). For purposes of this paragraph, the term 'withholding tax' means any tax which is imposed on a basis other than residence and for which credit is allowable under section 901 or 903.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any taxpayer with respect to extraterritorial income from any transaction if the taxpayer computes its qualifying foreign trade income with respect to the transaction under section 941(a)(1)(A).

''(e) ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—

''(1) IN GENERAL.—An applicable foreign corporation may elect to be treated as a domestic corporation for all purposes of this title if such corporation waives all benefits to such corporation granted by the United States under any treaty. No election under section 1362(a) may be made with respect to such corporation.

''(2) APPLICABLE FOREIGN CORPORATION.—For purposes of paragraph (1), the term 'applicable foreign corporation' means any foreign corporation if—

''(A) such corporation manufactures, produces, grows, or extracts property in the ordinary course of such corporation's trade or business, or

''(B) substantially all of the gross receipts of such corporation are foreign trading gross receipts.

''(3) PERIOD OF ELECTION.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the taxpayer. Any revocation of such election shall apply to taxable years beginning after such revocation.

''(B) TERMINATION.—If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraph (A) or (B) of paragraph (2) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

''(C) EFFECT OF REVOCATION OR TERMINATION.—If a corporation which made an election under paragraph (1) revokes such election or such election is terminated under subparagraph (B), such corporation (and any successor corporation) may not make such election for any of the 5 taxable years beginning with the first taxable year for which such election is not in effect as a result of such revocation or termination.

''(4) SPECIAL RULES.—

''(A) REQUIREMENTS.—This subsection shall not apply to an applicable foreign corporation if such corporation fails to meet the requirements (if any) which the Secretary may prescribe to ensure that the taxes imposed by this chapter on such corporation are paid.

''(B) EFFECT OF ELECTION, REVOCATION, AND TERMINATION.—

''(i) ELECTION.—For purposes of section 367, a foreign corporation making an election under this subsection shall be treated as transferring (as of the first day of the first taxable year to which the election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

''(ii) REVOCATION AND TERMINATION.—For purposes of section 367, if—

''(I) an election is made by a corporation under paragraph (1) for any taxable year, and

''(II) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of the first such subsequent taxable year to which such election ceases to apply) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

''(C) ELIGIBILITY FOR ELECTION.—The Secretary may by regulation designate one or more classes of corporations which may not make the election under this subsection.

''(f) RULES RELATING TO ALLOCATIONS OF QUALIFYING FOREIGN TRADE INCOME FROM SHARED PARTNERSHIPS.—

''(1) IN GENERAL.—If—

''(A) a partnership maintains a separate account for transactions (to which this subpart applies) with each partner,

''(B) distributions to each partner with respect to such transactions are based on the amounts in the separate account maintained with respect to such partner, and

''(C) such partnership meets such other requirements as the Secretary may by regulations prescribe,

then such partnership shall allocate to each partner items of income, gain, loss, and deduction (including qualifying foreign trade income) from any transaction to which this subpart applies on the basis of such separate account.

''(2) SPECIAL RULES.—For purposes of this subpart, in the case of a partnership to which paragraph (1) applies—

''(A) any partner's interest in the partnership shall not be taken into account in determining whether such partner is a related person with respect to any other partner, and

''(B) the election under section 942(a)(3) shall be made separately by each partner with respect to any transaction for which the partnership maintains separate accounts for each partner.

''(g) EXCLUSION FOR PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Any amount described in paragraph (1) or (3) of section 1385(a)—

''(1) which is received by a person from an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products, and

''(2) which is allocable to qualifying foreign trade income and designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

shall be treated as qualifying foreign trade income of such person for purposes of section 114. The taxable income of the organization shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

''(h) SPECIAL RULE FOR DISCS.—Section 114 shall not apply to any taxpayer for any taxable year if, at any time during the taxable year, the taxpayer is a member of any controlled group of corporations (as defined in section 927(d)(4), as in effect before the date of the enactment of this subsection) of which a DISC is a member.''

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(1) The second sentence of section 56(g)(4)(B)(i) is amended by inserting before the period ''or under section 114''.

(2) Section 275(a) is amended—

(A) by striking ''or'' at the end of paragraph (4)(A), by striking the period at the end of paragraph (4)(B) and inserting '', or'', and by adding at the end of paragraph (4) the following new subparagraph:

''(C) such taxes are paid or accrued with respect to qualifying foreign trade income (as defined in section 941).''; and

(B) by adding at the end the following new sentence: ''A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C).''.

(3) Paragraph (3) of section 864(e) is amended—

(A) by striking ''For purposes of'' and inserting:

''(A) IN GENERAL.—For purposes of''; and

(B) by adding at the end the following new subparagraph:

''(B) ASSETS PRODUCING EXEMPT EXTRATERRITORIAL INCOME.—For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2)).''.

(4) Section 903 is amended by striking ''164(a)'' and inserting ''114, 164(a),''.

(5) Section 999(c)(1) is amended by inserting ''941(a)(5),'' after ''908(a),''.

(6) The table of sections for part III of subchapter B of chapter 1 is amended by inserting before the item relating to section 115 the following new item:

''Sec. 114. Extraterritorial income.''.

(7) The table of subparts for part III of subchapter N of chapter 1 is amended by striking the item relating to subpart E and inserting the following new item:

''Subpart E. Qualifying foreign trade income.''.

(8) The table of subparts for part III of subchapter N of chapter 1 is amended by striking the item relating to subpart C.

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall apply to transactions after September 30, 2000.

(b) NO NEW FSCS; TERMINATION OF INACTIVE FSCS.—

(1) NO NEW FSCS.—No corporation may elect after September 30, 2000, to be a FSC (as defined in section 922 of the Internal Revenue Code of 1986, as in effect before the amendments made by this Act).

(2) TERMINATION OF INACTIVE FSCS.—If a FSC has no foreign trade income (as defined in section 923(b) of such Code, as so in effect) for any period of 5 consecutive taxable years beginning after December 31, 2001, such FSC shall cease to be treated as a FSC for purposes of such Code for any taxable year beginning after such period.

(c) TRANSITION PERIOD FOR EXISTING FOREIGN SALES CORPORATIONS.—

(1) IN GENERAL.—In the case of a FSC (as so defined) in existence on September 30, 2000, and at all times thereafter, the amendments made by this Act shall not apply to any transaction in the ordinary course of trade or business involving a FSC which occurs—

(A) before January 1, 2002; or

(B) after December 31, 2001, pursuant to a binding contract—

(i) which is between the FSC (or any related person) and any person which is not a related person; and

(ii) which is in effect on September 30, 2000, and at all times thereafter.

For purposes of this paragraph, a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.

(2) ELECTION TO HAVE AMENDMENTS APPLY EARLIER.—A taxpayer may elect to have the amendments made by this Act apply to any transaction by a FSC or any related person to which such amendments would apply but for the application of paragraph (1). Such election shall be effective for the taxable year for which made and all subsequent taxable years, and, once made, may be revoked only with the consent of the Secretary of the Treasury.

(3) EXCEPTION FOR OLD EARNINGS AND PROFITS OF CERTAIN CORPORATIONS.—

(A) IN GENERAL.—In the case of a foreign corporation to which this paragraph applies—

(i) earnings and profits of such corporation accumulated in taxable years ending before October 1, 2000, shall not be included in the gross income of the persons holding stock in such corporation by reason of section 943(e)(4)(B)(i), and

(ii) rules similar to the rules of clauses (ii), (iii), and (iv) of section 953(d)(4)(B) shall apply with respect to such earnings and profits.

The preceding sentence shall not apply to earnings and profits acquired in a transaction after September 30, 2000, to which section 381 applies unless the distributor or transferor corporation was immediately before the transaction a foreign corporation to which this paragraph applies.

(B) EXISTING FSCS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957) if—

(i) such corporation is a FSC (as so defined) in existence on September 30, 2000,

(ii) such corporation is eligible to make the election under section 943(e) by reason of being described in paragraph (2)(B) of such section, and

(iii) such corporation makes such election not later than for its first taxable year beginning after December 31, 2001.

(C) OTHER CORPORATIONS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957), and such corporation shall (notwithstanding any provision of section 943(e)) be treated as an applicable foreign corporation for purposes of section 943(e), if—

(i) such corporation is in existence on September 30, 2000,

(ii) as of such date, such corporation is wholly owned (directly or indirectly) by a domestic corporation (determined without regard to any election under section 943(e)),

(iii) for each of the 3 taxable years preceding the first taxable year to which the election under section 943(e) by such controlled foreign corporation applies—

(I) all of the gross income of such corporation is subpart F income (as defined in section 952), including by reason of section 954(b)(3)(B), and

(II) in the ordinary course of such corporation's trade or business, such corporation regularly sold (or paid commissions) to a FSC which on September 30, 2000, was a related person to such corporation,

(iv) such corporation has never made an election under section 922(a)(2) (as in effect before the date of the enactment of this paragraph) to be treated as a FSC, and

(v) such corporation makes the election under section 943(e) not later than for its first taxable year beginning after December 31, 2001.

The preceding sentence shall cease to apply as of the date that the domestic corporation referred to in clause (ii) ceases to wholly own (directly or indirectly) such controlled foreign corporation.

(4) RELATED PERSON.—For purposes of this subsection, the term ''related person'' has the meaning given to such term by section 943(b)(3).

(5) SECTION REFERENCES.—Except as otherwise expressly provided, any reference in this subsection to a section or other provision shall be considered to be a reference to a section or other provision of the Internal Revenue Code of 1986, as amended by this Act.

(d) SPECIAL RULES RELATING TO LEASING TRANSACTIONS.—

(1) SALES INCOME.—If foreign trade income in connection with the lease or rental of property described in section 927(a)(1)(B) of such Code (as in effect before the amendments made by this Act) is treated as exempt foreign trade income for purposes of section 921(a) of such Code (as so in effect), such property shall be treated as property described in section 941(c)(1)(B) of such Code (as added by this Act) for purposes of applying section 941(c)(2) of such Code (as so added) to any subsequent transaction involving such property to which the amendments made by this Act apply.

(2) LIMITATION ON USE OF GROSS RECEIPTS METHOD.—If any person computed its foreign trade income from any transaction with respect to any property on the basis of a transfer price determined under the method described in section 925(a)(1) of such Code (as in effect before the amendments made by this Act), then the qualifying foreign trade income (as defined in section 941(a) of such Code, as in effect after such amendment) of such person (or any related person) with respect to any other transaction involving such property (and to which the amendments made by this Act apply) shall be zero.

CONTINUING APPROPRIATIONS FY 2000

LOTT AMENDMENT NO. 4357

Mr. LOTT proposed an amendment to the bill (H.J. Res. 84) making further continuing appropriations for the fiscal year 2000, and for other purposes; as follows:

Strike all after the resolving clause and insert the following:

That Public Law 106–275, is further amended by striking the date specified in section 106(c) and inserting ''November 14, 2000''.

Amend the title so as to read: ''Making further continuing appropriations for the fiscal year 2001, and for other purposes.''

WILLIAM KENZO NAKAMURA UNITED STATES COURTHOUSE

HERBERT H. BATEMAN EDUCATIONAL AND ADMINISTRATIVE CENTER

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Senate now proceed en bloc to the following bills which are at the desk: H.R. 5302; and, H.R. 5388.

The PRESIDING OFFICER. The clerk will report the bills by title.

The legislative clerk read as follows:

A bill (H.R. 5302) to designate the United States courthouse located at 1010 Fifth Avenue in Seattle, Washington as the ''William Kenzo Nakamura United States Courthouse.''

A bill (H.R. 5388) to designate a building proposed to be located within the boundaries of the Chincoteague National Wildlife Refuse as the ''Herbert H. Bateman Educational and Administrative Center.''

There being no objection, the Senate proceeded to consider the bills en bloc.

Mr. MURKOWSKI. Mr. President, I further ask unanimous consent that the bills be read the third time and passed, the motions to reconsider be

laid upon the table, and any statements relating to any of these bills be printed in the RECORD, with the above occurring en bloc.

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

The bills (H.R. 5302 and H.R. 5388) were read the third time and passed.

GEORGE E. BROWN, JR., U.S. COURTHOUSE

Mr. MURKOWSKI. Mr. President, on behalf of the leader, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5110, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5110) to designate the U.S. Courthouse located at 3470 12th Street, Riverside, California as the ''George E. Brown, Jr., U.S. Courthouse.''

There being no objection, the Senate proceeded to consider the bill.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

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

The bill (H.R. 5110) was read three times and passed.

NATIONAL RECORDING REGISTRY IN THE LIBRARY OF CONGRESS

Mr. MURKOWSKI. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (H.R. 4846)

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendments of the Senate to the bill (H.R. 4846) entitled ''An Act to establish the National Recording Registry in the Library of Congress to maintain and preserve sound recordings that are culturally, historically, or aesthetically significant, and for other purposes.''.

Mr. MURKOWSKI. I ask unanimous consent the Senate recede from its amendment.

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

ORDERS FOR NOVEMBER 2, 2000, AND NOVEMBER 14, 2000

Mr. MURKOWSKI. Mr. President, on behalf of the leader, I ask unanimous consent that when the Senate completes its business today, it recess until the hour of 12 noon on Tuesday, November 14, under the provisions of S. Con. Res. 159.

I further ask unanimous consent that if the House of Representatives does not pass H.J. Res. 84 as passed by the Senate, the Senate reconvene at 8:30 p.m. on Thursday, November 2. I further ask unanimous consent that on Tuesday, November 14, immediately following the prayer, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then proceed to a period of morning business until 12:30 p.m., with the time equally divided between Senator LOTT and Senator DASCHLE.

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

Mr. MURKOWSKI. Mr. President, I further ask unanimous consent that the Senate stand in recess from the hour of 12:30 p.m. until 2:15 p.m. for the weekly policy conferences to meet.

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

PROGRAM

Mr. MURKOWSKI. Mr. President, for the information of all Senators, the Senate, therefore, will convene on Tuesday, November 14, at 12 noon, or at 8:30 p.m. tomorrow if a problem arises with the long-term continuing resolution. The Senate will be in a period of morning business on Tuesday, November 14 until the Senate recesses for the weekly party conferences at 12:30. Negotiations will continue during this short break, and therefore Senators should be aware that votes are expected to occur on November 14.

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.

The PRESIDING OFFICER. In my capacity as the Senator from the State of Idaho, I ask unanimous consent that the quorum call be rescinded.

Without objection, it is so ordered.

RECESS UNTIL TUESDAY, NOVEMBER 14, 2000

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess under the provisions of S. Con. Res. 159.

Thereupon, the Senate, at 3:33 p.m., recessed until Tuesday, November 14, 2000, at 12 noon.